



The Newsletter of the
Military Law Task Force of
the National Lawyers Guild

ON WATCH

Volume XXIV, Number 3

September 2013

Vieques: 10 years after U.S. bombing ends, struggle for justice in Puerto Rico continues

BY HELEN JACCARD AND DAVID SWANSON

Ten years ago May 1, the people of Vieques, Puerto Rico, and their supporters defeated the most powerful military machine ever, through mass civil disobedience and without firing a single shot. On May 1, 2003, the U.S. military put a stop to six decades of nonstop bombing, munitions dumping, war games, and poisoning the small island seven miles from the coast of Puerto Rico, activity that involved depleted uranium, Agent Orange, napalm and heavy metals. Vieques, and the bases were officially closed. People from all over the world supported the struggle on Vieques, and the activists and residents have an incredible victory to celebrate.

There were decades of resistance, civil disobedience and arrests, while the U.S. military “rained down” a trillion tons of ordnance over the course of six decades on an island scarcely the size of Santa Catalina in California or Nantucket in Massachusetts. But those hoping and laying the groundwork for greater resistance were given an opportunity on April 19, 1999, when a U.S. Marines pilot missed his target and killed civilian security guard David Sanes Rodriguez. That spark lit a fire of nonviolent resistance that brought together Viequesens, Puerto Ricans, and supporters from the United States and around the world. A campaign of non-violent civil resistance that began in 1999 lasted four years, including a year-long occupation of the bombing range, and saw over 1,500 people arrested. The Navy was forced to close the bombing range on May 1, 2003. Peace-



The Navy spent decades poisoning the island of Vieques with bombing, munitions dumping, Agent Orange, napalm and depleted uranium.

Team Manning: How a grassroots crew of war resisters took on the US Army

BY RENA GUAY

Thanks to help from the Task Force, I was able to attend the first days of the Manning court-martial, and also attended the June 1 rally outside the main gate to Ft. Meade, which was organized by the Bradley Manning Support Network (now the Private Manning Support Network).

I wanted to witness the court-martial for myself and more clearly understand the case and the support campaign developed around it. MLTF executive director Kathy Gilbert reflects the general consensus among military law professionals (and progressive activists like me) that the Manning court-martial is “one of the most important cases in our military’s history.”

(Continued on page 2)

(Continued on page 10)

loving people had won the first of their demands for the island: demilitarization.

A huge commemoration [occurred](#) in Vieques for the anniversary from May 1 - 4, 2013.

Island beauty belies environmental catastrophe

Beautiful Vieques Island is only 21 miles across, five miles wide, and home to about 9,300 people, as well as endangered turtle species, rare Caribbean plants and animals, bio-luminescent bays, and miles of what look like unspoiled beaches. But crabs with three claws, grossly deformed fish laden with heavy metals, once-beautiful coral reefs, and beaches and seas that have been decimated by military activity tell a story of environmental disaster with huge health impacts on people, plants, and animals.

An incredible three-quarters of the island was appropriated in the 1940s and used by the U.S. Navy for bombing practice, war games, and dumping or burning old munitions. This was a terrible attack on an island municipality, one the United States was not at war with.

Now, Vieques Island, a paradise in trouble, is one of the largest Superfund sites in the United States, together with its little sister island of Culebra, which took the brunt of the bombing until 1973, when the Culebra bombing range closed (also due to protests) and the bombing practice was transferred to Vieques.

U.S. Has Yet to Relinquish Control

In 2003, the Navy did not return the land to the people, but transferred its Vieques land to the U.S. Fish and Wildlife Service, which operates beaches that were never used

for military activities.

Viequeses fear that keeping the U.S. Government in control of their lands could result in future re-militarization of the island. Residents are unhappy that their land has not been returned to them and that they are fined for staying on their land past sunset or collecting crabs -- a mainstay of their historic diet. There are also two military occupations of lands -- a ROTHF radar system and a communications area, and the people want these closed as well. You can add your name to [Viequeses' demand for peace here](#).

For over 2,000 years people known as Taino inhabited Vieques, which they called Bieque. The Taino found and left behind them a paradise of fertile soil, fresh water, and trees. In 1493, the conquistadors arrived, and by 1524, the Spanish had killed every remaining resident. Vieques was then left uninhabited by humanity for 300 years, interrupted by a few British, French, and Spanish attempts to set up forts or destroy each other's efforts.

