

# ON WATCH

THE MILITARY LAW TASK FORCE OF THE NATIONAL LAWYERS GUILD



## A DAY WITH JROTC: TRAINING ‘GANGSTERS FOR CAPITALISM’



*"I spent 33 years and four months in active military service as a member of this country's most agile military force, the Marine Corps. I served in all commissioned ranks from Second Lieutenant to Major-General. And during that period, I spent most of my time being a high class muscle-man for Big Business, for Wall Street and for the Bankers. In short, I was a racketeer, a gangster for capitalism."*

- Gen. Smedley Butler (1881 - 1940)

By Reber Boulton

*While working as a substitute teacher, MLTF member attorney Reber Boulton has come face to face with the unquestioned nationalism and violence of the military program for youth.*

The Junior Reserve Officers' Training Corps ("JROTC") program is a "military services program in high schools throughout the nation" that is sponsored by the Secretary of each military department. 10 U.S.C. § 2031. The statute says the purpose of the program is to "instill in students of the United States secondary educational institutions the value of citizenship, service to the United States, and personal responsibility and a sense of accomplishment."

Units are established at public and private secondary schools; some middle schools have militarily uniformed groups of students labeled ROTC, too, but apparently not covered by this statute. Instruction is done by retired military personnel, officers and noncommissioned officers. Other than that, it has nothing

to do with officers. It's not part of any official "Reserve" component of the military.

In practice, JROTC programs appear to be more about recruiting and indoctrination than training. It's presented to the public as academic and educational with a physical training component. Albuquerque Public Schools, where this story takes place, has managed to get its JROTC programs positioned near the top of some search engines' responses for the search term "JROTC." Although the feds pay some of the costs, JROTC programs are a financial burden on the local school systems.

### A DAY WITH JROTC

It happened that my first day back on the Albuquerque substitute teaching job – after winning my contest to being fired for telling a Marine JROTC class of the military's pandemic sexual abuse – was

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### Points of interest

- Upcoming events, page 8.
- New design for **ON WATCH** -- an easier to read and navigate PDF version.
- Online content now optimized for mobile devices.

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at another Marine JROTC class. Here are some observations.

Based on last names alone, the unit, at Rio Grande High School, was 93% Latinos and Native Americans. I'd guess that's a few percentage points higher than the school as a whole. The student leader of the unit, designated "Commander," was a Mexican girl who brought some of her mother's empanaditas (stuffed pastries) to sell. The ROTC area is a place where ROTC students hang out when they have free time, which was almost all periods for the leader. Students, including the leader, spoke a lot of Spanish while hanging out.

The instructors, a Lt. Colonel and a Sergeant Major, both retired Marines, were white and Tongan, respectively. They say they come in at 5:30 a.m. to work out and leave at 5:30 p.m. after handling ROTC's after-school program, for which the students get academic credit. The instructors like the support the program gets from the principal (my firing at the other school had been at the request of an ROTC instructor). The instructors and the students participate in three dozen or more off-campus



*This picture from a Japanese newspaper shows the author (far left) at a GI antiwar coffeehouse, "The Hobbit," in Iwakuni, approximately 1974.*

activities every year; a good many of these are drilling contests.

### ALLOCATION OF JROTC CADET'S TIME

The students spend 40% of their class time, not counting the after-school program, in classroom instruction, 40% in physical training, and 20% in "inspection," which includes some drilling, as does, apparently, the "PT" segment. I was there on an inspection day.

Inspection consists of the students, "cadets," wearing military fatigues and boots, standing in ranks and

getting looked over one at a time by the class "commander" for things like belts, shoelaces, and haircuts. Then the commander asks a question, usually about a regulation, such as the haircut dimensions (they're told of a nearby barber who has a deal for ROTC students), or Marine lore, like when the Corps was founded (1775; one student answered 1992).

A question elicited the acceptable answer that loyalty to your country means following orders. The answers had to be shrieked at the top of the voice and include a lot of "sirs." Sometimes they were ordered to repeat them because the shriek wasn't loud enough. Sometimes the entire inspection would conclude with a command to express enthusiasm for the Marines. This meant yell "OORAH." This, too, had to be repeated if it wasn't loud enough. Other parts of the class, too, required yelling oorah, individually or collectively.

### CADETS PROMINENT IN ASSEMBLY

The Marine students appeared prominently in a school-wide assembly where other activities included couple of dozen girls in harem costumes doing something like a belly dance, introducing some of the sports teams, children's picnic games like an ice cream eating contest, and contests about which groups could yell the loudest. This JROTC supplements its local and federal money by selling candy at the doors.

A new student entered the class. The class commander asked him why he chose to join. Answer: "Because it's all they had." (There's a statutory minimum enrollment.)

