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WHAT DOES A TRUMP ADMINISTRATION MEAN FOR THE GI RIGHTS ADVOCACY COMMUNITY?

BY MARIA SANTELLI

President Trump has been and remains so unpredictable in his words and actions that there is much we still don't know about what his administration holds for the men and women who wear the uniforms of the United States Armed Forces. Because he is so often inconsistent in what he says and does, it is also difficult to determine what, if any, principles are guiding his actions. As such, it is important that we who are concerned about ensuring justice for members of the military, especially as an avenue through which to pursue a more peaceful, just and sustainable future for all, keep a close watch on the actions of this administration and begin to develop ideas and strategies to respond to the challenges that may lie ahead.

Immediately after the election, many analysts and activists expressed concern about a rollback on the progress that had been made over the last several years with respect to the freedom of LGBTQ members to continue to serve openly, the well-being of LGBTQ troops and their families, and the rights of women to choose to serve in any position for which they were qualified. During his campaign, Donald Trump said he would be an ally to LGBTQ communities, but he also frequently played to his base with disdainful talk about President Obama and his "politically correct" military. His campaign surrogates also ridiculed what they called Obama's and then-Secretary of Defense Ashton Carter's "social engineering" of the military. Then, last fall, Trump appointed Retired Marine General James Mattis as his Secretary of Defense, who has been on the record questioning the wisdom of women serving in combat and LGBTQ troops serving openly. Still, at his confirmation hearing, Mattis asserted that he had no plans to actively work to undo the gains of the Obama-era.¹

For now, it appears that these are settled policies, yet in light of the recent nude photo-sharing scandals² and the continuing failure of the branches to adequately address or prevent sexual assault, the ongoing well-being of LGBTQ troops and female service members should continue to be on our radar.

One very disturbing event that impacts military families is the Trump administration's removal of the guidance that the Obama administration laid out for schools to protect the rights of transgender students. Trump's Justice and Education Departments have decided to remove federal guidelines that protect, for example, a student's right to use the bathroom that matches their gender identity, in favor of allowing states to develop their own guidelines. Military families, otherwise protected by DOD policy, would be subjected to state policies in areas where they are stationed. Active duty military parents have no control over where they live or when they move, so it is quite possible, and likely, that a transgender student with a military parent could change schools and be subjected to a starkly different policy-- one that could have potentially devastating and damaging effects on the child. We know as GI Rights counselors, that the well-being of the family is rarely a concern to commands, but for military parents, a threat to the well-being of a transgender child could surface as a concern about the future of their military service obligation.

¹ <http://www.independent.co.uk/news/world/americas/james-mattis-anti-women-lgbt-views-a-secretary-defence-nominee-us-marine-general-senate-hearing-a7524531.html>

² <https://www.marinecorpstimes.com/articles/neller-testifies-on-photo-scandal>

Another matter that has been confirmed is that President Trump has an affinity for military generals and is a firm believer in “Peace through Strength.” He has declared his support for public displays of military strength, like parading tanks down Pennsylvania Avenue.³

But more alarmingly, he has given the Pentagon and the Intelligence community more power and authority to launch raids and drone strikes without his approval, and removed the Obama Administration policy that a strike take place only if there is “near certainty” that no civilians would be killed.⁴ Trump’s recently revealed budget proposal would cut the State Department by 28%, while increasing military spending by 10%, or \$52 billion.⁵ Trump plans to double the number of ground troops in Syria⁶ and has signaled he will continue *and increase* US support for the Saudi war against the Houthis in Yemen as part of his administration’s strategy toward Iran.⁷ Trump also has called for an increase in the size of the military, with the Army aiming to add 6000 new soldiers by September.⁸

