

ON WATCH

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MILITARY LAW TASK FORCE

National Lawyers Guild

318 Ortega Street, San Francisco, CA 94122

Kathleen Gilberd -- co-chair, KathleenGilberd@aol.com, 619-233-1701

Marti Hiken -- co-chair, mlhiken@pacbell.net, 415-566-3732

www.nlg.org/mltf

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Co-Chairs:

Kathy Gilberd (KathleenGilberd@aol.com), 619-234-1883 (work)

Marti Hiken, 415-566-3732 (mlhiken@pacbell.net)

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National Lawyers Guild
143 Madison Ave., 4th Floor
New York, NY 10016
212-679-5100
212-679-2811 fax
www.nlg.org

MLTF Website http://www.nlg.org/mltf/
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People who worked on this issue: Kathy Gilberd, David Gespass, Michael Gaffney, Marti Hiken

STOP LOSS ORDERS

This article was written by Teresa Panepinto, GI Rights Program Coordinator for the Central Committee for Conscientious Objectors (CCCO).

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

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

Two stop-loss orders and one stop movement order are currently in effect in the Army. The Reserve Component unit stop loss policy, put into effect November 2002, remains in place. An Active Army unit stop loss policy came into being November 13, 2003. A stop movement policy was also re-instated Read below for more details on these policies.

- 1. Reserve Component (RC) unit stop loss policy applies to all reserve units that have been mobilized or alerted for mobilization. The stop loss begins once a unit

has been alerted for mobilization, and lasts until 90 days after the unit has demobilized or taken off alert status.

2. Active Army (AA) unit stop loss policy applies to those deployed overseas for Operation Enduring Freedom, 5th rotation (OEF5) and Operation Iraqi Freedom, 2nd rotation (OIF2). It also applies to those providing the transition from OIF1 to OIF2 for the duration of deployment. This AA stop loss begins 90 days before deployment and lasts until 90 days after deployment.

3. Stop Movement. This order suspends permanent change of duty station moves. It was implemented November 13, 2003, and applies to all soldiers affected by the Active Army unit stop loss policy.

Please note that both stop-loss orders apply to those who would be discharged at the end of their term of service (ETS) only. There are several exceptions to both orders; those seeking CO, disability, hardship, homosexual conduct, ODPMC, and any other "convenience of the government" discharges (or anyone seeking an involuntary discharge) will NOT be affected by stop loss.

Also, AA soldiers already deployed in the operations listed above (OEF & OIF) will NOT be affected by stop loss.

NAVY

As of May 19, 2003, all stop-loss restrictions have been lifted. There are currently NO stop loss orders in effect in the Navy.

AIR FORCE

As of June 24, 2003, the Air Force Stop-loss has been lifted. There are currently NO stop loss orders in effect in the Air Force.

MARINES

As of May 23, 2003, all stop-loss restrictions have been lifted. There are currently NO stop loss orders in effect in the Marines.

(For further information, or to check for changes in the stop loss policies, readers can contact the author at 888-231-2226 or at Teresa@objector.org.)

COUNSELING CONSCIENTIOUS OBJECTORS: COMBATting THE STEREOTYPES

By Kathleen Gilberd, co-chair of the MLTF and a legal worker in San Diego.

Stereotypes about conscientious objectors are common. Military personnel often judge their own qualification for CO discharge on the basis of stereotypes rather than the legal definition of objection. Military counselors and attorneys sometimes make assumptions about their clients based on stereotypes. Most problematic is the fact that officers who review CO claims frequently judge applicants' beliefs and sincerity on the basis of their own ideas about what CO's are like rather than the requirements of the regulations.

The stereotypes are not surprising. People tend to assume that CO's are bright, thoughtful, articulate and gentle people who look and sound sincere. CO's are expected to be better educated than their peers, to read a lot and to be eager to talk about their convictions with anyone who will listen. Of course they are expected to be white and middle class. They are usually presumed to be religious -- and Christian, at that -- or to have esoteric moral beliefs based on the teachings of great moral leaders. They are expected to be total pacifists who would no more raise their voice to a sergeant than they would hurt a fly. They should *sound* sincere and shyly eloquent.

These stereotypes are just fine if your client happens to be an articulate, white, middle-class clerk with a gentle voice and a traditional belief system. But many of our clients do not match these images, and their CO claims may suffer because chaplains, investigating officers (IO's) or others don't think they fit the part. In order to represent these clients well, counselors and attorneys should give special attention to the problems posed by the stereotypes.

This article offers a few practical suggestions for those representing clients - -generally those from poor or working class backgrounds -- who don't fit the stereotypes about education, language and style.

TALKING ABOUT CONSCIENTIOUS OBJECTION

Many young men and women join the military knowing little or nothing about conscientious objection. Many define objection only in terms of the stereotypes mentioned here. Others have heard that CO's are cowards, opportunists, radicals or crazies. Some think that CO's must be life-long

members of peace churches and total pacifists, with beliefs grounded in abstract philosophies or complex theological principles.

When counseling new clients seeking discharge, it is important to be sensitive to their and our own stereotypes about CO's. Counselors or attorneys sometimes face the temptation to focus on the discharge clients mention first, or the one that seems to fit them at first glance. Clients who start out by asking for help with a gay discharge, or who say they want out because "I feel like I'm about to lose it," may lead counselors or attorneys to emphasize discharges for homosexual conduct or personality disorder, respectively. The problem may be complicated by the fact that many clients will assert they are not CO's, or appear insulted when the term is mentioned.

However, many of these men and women are conscientious objectors, and CO discharges may be their best option. Clients who don't say they are CO's may not know that they are, may not realize people can still be discharged for this reason, or may ask about another discharge because a friend got out that way. Clients who express hostility or contempt towards CO beliefs may nonetheless oppose killing and war for reasons of conscience. And clients who say they could never get out as COs may wrongly believe that only total pacifists, or life-long pacifists, or peace church pacifists will qualify. Initial discussion with clients should include a detailed explanation of conscientious objection, as is the case with most discharge categories. Clients should be encouraged to describe their beliefs about war, to ensure that neither we nor our clients fall prey to the stereotypes.

WRITING AN APPLICATION

Not every CO can write a clear and articulate claim. Given the quality of our educational system, many military personnel write at a junior high school level, at best. For some, writing is a painful task, spelling is guesswork, and finding the right word or phrase to express a feeling is agony.

The ability to get words down on paper normally has no relation to the sincerity or validity of beliefs, but it may have a profound effect on the success of CO claims. It is essential that clients who lack strong writing skills have help in preparing applications. At the same time, it is extremely important that the applications are their own, using their language and ideas to get across their beliefs in a way that reviewing officers can understand and appreciate.

For some clients, talking is easier than writing. It may help to have them talk about their beliefs at some length before they begin writing. In addition, they may want to use a tape recorder or dictaphone to talk out their answers to the questions in the application, and to write from their own dictation or hire a typist to prepare written drafts. Particularly if the command has other samples of their writing, clients may want to explain in the application that they have recorded and then written out their answers, or that they dictated answers for transcription. Nervousness when using a tape recorder may be a problem, but most people can overcome it with practice; this also provides good experience for those who will want to tape record CO interviews.

Many young men and women leave school with a limited ability to write and think abstractly. These clients commonly have the great difficulty with the first substantive question in the CO application, which asks for a description of the nature of their beliefs. Since the remaining questions are somewhat more experiential and practical, it may help clients to start with the second question and work their way to the end, then return to the first question. Along the way, applicants will make a number of practical statements about their beliefs which can be developed when they return to the first question.