### SCHOOL PERSONNEL EXCLUDED

This one class uses nine rooms that aren't used by any other classes; school personnel don't even have keys. One is a large gym-like room; they use it for their formations and shooting pellet guns and so don't have to do those activities outdoors. Near the middle of the floor the tiles spell, in 3-foot letters, "USMC." That part of the floor can't be walked on — "That would be like stepping on the flag."

## THE MILITARY LAW TASK FORCE of THE NATIONAL LAWYERS GUILD

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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.

A digital archive of back issues of this newsletter can be found on our website.

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All in all it was heavy militaristic conditioning, or conditioning the cannon fodder. I saw little that appeared consistent with the official JROTC image of an academic program – including the program that precipitated my earlier firing — a Hollywood movie and serious historic misinformation.

Recruiting pitches were pervasive. An ex-student came in to ask the instructors for a letter recommending that he be accepted into the Marine Military Police. The way the instructors treated the students and the way the student leaders treated the other students was straight out of movies with boot camp scenes, with a dash of empathy mixed in.

Among the military posters, trophies, and banners adorning the area was a photo of General Smedley Butler, with a few paragraphs of tribute. An instructor said he was a great guy. Nothing was said about his famous dictum: “I spent 33 years and four months in active military service and during that period I spent most of my time as a high class muscle man for Big Business, for Wall Street and the bankers. In short, I was a racketeer, a gangster for capitalism.”

#### EXPLANATION OF LYNCHING GETS TEACHER FIRED

I worked as a substitute teacher in the Albuquerque Public Schools (“APS”). I had a few minor disciplinary dustups, most notably when I was disciplined for telling a class, in relation to its poster about Billie Holliday, that her song *Strange Fruit* was about lynching and what that was (the students seemed to have never heard of it). Some parents, disgruntled about too many Mexicans being zoned into the attendance area, complained.

Apparently, it was seen as easier to banish me from the school than to deal with the disgruntled racists.

Years later I spent a couple of days teaching Air Force JROTC at Volcano Vista High School. It was all very friendly, including a compliment from the retired Sergeant who was the other instructor. Then I did a day with Marine JROTC at Atrisco Heritage, the other of Albuquerque's two new urban-sprawl high schools.

My assignment was to show the final 20 minutes or so of a movie, *Dances With Wolves*. I filled a little of the remaining time in the three periods with mention of a news report of a current Pentagon study of sexual assault; I said it was reported to be bad in all the branches but worst in the Marine Corps. No student complained then (I tried to engage them), but the regular teacher, a retired Colonel, did when he got back.

#### DISMISSAL SOUGHT FOR SEXUAL ASSAULT DISCUSSION

He reported my remarks to the principal, calling them “highly inappropriate behavior,” “harmful and wrong,” and “a disservice ... to those who hold dear our country’s principles and ideals.” He asked that I be fired, the principal sent it up the APS line, also asking for firing. I had administrative hearings that concluded I should be fired for these remarks (not in the [nonexistent] lesson plan and inappropriate for high school students), for my prior record, and because “You also stated that the ROTC students had a right to know about sexual assaults in the military because this was a topic reported in the news.”

There were two administrative hearings of sorts — the hearing officers were basically the people who had fired me. When I



## REGIONAL NEWS



From **The Bay Area Military Law Panel**

#### GI RIGHTS TRAINING

In January, the Bay Area Military Law Panel and the Bay Area GI Rights Network completed another round of training for law student GIRN counselors. Most of this semester’s volunteer law students have some connection with the military – many have served, some are from military families. None seemed put off by the peacenik nature of the MLTF.

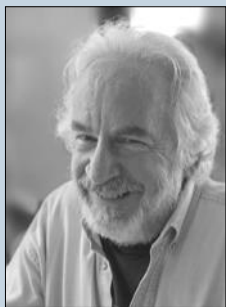


#### INVOLUNTARY SEPARATIONS WORKSHOP

On March 4, MLTF member Siri Margerin conducted a program on involuntary separations. She reports that they used MLTF’s updated memo on Involuntary Discharges as the foundation for a wide-ranging discussion about the issues involved and best practices, both from the perspective of counselors on the GI Rights Hotline and from lawyers on the Panel.

Contact BAMLP through at [bamlp@militarylawtaskforce.org](mailto:bamlp@militarylawtaskforce.org)

## ABOUT THE AUTHOR



**Reber Boulton** practiced law, the majority of it criminal and much of it civil rights, for 40 years in Nashville, Atlanta and Albuquerque. He was on the staff of the ACLU's Southern Regional office from 1968 to 1971. He worked with the National Lawyer's Guild Military Law Office in Japan in 1973 and 1974, helping U.S. Marines resist the war. He is a member of the MLTF steering committee.

complained this kind of firing gave too much power to a single teacher (sent there by a federal agency), they responded with the *non sequitur*, that's not so because four years ago you also got in trouble for departing from the lesson plan (the lynching episode). When I pointed out to the hearing officers that their very department pushes a pamphlet against sexual assault, they quickly corrected me: "Oh that's not about sexual assault, it's about sexual harassment."