The Spanish and French used Vieques to grow sugar from 1823 into the 1900s. English-speaking people of African origin from nearby islands were kept in slavery conditions, or the nearest thing to it, and forced to grow sugar cane. They revolted in 1864 and 1874, and in 1915 via the Sugar Strike. The United States took Puerto Rico from the Spanish in 1898 and made its residents U.S. citizens in 1917(Editor's note: neatly timed to allow them to be conscripted to fight WWI). The Great Depression of the 1930s, together with two hurricanes in 1932, brought on harder times than ever.

In 1939 the United States bought 26,000 of the 30,000 acres of land on Vieques from big sugar plantation owners. Living on that land were 10,000 to 12,000 workers

ON WATCH**XXIV.III ★ CONTENTS ★ SEPTEMBER 2013****Editors**

Chris Ford
Kathleen Gilbert
Rena Guay
Jeff Lake

Production

New Media Active

Vieques: Still seeking justice 1

Manning Support Network looks back and ahead 1

2013 IAW Convention: Moving beyond militarism 6

MLTF regional news 8

MLTF news and notes 8

Marines enact new CO standards 9

NLG 2013 Law for the People Convention, MLTF events 11

who also raised crops to feed themselves. The U.S. Navy gave families \$30 and one day's notice before bulldozing houses. Most people were left without means of subsistence, but many stubbornly refused to leave the island.

[Carlos Prieta Ventura](#), a 51-year-old Viequense fisherman, says his father was 8 years old in 1941 when the Navy told his family their house would be bulldozed whether or not they accepted the \$30. Ventura says he has always resisted the Navy's efforts to force people off the island.

100,000 unexploded bombs litter land and sea

From 1941 to 2003, the U.S. military flew planes from aircraft carriers based on the main island of Puerto Rico and dropped bombs over Vieques. Explosives "rained down," and personnel could feel the ground shake within the base, as one U.S. veteran [told CNN](#). Bombs fell at all hours, all day, all week, all year, totaling approximately a trillion tons of ordnance, much of which (some 100,000 items) lies unexploded on land and in the sea.

Moreover, Vieques was systematically poisoned by heavy metals, napalm, Agent Orange, depleted uranium, and who knows what all else that the Navy has not announced publicly – having falsely denied using depleted uranium before finally admitting to it, and having dumped barrels of unknown toxic substances into the clear blue Caribbean.

The arsenic, lead, mercury, cadmium, and aluminum in the bombs are also found in hair samples of 80% of the people living on Vieques, who suffer at far higher rates than on the main island (and possibly anywhere else on earth) from cancer (30% higher than Puerto Rico), cirrhosis of the liver, kidney failure, hypertension (381%), diabetes (41%), birth defects, stillbirths, and miscarriages.

A dozen people were killed over the years directly by the U.S. weapons testing. And the Navy banned fishermen from various areas, advising them to try food stamps instead.

Impact and resistance

According to Ventura, the Viequense fisherman, a more direct and immediate impact of the U.S. occupation was felt as some 15,000 troops were routinely set loose on Vieques looking for booze and women. Women were dragged out of their homes and gang raped. A boy was reportedly killed by gang rape.

[Lydia Ortiz](#), a Viequense who grew up in the small town of Esperanza, recalls the bombing: "A lot of houses had their roofs falling in and everything as a result of the vibrations from the bombs for many years. It was pretty nerve-wracking because you never knew what was going



to crash down in your house. We lived quite close to where the bombing was happening. When I was a child they were dropping bombs near me. In the school, you could hear the bombing. You couldn't even hear the teacher because of the noise. People were afraid to go anywhere near the base or the beach so it was very difficult for many years. It seems like just yesterday or only five or six years ago that the bombing stopped, even though it is really almost 10 years ago."

Throughout the later years of the occupation, fishermen attempted civil resistance actions, and many were arrested during the 1970s, 80s, and 90s.

A celebration of the 10-year anniversary was indeed in order. We must remember victories, as they have remarkable power to motivate others around the world.

Continuing effects of Navy occupation

But the Navy's presence and the environmental disaster it created continue to afflict Vieques today. The U.S. government has not cleaned up the poisons and bombs and continues to use practices that further endanger the people. There is no bomb explosion chamber on the island. The United States has disposed of what unexploded bombs it has by blowing them up, further spreading the contaminants that are killing the people of the island.

There is also no hospital on the island, few ferries to Puerto Rico, few and expensive flights, a handful of taxis and public vans, and very limited tourist facilities. There is no college or university, and very few jobs of any kind. Business licenses are issued in San Juan and require bribes. Viequenses' families are ravaged by cancer, but also by illiteracy, unemployment, violent crime, and teen pregnancy. All of the water – like all electricity – comes in a pipe from the main island.