These clients may also write too concretely about their experiences, without describing the development of beliefs or ideas associated with the experiences. "I went to church when I was a boy" is no substitute for "I went to church when I was a boy, and I didn't question what I learned there, but I didn't think about what it meant for my life." With a little questioning, counselors and attorneys can encourage clients to express the religious or moral lesson or growth that accompanied church attendance, the death of a friend, a day on the firing range or other significant experiences.

Clients who have little experience in essay writing often prepare disjointed drafts in which ideas and experiences are not well organized or connected. They may benefit from an outline breaking each question into smaller components. Without telling clients what to write, counselors and attorneys can use an outline to explain the topic areas that may be covered in each question and a logical order for the topics. This breaks questions down into manageable chunks and provides a logical structure for answers.

Some reviewing officers are quite impressed with CO's who can describe theological reading, dialog or correspondence preceding or following the

crystallization of their beliefs. While such intellectual efforts are certainly not necessary in CO claims, it is essential to document the reflection which accompanies development of CO beliefs. CO's who lack an intellectual background are no less likely to reflect on their beliefs than others, but they are less likely to describe the process. Counselors and attorneys can help by asking for descriptions of the emotional or spiritual process by which beliefs changed, and making sure those descriptions end up in the application, particularly in the second and third questions.

Clients often ask to see other CO applications, and it is tempting to agree when they are having difficulty with their own applications. Yet these clients may be the most susceptible to the temptation to borrow words or phrases from other writers -- words or phrases that won't match their own language during interviews.

Clients may also unintentionally borrow words or phrases from their counselors or attorneys. It is important to warn them that reviewing officers may notice any disparity between different parts of an application, or between the application and interviews. We should watch for borrowed language when reviewing applications, since clients are often unaware that they have used others' words.

Many clients have real trouble with spelling, punctuation and grammar. Since their commands may have samples of this in other writings, it is often best to ignore spelling or punctuation mistakes in the application unless they change meaning. If clients prefer to have someone proofread for spelling and punctuation, this should be mentioned in the application. While problems of grammar sometimes make applications hard to read, they often parallel speaking patterns and, at least in this writer's view, should be changed only if necessary for an understanding of the text.

Clients who have difficulty writing usually need to do a good deal of re-writing, and this can be a frustrating experience. Criticism of their drafts should be tempered with that understanding and should be combined with praise for positive aspects of the applications. Counselors and attorneys need to avoid the temptation to limit criticism and discussion of drafts in these cases, since the process of editing and rewriting is essential for strong applications and excellent preparation for interviews.

PREPARING FOR INTERVIEWS

Advance preparation for interviews is always important, but has special significance for clients who have problems expressing ideas verbally and clients who are simply nervous in front of officers. It helps to talk at length with these clients about ways to handle interviews, and to practice interviews beforehand.

Talking with clients about the style of interviews and ways to respond to difficult questions or questioning techniques can be quite helpful. By way of example, counselors and attorneys can offer suggestions about responding to rapid, aggressive questioning ("feel free to ask the IO to slow down or repeat a question; tell her you'd like to say something more about that last question; stop and take a few breaths if she's rushing you; keep an eye on your temper because she's trying to get a rise out of you," etc.) and about responding to questions they don't understand ("ask her to rephrase it, talk in generalities while you think about the question, don't say you've never thought about it if it's a basic kind of issue").

Counselors and attorneys can also help clients prepare mental checklists of the ideas they want to get across in the interviews. This allows applicants to organize the information they want to volunteer if chaplains or IO's don't ask the right questions. Additionally, we can help clients notice and deal with nervous mannerisms which might be distracting during interviews or might be misinterpreted as evidence of insincerity.

There is no substitute for practice interviews. The questions listed at the end of CCCO's Advice for Conscientious Objectors in the Armed Forces are excellent and can be supplemented with questions about recent and current military actions and conditions. If clients are too comfortable with their counselors, it may help to bring in someone else to play the role of chaplain or IO. Tape recording the practice sessions will make clients more comfortable with recorders and allow them to review the sessions.

In the course of practice interviews, it is useful to practice responses to difficult questioning styles as well as the questions themselves. Clients who have never developed debating skills may have trouble maintaining a measure of control over the interview. Practice sessions allow them to develop ways to assert their views in the face of hostile or confusing questions. These sessions can also help less articulate clients learn to

elaborate on their ideas, avoiding the monosyllabic style in which many enlisted people deal with officers.

Finally, practice sessions can be used to test questions that stem from stereotypes about intellectual background, theological study, or speaking or writing style. Clients who have thought about these questions are less likely to be defensive or apologetic. When clients learn not to treat these things as weaknesses, it becomes a little more difficult for IO's and chaplains to do so. For example, clients may want to comment on their lack of writing or speaking skills before the issue is raised by the IO; they may practice ways to remind interviewers that it is not written texts and denominational teachings that are important to them, but God's communication with them through soul or conscience, if that fits their beliefs.

INTERVIEWS

Clients who have difficulty expressing themselves in interviews may benefit even more than others from the presence of a counselor or attorney at their IO interview. And while counselors and attorneys generally do not attend chaplain interviews, this may be useful with inarticulate clients. Representatives can intervene if chaplains or IOs engage in hostile, rapid-fire or confusing questioning, or rephrase questions where clients have trouble understanding them. In some cases, representatives may take the offensive and talk about clients' difficulty in speaking publicly or expressing ideas, pointing out that such things have no relation to the criteria for conscientious objection and are inappropriate considerations. It may be valuable to discuss the case law on this issue, some of which is discussed below. (This is particularly true in Navy cases, where commands are encouraged to use JAGs as IOs.)

Some clients are more comfortable if a friend, family member or church member attends the hearing to offer moral support, while others may feel awkward or nervous talking in front of people they know. With inexpressive clients, it may be particularly useful to present witnesses to bolster the clients' testimony.

Unless there are reliable guarantees that a transcript will be made, IO interviews and perhaps chaplain interviews should be taped in most of these cases. Interviewers sometimes misunderstand or distort clients' comments, and the problem is magnified when clients are not articulate. Accurate

records are essential where bad recommendations or decisions result from bias against or misunderstanding of clients.

REBUTTALS

If rebuttals to adverse recommendations are necessary in these cases, they normally should be done by the counselor or attorney. Where clients have stumbled or misspoken during interviews, the rebuttal may also include their statements, perhaps under oath, to clarify issues. Additional witness statements can be added at this point to rebut erroneous IO findings or buttress weak points.

Where clients are assisted in CO proceedings by counselors rather than attorneys, and where clients feel they may want to litigate denial of their claims, it is helpful to consult an attorney experienced in military law at this point, since the rebuttal can be used to ensure that an appropriate record is made for litigation.

CASE LAW

During the Vietnam era, a number of military and draft CO cases considered the problem of claimants whose views were not clearly or artfully expressed. Federal appellate courts frequently held that being inarticulate was not a proper basis for denial of a CO claim.

Courts found support for this view in *United States v. Seeger*, 380 US 163 (1965). Immediately after its well-known explanation of the breadth of beliefs which may qualify as religious, the Supreme Court stated:

"[I]t must be remembered that in resolving these exemption problems one deals with the beliefs of different individuals who will articulate them in a multitude of ways."

This language was expanded a little in *United States v. James*, 417 F.2d 826 (4th Cir. 1969), a draft case involving a claimant whose "religious views [were] not set forth at length or articulately." Footnoting the Seeger quotation above, the court stated that "we believe, nevertheless, that not only the articulate may qualify as conscientious objectors."