POLICY-BY-GENERAL

This is a clear move toward even greater militarization of the US’ already over-militarized approach to foreign policy. The question for us is will this decreased focus on diplomacy mean more war, more deployments, more boots on the ground and more US drone pilots asked to strike high-civilian targets? All of which adds up to, at best – more traumatized troops facing already overburdened healthcare providers within DOD, and at worst – more troops being forcibly kicked out of the military. These involuntary discharges are often the result of some infraction triggered by their medical condition. And being kicked out means being denied proper care from the DOD and can mean being stripped of the right to access care as veterans once they are discharged. The problems of redeploying traumatized troops⁹ likely are well-known to this audience, as well as the unique trauma suffered by drone pilots.¹⁰ And just so it is crystal clear that support for the troops is not a high priority for this administration, their proposed budget intends to cover military spending increases with cuts to DOD health care, according to a tweet by Mackenzie Eaglen, an analyst with the American Enterprise Institute. Additionally, with the aggressive recruiting that’s going to be required to increase troop numbers that quickly, it is a safe bet that recruiter abuse – already rampant and, in many cases, cruel and inhumane (Indiana National Guard, I’m looking in your direction) – will be on the rise.

³ <http://www.militarytimes.com/articles/trump-to-hold-military-parades-as-us-forces-grow>

⁴ <http://www.nbcnews.com/news/us-news/trump-admin-ops-drone-strikes-tolerates-more-civilian-deaths-n733336>

⁵ <https://www.bloomberg.com/politics/articles/2017-03-16/trump-proposes-historic-cuts-across-government-to-fund-defense>

⁶ https://www.washingtonpost.com/news/checkpoint/wp/2017/03/15/u-s-military-probably-sending-as-many-as-1000-more-ground-troops-into-syria-ahead-of-raqqah-offensive-officials-say/?utm_term=.055dc14cf764

⁷ <http://www.commondreams.org/views/2017/03/15/why-donald-trump-lunching-saudi-war-criminal-while-yemenis-are-starving>

⁸ <http://www.defensenews.com/articles/plans-to-extend-basic-training-are-on-hold-as-the-army-works-to-add-6-000-more-soldiers>

⁹ https://www.washingtonpost.com/world/in-afghanistan-redeployed-us-soldiers-still-coping-with-demons-of-post-traumatic-stress/2013/08/18/27c18e96-0058-11e3-8294-0ee5075b840d_story.html?utm_term=.5bcb9e269081

¹⁰ http://www.salon.com/2015/03/06/a_chilling_new_post_traumatic_stress_disorder_why_drone_pilots_are_quitting_in_record_numbers_partner/

Legendary journalist, and all around good guy, Bill Moyers puts it this way: “Policy-by-general is sure to create a skewed view of policy-making, since everything is likely to be viewed initially through a military lens by men trained in war, not diplomacy or peace.”¹¹ This kind of thinking may be contributing to the administration’s posture toward North Korea. US troops stationed near North Korea already endure a hostile and traumatizing environment, with regular war games and looming threats of hostility. The stress and trauma of this environment could increase, if the already intense posturing on both sides continues.

In contrast to an example of the better judgment of his generals, though, Trump has a pet project he just doesn’t seem to want to let go: bringing back torture and the infamous CIA “black sites,” and once again filling up the US prison at Guantanamo Bay, Cuba.¹² For now, it appears that Secretary Mattis has been able to overrule Trump on torture, but the executive order is written and standing by. Torture does not work. It fuels acts of terrorism. It puts US service members, citizens, residents, and nationals abroad at risk. It is also unlawful, but when was the last time a high-ranking or high-profile official was held accountable? More likely, in the event anyone is brought to account, she will resemble 21-year old Army Private Lynndie England, whose young life was thrown into chaos for her participation in abuse of prisoners at Abu Ghraib prison in Iraq.¹³

Another reportedly drafted proposal would mobilize 100,000 National Guard troops to assist with immigration and border enforcement.¹⁴ The administration has denied that this proposal is under any kind of serious consideration, but they also have been quite clear that immigration enforcement is an integral piece of their national security policy. In the event that National Guard soldiers were called up for such a mobilization, resources to support the troops who resist or refuse would be in high demand.