This is a class that has students who believe the original official version of the Gulf of Tonkin matter and that Iraq hid its weapons of mass destruction by trucking them to Iran.

### SCHOOL AMPLIFIES ENFORCED IGNORANCE

Looking at the results, I'd say keeping the troops ignorant of current events is an overarching military policy, and it's quite different from when I was in the military. "I don't think about that" is a standard response of military members when some matter of policy is brought up. APS seems to be expanding that enforced ignorance to its entire system. It was made clear to me at the hearing that the term "substitute teacher" is an oxymoron – they're essentially prohibited from teaching.

There's a book by Robert Sherrill entitled: *Military Justice Is to Justice as Military Music Is to Music*. I was interviewed by the author as part of his research. That's the kind of expertise that

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In practice, JROTC programs appear to be more about recruiting and indoctrination than training.

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APS and the Marines are barring from their classrooms (or if it gets in the door it must keep its mouth shut). Now we can substitute "Education" for "Justice."

### AUTHOR WINS JOB BACK IN ARBITRATION

The next statutory step was arbitration. The arbitrator ruled:

*Boulton was terminated following the complaint that he inappropriately interjected personal opinion and personal political views by raising the subject of sex abuse within the military's ranks, a subject of much public discussion and Congressional action in 2013 to an ROTC class following the viewing of a film on leadership qualities.*

*The timing of Boulton's termination suggests a firing for raising a topic appropriately related to and in furtherance of the day's lesson plan if not identical to that which the class's regular teacher would have raised. [...]*

*Boulton's termination is hereby REVERSED [...]*

I had to pay half of the arbitrator's \$350 an hour. Back pay is still undecided. [C](#)

## UNDER THE HOOD TURNS FIVE, LOOKS TO FUTURE

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*"If you've been there, you know it: Under the Hood Café is a desert rose, a light in the dark, it's unlike anything else you will see or experience in Killeen Texas - home of "The Great Place" aka Fort Hood--the largest military base in the US. In a town that lives off militarism, UTH offers a refuge from the stress of military life and the barrage of businesses trying to get their share of each soldier's pay."*

*-Maggie Martin, Iraq vet, staffperson for Iraq Veterans Against the War*

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### By Rena Guay

In January, I finally visited Under the Hood Café and Outreach Center in Killeen, TX. After years of working as a GI Rights advocate and counselor, it was very moving to be in the rooms that offer an alternative space and world view to the thousands of GIs who come through nearby Ft. Hood. It was a great time to be there, too, as the fifth anniversary was celebrated on January 18 with an evening of food, song, poetry and conversation.

A project of the Fort Hood Support Network, Under the Hood is located in a former residence nestled just off Killeen's main thoroughfare and half a block from the railroad tracks. Signs in



front proclaim: "In war, there are no unwounded soldiers" and "GI Voices: You are not alone." In a region where all signs literally reinforce the military culture's demand to buck up, squelch emotions, ignore physical pain and never ask questions, these invitations to another approach are critically needed. Their motto is "Pro Soldier, Anti War."

That's why I'm involved in making sure Under the Hood (along with the two other GI coffeehouses, one near Seattle and on in Germany) stays open and viable, able to offer GIs vital resources, information about their legal rights, or just a listening ear. My CCA and MLTF colleague James Branum, an attorney who represents service members seeking discharge as conscientious objectors, is also on the advisory board, along with MLTF member Kathleen Gilberd; MLTF members Siri Margerin and Lori Hurlebaus are on the board of directors.

A new board of directors and advisory board was created last summer, and this gathering in Killeen was our first opportunity to meet together in person. We came from all across the country, and represented the organizations most involved in supporting GIs during this period of endless war since 2001: War Resisters League, the GI Rights Hotline, Veterans for Peace, Iraq Veterans Against the War, Center on Conscience and War, Civilian Soldier Alliance and the Military Law Task Force. We met for four days, getting to know each other, and working towards crystallizing the mission and future goals for the organization.

*"I come here a lot, and I sit around, and I hang out and I drink free coffee and I maybe don't do as many dishes as I should, and so it may seem superficial, I don't know if I can express the importance that this place has played in my life recently. It gave me the courage to get back on my own feet, as far as who I am and what I feel about myself. And I realize that I'm not the only person that feels that way."*

*-Chris, US Army veteran and UTH member*

The challenges are great, and aren't getting any easier, but the organization is moving forward with more and better programming and services for 2014 and beyond. One of the major new projects is a community radio station, as FHSN has been granted a provi-

sional FCC license for a low-power FM station in Killeen. Once it begins broadcasting, the station will be accessible over the airwaves to most of the residential area of Ft. Hood, including all the barracks. It is an unprecedented opportunity to reach active duty soldiers with an alternative message about peace, justice and their right to dissent, resist and refuse to violate their own conscience. In the meantime, staff member Malachi Muncy is recording know-your-rights podcasts with counselors and attorneys from MLTF and the GI Rights Network.