In *Gruca v. Secretary of the Army*, 436 F.2d 239 (D.C. Cir. 1970) *cert.den.* 401 US 978, the appellate court denied an objector's petition for habeas corpus, but wrote at length about the problem facing uneducated or inarticulate applicants:

"It will be recalled that the Board noted that Gruca 'was very quiet and information was difficult to obtain [and] he either could not or would not express himself in any way.' [citation omitted] When we consider this observation in tandem with the clumsiness of Gruca's written views, we are led to suspect that Gruca was badly handicapped through lack of education in his attempt to establish his claim....If the Board denied Gruca the desired status because it mistook his inability to express himself for an unwillingness to do so, or if Gruca was simply unable to make a convincing presentation because of his lack of education, then we cannot pretend that justice has been done.

"This is only a single instance of a recurring problem. There is a real risk that the conscientious objector classification has become a shelter reserved exclusively for the glib or well educated registrant who has learned how to speak the language of sincerity. Since it is obvious that the sincerity of a registrant's belief is not, in theory, a function of his education or his ability to express himself, this exclusivity is intolerable."

Other helpful cases include *Helwick v. Laird*, 438 F.2d 959 (5th Cir. 1971) ("One does not have to be a St. Augustine or a Thomas Aquinas to qualify as a conscientious objector...." "Conscientious objection has no necessary relation to intellectual sophistication."); *United States v. Stetter*, 445 F.2d 472 (5th Cir. 1971); *United States v. Joyce*, 437 F.2d 740 (7th Cir. 1971); *United States v. Zaragoza*, 449 F.2d 1278 (9th Cir. 1971) (Where the claimant was a high school drop-out and not fluent in English, "we do not hold him to the standards of eloquence and sophistication one might expect from a graduate student in philosophy."); *Rastin v. Laird*, 445 F.2d 645 (9th Cir. 1971) ("A person may be both naive and immature and still be very sincere and hold deep convictions.") and *United States v. Peterson*, 456 F.2d 1099 (8th Cir. 1972).

At least one Vietnam-era case went against this trend. In *Bishop v. United States*, 412 F.2d 1064 (9th Cir. 1969), the court considered CO beliefs which grew out of a claimant's Bible study with the Jehovah's Witnesses. The court held that:

"Therefore, since Bishop claims to have derived his beliefs through exercise of his intellect, his inherent ability to formulate such thoughts are [sic] relevant to the honesty and sincerity of the asserted beliefs. In these circumstances, Bishop's 'intellectual capacity' is one of the 'objective facts' from which inferences as to his sincerity or insincerity can be drawn."

The case serves as a reminder that clients who discuss their reading of religious texts are expected to be knowledgeable about them--often unreasonably so--and that clients who emphasize conscience or spiritual communication with their God may have less difficulty. It also reminds us that courts are not always sympathetic to those who have not "learned how to speak the language of sincerity." As counselors and attorneys, we must help our clients to speak this language in their own words, while reminding the military that "not only the articulate" should be granted CO status.

(The author would like to thank attorney Jim Feldman for his review of the case law discussed in this article.)

GUANTANAMO: THE US's CONCENTRATION CAMP ABROAD

This article was written by Luke Hiken, a MLTF member and staff attorney with the California Appellate Project.

When I was growing up, the quintessential symbol of Nazism/Fascism was the concentration camp. I associated the names of Auschwitz, Dachau, and Bergen-Belsen with a nation and people gone mad. Furthermore, I carried my feelings towards the German people well beyond those for any equivalent murderers in the world's history. Not only was it the horrific nature of the camps themselves that appalled me, but the fact that the German people pretended that they did not know what was going on in the camps, that I found inexcusable.

Like most stereotypes, my contempt must now be tempered by my realization that my own nation, the United States of America, has its own concentration camps. The most obvious one exists right before our eyes; and we know what is taking place there. Our form of Auschwitz is called

Guantanamo. And like Auschwitz, we have it situated outside of our native borders.

The characteristics of the German concentration camps that shocked and horrified were not only the wholesale slaughter of human beings -- that appears to be an unfortunate by-product of all totalitarian regimes. Throughout history, millions of humans have been killed by those who would assume the mantle of king, dictator, or emperor. But the inhuman and debasing treatment of those about to die seemed to reach an apex with the concentration camps established by the Germans.

What were the barbaric characteristics of those camps?

1) Isolation of a population that was not afforded a public trial.

Not only are detainees not permitted contact with lawyers, family or international peace groups, they are not even subjected to the scrutiny of a pro-government media that could document their conditions.

2) Identification of the prisoners as less than human.

Jews, Gypsies, Catholics, and the mentally and physically handicapped are replaced in the US lexicon with "terrorists," "Muslims" (i.e., infidels, or people with "little gods"), the "homeless," or "drug dealers." Our homegrown definitions of worthless humans are broader than those employed by the Germans. Whereas one could conceive (however terrible the conception) of the Germans reaching their goal of eliminating their "enemies," it is virtually impossible to imagine where George Bush's enemy list of worthless people will end.

3) Depriving prisoners of health care, legal support or contact with the outside world.

The Bush government has warned lawyers that if they interfere with his plans for alleged terrorists, he will prosecute them (see the Lynne Stewart case). If chaplains attempt to give meaningful assistance to prisoners, they will be prosecuted (Yee case). And, if translators, who are necessary to extract information from the prisoners, dare to speak out against the atrocities taking place in the camps, they are prosecuted (Al-Halabi case). Even the Red Cross is forbidden to have on-going contact in the camps. (The

International Red Cross has recently denounced the situation at Guantanamo.)

4) Sensory deprivation and loss of any human contact with friends or family.

The studies done on the impact of sensory deprivation on babies taken from their families at a young age underscored the destruction of mental and physical health suffered by those victims. At Guantanamo, the prisoners range in age from 90 years old to less than 16 years of age.

5) The prisoners are beyond the reach of any judicial institutions or legislative oversight.

Despite the Rehnquist Court's voluntary abandonment of its obligation to intervene to prevent the existence of the Guantanamo concentration camp, certiorari has been granted in Al Odeh, et al. v. United States, et al., No. 03-343, November 10, 2003. Other cases show that the Court relishes an executive with the power to do as it chooses in the name of national defense and executive privilege. Two books, Arthur Kinoy's Rights on Trial (see the chapter on US vs. US District Court) and Herbert Mueller's Hitler's Justice, describe what happens in a nation where courts abandon their obligation to control a rogue executive government. In fact, with judges and officials such as Clarence Thomas, Condoleezza Rice, John Ashcroft, Donald Rumsfeld, and Colin Powell, our judicial and executive branches of government have reached Orwellian proportions.

6) Prisoners are killed without the outside world being able to identify them, describe their causes of death, or identify their murderers.

The American people have already been told that individuals at Guantanamo have died and committed suicide, and that the government is "investigating." Photos taken from afar of the detainees show tortured individuals, chained, staggering and being dragged from one place to another inside the camp. All the while, we pretend we don't know what is taking place.

7) A policy of driving prisoners insane.

The US government has had the audacity to acknowledge that its program at Guantanamo is designed to "break" the spirit (i.e., the mental health) of the detainees to the point where they believe that life and rescue are hopeless.

8) A renunciation of principles of international law.

The world looks on with the same disbelief it did at the atrocities of the Germans, helpless to do anything about it until there is full-scale international war. We are now not only international outlaws, we run concentration camps, as well. Our attempts to subdue the world to our own sense of obedience (in the former Yugoslavia, Afghanistan, Iraq, Colombia, the Philippines, and throughout Africa) is doomed to failure. That we slaughter millions in this process is inevitable. To add to that shame the open abuse represented by concentration camps adds salt to an already festering wound.

The step-by-step process by which a nation goes from prisons to maximum security prisons (SHUs) to concentration camps is a subtle one, as it happens. In reality, it is a raw exercise of police-state authority. For the people of the US to allow the atrocity of Guantanamo to continue will be a blight on our souls for decades, if not centuries to come.