MOST VULNERABLE STAND TO LOSE THE MOST

This brief summary is chock full of alarming activity and proposals for such a brief tenure and an administration that is still largely unstaffed. Trump has had great difficulty filling the top posts at the Pentagon. His Navy and Army secretaries stepped down due to ethics conflicts. Now his Air Force Secretary nominee, former New Mexico Congresswoman Heather Wilson, is under scrutiny as well for her close ties as a lobbyist for the nuclear weapons industry. Deputy National Security adviser Keith Kellogg is a retired general who worked for defense contractors who fueled and profited from the occupation of Iraq under the George W. Bush administration.¹⁵ Trump’s go-tos for appointments are consistently millionaires or billionaires who stand to profit either directly or indirectly from US government business, and no US business is more profitable than war.

With personal interest at stake, the risk of corruption is high, and in the inevitable scandals and cover-ups that already have begun, it will always be the most vulnerable who stand to lose the most. In the US military, the most vulnerable will always be the lowest ranking enlisted members, who overwhelming

¹¹ <http://billmoyers.com/story/president-loved-generals/>

¹² <http://www.vox.com/world/2017/1/25/14382724/trump-torture-black-sites-executive-order-draft>

¹³ <https://www.theguardian.com/world/2009/jan/03/abu-ghraib-lyndie-england-interview> and http://www.salon.com/2006/03/14/prosecutions_convictions/

¹⁴ <https://www.nytimes.com/2017/02/17/us/politics/national-guard-illegal-immigrants-report.html>

¹⁵ http://www.tomdispatch.com/post/176250/tomgram%3A_william_hartung_the_generals_vs_the_ideologues_or_the_generals_and_the_ideologues/

are barely out of their teen years, and members of already marginalized populations, including women, people of color, and LGBTQ people.

Finally, the fact that Trump, a notorious bully,¹⁶ is the Commander in Chief, is reason enough for us to be concerned about the erosion of justice for members of the military. The military exists to perpetrate injustice: the military exists to fight and win wars. By design, it must program its members with, and constantly reinforce, inhumanity so that they will be capable of taking another human life by rote, without thinking and on command. Inevitably, that inhumanity will be and is frequently directed at the internal population. The case of Raheel Siddiqui, a young Muslim Marine who died under suspicious circumstances at boot camp, is a more horrifying example of thousands of cases of abuse and cruelty toward members of the military at the hands of their own.¹⁷ And Raheel's case took place under the best of circumstances, with an administration that never demonized Islam, and made significant strides toward equality within the DOD.

We already know from our experience with callers to the GI Rights Hotline that people of color, women, and non-Christians – all populations Trump has disparaged in a variety of ways – meet hostility on a regular basis in the course of their service. One young woman, the only African American in her shop at Little Rock Air Force Base, reports coming to work the day after the election, to find “Trump” written on her workstation. At the Center on Conscience & War, conscientious objectors we are working with have reported feeling even more marginalized, as troops feel emboldened to posture aggressively toward them, imitating, like children, what they see modeled for them on the news or their Twitter feed.

Resistance to the many dangerous and unjust policies of the Trump administration is already in progress on many fronts. We in the GI Rights community are called on, too, to bolster not only our resolve so that we can remain vigilant for the long haul, but also our compassion, our patience and our love. With those in force, we won't fail.

Maria Santelli is Executive Director of the Center on Conscience & War in Washington, DC, and a counselor with the GI Rights Hotline.

¹⁶ http://www.huffingtonpost.com/harlan-green/president-trumps-bully-me_b_14418006.html

¹⁷ <http://www.esquire.com/news-politics/a52195/raheel-siddiqui-marine-corps-death/>

2017 NATIONAL DEFENSE AUTHORIZATION ACT PERSONNEL PROVISIONS

BY KATHLEEN GILBERD

On December 23, 2016, President Obama signed the National Defense Authorization Act of 2017 <<https://www.congress.gov/bill/114th-congress/senate-bill/2943/text>>. Although the Act deals primarily with funds and authorizations for the military's bloated budget, it always contains policies affecting military personnel and veterans. The following is a review of the most significant changes:

DISCHARGE REVIEW PROVISIONS

Section 533 of the Act requires the Boards for Correction of Military/Naval Records (BCM/NRs) and the Discharge Review Boards (DRBs) to publish the number of cases considered. Publication must be done quarterly on public websites. The listings will denote cases where applicants contend their discharges were based in whole or part on mental health problems, cases where applicants had served in combat areas, and cases resulting in upgrades. This section does not require the Boards to publish the decisional documents themselves on these websites (they are currently published in difficult-to-use electronic libraries). While section 534 requires the publication of BCM/NR decisions, it is not clear whether this will be done separately from the existing electronic library.

There are several substantive changes to section 534. Under this section, the Boards for Correction will be required to advise applicants if they determine that their claims have insufficient information or documentation; they must tell applicants specifically what information they think would be necessary to make the claim "complete and reviewable." If claimants cannot provide military personnel or medical records, the Boards are to make "reasonable efforts" to obtain the records, and provide the claimants with copies.

Section 534 also states that, when a case has been denied by the BCM/NR, a request for reconsideration may be filed at any time. This is an important change, as the Army and Navy Boards have recently refused to accept requests for reconsideration not filed within a year of the initial denial. Under this provision, a reconsideration request may be based on any "materials not previously presented to or considered by the board..." In the past, the Boards accepted requests for reconsideration only if they contained "new material evidence," and sometimes defined this very narrowly.

Finally, Section 534 also requires the Board for Correction to develop a comprehensive training curriculum for Board members, including training in appropriate areas of administrative law.

Section 535 addresses applications to the Discharge Review Boards made by veterans who raise post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) "in connection with combat or sexual trauma as a basis for review of discharge." While the DRBs and BCM/NRs have been ordered to give consideration to combat-related PTSD and TBI in recent years, this is the first time that military sexual trauma has been included. The section requires the DRBs to consider VA records or civilian medical records submitted as evidence of PTSD or TBI, and to "review the case with liberal consideration to the former member that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge..."

WHISTLEBLOWER PROTECTION

Section 536 requires the Controller General of the US to submit to Congress a report on the integrity of the DOD whistleblower program within 18 months after the Act is signed. The report must assess whether the DOD program meets the executive branch's policies and goals for whistleblower programs; whether its procedures are adequate to protect employees of the DoD Inspector General's (IG's) office who are whistleblowers; whether confidentiality of whistleblowers is properly maintained by the IG's office; and other issues concerning the effectiveness of the whistleblower program.

Section 531 improves other protections for military whistleblowers as well. It expands the definition of prohibited personnel actions which may be viewed as retaliation for whistleblowing; these will now include command failure to respond to retaliatory action or harassment by others in the command, and retaliatory investigations of the whistleblower. Under this section, if the IG makes a preliminary determination that "more likely than not" a prohibited retaliatory action has been taken against a whistleblower, and if the action will cause an immediate hardship to the whistleblower, the IG will notify the Secretary of the Service, who will "take such action as [he or she] deems appropriate." (This could remedy, for instance, a retaliatory transfer away from the whistleblower's family or, hopefully, retaliatory harassment resulting in emotional distress.) The section also requires the IG's office to periodically notify the whistleblower, the Secretary of Defense, and the Secretary of the Service of the status of the investigation.

When whistleblower complaints involving retaliatory action are taken to the BCM/NRs, section 531 requires the Boards to review the relevant IG report and, if appropriate, to ask the IG to develop further evidence in the case. The Boards may "receive oral argument, examine and cross-examine witnesses and take depositions," which are unique in Board for Correction cases, and will consider an applicant's request for an evidentiary hearing, a rarity in BCM/NR cases. (These provisions are already contained in the Military Whistleblower Protection Act, 10 USC 1034.)

Also under this section, the DoD IG is to prepare uniform standards for investigating retaliatory actions, and for the training of IG staffs on the conduct of investigations.