Other plans for the next six months were developed at the board meeting—regular outreach to soldiers on the base; release of IVAW's Ft. Hood Report, with interviews from Ft. Hood soldiers on medical problems and inadequate medical care at the base, followed by a petitioning campaign about the "right to heal;" regular poetry slams and cultural events; development of a GI counseling program; and more.

To keep up with UTH's news and needs, please visit [www.underthehoodcafe.org](http://www.underthehoodcafe.org), email [underthehoodcafe@gmail.com](mailto:underthehoodcafe@gmail.com) or call 254-307-8811. ■



*Members of Under the Hood's Board of Directors and Advisory Board take a break during a four-day retreat in Killeen. Back row: Maggie Martin, Kathy Gilberd, Kimber Heinz, Gerry Condon, Rena Guay. Front row: Maria Santelli, Lori Hurlebaus, Ryan Holleran, UTH director Malachi Muncy.*

*Photo by Siri Margerin, also a board member.*

Rena Guay is Executive Director of the Center for Conscience in Action in Oklahoma, and serves on MLTF's steering committee. She is an editor, designer, web developer and website administrator for a number of non-profits.



# MILITARY LAW AND THE NEW NDAA:

## CHANGES INCLUDE SEXUAL ASSAULT REFORM, REPEAL OF SODOMY BAN



## NUMEROUS OTHER IMPORTANT UPDATES TO UCMJ, COURT MARTIAL PROCEDURE

By Kathleen Gilbert

The new [National Defense Authorization Act \(NDAA\) of 2014](#), enacted Dec. 26, 2013, contains a number of significant changes to the UCMJ and court-martial procedure, some but not all are focused on military sexual assault cases. These changes are summarized below; their implications for court-martial practice will be discussed in future issues of On Watch.

**Section 1701** of the NDAA amends UCMJ Article 6 by adding 6b, "Rights of the victim of an offense under this chapter." This amendment, not limited to victims of sexual assault, provides for the right

- to be "reasonably protected" from the accused;
- to notice of confinement hearings, court-martial proceedings, public proceedings of the service clemency and parole board, and the release or escape of the accused;
- not to be excluded from such hearings unless the judge or investigating officer determines on clear and convincing evidence that the victim's testimony would be materially altered by hearing other testimony;
- reasonably to be heard at confinement hearings, sentencing hearings and the clemency and parole board;
- reasonably to confer with government counsel in these proceedings;
- to restitution;
- to proceedings free from unreasonable delay; and

- "to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter."

Appropriate changes to the Manual for Court-Martial are to be recommended, and appropriate regulations are to be prescribed, within one year of enactment of the NDAA.

**Section 1702** provides for revision of Article 32 and Article 60. Article 32 hearings, now to be termed preliminary hearings, are to determine probable cause and court-martial jurisdiction, consider the form of charges and recommend disposition of the case. Formerly, the purpose of the hearing was to determine "the truth of the matter," giving much more scope for discovery by the defense. Other than in exceptional circumstances, preliminary hearings should be conducted by Judge Advocates, and where practical this JAG will be equal to or senior in grade to government and defense counsel. Victims may not be required to testify; if they decline to do so, they will be deemed not available. Article 32 amendments will become effective one year after the NDAA's enactment.

This section also limits command "prerogative and discretion," amending Article 60 of the UCMJ. Except for qualifying offenses (those where maximum punishment of confinement is less than two years, and the sentence adjudged does not include a punitive discharge or confinement for more than six months, but excluding sexual assault offenses), convening authorities may

not disapprove, commute or suspend all or part of the sentence of a court-martial without a written explanation to be made part of the record of trial. They may not disapprove, commute or suspend all or part of a sentence of confinement for more than six months or a punitive discharge, except upon the recommendation of trial counsel for the accused's assistance in investigation or prosecution, or pursuant to a pre-trial agreement. These provisions take effect 180 days after enactment of the NDAA.

**Section 1703** eliminates the five-year statute of limitations for certain sex-related offenses - rape or sexual assault, or rape or sexual assault of a child – for offenses committed on or after the NDAA's enactment.

**Section 1704** provides that defense counsel will make any request to interview the victim of a sex-related offense through trial counsel. If the victim requests it, the interview may take place only in the presence of trial counsel, counsel for the victim, or a Sexual Assault Victim Advocate. (Sex-related offenses here include violations or attempted violations of Articles 120, 120(a), 120(b), 120(c) or 125.) This provision apparently takes effect immediately.

**Section 1705** amends Article 56 to include trial by general court-martial and mandatory dishonorable discharge or dismissal for violation of Article 120(a) or (b) and for forcible sodomy under Article 125, as well as attempts to commit these offense. These amendments are to take effect 180 days after enactment of the NDAA for offenses committed on or after that date.