Just as to the Japanese "relocation centers" have been denounced for the despicable concentration camps they were, so will Guantanamo go down in history as one of our country's greatest failures and atrocities.

While we currently do not have the political unanimity to forestall the fascist juggernaut of US corporate/state empire, we can at least eradicate the existence of concentration camps being run in our name.

The following resources can be found at this website:

18 USC § 2441

<http://www4.law.cornell.edu/uscode/18/2441.html>

Key Documents

HR 104-698 - WAR CRIMES ACT OF
1996

HR 105-204 - EXPANDED ACT OF
1997

Army FM 27-10 - Law of Land
Warfare

Army Regulation 190-8 - POWs
Bush Military Tribunal Order
Fact Sheet: Status of Detainees
Military Commission Order No. 1
Draft Crimes and Elements Inst.
Military Commission Instructions 1-8

Current Cases

Supreme Court Filings
USAF v. AL-HALABI
AL MARIA v. Bush
AL-ODAH v. United States
HAMDI v. Rumsfeld
PADILLA v. Rumsfeld
RASUL v. Bush

Open Letter

<http://www.nlg.org/cuba/gremanintlaw.htm>

Bush Administration has to follow international law

The bombardment of Afghan targets, among them civilians and civil infrastructure, by US military forces which has been going on for months now, violates international law. In recent weeks alleged Taliban and Al-Qaeda fighters have been deported and imprisoned at the Guantanamo US military base. It is rumored several hundred people are now imprisoned there.

The US government classifies these prisoners as "irregular fighters" instead of as "prisoners of war" and has therefore been criticized by many governments and respected organizations. The Geneva Convention

guarantees all prisoners who are taken during war-like fights the status as "prisoners of war" -- as long as an "authoritative tribunal" has not ruled otherwise. This arbitrary handling by the Bush administration violates international law and contradicts the officially declared goal of achieving and protecting freedom and democracy.

The US military is being criticized by many governments and organizations because of its inhuman and life threatening treatment of the prisoners. The Bush administration is trying to utilize a lawless space (the Guantanamo US military base has been deprived of Cuban jurisdiction and legislation) to assert its national interests. This cannot be tolerated.

The very place of the imprisonment, which the US is using without any judicial foundation or supranational settlement, is of controversial status: the US military base is located in the territory of Cuba. Since the so-called "Platt-Amendment" of 1903, which has been forced upon the Cuban government, the stationing of US troops at Guantanamo can only be ended through bilateral consent. This relic of an overt imperialist era is not accepted by the current Cuban government and it violates principles of international law.

Furthermore, Guantanamo is located in a country that the US is attacking with legal, illegal and criminal means, in an effort to disturb its autonomous development. Despite all security measures by the US military an escape of some of the prisoners cannot be ruled out. Whoever might be able to escape, would escape into a foreign territory, and into a country that the US has been trying to overthrow for more than 40 years. The risk would thus be transferred to an "enemy country," which in case of a crisis would be enormously threatened by US actions. Examples in US history like the "Gulf of Tontine incident" or CIA activities in Latin America show what this could mean. Such a dangerous situation, possibly arranged by the Bush administration, cannot be accepted.

Worldwide, but also in the US, fundamental concerns are being expressed that the "war against terror" a la Bush ("Bush War") might destroy what it intends to defend. This danger has to be prevented through a significant shift of policies and politics. To achieve this all European partners and friends along with the international community are called on to act now.

A solution with respect to the Guantanamo prisoners that might be agreeable to all sides concerned would be to bring the prisoners -- to the UN Charter and international law (Geneva Convention) -- into UN custody and try them before an international court or tribunal.

* We demand from the US Administration and US Congress that the prisoners be treated according to the Third Geneva Convention and that they be turned over to an international tribunal.

* We demand from the US government that they leave the military base in Guantanamo (a relic of the Cold War and of US imperialism) and withdraw completely from Cuba.

* We demand from the UN that they immediately establish a tribunal on the terror attacks against the US and the war in Afghanistan, and work to restore the primacy of international law.

* We demand from the European Commission that they support the UN in these efforts and work to counteract the increasing unilateralism ("selfishness") of the Bush administration.

* We demand from the German government that they immediately initiate and support the establishment of a UN tribunal, and work to restore the primacy of international law and to counteract the unilateral politics of the Bush administration.

* We demand from the German government that they not extradite suspects that have been taken in custody in Germany (as with a 19 year old citizen of Turkish descent from Bremen), and work within the European Union for the same purpose.

Contact: Friendship Society Berlin

Cuba E-mail:

fg-berlin-kuba@gmx.de

Homepage: www.berlinet.de/kuba/fbk.htm

www.fg-berlin-kuba.de

Human Rights News

<http://www.hrw.org/press/2002/01/us011102.htm>

U.S.: Geneva Conventions Apply to Guantanamo Detainees

(New York, January 11, 2002) -- Human Rights Watch questioned Secretary of Defense Donald Rumsfeld's statement today that captured fighters from Afghanistan shipped to Cuba were "unlawful combatants" not entitled to protection under the Geneva Conventions. Human Rights Watch also criticized the reported use of chain-link cages to confine the detainees.

"The Secretary seems unaware of the requirements of international humanitarian law," said Jamie Fellner, director of Human Rights Watch's US Program. "As a party to the Geneva Conventions, the United States is required to treat every detained combatant humanely, including unlawful combatants. The United States may not pick and choose among them to decide who is entitled to decent treatment."

News reports indicate that Taliban and Al-Qaeda detainees will be confined at Guantanamo Bay in small cages with chain-link sides, concrete floors and metal roofs. The cages will offer scant shelter from wind and rain. Details about sanitary and hygiene facilities are not available.

This is not the first time detainees have been held at Guantanamo Bay. In 1994, the US government responded to refugee flows from Haiti and then Cuba by creating a temporary holding facility at the base. While conditions there were stark and hardly hospitable, the detainees were held in permanent hard-walled shelters.

"The proposed cages are a scandal," said Fellner. "The United States should not be transporting detainees to Cuba until it can provide decent shelter."

The United States is a party to the Geneva Conventions, the laws governing the treatment of persons captured during armed conflict. Every captured fighter is entitled to humane treatment, understood at a minimum to include basic shelter, clothing, food and medical attention. In addition, no detainee -- even if suspected of war crimes such as the murder of civilians -- may be subjected to torture, corporal punishment, or humiliating or degrading treatment. If captured fighters are tried for crimes, the trials must satisfy certain basic fair trial guarantees.

Prisoners of war (POWs) are entitled to further protections, commensurate with respect for their military status as soldiers. Indeed, the Geneva Conventions provide that prisoners of war must be quartered in conditions that meet the same general standards as the quarters available to the captor's

forces, e.g., the US armed forces. In addition, POW's prosecuted for war crimes must be tried by the same court under the same rules as the detaining country's armed forces. In the current conflict, an Afghan POW could not be tried by the proposed military commissions, although they could be tried by an American court-martial.

Under the Geneva Conventions, captured fighters are considered prisoners of war (POWs) if they are members of an adversary state's armed forces or are part of an identifiable militia group that abides by the laws of war. Al Qaeda members, who neither wear identifying insignia nor abide by the laws of war, probably would not qualify. Taliban soldiers, as the armed forces of Afghanistan, may well be entitled to POW status. If there is doubt about a captured fighter's status as a POW, the Geneva Conventions require that he be treated as such until a competent tribunal determines otherwise.

Brief History:

The Platt Amendment, 1903

Article I. The Government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes, or otherwise, lodgment in or control over any portion of said island.