Heaps of destroyed military hardware at a processing area of the former naval training range on Vieques Island, Puerto Rico, 2008

Brennan Linsley / AP



Two of the residents said that the one resort on Vieques sometimes uses all the water. Myrna Pagan, a long-time resident of Vieques, said, “If we had a real hospital people would just go to the hospital and you would have some preventive treatment. The abominable ferry service and the number of people that go over to the big island for medical treatment are all things that can be done here if the center were adequate.”

Courts refuse to hear islanders’ case

Seven thousand Viequeses [sued](#) the U.S. government over their health problems, but the U.S. Supreme Court refused to hear the case. The class action lawsuit was filed against the Navy by over 7000 of the island’s 9500 residents in 2005 by the law firm of John Arthur Eaves, Jr., a prominent Mississippi attorney. The plaintiffs asserted that the Navy failed to warn residents of any potential danger from the government’s military activities.

In 2010, the case was dismissed by a federal district court in Puerto Rico, and the dismissal was upheld in a 2-1 vote of the U.S. First Circuit Court of Appeals in 2012. Both of the courts said that the Navy had sovereign immunity, which gives the federal government discretion to carry out its activities without being sued, except where approved by Congress. The courts declined to judge the case on its merits.

The dissenting judge, Juan Torruella of Puerto Rico, wrote that the government should not have been shielded because it knew how toxic the bombings were but decided not to warn the people of Vieques. Torruella wrote, “Nowhere does the medieval concept of ‘the King can do no wrong’ underlying the doctrine of sovereign immunity sound more hollow and abusive than when an imperial power applies it to a group of helpless subjects. This cannot be a proper role for the United States of America.” The three judges agreed that Congress would be the proper venue for redress of the legitimate and serious concerns about health on the island.

Eaves said, referring to violations of the Clean Water Act of 1972, “The problem here is that the Navy was acting

within its discretion when it was bombing the island. Yes, the Navy was doing what it was designed to do. But it violated the law, which is not within their discretion.”

Court excludes relevant evidence

The Environmental Protection Agency cited the Navy for violating the Clean Water Act by dropping too many bombs off the shores of Vieques. One year, the EPA cited the Navy 102 times. This evidence was not allowed to be presented to the court and Eaves said that the harm done by this bombing is just collateral damage under the doctrine of sovereign immunity.

Supporters of the Vieques residents have already turned to Congress as well as the courts.

“[The Vieques Recovery and Development Act of 2011](#),” introduced by New Jersey Rep. Steve Rothman and Puerto Rico’s non-voting representative, resident commissioner Pedro Pierluisi, would have provided funding for a hospital and toxins research center for the island.

“The federal government was responsible for the military activities there, the least they should be doing is coming up with a plan so that all the agencies involved would do whatever testing needs to be done at the federal government’s expense,” said Pierluisi. “It’s the least they owe to the people of Vieques.”

The bill languished and died in committee and has not been re-introduced.

With very little land available for farming, Vieques, like all of Puerto Rico, imports almost all of its food. Some people have become so desperate that they gather old munitions to sell for a little money to someone who will melt the metal for aluminum cans. But heavy metals and depleted uranium endanger the metal gatherers and whoever later drinks from the cans.

Obama's unfulfilled promise

Presidential candidate Obama wrote to the Governor of Puerto Rico in 2008: "We will closely monitor the health of the people of Vieques and promote appropriate remedies to health conditions caused by military activities conducted by the U.S. Navy on Vieques." But that promise remains unfulfilled.

[In a letter to the President](#), Robert Rabin Siegal of the Committee for the Rescue and Development of Vieques writes:

Although I cannot claim the Navy and military toxics caused my cancer, you don't have to be a quantum physicist to understand how decades of exposure to heavy metals in the food chain, air, water and land, combined with the socio-economic pressures from the loss of two thirds of the island's lands, would clearly contribute to high cancer rates. The Navy dropped radioactive uranium projectiles here, we believe, in large quantities, in preparation for military actions in the Balkans and the Middle East. The list of dangerous chemical components from munitions dropped on Vieques is extensive, as is the number of illnesses they cause.

Mr. President: you received the Nobel Peace Prize; we demand peace for Vieques. An island and people used to protect U.S. interests since WWII, forced to sacrifice its land, economic prosperity, tranquility and health, deserves at least the hope of peace for this and future generations. . . .

A handful of powerful U.S.-based corporations have pocketed most of the more than \$200 million spent on clean-up over the past decade. We urge you to order technology transference to promote the creation of Puerto Rican and Viequense companies to carry out the clean-up of Vieques, thereby transforming that process into part of the economic reconstruction of the island as well as assuring community confidence in this crucial element in the healing of Vieques.