**Section 1706** amends Article 60 to allow victims of offenses an opportunity to submit matters for consideration by the conven-

ing authority in clemency proceedings, and to limit the convening authority's consideration of victims' character unless such matters were allowed as evidence at trial.

**Section 1707** repeals consensual sodomy as an offense, changing Article 125 to include only forcible sodomy and bestiality.

**Section 1708** modifies the discussion section of Rule 306 of the Manual for Courts-Martial to eliminate the character and military service of an accused from the matters a commander should consider in his or her initial decision on disposition of an offense. The Rule itself is not altered. This change is to take effect no later than 180 days after the NDAA's enactment.

**Section 1709** requires promulgation of regulations prohibiting retaliation against an alleged victim or another for reporting a criminal offense, making retaliation a violation of Article 92. Here, retaliation is defined to include:

- "taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action...because the member reported a criminal offense; and
- "ostracism and such acts of maltreatment as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense."

Implementing regulations are to be promulgated no later than 120 days after enactment of the NDAA.

This section also requires that the Secretary of Defense submit a report within 180 days of the NDAA's enactment setting out

*(Continued on page 8)*

*Military service chiefs testify about sexual assault in the military before the Senate Armed Services Committee in 2013.*

U.S. Army photo by Staff Sgt. Teddy Wade.



## Senate blocks Gillibrand sexual assault bill

By Meredith Clark | [MSNBC.com](http://MSNBC.com)

03/06/14 - Military commanders will keep their authority over sexual assault prosecutions, after the Senate blocked a proposal to radically overhaul the way the military justice system deals with serious crimes. This is a major setback for New York Sen. Kirsten Gillibrand, a Democrat, who has spent much of the last year holding hearings, talking to survivors, and collecting support for her proposal, which would have removed decisions about serious crimes like sexual assault from the chain of command and placed it with military prosecutors. The vote on whether to move forward failed to cross the 60-vote threshold, 55-45.

[...] Another bill, introduced by Democratic Missouri Sen. Claire McCaskill, featured a number of less sweeping reforms but left

authority with military commanders, advanced after it easily cleared the 60-vote marker. [...]

Both bills were originally amendments to last year's National Defense Authorization Act, which included a spate of historic reforms to the military's sexual assault response policies. [...]

[This vote is] unlikely to take pressure off the Pentagon. The Department of Defense will release its annual report on sexual assault in the armed forces this spring. After the Associated Press [reported](#) that sexual assault reports had spiked more than 50% in 2013, President Obama ordered Secretary of Defense Chuck Hagel and Chairman of the Joint Chiefs of Staff Martin Dempsey to conduct a comprehensive review of sexual assault response and prevention policies and report to him by December. ■



recommendations on whether or not retaliation should be the subject of a new punitive article of the UCMJ.

**Section 1711** adds a new section 657 to chapter 37 of Title 10, prohibiting enlistment or commissioning of persons for rape or sexual assault, forcible sodomy, incest, and attempts at these offenses. (This repeals a similar section in the 2013 NDAA.)

**Section 1712** changes 10 U.S.C. § 673(b) to include the Coast Guard in regulations on requests for transfers by victims of sexual assault.

**Section 1713** would add a new 10 U.S.C. § 674, “temporary administrative reassignment or removal of a member on active duty accused of committing a sexual assault or related offense.” Under DoD and service guidance, commanders would have authority to temporarily reassign or remove members accused of offenses under Articles 120, 120(a), 120(b), 120(c) or 125 or attempts at these offenses. The section notes that transfers would not be a punitive measure, but rather have the purpose of maintaining good order and discipline.

**Section 1714** amends 10 U.S.C. § 1034, the Military Whistleblower Protection Act, in several places. It now covers individuals who are “being perceived as making or preparing” a complaint, as well as those who make or prepare to make complaints. Complaints of wrongdoing, etc., made in court-martial proceedings are now covered under the Act. This will include “testimony, or otherwise participating in or assisting in an investigation or proceeding related to” a covered communica-

tion. The definition of reprisals is expanded to include “making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member’s grade.” Communications will not be excluded from protection because the information had previously been disclosed, the communication was not made in writing or while on duty, or because of the member’s motive in making the disclosure, nor if the member reasonably thought that the person to whom the disclosure was made was participating in a covered activity (for instance, participating in an investigation).

The time to submit complaints of violation of the Act is changed from 60 days to one year. The section also includes action to be taken by the service Secretary on receipt of an IG investigation, including disciplinary action against the person responsible for the reprisal. Finally, the possibility of a Board for Correction of Military Records evidentiary hearing for a victim of reprisals is to be available when it would benefit the victim, not only when the case is unusually complex.

**Section 1715** also amends 10 U.S.C. § 1034, to add complaints of “rape, sexual assault or other sexual misconduct” in violation of Articles 120 through 120(c) to the section protecting complaints about sexual harassment.