Article II. The Government of Cuba shall not assume or contract any public debt to pay the interest upon which, and to make reasonable sinking-fund provision for the ultimate discharge of which, the ordinary revenues of the Island of Cuba, after defraying the current expenses of the Government, shall be inadequate.

Article III. The Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba. . . .

Article V. The Government of Cuba will execute, and, as far as necessary, extend the plans already devised, or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the Southern ports of the United States and the people residing therein....

Article VII. To enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the Government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations, at certain specified points, to be agreed upon with the President of the United States.

The Platt Amendment, an unwelcome limitation on Cuban independence, was not abrogated until 1934.

Spanish-American War Teller Amendment April 1898

In order to reassure anti-imperialist elements on the eve of declaring war on Spain, Congress adopted a measure pledging that the United States had no designs on remaining in Cuba following conclusion of the conflict.

Sen. Henry M. Teller of Colorado drafted an amendment to the resolution of war, which stated that the United States "hereby disclaims any disposition of intention to exercise sovereignty, jurisdiction, or control over said island except for pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people."

The United States did not, as pledged, annex Cuba. Occupation continued until 1902 when the Platt Amendment was inserted into the Cuban constitution in return for the withdrawal of American forces.

In 1903, the US also secured rights to maintain a naval base at Guantánamo Bay, one of the world's great harbors, located at the southeastern tip of Cuba. American rights were reconfirmed in a formal treaty in 1934, an agreement that cannot be rescinded without mutual consent.

INFORMATION OFFERED TO THE PEOPLE BY DR. FIDEL CASTRO RUZ, PRESIDENT OF THE REPUBLIC OF CUBA, IN A TELEVISION AND RADIO APPEARANCE, JUNE 13TH 2002.

<http://www.cuba.cu/gobierno/discursos/2002/ing/f130602i.html>

Fellow Cubans:

On Wednesday, June 5th, exactly eight days ago, in the meeting I held with the leaders of the mass organizations to review the project they proposed to present to the National Assembly prior to approval by their national leaderships as a response to George W. Bush's speech before the terrorist mob in Miami, I made three suggestions.

One, to publicly discuss the idea with the Cuban people; two, to mobilize the entire nation in support of such a just, dignified and convincing response; three, to offer each citizen of voting age the possibility to fully exercise that right to sign this historic project and endorse it.

We are all of one mind. The appropriate consultation and preparations have been undertaken. The first two steps have already been taken; the third remains, and should be commenced without delay.

Tomorrow, June 14th, marks the anniversary of the births of Maceo and Che, two great symbols of revolutionary intransigence, the most outstanding feature of our people's heroic fight from 1868 to the present day.

On Saturday, May 15th, at 8:00 a.m., in el Cacahual, where the mortal remains of the Bronze Titan and his loyal aide Panchito Gómez Toro, son of the renowned internationalist combatant and leader of the Liberating Army, Máximo Gómez, are to be found, special homage will be paid to Maceo and Che in a solemn ceremony in keeping with the nature and importance of that sight.

On the same day, at 10:00 a.m., in 129,523 locations around the country, the appropriate copies of the proposed amendment to the Constitution presented by the Special Session of the mass organizations leaders will be available to

all those citizens of voting age who wish to sign this historic project. These copies will be available at every one of these locations from that moment until 12 noon on Tuesday the 18th.

The necessary facilities have been provided for those citizens who find themselves away from their places of residence due to personal or professional matters, for scholarship students away from home, for military or security personnel who are away from their places of residence in the line of duty and for those absent due to health or other reasons. Not one single Cuban will be left without the opportunity to sign.

The mass organizations will be entirely responsible for this task through the national, provincial, municipal and local commissions created especially for this purpose. Support will be provided, of course, by the Party and the Communist Youth. This will not be a state activity.

The leaderships of the mass organizations will be issuing concrete instructions to all their teams as of tonight. Tomorrow at 6:00 p.m., in the Round Table Meeting to be broadcast on both television and radio, precise details will be offered to all of the people. Special emphasis will be placed on the appropriate measures to avoid the repetition of signatures.

The tropical depression covering the entire island continues to affect our rain saturated country. Neither the rain, however, nor isolation nor difficult terrain will prevent a single Cuban from having access to this prerogative.

With the well-known capacity for organization our people have acquired, with their culture and political conscience, this important step will be taken to definitively demonstrate to the world just how the Cuban people think and feel.

Millions of Cubans will also make use of this opportunity to offer a persuading and fitting response to the uninvited "liberator," W. Bush. All that will remain will be the discussion and decision by the National Assembly of Peoples Power that will say the last word.

Yesterday, on the very day that the shameful Platt Amendment reached its 101st anniversary, the Amendment that cruelly humiliated our people, treacherously stripping them of an independence they had won after 30 years of unprecedented and heroic struggle, our people offered the most dignified

and extraordinary tribute to the generation that suffered such terrible humiliation. Despite the adverse weather conditions, under the depression I have already mentioned with rain falling or threatened from Las Tunas to Pioneer del Río, almost 9 out of every 10 Cubans participated in one way or another in the marches, rallies and other patriotic activities throughout Cuba, to the amazement of the entire world.

This was the most dignified response to those who today attempt to impose a Platt Amendment on Cuba once again and unequivocal proof that those days are gone for good!

Treaty Between the United States of America and Cuba; May 29, 1934

<http://www.yale.edu/lawweb/avalon/diplomacy/cuba/cuba001.htm>

Signed at Washington, May 29, 1934,
Ratification advised by the Senate of the United States, May 31, 1934
(legislative day of May 28, 1934);
Ratified by the President of the United States. June 5, 1934;
Ratified by Cuba, June 4, 1934;
Ratifications exchanged at Washington, June 9, 1934;
Proclaimed by the President of the United States, June 9, 1934

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA A PROCLAMATION

Whereas a Treaty of Relations between the United States of America and the Republic of Cuba was concluded and signed by their respective Plenipotentiaries at Washington on the twenty-ninth day of May, one thousand nine hundred and thirty-four, the original of which Treaty, being in the English and Spanish languages, is word for word as follows:

The United States of America and the Republic of Cuba, being animated by the desire to fortify the relations of friendship between the two countries and to modify, with this purpose, the relations established between them by the Treaty of Relations signed at Havana, May 22, 1903, have appointed, with this intention, as their Plenipotentiaries:

The President of the United States of America; Mr. Cordell Hull, Secretary of State of the United States of America, and Mr. Sumner Welles, Assistant Secretary of State of the United States of America; and

The Provisional President of the Republic of Cuba, Senor Dr. Manuel Marquez Sterling, Ambassador Extraordinary and Plenipotentiary of the Republic of Cuba to the United States of America;

Who, after having communicated to each other their full powers which were found to be in good and due form, have agreed upon the following articles:

ARTICLE I

The treaty of Relations which was concluded between the two contracting parties on May 22, 1903, shall cease to be in force, and is abrogated, from the date on which the present Treaty goes into effect.

ARTICLE II

All the acts effected in Cuba by the United States of America during its military occupation of the island, up to May 20, 1902, the date on which the Republic of Cuba was established, have been ratified and held as valid; and all the rights legally acquired by virtue of those acts shall be maintained and protected.

ARTICLE III

Until the two contracting parties agree to the modification or abrogation of the stipulations of the agreement in regard to the lease to the United States of America of lands in Cuba for coaling and naval stations signed by the President of the Republic of Cuba on February 16, 1903, and by the President of the United States of America on the 23d day of the same month and year, the stipulations of that agreement with regard to the naval station of Guantanamo shall continue in effect. The supplementary agreement in regard to naval or coaling stations signed between the two Governments on July 2, 1903, also shall continue in effect in the same form and on the same conditions with respect to the naval station at Guantanamo. So long as the United States of America shall not abandon the said naval station of Guantanamo or the two Governments shall not agree to a modification of its present limits, the station shall continue to have the territorial area that it

now has, with the limits that it has on the date of the signature of the present Treaty.