People anywhere in the world can [take one minute to sign a petition to the Pentagon, Congress, and the White House](#) in support of justice, at long last, for Vieques:

I join the people of Vieques in demanding:

Health Care – Provide a modern hospital with cancer treatment facilities, early screening and timely treatment for all diseases. Create a research facility to determine the relationship between military toxins

and health. Provide just compensation to people suffering poor health as a result of the Navy's activities.

Cleanup – Fund a complete, rapid cleanup of the land and surrounding waters, still littered by thousands of bombs, grenades, napalm, Agent Orange, depleted uranium and other explosives left by the Navy. Cease the ongoing open detonation of unexploded ordnance. Guarantee community participation in the cleanup; train Viequenses as managers, administrators, and scientists, and foster Viequense companies to do the work.

Sustainable Development – Support the Master Plan for Sustainable Development of Vieques which promotes agriculture, fishing, eco-tourism, small guest houses, housing, collective transportation, archaeology, and historic and environmental research, among other things.

Demilitarization and Return of the Land – Close the remaining military installations still occupying 200 acres of Vieques. Return to the people of Vieques all land still under the control of the U.S. Navy and the federal government.

For extensive documentation, see the attachments posted at warisacrime.org/vieques and other files hosted at this [Dropbox public folder](#). ■

Addendum by MLTF Editors

- Supreme Court rejects Vieques pollution case against U.S.: [Sanchez et al. v. United States, 671 F.3d 86 \(1st Cir. Feb. 14, 2012\)](#).
- Press Release: [U.S. Supreme Court Ruling Indemnifies The Navy For Damages To The Puerto Rican Island of Vieques](#) (Committee for the Rescue & Development of Vieques)
- [March 2013 Report by Federal Agency for Toxic Substances & Disease](#)

Helen Jaccard is Chair of the Veterans for Peace Environmental Cost of War and Militarism Working Group. She spent October 2012 in Vieques doing research about the environmental and health effects of the military activities. Her previous article about Sardinia, Italy, can be found at warisacrime.org/sardinia.

David Swanson's books include "[War Is A Lie](#)." He blogs at davidswanson.org and warisacrime.org and works for [Roots Action](#). He hosts [Talk Nation Radio](#).

2013 IVAW convention: Moving beyond militarism

BY BECCA VON BEHREN AND BRAD THOMPSON

Nearly 100 members and allies of Iraq Veterans Against the War came to Chicago the first weekend in August for the organization's 2013 national convention. The gathering provided diverse experiences, from a well-attended panel on moving beyond militarism to member meetings and skill sharing. Members of IVAW's new Volunteer Organizing Team were able to use their ever-developing skills to build more confident, competent leaders. Members were offered workshops on everything from developing better chapter communication and organization to national strategic planning.

The Military Law Task Force was honored to be invited to speak on a panel at the convention titled "The Future of 'Active Duty' Resistance and the Veterans' Movement," with MLTF Steering Committee member Becca von Behren stepped up to speak for us. Other groups represented on the panel were Warrior Writers, Justseeds, National Nurses United, Courage to Resist, Under the Hood, Center for Constitutional Rights, and the Civilian Soldier Alliance.

Becca addressed the current and future struggle as we see it: How do we keep anti-war and anti-militarism momentum alive when we are not in a period of "war." Even though the current occupations of Iraq and Afghanistan have not ended, the public perception is that they have. Even still, U.S.-led occupations are occurring around the globe; U.S. military engagement in another active conflict is really only a matter of time.

Some of the points she addressed are part of the MLTF vision statement, found in the inset box with this article.

Planning for future needs and action

MLTF Steering Committee member Brad Thomson represented MLTF during the breakout session on "The Future of GI Resistance and Truth In Recruiting." The panel also included representatives from Under The Hood, Courage to Resist and the Bradley Manning Support Network (later renamed Private Manning Support Network), along with IVAW members focused on GI rights, counter-recruitment, as well as IVAW members working as VA Claims Agents.

The breakout group discussed the current terrain of the



MLTF Steering Committee member and MLTF Chicago founder Brad Thomson staffs the MLTF table at the 2013 IVAW convention in Chicago.

movement, specifically discussing the types of calls coming from active duty members. There was a discussion about the waves of GI Resistance, the historical moment we are currently in and what types of calls our organizations are getting and the cases we are working on.