**Section 1716** provides for Special Victims’ Counsel (SVC) for victims of sex-related offenses who are eligible for legal assistance under 10 U.S.C. § 1044. Victims of sex-related offenses will be entitled to the assistance of JAG counsel whether their reports are restricted (confidential) or unrestricted. In addition to consultation about sexual assault policy, the potential for civil litigation against other parties (other than the DoD), and the like, this assistance includes consultation on potential criminal liability of the victim for collateral misconduct. SVCs will also accompany victims to any proceedings regarding reporting, investigation and prosecution of the offense.

The section makes it clear that this is an attorney-client relationship. Victims will be offered the option of SVC assistance when they make a report or seek assistance from a Sexual Assault Response Coordinator, Victim Advocate, military criminal investigator, victim/witness liaison, trial counsel, health care provider and any others designated by the service secretary. Declining the help of an SVC does not preclude subsequent requests for such assistance. For this section, sex-related offenses include those under Articles 120, 120(a), 120(b), 120(c) or 125, as well as attempts.

**Section 1721** requires the service Secretaries to track commanding officers’ compliance in conducting climate assessments as required by 10 U.S.C. § 1561, subsection (a)(3).

**Section 1722** requires the Independent Panel on Assessment of Military Response Systems to Sexual Assault to submit a report in 12, rather than 18, months.



## MARK YOUR CALENDARS FOR THESE UPCOMING EVENTS

**MAY 15 - 18**



### **GI Rights Network conference**

Charlotte, NC

FMI: [kathleengilberd-AT-aol-DOT-com](mailto:kathleengilberd-AT-aol-DOT-com);

[www.girightshotline.org](http://www.girightshotline.org)

**JULY 23 - 27**



### **Veterans for Peace Annual Convention**

Ashville, NC

[www.vfpnationalconvention.org](http://www.vfpnationalconvention.org)

**SEPTEMBER 3 - 7**



### **NLG Law for the People Convention**

Chicago, IL

FMI: [www.nlg.org/law-people-convention](http://www.nlg.org/law-people-convention)



**Section 1723** mandates retention of restricted sexual assault reports for 50 years or the length of time required to save unrestricted reports; formerly, these were kept only at the request of victims.

**Section 1724** requires the services to ensure timely access to Sexual Assault Response Coordinators for members of the reserve and guard who are assaulted during performance of duties or assaulted by a member of the guard or reserves.

**Section 1725** deals with qualifications and selection of sexual assault prevention and response personnel, and requires reports on their training, qualification and experience. It also requires the assignment of sexual assault nurse examiners at military medical facilities with full-time emergency departments, and the availability of nurse examiners to victims treated at facilities lacking full-time emergency departments. The Secretary of Defense is to prepare a report on the training and certification of personnel no later than 120 days from enactment of the NDAA.

**Section 1726** gives the DoD Sexual Assault Prevention and Response Office additional duties, including data collection with metrics to measure effectiveness of and compliance with training objectives, serving as a liaison between DoD and other federal and state agencies on sexual assault prevention and response, and overseeing development of strategic program guidance and making recommendations on modifications to policy, law and regulations for resources in support of the SAPR program.

**Section 1731** gives additional responsibilities to the previously-established DoD “response system panel” to assess the impact of removing UCMJ disposition authority from the chain of command; to assess whether SVC’s role should be expanded to include legal standing to represent victims during investigation and disciplinary proceedings in connection with the prosecution of the offense; to assess the feasibility and appropriateness of extending to victims of UCMJ crimes the right afforded a civilian crime victim under 18 U.S.C. § 3771; to evaluate the means by which names and identifying information of offenders collected in restricted reports could be compiled into a protected database available only to military criminal investigators, SARCs, etc., to identify individuals who are multiple offenders; to examine the military and civilian clemency systems, including whether clemency could be reserved until the completion of military appeals; to assess whether DoD should publish a formal statement of “what accountability, rights and responsibilities a member of the Armed Forces has with regard to matters of sexual assault prevention and response.”

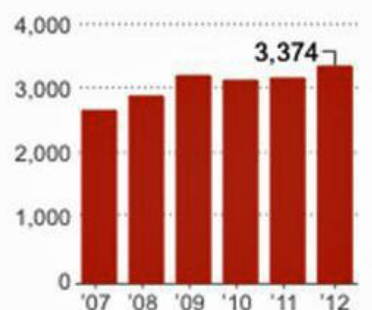
Under the same section, DoD’s “judicial proceedings panel” is to assess

- the likely consequences of amending Article 120 to cover commission of a sexual act upon another “by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person;”
- 10 U.S.C. § 1044e and recommend any appropriate modifications;
- the implementation and effect of mandatory minimum sentences under Article 56b of the UCMJ as added by section 1705 of the Act, and consider the appropriateness of mandated minimum sentences for other offenses; and
- the adequacy of provisions for compensation and restitution of victims of UCMJ offenses and make recommendations on providing forfeited wages of incarcerated offenders to victims as compensation.