PTSD, TBI AND MILITARY SEXUAL TRAUMA

Under previous legislation, the services have been required to conduct medical evaluations of PTSD or TBI for servicemembers facing administrative discharges under other than honorable conditions, if the members had been deployed to a combat area in the previous 24 months and had been diagnosed with or "reasonably asserted" that they had PTSD or TBI. Separation authorities were then required to consider whether these medical conditions constituted matters in mitigation warranting a better character of discharge. Servicewomen's advocates have long argued that survivors of military sexual trauma should also be afforded such evaluations and consideration. Now, section 524 of the NDAA adds sexual assault as a basis for such PTSD or TBI evaluation and consideration of characterization of discharge. (DoD has just added this provision to Change 2 of DoD Instruction 1332.14, at enclosure 5, section 9.)

SEXUAL HARASSMENT DEFINITION

Section 548 revises the definition of sexual harassment for purposes of investigating sexual harassment complaints within the military, set out in 10 USC 1561. While the prior definition referred to harassment that created a hostile "work environment," this section replaces the term with "environment," covering the variety of military settings and situations in which harassment may occur. The section also deletes the term "constituting a form of sex discrimination" from the definition of harassment.

HAZING

The problem of hazing in the military is addressed in section 549. DoD will now be required to set up a comprehensive data collection system to track incidents of hazing throughout the services. Guidance about the use of the database will include "information on protected classes, such as race and religion, who are often the victims of hazing." The services are to work to improve training of military personnel to "better recognize, prevent and respond to hazing at all command levels." Each branch of service will be required to make annual reports to Congress on hazing discussing, among other things, the previous year's efforts to track and encourage reporting and anonymous reporting of hazing.

MEDICAL RETIREMENT

Section 525 reduces the time that medically retired servicemembers placed on the Temporary Disability Retirement List (TDRL) must remain on that temporary list and undergo periodic medical examinations before being transferred to permanent medical retirement. Rather than spending five years on the TDRL, subject to reevaluation and removal from medical retirement, these servicemembers will now be transferred to the permanent list after three years on the TDRL.

As always, the test for the effectiveness of these improvements will be in their implementation. Hopefully counselors and attorneys will be able to work effectively with servicemembers affected by these changes and use them for their benefit. We will have to wait and see if the services comply with the new reporting requirements and if those reports lead to any changes or improvements in policies.

Kathleen Gilberd is a legal worker in San Diego, California, working primarily on discharges and discharge review, and is the executive director of the Military Law Task Force of the National Lawyers Guild.

THE INJUSTICES OF MANNING'S ORDEAL

BY MARJORIE COHN

This article first appeared on Consortium News on [January 25, 2017](#).

Exclusive: For exposing war crimes in Iraq and Afghanistan, Pvt. Chelsea Manning suffered nearly seven years in prison, an ordeal President Obama finally is ending but without acting on the crimes she revealed, says Marjorie Cohn.

After overseeing the aggressive prosecution and near-seven-year incarceration of Army whistleblower Chelsea Manning, President Obama – in one of his last acts in office – commuted all but four months of her remaining sentence but ignored the fact that he had taken no action on the war crimes that Manning revealed.

At his final news conference, Obama explained his reasons for commuting Manning's record-setting 35-year sentence for leaking classified information to the public. Manning is scheduled to be released on May 17.

"Chelsea Manning has served a tough prison sentence," Obama said. "It has been my view that given she went to trial; that due process was carried out; that she took responsibility for her crime; that the sentence that she received was very disproportionate relative to what other leakers had received; and that she had served a significant amount of time; that it made sense to commute and not pardon her sentence. ... I feel very comfortable that justice has been served."

But there has been no justice for the Iraqis and Afghans whose unjustified deaths and mistreatment were exposed by the then-22-year-old Army private, known at the time as Bradley Manning. An Army intelligence analyst in Iraq, Manning sent hundreds of thousands of classified files, documents and videos, including the "Collateral Murder" video, the "Iraq War Logs," the "Afghan War Logs" and State Department cables, to WikiLeaks. Many of the items that she transmitted contained evidence of war crimes.