In terms of Truth In Recruiting, there was a crucial connection made between the work MLTF is doing around veterans benefits and the efforts of counter-recruitment activists. Participants discussed how the promise of career opportunities and educational scholarships are used to convince young people to enlist, and that those of us who do veterans benefits work and discharge upgrades understand that these promises often go unfulfilled. It seemed that new space was being created in these discussions about connecting legal work for veterans with dispelling the myths of recruiters.

Connecting & resource sharing

During the breakout group, issues addressed included how our different organizations could better work together and the importance of networking and connecting. The discussion covered how different groups could share resources in a way that would further the work of the individual groups and the movement as a whole. One idea was creating reference cards that could be distributed to active duty service members listing contact

information on all the organizations. For example, a business card or brochure could be created with the website and phone number of the GI Rights Network, MLTF and Courage to Resist. Locally, specific cards could be created and distributed – for example, there could be cards with the contact information for Under The Hood that would be distributed in the Ft. Hood area. Similarly, reference guides could be created for the Joint Base Lewis-McCord area that would include contact information for Coffee Strong.

A similar proposal was for the various groups addressing GI Resistance, such as IVAW, MLTF, GI Rights Network, Courage to Resist and the GI coffeehouses to coordinate and collectivize print resources. The idea would be to create an “Organizer Kit” that would include key resources from each organization. The kit could be sent to organizers throughout the country interested in tabling or doing outreach work for active duty service members.

All in all, the convention provided an opportunity for various groups to discuss the current state of our movement and how best to move it forward. ■

Vision for future of GI rights and resistance movement

These are some of the issues and ideas that MLTF's Becca von Behren discussed with the IVAW convention attendees:

Vets are key to organizing

As we see it, if the goal is to establish sustainable, long-term, post-active conflict organizing around war, imperialism and GI rights issues, veterans could be key to accomplishing this goal. Veterans have the personal experience to give the movement momentum, the ability to keep the institutional memory of war alive and the knowledge needed to frame the wider discussion about war, profiteering and the United States' general disregard for the human needs of service members and their families for the benefit of corporate profit and imperialism.

Some key actions MLTF identified as important in the veterans' movement moving forward are:

Truth in recruiting campaigns at critical spaces targeted for youth recruitment, such as community colleges and junior colleges. Veterans are able to provide young folks contemplating enlistment with the realities of military life and the “truths” that are not told by recruiters, as only former servicemembers could know.

By pursuing Service Connected Disability Compensation claims with the Department of Veterans Affairs, and demanding that the VA fully compensate veterans for their wounds of war and service, the VA – and by that the DOD – will be forced to acknowledge the *full* cost of war and militarization.

Similarly, veterans should aggressively pursue unjust discharges to the Military Discharge Review Boards and the Boards of Correction of Military Records to highlight the overwhelming number of faulty discharges that

were issued during the occupations in Iraq and Afghanistan. The types of discharge upgrades MLTF considers particularly important to pursue are those in which the DOD discharged individuals with combat trauma, Military Sexual Trauma, or other military-related trauma that resulted in the service member being discharged with less than fully honorable discharges for “misconduct” that was symptomatic of the service member's psychiatric response to their experienced trauma. The hope in pursuing these claims is to:

- 1) correct these injustices for individual veterans,
- 2) systematically overwhelm the DRBs and the BCMRs to such an extent that future policy changes become necessary, and
- 3) draw public attention to the true reasons for these less than fully honorable discharges.

Increasingly, it seems the veteran community will need to ally with organizations that are working in parallel issue areas that similarly seek to deconstruct the Military Industrial Complex — organizations that work on issues such as environmental activism, divestment campaigns focusing on corporations that profit most from military expansion and occupation, work against surveillance culture and the Prison Industrial Complex, and those groups actively fighting the United States' drug war policies.

The Military Law Task Force also sees great possibilities for active duty service members in the “future of resistance.” With the United States' continued occupations around the globe, and significant murmurings of future active conflicts, the “future of resistance” would benefit from moving from a reactionary stance to a pro-

(Continued on page 8)

MLTF NEWS & NOTES

VA claims assistance. The American Bar Association is establishing a Veterans Claims Assistance Network to help veterans submit expedited claims to the VA. ABA is currently recruiting attorneys and plans to launch the network this fall. For FMI or to volunteer, [go here](#).

Navigating the VA System. A veterans self-help guide on the VA system, adapted from Becca von Behren's *On Watch* article on the VA, is now available. Download the guide from MLTF's website, or order copies at 619-463-2369 or nlgmltf@gmail.com.