ARTICLE IV

If at any time in the future a situation should arise that appears to point to an outbreak of contagious disease in the territory of either of the contracting parties, either of the two Governments shall for its own protection, and without its act being considered unfriendly, exercise freely and at its discretion the right to suspend communications between those of its ports that it may designate and all or part of the territory of the other party, and for the period that it may consider to be advisable.

ARTICLE V

The present Treaty shall be ratified by the contracting parties in accordance with their respective constitutional methods; and shall so into effect on the date of the exchange of their Ratifications, which shall take place in the city of Washington as soon as possible.

In faith whereof, the respective Plenipotentiaries have signed the present Treaty and have affixed their seals hereto.

Done in duplicate, in the English and Spanish languages, at Washington on the Twenty-ninth day of May, one thousand nine hundred and thirty-four.

CORDELL HULL

SUMNER WELLES

M. MARQUEZ STERLING

And whereas, the said Treaty has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the city of Washington on the ninth day of June, one thousand nine hundred and thirty-four;

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this ninth day of June, in the year of our Lord one thousand nine hundred and thirty-four and of the Independence of the United States of America the one hundred and fifty-eighth.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

Source: Inter-American relations; collection of documents, legislation, descriptions of inter-American organizations, and other material pertaining to inter-American affairs. Compiled by Barry Sklar and Virginia M. Hagen Washington, US Govt. Print. Off., 1972

LAWRENCE V. TEXAS

This article was written by David Gespass, a member of the MLTF practicing in Birmingham, Alabama, and the newly-selected editor of the Guild Practitioner.

In one of life's little ironies, the MLTF, founded to support the GI resistance to US imperialism, morphed into a strong proponent of lesbian and gay rights in the military. There can be no doubt that the right to be a gangster for capitalism, as Major General Smedley Butler put it, should not be denied to someone because of sexual preference. In fact, the expansion of such democratic rights is essential to isolating, and focusing on, the real enemy.

In any event, the recent Supreme Court decision in Lawrence v. Texas, Docket No. 02-102 (6/26/03) was the most significant legal victory for lesbian and gay rights that we have seen in this country. It held unconstitutional, in the broadest possible way, laws aimed at gay sexual relations and explicitly and harshly overruled Bowers v. Hardwick, 478 U.S. 186 (1986), which held there is no constitutional right to engage in "homosexual sodomy." Justice Kennedy, in Lawrence, held that Bowers was predicated on both bad law and false history, saying it "was not correct when it was decided and it is not correct today. It ought not to remain binding precedent. Bowers v. Hardwick should be and now is overruled." Lawrence was grounded in the right of adults to privacy in this most intimate of activities, rather than on the narrower grounds of equal protection,

and therefore invalidated all state laws that sought to make private, consensual, non-commercial adult sex illegal.

The Servicemembers Legal Defense Network almost immediately filed a suit to set aside the separation of Lt. Col. Loren Stephen Loomis in a case that was at once compelling and problematic. Col. Loomis was separated, despite a previously unblemished record, eight days before he became eligible for retirement benefits estimated at \$1 million. He had, however, been found to have been sexually involved with a junior enlisted man, conduct that would have caused him problems regardless of gender. It appears that SLDN remains cautious about the policy; its web site includes an article saying that, despite the Lawrence decision, Article 125, UCMJ, which prohibits sodomy, remains in full force and effect (apparently, to the armed forces, non-coital sex is unnatural and killing from miles away is ordinary).

Since then, the 9th Circuit decided the case of Hensala v. Department of the Air Force, 343 F. 3d 951 (9th Cir. 2003). The Air Force paid more than \$71,000 for John Hensala's medical education; just prior to beginning active duty, he advised the Air Force he was gay, saying he did "not believe this will affect (his) ability to serve in the Air Force as a child psychiatrist." Although he continued to say that he was prepared to serve, he was discharged. The Air Force also concluded that Hensala revealed his sexual orientation in order to obtain a separation and therefore sought recoupment of the money it spent on his education. Hensala sought, first through the Board for the Correction of Military Records and then in federal court, to rescind the recoupment order, but not his separation. He lost in district court but, on appeal, a majority of the panel found that facts had to be developed to determine if he was treated differently than would have been a heterosexual who violated 10 U.S.C. §925, which makes sodomy illegal. His claim was that his rights to equal protection and freedom of speech were violated when the recoupment policy was applied against him not because of anything he did, but because of his status as a gay man. The holding is extremely narrow and hardly gives cause to believe that Lawrence is going to lead to an immediate sea change in the military's policy towards gays and lesbians.

Indeed, the real key to understanding Lawrence's impact -- or lack thereof -- on matters military lies in what it explicitly and impliedly says it is not about. It explicitly does not involve such things as marriage and is limited exclusively to private, adult, consensual, non-commercial sexual relationships. My recollection when I first read the opinion is that it also explicitly excluded matters of national security from its coverage. That, however, is not part of the currently-published opinion. Nevertheless, the implication is clear.

Courts have historically given the military excessive latitude in determining the regulations imposed on its members, and there is no reason to think that Lawrence is going to change that for gay and lesbian service members. It was not, after all, a court ruling that integrated the armed forces. It was an executive

order from President Truman, the kind of order that Bill Clinton had neither the backbone nor the political capital to enforce for gays and lesbians.

Other than the opinion itself, what creates some grounds for hope is the way in which discourse about gay and lesbian issues has changed since the Court spoke. The principal debate now is over marriage, and few argue that gay and lesbian people should not have equal rights (this begs the question of how they can have equal rights without the right to marry). One can only hope that "Justice" Scalia was correct when he predicted that the decision would open the floodgates to the radical concept that homosexuals should be free from any form of discrimination. The recent decision by the Massachusetts Supreme Judicial Court in Goodridge v. Department of Public Health certainly gives ground for some optimism.

In short, a significant step forward has been taken toward the day when people consider homophobic judicial decisions as antediluvian as Dred Scott and anti-gay legislation as reprehensible as Jim Crow. Eventually, but not now, that will include the United States armed forces.

NATIONAL LAWYERS GUILD CONVENTION REPORT MINNEAPOLIS, MN

By Marti Hiken, co-chair of the MLTF

It was truly a wonderful convention. It was a very different convention from others that I have attended over the years, however. There was an overriding sense of the serious nature of our historical period, i.e., what we are facing in this country and worldwide is frightening. People came together to discuss solutions to life and death questions. We are in the belly of the beast. How can we, an organization of some 4000 people, create changes for the better? The NLG members there were ready for the challenges and were prepared to pull together.

The second most obvious reality is that the 60's generation is getting older. As Karen Jo Koonan (past president of the Guild and current president of the San Francisco NLG chapter) fondly referred to us during the banquet, we "old farts" better make room for the younger people. Karen Jo asked that the young lawyers and law students lead off with financial pledges to the Guild, and they certainly rose to the challenge. I think the younger NLG members must have been impressed with the thousands of dollars that rolled in when the "old farts" got serious about supporting the organization and its programs. As Jeanne Mirer from Detroit (and one of the chairs of the International Committee) pledged \$2000 toward the Military Law Task Force and the Guild's anti-militarization work, she took issue with the term "old farts." But Karen Jo held her ground.