In an online chat attributed to Manning, she wrote, "If you had free reign over classified networks... and you saw incredible things, awful things... things that belonged in the public domain, and not on some server stored in a dark room in Washington DC... what would you do?"

Manning went on to say, "God knows what happens now. Hopefully worldwide discussion, debates, and reforms... I want people to see the truth... because without information, you cannot make informed decisions as a public."

CALLOUS KILLINGS

[The Collateral Murder video](#) depicts a U.S. Apache attack helicopter killing 12 people, including two Reuters journalists, and a passerby who stopped his van to rescue the wounded. Also wounded were two children in the van. Finally, a U.S. tank drove over one of the bodies, cutting the man in half. These acts constitute three separate war crimes under the Geneva Conventions and the U.S. Army Field Manual.

Manning fulfilled her legal duty to report war crimes. She complied with her duty to obey lawful orders but also her duty to disobey unlawful orders. Enshrined in the U.S. Army Subject Schedule No. 27-1 is “the obligation to report all violations of the law of war.”

Manning went to her chain of command and asked them to investigate the Collateral Murder video and other “war porn,” but her superiors refused. “I was disturbed by the response to injured children,” Manning stated. She was also bothered by the soldiers depicted in the video who “seemed to not value human life by referring to [their targets] as ‘dead bastards.’”

The Uniform Code of Military Justice sets forth the duty of a service member to obey lawful orders. But that duty includes the concomitant duty to disobey unlawful orders. An order not to reveal evidence of war crimes would be an unlawful order. Manning had a legal duty to expose the commission of war crimes.

Manning’s revelations actually saved lives. After WikiLeaks published her documentation of Iraqi torture centers established by the United States, the Iraqi government refused Obama’s request to extend immunity to U.S. soldiers who commit criminal and civil offenses there. As a result, Obama had to withdraw U.S. troops from Iraq.

Although Manning pled guilty to 10 offenses that carried 20 years in prison, military prosecutors insisted on pursuing charges of aiding the enemy and violation of the Espionage Act, that carry life in prison. Manning was not allowed to present evidence that she had been acting in the public interest.

When she entered her plea, Manning stated, “I believed if the public, particularly the American public, could see this it could spark a debate on the military and our foreign policy in general as it applied to Iraq and Afghanistan.” She added, “It might cause society to reconsider the need to engage in counter terrorism while ignoring the situation of the people we engaged with every day.”

Col. Denise Lind, the presiding judge, found Manning not guilty of the most serious charge – aiding the enemy – because the evidence failed to establish that Manning knew information she provided to WikiLeaks would reach Al Qaeda. A conviction of aiding the enemy would have sent a chilling message to the media and to whistleblowers that leaked classified information could lead to sentences of life in prison. That would deprive the public of crucial information.

Although that draconian possibility was averted, Manning still was convicted of 20 crimes, including Espionage Act offenses, itself an ominous warning that could deter future whistleblowers from exposing government wrongdoing. Traditionally, the act has been used only against spies and traitors, not whistleblowers. Yet Obama used the Espionage Act to prosecute more whistleblowers than all prior administrations combined.

Judge Lind, who sentenced Manning to 35 years in prison, reduced her sentence by 112 days because of the mistreatment she suffered in custody.

HARSH TREATMENT

For the first 11 months, Manning was held in solitary confinement and subjected to humiliating forced nudity during inspection. In fact, Juan Mendez, United Nations Special Rapporteur on Torture, characterized her treatment as cruel, inhuman and degrading. He said, “I conclude that the 11 months under conditions of solitary confinement (regardless of the name given to [her] regime by the prison

authorities) constitutes at a minimum cruel, inhuman and degrading treatment in violation of article 16 of the Convention against Torture. If the effects in regards to pain and suffering inflicted on Manning were more severe, they could constitute torture.”

Mendez could not conclusively say Manning’s treatment amounted to torture because he was denied permission to visit her under acceptable circumstances. Mendez also concluded that, “imposing seriously punitive conditions of detention on someone who has not been found guilty of any crime is a violation of [her] right to physical and psychological integrity as well as of [her] presumption of innocence.”