Navy discharges in absentia. The Navy Deserter Information Point (DIP) has informed counselors that sailors UA for over 180 days with no other charges pending are now eligible for discharge in absentia. Interested sailors or their advocates can contact the DIP at 877-663-6772 or 901-874-2441 and request that discharge paperwork be faxed or mailed to them (or to an advocate or other party). Once the paperwork is filled out and verified by the DIP the warrant is immediately removed. The completed discharge will take one to two months. Characterization is OTH. DIP also said that commands could offer discharge in absentia for sailors gone less than 120 days but that this rarely happens.

Ft. Knox PCF to close. The Personnel Control Facility at Ft. Knox is scheduled to close at the start of the next fiscal year, with processing of qualified long-term AWOLS consolidated at Ft. Sill. In the meantime, with lower numbers of cases, processing time at Ft. Knox has decreased. Staff there report that generally AWOLs arriving on a Wed. or a Sun. night with their own vehicles would likely be released the next night. Otherwise, if the members need to travel by plane or bus, they would generally be released the following Fri. or Tues.

Changes at Under the Hood Cafe and Outreach Center. The GI Rights coffeehouse near Ft. Hood in Killeen TX is managed by the Fort Hood Support Network, which has seen a new board of directors take the reins this summer, as well as establishment of a new advisory committee. [Read all about it](#), along with news of other activities, at the organization's website.

Got news? The Task Force is preparing its annual report to the membership. The report will include news on our members' work. Readers are encouraged to send info on interesting cases and projects to the Task Force at nlgmltf@gmail.com.

(Continued from page 7)

gressive and preemptive strategy that addresses where the United States' military campaigns may be headed.

The political and military terrain is shifting, and we need to continue to pay close attention to where troops are being deployed and where they are deploying from. We should prioritize our GI rights work and legal support at those spaces. The movement should be developing resistance strategies for active duty service members currently deployed, or being deployed, to the United States' current occupations in other countries in the name of United States imperialism, and areas where the United States is beginning to develop strategic bases for potential future active conflicts.

Protecting whistleblowers

Additionally, work is greatly needed to expand – or at least maintain and promote – current service members' rights to whistleblow. Military whistleblowers not only have the right to speak truth about military war and occupation actions that constitute war crimes, there are also myriad ways for whistleblowers to chip away at the abuses within the Military Industrial Complex in smaller ways. The Military Whistleblower Protection Act permits reporting of any and all unlawful discrimination, gross mismanagement, abuse of authority, etc. within the military ranks. This reporting mechanism has the potential to go a long way toward challenging systemic practices of racial discrimination in the military, military sexual trauma, and many of the other abuses within the military that contribute to the overall problematic military culture. ■

Regional Newswire

Chicago MLTF. The Chicago Chapter of the Military Law Task Force is moving forward. We now have an email: ChicagoMLTF@gmail.com. We

have a phone: (312) 945-MLTF (6583). And the greeting on the Chicago NLG voice message has been changed to say "If you are calling for the Military Law Task Force, please call (312) 945-6583." And sometime soon we will have a page on the Chicago NLG website.

The group is currently working on a number of Discharge Upgrade cases and taking referrals for all different types of military law, but is particularly interested in Conscientious Objector cases, other discharge cases and VA Claims.

BAMLP. The Bay Area Military Law Panel held a military law training for law students and other interested persons on September 6th. This was the third year of the program. Outreach included Guild law students, veteran law student groups, and pro bono programs at the law schools. Participants are trained to do military counseling on the GI Rights Network hotline.

Marine Corps implements new standards for conscientious objectors

BY BILL GALVIN

In a new version of [Marine Corps Order \(MCO\) 1306.16*](#) (PDF), issued in June of this year, the Department of the Navy, Marine Corps Headquarters, heightened the evidentiary standard a conscientious objector (CO) must meet. This reissue rescinds the previous version, which dates back to 1986.

For the most part, the new MCO is the same. Some sections have been reworded, but essentially say the same thing. In some such cases the tone of the new wording favors the CO, while in others it seems to favor the command.

However, there are two important substantive changes.

The 1986 version of the regulation states, “The person seeking conscientious objector status bears the initial responsibility of presenting evidence which demonstrates a sincere opposition to war in any form based upon religious training and belief. Once this responsibility is met, conscientious objector status will be granted unless the Government can establish a rational basis in fact for denying the application.”

The new regulation states, (new words are in italics) “The person seeking conscientious objector status bears the initial responsibility of presenting evidence which demonstrates *by a clear and convincing standard* a sincere opposition to war in any form based upon religious training and belief.” It omits these words: “Once this responsibility is met, conscientious objector status will be granted unless the Government can establish a rational basis in fact for denying the application.”

In the next paragraph about those with pre-existing beliefs not qualifying for CO status, these words are deleted from the new reg: “The Government bears the responsibility of demonstrating this disqualification.”