A plenary for young lawyers, law students and legal workers was dedicated to the young people who will carry on the work that the older and the New Left's generations have left to them. Dan Spaulding, a legal worker member of the Midnight Law Collective in Oakland, gave a speech a la Paul Harris (a long-time Guild member in San Francisco) and Lenny Bruce combined. I actually pictured Dan in several years, presiding over an auction at a national convention or the annual banquet in San Francisco, raising money for our work and making it fun to give away money. Jana Carter's speech (Jana is a member of the MLTF and a San Francisco Guild member who practices personal injury law), talking about those who inspire us and how difficult our task is, brought tears to my eyes.

A major priority identified at the Convention was the support of GIs and the work of the MLTF. People realized that court challenges are not succeeding, and as we did during the Vietnam War years, we must turn to the GIs themselves to end this war. They are the ones with the immediate incentives and knowledge of why we must get out of the Middle East.

The Guild's support for our work has never been more evident or tangible. It ranged from offers of help around Guantanamo to defending GIs. Volunteers offered to help with leaflets, contacts, military law training sessions, GI organizing and legal projects, and international contacts. At the International Reception, Peter Erlinder (past president of the NLG and law professor in Minneapolis, who is working with Margie Cohn, NLG Executive vice-president, and Ralph Overholt, also a Minneapolis lawyer, on the Guild's amicus brief re Guantanamo) introduced a Japanese couple who had lost their son while working at a naval base in Japan. I introduced Silke Studzinski, from the European Democratic Lawyers Association (AED) and the Republican Lawyers Organization (RAV) in Berlin, presenting her with a copy of the GI counseling manual, "Helping Out."

A roundtable discussion among representatives of the Guild's national committees, which the MLTF organized, went very well. I think it will be a permanent fixture of the organization now. At both the roundtable and at the International Committee meeting there was a unified response at the need to shut down Guantanamo as a concentration camp and to engage in anti-military work in general.

At the MLTF workshop, Jim Klimaski (a Washington, D.C. Guild/MLTF member who practices military law) talked about the background and framework of military law. People wanted to know more about Stephen's Funk case. It was disappointing that Stephen and his lawyer and San Francisco MLTF member, Steve Collier, couldn't be there. (Funk is currently imprisoned at Camp Lejeune in North Carolina. On September 6, 2003, a military jury acquitted him of shirking hazardous duty and found him guilty of merely unauthorized absence. He was sentenced to six months in a military prison, a bad conduct discharge, a reduction in rank to an E-1 and forfeiture of two-thirds pay -- to \$767 per month for six months. This was a partial victory. The jury recognized the fact that,

because Stephen filed for a discharge as a conscientious objector, he was not a military deserter. He is scheduled to be released on March 6, 2004, but he could get one month off for good behavior.)

The Steering Committee met amidst all the hustle and bustle. We are all very active members of the Guild and finding any time to get all of us together was a challenge in itself. Hopefully, we'll work out the time to meet before we all get to the Convention next year. New York MLTF member, Aaron Frishberg was busy with the Disability Rights Committee. David Gespass (MLTF member in Birmingham) is going to take on the editorship of the Guild Practitioner. It is an honor for all of us to have him in this position. Kathy Johnson, also a Birmingham MLTF member, helped tremendously by filling in for any number of us when necessary and sensing when we needed her insight, experience and support. Jim's expertise in military law was important at the convention since militarization issues now impact almost all aspects of Guild work. And I spent many hours going from law student caucus to law student caucus, from the legal worker caucus to meetings about support for the work of the MLTF.

We only had time to tackle one big issue during the Steering Committee meeting. We made the decision to move the administrative work of the MLTF to San Francisco from San Diego. Kathy Gilberd and I will remain as co-chairs. In addition to our other work as chairs, I will do the administrative work and Kathy will coordinate the publication of On Watch.

The Convention was very rewarding in that many individuals and committees have come to the realization that the work of the MLTF needs to be a part of the work of the entire organization, not just a small committee. To be an NLG member is synonymous with understanding the importance of military law and making a commitment to include anti-military work as part of the overall strategy of every committee.

I also enjoyed the workshop about language and politics. I noticed during this workshop, organized by David Gespass (MLTF member in Birmingham), that several times the speakers were discussing concepts that had no words to describe them. I reflected that given the challenges we are faced with today, that our actions, our responses, and our politics are rapidly going through changes. We are developing our collective consciousness and practice to meet what the right-wing is throwing at us. It will indeed be a creative time for us. The words will come to us through our practice. As we meet these challenges with our programs, we will find the vocabulary to better identify the nature of our struggle.

GI RIGHTS HOTLINE: RECENT TRENDS AND PROJECTIONS FOR THE FUTURE

By Teresa Panepinto

A number of military counseling groups around the country are working together on a national GI Rights Hotline, an 800 number which provides information about discharges, complaint procedures and other military policies. The number of calls the Hotline is receiving is on a steady rise, with over 2,000 calls received in October alone. The volume of calls the Hotline receives has grown 45% since 2001; it will receive over 25,000 calls this year. During the past few months, we've seen a marked increase in Iraq-related calls and calls from Reservists and members of the National Guard.

The Iraq-related callers range from those currently stationed in Iraq (calling both from Iraq and from the US while home on leave), family members of such GI's, and those who have just completed their duty there. What these GIs have to report is horrific. The majority who contact us are absolutely opposed to this war (if not all wars), have lived under terrible conditions, and have been deeply psychologically wounded. They are sickened by what the US government has done to the Iraqi people.

Many Reservists and members of the National Guard are desperately trying to avoid the aforementioned experiences of their fellow servicemembers. With 164,732 Reservists currently activated (as of 11/19/03), and an additional 43,000 Bush expects to send to Iraq in January, a remarkable number of these GIs are contacting the Hotline, searching for ways to avoid deployment and get out of the military altogether.

There has also been an increase in the number of AWOLs and Conscientious Objectors. The bottom line: resistance to the war is growing strong in the military. These are just two examples of such resistance. We expect to see more in the coming months. As GI Advocates (attorneys and counselors), it is our role to be prepared to provide military counseling and legal support for these women and men as they resist.

Realizing that the US becomes more entrenched in global warfare each day, we at CCCO see a pressing need to pay particular attention to the following four areas of GI Advocacy:

- Ongoing support for Conscientious Objectors and GI resisters
- Legal support for those who go AWOL/UA and miss troop movement
- Counseling reservists who face rapid overseas deployment
- Information and referrals for GIs suffering from combat PTSD

Through strategizing, researching changes in regulations and staying on top of current policies, we hope to respond adequately to the needs of GIs and to continue to play a key role in uniting them with the anti-war movement.

To respond to the increased need for military counseling, CCCO has helped the GI Rights Network more than double its size. From 2001-2002, the following groups joined the Network:

- American Friends Service Committee New England Regional Office (AFSC-NERO), Cambridge, MA
- Humboldt Committee for Conscientious Objectors (HCCO), Arcata, CA
- Military Law Task Force of the NLG
- War Resisters League (WRL), New York, NY

The Network continued its expansion this year, with the addition of:

- Military Counseling Network (MCN), Bammental, Germany
- Resource Center for Nonviolence (RCNV), Santa Cruz, CA
- San Diego Military Counseling Project (SDMCP), San Diego, CA

CCCO has also trained community groups in Tucson, AZ, and Gainesville, FL this year. We hope to see these groups begin counseling GIs within the next several months.

Other potential areas of military counselor trainings include: Albuquerque, NM; Honolulu, HI; Madison, WI; and Notre Dame, IN.

CCCO is also working with the MLTF to plan for attorney/counselor training sessions throughout the US for 2004, and with the Catholic Peace Fellowship to provide additional support to CO's.

A note on CCCO publications: A new version of the booklet "Getting Out: A Guide to Military Discharges" was published in July. If you are interested in ordering copies, or would like more information on CCCO's publications, please contact Teresa Panepinto at 888-231-2226 or via email at teresa@objector.org. The cost of Getting Out is .65/copy.