**Section 1732** calls for a review of the criminal investigative services’ practices in responding to UCMJ offenses, including the extent to which they make recommendations as to whether offenses are founded or unfounded. Following this review, which is to be done no later than 180 days after enactment of the NDAA, DoD is to develop a uniform

## Military sex assaults

Sexual assaults reported to the Defense Department with a service member as a victim or assailant:



2012 VICTIMS BY GENDER:



SOURCE: Defense Dept. AP

## TOPICS COMING IN FUTURE ISSUES OF ON WATCH:

- Same-sex spousal benefits
- Operation Recovery
- Non-judicial punishment
- Civilian consequences of court-martial convictions
- CO litigation update
- Discharge upgrade trends
- Court-martial practice
- Dissent primer for servicemembers and counselors
- GI organizing trends & needs
- Challenging misconduct discharges
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policy for the investigative services, in which it will consider the feasibility of using case determinations (such as the uniform crime report) used by civilian law enforcement agencies.

**Section 1733** requires that the Secretary of Defense review the adequacy of training on sexual assault prevention and response, with a report of the review to be made no later than 120 days after enactment. The review will identify common core elements to be included in all training and recommend other appropriate modifications for training.

**Section 1734** requires a review of the progress made in developing comprehensive policy on retention of and access to sexual assault evidence and records (as required by section 586 of the 2012 NDAA), and a report back to the Committees on Armed Services no later than 180 days after the NDAA's enactment.

**Section 1735** mandates review of the Office of Diversity Management and Equal Opportunity to determine whether sexual harassment cases should be evaluated or addressed within this office; evaluate how DMEQ works with SAPRO to address harassment; identify any resource and personnel gaps in DMEQ that affect this work; and assess its capability to track incidents of sexual harassment.

**Section 1741** provides enhanced protection for prospective and new members of the military during entry-level processing and training. This section addresses both recruitment and initial training. The service secretaries are to develop policies that define and proscribe inappropriate and prohibited relationships, communication, conduct or contact (including consensual

actions) between service members "who exercise authority or control over, or supervise" prospective members and members in entry-level processing or training. The section specifically mentions recruiting personnel, MEPS personnel, and members working at entry-level training facilities. Violators will be subject to disciplinary action, and to administrative separation processing in response to the first substantiated violation of this policy, if the member is not punitively discharged. Separation will be based on the full facts of the case, not merely a court-martial conviction. Substantiated violations are defined as those with court-martial convictions or imposition of nonjudicial punishment. Implementing regulations are to be published no later than 180 days after enactment of the NDAA. The Secretary of Defense will also prepare a report containing his recommendations regarding the need to create a UCMJ article for violations of this policy.

**Section 1742** requires commanders who receive a report of a sex-related offense in their chain of command to act immediately by referring the report to the military criminal investigative organization for that service.

**Section 1743** requires preparation of eight-day incident reports in response to unrestricted reports of sexual assault, to be provided to the installation commander, if appropriate, the first officer in the grade of O-6 and the first general or flag officer in the victim's and alleged offender's chains of command. The reports must detail action that has been or is being taken on the case to provide the victim support, refer the case to the appropriate investigative service and provide initial notification of a serious incident, if that has not already been done. Imple-

News

&

Notes

Send member news, resources and tips to the editors at [nlg.mltf@gmail.com](mailto:nlg.mltf@gmail.com)

#### NEW DISCHARGE REG

DoD has reissued its Instruction on enlisted administrative discharges, [DoD 1332.14](#) (PDF). Discharge criteria remain the same, as do almost all discharge procedures. The new Instruction can be found at <http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf>.

#### REPRESENTING SERVICEMEMBERS IN INVOLUNTARY DISCHARGES

MLTF's revised legal memo on involuntary discharges, designed for attorneys and counselors, is finally available. It can be found on the MLTF website at [nlgmltf.org/military-law/tag/memo/](http://nlgmltf.org/military-law/tag/memo/).

#### TRENDING IN MILITARY LAW & GI RIGHTS

Speaking of involuntary discharges, Steve Woolford, a counselor at Quaker House in North Carolina, reports an Army trend of general discharges for misconduct. While this avoids more serious other than honorable discharges, it also denies servicemembers facing discharge the right to an administrative discharge board hearing if they have less than six years of service.



#### MEMBER RECOGNITIONS

Congratulations to MLTF co-chair Dan Mayfield, who was recently named defense attorney of the year by the Criminal Defense Attorneys Association of Santa Clara County.

menting regulations are to be promulgated within 180 days of enactment of the NDAA.

**Section 1744** mandates review of decisions not to refer charges to court-martial in sex-related offenses, with review policies set out by the secretaries of the services. The policies are to include requirements that consideration be given to the victim's statement provided during the criminal investigation, and that determinations be made as to whether the victim's statement and views concerning disposition of the offense were considered by the convening authority in making the referral decision. For this section, sex-related offenses include Article 120(a) or (b), forcible sodomy under Article 125, and attempts to commit those offenses.