Commandant cannot deny CO applications

But here’s the good news. MCO 1306.16F, paragraph 4.d(8) states, “CMC (MM) [Commandant of the Marine Corps] has the authority to approve Conscientious Objector designation. *In those cases where CMC (MM) determines that Conscientious Objector designation is not justified, CMC (MM) will forward the recommendation to the Secretary of the Navy*

(SECNAV) for final determination.” (Emphasis added.)

So while the Commandant of the Marine Corps has the power to approve CO applications, he no longer has the authority to deny them!

If the GAO report from 2007 is accurate and those trends still hold, this is significant. According to that report, the Marines approved 33% of all CO applications, and the Navy approved 84%. While no one knows the exact statistics, counselors working with conscientious objectors can verify that it seems to be easier to get approval for CO applications in the Navy than in other branches.

Supreme Court CO criteria

The Supreme Court has clearly laid out the three criteria for qualifying for CO status:

“He must show that he is conscientiously opposed to war in any form . . . He must show that this opposition is based upon religious training and belief, as the term has been construed in our decisions. . . And he must show that this objection is sincere.” *Clay v. United States*, 403 U.S. 698, 700 (1971).

In a change some may consider to be minor rewording, the third criterion in the reg was changed. The old reg said “whose position is sincere and deeply held.” New reg says, “whose position is firm, fixed, sincere and deeply held.”

There have been a number of cases in which an Investigation Officer or chaplain have said in their report, “He is sincere, but his beliefs are not deeply held.” Or “She is sincere, but since she has not held her beliefs very long, she has not demonstrated that they are firm and fixed.”

These are false distinctions, and adding these words to the regulation will confuse IOs and chaplains and lead to more erroneous IO and chaplain reports. ■

* [Read/Print MCO1306.16F](#) (PDF hosted at nlgmtf.org, since no official document could be found online)

A Vietnam-era conscientious objector, Bill Galvin has been an advocate for COs ever since, and is currently the Counseling Coordinator at the [Center on Conscience and War](#) in DC.

(Continued from page 1)

“It raises,” she observes, “critical issues about the moral and legal obligations of soldiers, and demonstrates the lengths to which the government will go to keep its military actions secret.”

I had to be there, even if only for five days.

As fascinatingly bizarre as the trial proceedings were and as admirable as the work of the legal team in the courtroom was, it was the staff and volunteers with the Support Network that most impressed and inspired me. (Likely this is due to not being a lawyer, but a long time organizer.)

This is the team behind the team, which for over three years has raised funds for legal fees, public education and publicity efforts, coordinated a massive and creative advocacy effort, made sure that reports of the case were made available to the public, despite the best attempts of the government to keep things secret, and generated awareness and action at countless panels, workshops and conferences within the wider peace/progressive movement.

Now that the court-martial is over, and as the needs for the future are being assessed and planned for, it's worth taking time to consider – and praise -- the stunning results this small organization achieved.

Initiated by Courage to Resist's Jeff Paterson, himself a conscientious objector, the Support Network grew from CtR's years-long struggle to help other COs. Eventually, the grassroots effort would grow to be an international powerhouse of commitment and energy. Events were coordinated across the globe, petitions drew huge support, videos featuring well-known names were produced, but it was the personal nature of much of the advocacy – photos asserting “I am Bradley Manning” became a viral meme on the Internet, and letter-writing to the imprisoned whistleblower with heartfelt greetings as to a dear friend – that gave the network its real key to making good on its mission to not let the world forget about an Army private who answered first to conscience, or allow the case to languish without legal representation fully invested in seeing justice for Manning.

All of this was done while fighting an almost overwhelming public narrative, fed by the media. “Our biggest challenge,” Paterson says, “was overcoming the mainstream media's herculean efforts to avoid reporting on what this case was actually about—a soldier who shared classified documents with the

world in order to expose wrongdoing, with the greater goal of ending war. Instead of accurately reporting on Manning as a young person who took bold action guided by conscience, without personal gain of any kind, Manning was painted as a crazed, gay, misfit soldier.”

Despite this, “we built a grassroots support network that introduced Manning to the world,” Paterson recalled with appropriate pride. “It's important that folks learned that Manning was a whistle-blower in every sense of the term.”

The legal defense case was developed out of this understanding. “The government's narrative from the very beginning was that Manning should be executed, but life in prison would be acceptable,” Paterson continued. “According to the government, Manning was a traitor and a spy, WikiLeaks was not a journalistic entity, and people were killed because of the leaks. Each of these allegations was disproven in the course of the court-martial, which led to our success in winning an acquittal on the ‘Aiding the Enemy’ charge.”