GI RESISTANCE -- WHAT'S UP?

By Marti Hiken.

What is GI Resistance? GI Resistance develops when troop members no longer complain about their conditions, but rather take action to change those conditions. They begin to resist the orders coming from their higher-ups. They turn against the war they are fighting and no longer want to participate in it. They take action to leave the military, to organize, and to resist. Some register their dissent by filing discharges and some by going AWOL. Presently, there are signs

of developing GI Resistance within the military that goes beyond and passive opposition to their Commanding Officers.

There is no draft or involuntary servitude of GIs. GIs sign their own names on the dotted line when they enlist. Why? One reason is that recruiters lie and make promises that cannot be kept. Another reason is that the military is perceived as a road away from joblessness and, indeed, for many it is a step up. The military promises an education and a career. The 18 year old sees nothing but the possibility of personal and financial gain. For the reservist, weekend drills are not that bad, and there is the added income. What we have found, however, is that for many reservists, the military contract was far from fighting in a war. And, the idea of fighting a war was far removed from the reality of not going home for over one year. Now that these illusions have been shattered, it will be interesting to see if recruitment into the military and retention remain steady.

There is still only limited principled opposition among GIs to the present war. (It is important to note that 20%-30% of essential military support services in Iraq are handled by civilian contractors. Rumsfeld says that there are 300,000 troops doing the tasks that civilians could be doing.) Mostly, GIs in the war zones complain about their "hours and working conditions." They would rather not be fighting. Most would prefer to stay in the military, but want stints that last no longer than six months. Of course, when the 11,000 estimated wounded are back at home and out on the streets, the reality of war hits harder.

The troops are acting as a police force at this time, not as a military force. According to Business Week, "90% of all American military police are already on active duty." This certainly sets up the individual soldier to be an easier target for enemy gunfire and bombs. It is also demoralizing to troops. The GI who entered the military to act as Rambo or some type of commando operative has illusions shattered quickly when troops are attacked and ambushed in daily guerilla war in Iraq at the acknowledged rate of 36 times a day.

The air war, a specialty of the American fighting forces, is pretty much worthless in "nation-building." No matter how many bombs were dropped in Vietnam, the Vietnamese managed to win the war. It is easier to kill when troops do not see their enemies' eyes while dropping bombs. But it is clearly going to take years for our fighting forces to react to killing with their own hands before they refuse to kill at all and think of resisting their orders.

Each day GIs in Iraq confront the discrepancy between Bush's stated reasons for being there and the fact that they are there dying for the oil profiteers. The line that says that Americans are fighting in Iraq to fight terrorism at home rings hollow for the families of GIs killed in the war zone. The armed conflict divides Americans from each other, resulting in GIs once more realizing that the public is divided over supporting them. No one knows better than the GI that is indeed a

complex issue. Where can it be better exemplified than in a war zone that is creating more problems and terrorists than it is stopping?

Rumsfeld has lost all credibility. He can't even speak before GIs in Iraq, they are so hostile to him. The "revolution in military affairs" has been a royal flop. Guerilla war remains guerilla war, and the hearts and minds of 25 million Iraqis will not be bombed into oblivion, controlled or manipulated by 150,000 troops of the world's mightiest army. Rumsfeld's attempts to use technological mobile forces cannot be successful while the US is supposedly engaged in nation-building. Civilian mercenaries might be the wave of the future, but again we don't know how this will play out.

The military brass still comes down hard on those who do speak out. This has not changed; yet the numbers of GIs who want out of the military hardly comes close to the mass resistance of the Vietnam War, so that the brass is able to control the smaller number of GIs who do resist more easily. Stephen Funk's recent sentence to six months confinement and a Bad Conduct Discharge for AWOL (a lesser included offense of the original desertion charge) is just an example of the retaliatory punitive posture of the Pentagon. However, the Vietnam War lasted 15 years and resistance grew over time. It remains to be seen if this will be the case again.

One sign of growing GI dissatisfaction appears in letters home asking for support and sharing their discontent with vet, family support, and peace (anti-war) organizations. It is the beginning of a parallel connection between soldiers and families at home and those facing death abroad. These groups include Veterans For Peace (VFP) and Vietnam Veterans Against the War (VVAW), mass campaigns such as Bring Them Home Now (BTHN), and military family support organizations such as Military Families Speak Out (MFSO). In with the marches, peace gatherings, and the creation of thousands of peace coalitions and peace centers, these organizations and movements are a vibrant and powerful emerging force in American politics.

The following organizations have been particularly effective in the matrix of providing support to soldiers and dealing with the situation in Iraq. The Central Committee for Conscientious Objectors (CCCO), directed by Teresa Panepinto in Oakland, continues its good work. The GI RIGHTS HOTLINE (Helping-Out Network), formed several years ago, has many organizations participating including the MLTF, Quaker House, the Center on Conscience and War, and a number of peace and counseling groups. Global Exchange created Operation Iraq Watch in Baghdad. The Military Counseling Network (MCN) directed by Dave Stutzman in Germany counsels active duty GIs.

Resistance to the war in Iraq is not only growing domestically, but internationally as well. Contacts with counseling networks and counselors learning military law bode well for future projects for GIs in Germany, Japan and other hot spots.

There is now an organization of lawyers working worldwide to close down US bases in their own countries.

Within the LNG, the MLTF is working towards gaining more support from the NLG nation-wide. We have an active Steering Committee of 13 Guild members, a membership of over 100 people, and an ever-growing number of NLG members learning military law. Our second training session was just held in Los Angeles, CA. Training Sessions in January 2004 are scheduled in Berlin, New York, and Portland.

Given that the US military is the most powerful institution in the history of western civilization, members of the MLTF should be satisfied if, through our work, we are no more than a mere gadfly to the Pentagon. Yet, our task is to be swarms of gadflies. Symbolic GI resistance is not our goal. GI resistance can grow quickly, even with all-volunteer forces, as the American public quickly grows weary, skeptical and hostile to imperialistic aims. Through meaningful education and support, we want to turn the minds of the troops around. We want to bring them home immediately. We want them to come home stronger and determined to control their own lives and to feel a part of a larger movement for change.

Bush's willingness to sacrifice soldiers is wearing thin with American families of GIs, as is the \$87 billion price tag. The simple fact is that as more GIs find out about the MLTF, the Hotline, and alternatives to remaining in Iraq and to senseless wars, they have less to lose by resisting than staying inside the military. At the Veterans For Peace national convention in San Francisco this past August, I was in a workshop with about 30 vets and one vet cried out critically, "Yeah, where are the vets from this war?" Another vet responded, "They'll be here."

Announcements

? GI Hotline: 800-394-9544

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.

**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

**NATIONAL CONFERENCE OF BLACK LAWYERS
COUNTER-RECRUITMENT PROJECT**

The National Conference of Black Lawyers has initiated a counter-recruitment campaign, focusing particularly on persuading African-American youth not to enlist in the military. The NCBL sees a need to do this now because African-Americans speaking on behalf of the US military and government create the false image of this country as one that has overcome its racist past. Moreover, the important ties between oppressed nationalities within the United States and targets of US imperialism around the world are weakened when American armed forces are not just populated with, but have leaders who are, people of color, and who are placed in the public eye as such.

The Military Law Task Force wishes to assist in this important campaign. We ask our members and friends to do what you can. In particular, arranging meetings in schools or elsewhere, where representatives of the NCBL, the MLTF or both can speak to youth about alternatives to military "service." Too often, enlistment is seen by poor people, especially people of color, as the best alternative when jobs are scarce and insecure.

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 or 415-566-3732.