Manning, who began her gender transition following her sentencing, has been denied critical and appropriate treatment related to her gender identity at various points during her imprisonment. Her long sentence and harsh incarceration also drew protests from other human rights advocates.

“Chelsea Manning exposed serious abuses, and as a result her own human rights have been violated by the U.S. government for years,” said Margaret Huang, executive director of Amnesty International USA. “President Obama was right to commute her sentence, but it is long overdue. It is unconscionable that she languished in prison for years while those allegedly implicated by the information she revealed still haven’t been brought to justice.”

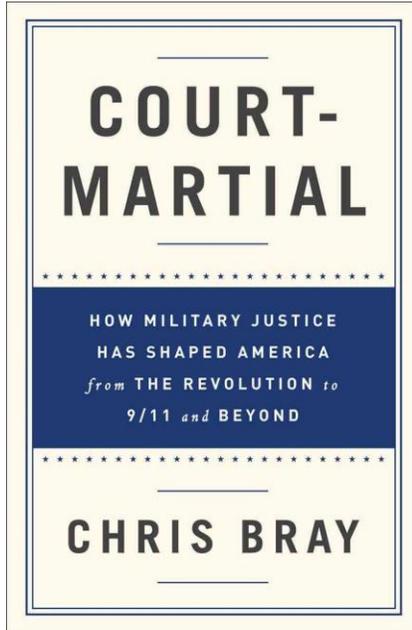
“Instead of punishing the messenger, the U.S. government can send a strong signal to the world that it is serious about investigating the human rights violations exposed by the leaks and bringing all those suspected of criminal responsible to justice in fair trials,” said Erika Guevara-Rosas, Americas Director at Amnesty International.

The commutation was the culmination of efforts by the Chelsea Manning Support Network, her legal team, and hundreds of thousands of people who signed petitions demanding her release.

Indeed, Kathleen Gilberd, executive director of the Military Law Task Force of the National Lawyers Guild, stated, “While Chelsea’s freedom is long-overdue, we are gratified that she has been afforded some measure of delayed justice. There is no doubt that the tremendous outpouring of public support and organizing for commuting the sentence contributed to this outcome. Still,” she added, “we remain critical of a government that seems more intent on prosecuting those who expose war crimes than those who commit them.”

Marjorie Cohn is professor emerita at Thomas Jefferson School of Law, former president of the National Lawyers Guild, and on the advisory board of Veterans for Peace. Her books include Rules of Disengagement: The Politics and Honor of Military Dissent (with Kathleen Gilberd) and Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues. Visit her website at <http://marjoriecohn.com/> and follow her on Twitter @MarjorieCohn

BOOK REVIEW



Court-Martial: How Military Justice Has Shaped America from the Revolution to 9/11 and Beyond

by Mr. Chris Bray, US Army Infantry Sergeant & PhD in History from UCLA.

REVIEWED BY JAMES R. KLIMASKI, ESQ.

The United States came into existence at a time when the laws of war and governance of the armies which fought them were beginning to take hold and develop. The new nation had only a limited history of warfare: formations of citizen militias to fight off attacks from Native American tribes trying to resist further expansion of the European colonists.

These militia formations consisted of friends and neighbors: volunteers and pressured townspeople or farmers, who had a personal stake in whatever fight they were engaged in. Officers were elected. These citizens taught themselves how to fight and behave as soldiers. It was not uncommon for debates to occur as to the best ways to fight. Once the danger was over, these militias would become dormant or even disband.

To keep up a presence, some would become clubs or social organizations. It was from this core that an American revolutionary army would emerge. And this is the starting point for Chris Bray's *Court-Martial* and its chronicle of the evolution of American military law and American military justice. The book is not just for those interested in the history of law. Bray presents a picture of military law attempting to protect the status quo as the world changes.