The section also provides that, in any case where a staff judge advocate recommends that charges of a sex-related offense be referred to court-martial and the convening authority declines to do so, the convening authority will forward the case file to the service secretary for review. Where staff judge advocates recommend against referral, and the convening authority concurs, the case file will be reviewed by the next superior commander with general court-martial convening authority. The case file will specifically include the victim's statements, such as statements to the chain of command and to the convening authority; a written statement explaining the convening authority's reasons; and a certification that the victim was informed of

the convening authority's decision. The victim will be notified of the results of such review.

**Section 1745** requires that, when members are convicted at court-martial or receive nonjudicial punishment for a sex-related offense, a notation to that effect will be placed in their service record, regardless of rank, to reduce the likelihood that repeat offenders will escape notice by subsequent commands. Commanders will be required to review files for such notations upon members' transfer or permanent assignment. Members will have the right to challenge such entries.

**Section 1746** focuses on prevention of sexual assault at military academies, requiring that a section on assault be included in the curriculum section dealing with honor, respect and character development. This training will include the history of the problem of sexual assault, reporting procedures, victims' rights, mandatory punitive discharge or dismissal, etc., and must be provided within two weeks of recruits' arrival at the academies.

**Section 1747** requires that members completing Standard Form 86 of the Questionnaire for National Security Position be notified that they may answer "no" to the question about consulting a health care provider if they are victims of sexual assault and the consultation "occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault."

**Section 1751** is a sense of Congress provision holding that commanding officers are responsible for command climates in which sexual assault allegations are properly managed and victims can report all criminal activity without fear of retaliation, "including ostracism and group pressure from other members of the command." The section suggests that maintenance of such a command climate is a proper subject for evaluation in regular evaluation systems, and that failure to maintain this command climate can be an appropriate basis for relief from command.

**Section 1752** is another sense of Congress provision, that offenses under Articles 120(a) and (b), forcible sodomy under Article 125, and attempts to commit those offenses should be disposed of by court-martial rather than nonjudicial punishment. Where nonjudicial punishment or administrative action is used instead of court-martial, the disposition authority should include a justification for the action in the case file.

**Section 1753** states that it is the sense of Congress that discharges in lieu of court-martial should be "exceedingly sparing" in cases of rape, sexual assault, forcible sodomy or attempts at these offenses, and used only when the facts of the case clearly warrant such discharge. Victims should be consulted prior to determinations to discharge offenders in lieu of court-martial. The section states that such discharges should be characterized as other than honorable. [C](#)



## ABOUT THE AUTHOR

Kathleen Gilberd is a legal worker in San Diego, working primarily in the area of discharges and discharge review. She is the executive director of the Military Law Task Force, and is on the board of directors for the

national GI Rights Network. She has written extensively on military personnel policies and on the problems of military sexual assault and harassment.

## Members — Get involved



MLTF needs your assistance on the following program activities:

- Fundraising
- Research
- Communications
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# DEPARTMENT OF DEFENSE CUTS DON'T TRANSLATE INTO LESS SPENDING

FROM NATIONALPRIORITIES.ORG

On Feb. 24, Secretary of Defense Chuck Hagel gave a speech at the Pentagon that announced cutbacks in a number of military programs:

- Reductions in military personnel in the active-duty Army, Army National Guard, Army Reserve, and Marine Corps
- A pay freeze for flag officers and generals
- A reduction in benefits for active-duty personnel and their families
- Elimination of some weapons systems, including the Air Force A-10 Attack Jet and U-2 spy plane fleet, and reduction in the number of Navy littoral combat ships

However, despite all of these changes, the [new Pentagon budget does not project a commensurate decline in spending](#).

The president is [expected to propose](#) an additional \$26 billion for the Pentagon in 2015, on top of the spending limits agreed to in the Bipartisan Budget Agreement. In addition, the Pentagon receives many tens of billions in additional funding to operate wars overseas, officially known as "Overseas Contingency Operations (OCO)," and that money isn't subject to caps.

"Five-year spending projections at the Pentagon show that it plans to exceed the spending caps of sequestration by \$115 billion over the next five years," said Jo Comerford, NPP Executive Director. "We must hold Secretary Hagel to his promise to



make tough choices in Pentagon spending, including examining the OCO 'slush fund.'

As a nation, we must redefine what we mean by security and listen to the people's priorities for how to spend our tax dollars."

*National Priorities Project (NPP) is a non-partisan, non-profit organization that was nominated for the Nobel Peace Prize in recognition of pioneering work to track federal spending on the military and promote a U.S. federal budget that represents Americans' priorities, including funding for people's issues such as inequality, unemployment, education, health and the need to build a green economy. [Learn more at nationalpriorities.org.](#)*

*The National Lawyer's 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.*

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