“We were always going to be the underdog in this fight, going up against the unlimited resources of the government, including the State Department, FBI, and NSA. I'm proud of the team we fielded both inside and outside the courtroom.”

The results can be seen in hard numbers: In a post-trial report, the Support Network said that over 23,246 individuals had donated a total of \$1,440,840 to the defense fund, while an additional 825 supporters (including WikiLeaks) had given \$64,164 to Pvt. Manning's legal trust account (as of September 1, 2013). The most recent monthly fiscal report as of this writing can be found [here](#).

When asked to reflect about the court-martial, how the government approached the trial, and what appeal efforts might involve, Jeff gave this thoughtful reply:

In my opinion, military justice usually has little to do with justice, and everything to do with discipline. Yet, we've “won” previous cases when the military pragmatically chooses to resolve objector cases—we need to tip the scales in that direction with protest, favorable media, and first-rate legal support. However, in *US v. Manning*, the military was intent on not resolving this case short of “Espionage Act” related convictions, regardless of the costs. This trial was primarily about sending a clear message to any future military whistle-

blower: Proceed only with unlimited courage, under the very real threat of unimaginable punishment. And military judge Col. Denise Lind was willing to go along with the government agenda, specifically when she upheld the “Aiding the Enemy” charge multiple times against compelling defense motions.

MLTF Fact Sheet on the MILITARY WHISTLEBLOWER PROTECTION ACT

- What is the MWPA?
- What communication is protected?
- Dealing with retaliation

[Now on our website.](#)

While Judge Lind and the government extracted a 35-year sentence from Manning, they did so with little concern for how things might look upon appeal--and that offers significant hope down the road. Lind allowed the prosecution to make significant changes to the charge sheet after the close of all arguments in order to match the evidence presented, after the fact. Lind bent over backward to void the 120-day speedy trial clock. And while Lind ruled that Manning was illegally subjected to pre-trial punishment, she only credited 112 days for 9 months of torturous treatment. Given that Manning’s sentence is nearly 13,000 days, those 112 days are insignificant. If that credit and/or sentence is allowed to stand, it tells the military that they have the green light to illegally abuse a service member in pre-trial confinement, as long as a long sentence is expected down the road.

The support campaign will carry on and will continue to support Pvt. Manning in all appeals going forward, including a bid for a Presidential Pardon, the clemency appeal to the Convening Authority, Maj. Gen. Jeffrey Buchanan, in the fall, and the case before the Army Court of Criminal Appeals next year. Manning will also have a clemency hearing in three years at Fort Leavenworth, and her first parole hearing in a little over seven years. Awareness and advocacy work will continue, and likely grow.

Now Paterson looks ahead: “While the support network’s efforts will remain focused on why Manning is now a political prisoner, and how to free her without delay, we will also be expanding our work to encompass Manning’s health care needs at Fort Leavenworth -- specifically that she be given access to hormone therapy appropriate for a trans woman,” Patterson said. “There is favorable case law in the courts covering federal prisons, so this will be an interesting fight to force the military to do the right thing and provide that medically accepted therapy to a trans soldier.”

An “interesting fight” it has been, and will continue to be. Stay tuned. ■

Rena Guay serves on the MLTF steering committee.

The 76th Annual NLG Law for the People Convention



San Juan, Puerto Rico
Oct. 23—27

MLTF membership meeting

Thursday, Oct. 24, 1:30 - 4:30

followed by drinks & munchies at hotel bar,
4:45 - 6:00

WORKSHOPS WITH MLTF

Racism & Sexism in the Courtroom

Friday, Oct. 25, 1:45 - 3:00

Extra-Judicial Killing & the Drone Industry

Friday, Oct. 25, 1:45 - 3:00

PANEL WITH MLTF

US Colonialism in Puerto Rico

Saturday, Oct. 26, 4:00 - 5:30

For more convention information:

[Convention Schedule](#) (subject to change)

[Walking Tours & Trips Agenda](#)

ABOUT THE MILITARY LAW TASK FORCE

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

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

The Task Force encourages comments, criticism, assistance, subscriptions and membership from Guild members and others interested in military, draft or veterans law. To join, or for more information, please check our website at www.nlgmtf.org or contact the Task Force at:

MLTF, 730 N. First Street, San Jose, CA. 95112 ▪ (619) 463-2369 ▪ nlg.mltf@gmail.com

 facebook.com/nlgmtf

 twitter.com/military_law



Military Law Task Force
730 North First Street
San Jose, CA 95112