Early victories in Massachusetts and the Carolinas at the beginning of the fight with England would soon be followed by one disaster after another as the militias rebelled against the discipline imposed upon them and the extended need for their services. The fledgling country imported European officers to train these citizen volunteers and mold a true fighting force. Debating was being replaced by strict discipline. This discipline required laws. But the tension between the individual soldiers' sense of right and fairness would quickly come into conflict with the new armies' need for discipline and order.

In *Court-Martial*, Bray provides a socio-political history of the development of military law and military justice from its inception during the War of 1812 until the present day. Mr. Bray speaks with authority from his research as a historian and his personal experience as a former Army sergeant. His book is not a dry recitation of the change in the written laws, but rather it documents the impact of political and social events on the formation of military justice as the country grew and aged.

The early militias raised the question of the extent of military law jurisdiction. When were you a soldier, and when were you a free citizen? Throughout the 19th century and the advance of the manifest destiny ideology – the colonizing of the land mass between the Atlantic and Pacific Oceans – this tension would remain.

Further tension arose in the question of military governance over civilians caught up in war-like incidents involving Native Americans and other distinct groups attempting to assert their dominion over tracts of land during the Westward expansion to the Pacific and beyond. Bray provides examples of Generals Andrew Jackson, Winfield Scott, and Henry Sibley creating military commissions of dubious legality to try Native Americans and recalcitrant civilians standing in the way of the Army or initiating uprisings to protect their lands from further encroachment by westward moving immigrants. These civilian-military conflicts would rise again and again, up to the present-day Guantanamo cases.

As Bray points out, these military commissions resulted in expediency trumping law and justice – although the Guantanamo cases have found the opposite to be true as law triumphed in the battle over ascendancy between the civilian government and the military – both sides having “traitors” in their midst.

The book covers the effect of changing social values and political considerations. The US Civil War brought Blacks – both free men and former slaves – into the military officially for the first time. It took over a hundred years to complete the integration, with the military sometimes leading, and sometimes following, the civilian community. One setback resulted in the summary hanging of 19 Black soldiers near Houston, Texas before higher authorities could even review the trial.

The integration of women in the military is now unfolding at an accelerated pace. So too gays, lesbians, transgender, and other ethnic and social minorities are now being officially accepted into the armed services.

To deal with the military, you need to understand the military. Mr. Bray's *Court-Martial* opens the door to the military's soul and it isn't very pretty, but well worth the read.

Jim Klimaski was a co-founder of the MLTF and is the principal in the law firm [Klimaski and Associates](#), P.C. located in Washington, DC. He practices in the fields of Military Law, Employment Law, Security Clearances and Freedom of Information and Privacy Law.

ANNOUNCEMENTS

GI RIGHTS NETWORK CONFERENCE

MLTF members are invited to attend the GI Rights Network annual conference, to be held at the Stony Point Center outside New York City from the evening of May 18th to the 21st. The conference will include workshops on military whistleblowing (presented by attorney David Coombs, by Skype), dissent and protests, reserve issues (including medical discharge and retirement), advocacy with commands, VA benefits, and sexual assault policy. The conference will also include discussion of ways to support and expand the Network. For information and registration, contact Kathleen Gilberd at 619-463-2369 or email@nlgmtf.org

THE MILITARY LAW TASK FORCE of THE NATIONAL LAWYERS GUILD

ON WATCH is published quarterly by the Military Law Task Force of the National Lawyers Guild. Subscriptions are free with MLTF dues (\$25), or \$20 annually for non-members.

We welcome comments, criticism, assistance from Guild members, subscribers and others interested in military, draft or veterans law.

For membership info, see our website, or contact us using the info below.

Each issue is made available to the public on our website approximately one month after distribution to subscribers. A digital archive of back issues of this newsletter can be found on our website. See nlgmtf.org/onwatch/.

Editors: Chris Ford, Kathleen Gilberd, Rena Guay and Jeff Lake

CONTACT

Kathleen Gilberd, Executive Director
730 N. First Street, San Jose, CA 95112
email@nlgmtf.org; 619.463.2369

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

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

To join, or for more information, contact us by email or phone, or visit our website or social media pages.

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