

ON WATCH



THE MILITARY LAW TASK FORCE OF THE NATIONAL LAWYERS GUILD



CONSCIENTIOUS OBJECTION AND SECULARISM

With the majority of CO applicants today adhering to no religious practice or tradition, how does the military adapt? How do we?

by Maria Santelli
Center on Conscience & War



The Center on Conscience & War (CCW), which extends and defends the rights of conscientious objectors to war (COs), has found that more than half of today's COs are solidly secular, adhering to no religious practice or tradition. These COs conclude, without reference to religious precepts, that war is wrong.

A Washington, D.C. nonprofit celebrating its 75th year advocating for the rights of conscience and objectors to war and violence, CCW also reports that conscientious objection in the context of a volunteer military is alive and well, and its caseload of COs has been higher this year than it has been in recent memory.

The COs who come to CCW are successful in winning discharge based on a variety of belief systems and from every branch of the armed forces. This is great news, and it inspires us to reflect on and evaluate our work, both the technical support we provide for each individual CO, and the outreach and education we do to raise the profile of CO and to demonstrate its relevance and power within a broader movement for peace and justice.

Outreach broadened

Does the greater number of COs mean that members of the military are objecting in greater numbers than before? Or does it indicate that we are doing a better job at getting the word out that CO is a *real* option for service members facing a crisis of conscience? While the first question is one we can only speculate about, the second is easier to measure. In recent years, CCW has taken steps to boost our outreach strategy to reach a broader base – a base that we consider to be a more relevant audience for the information and technical expertise we offer.

When CCW was founded in 1940, the only way one could legally qualify as a CO was if his (and it was only men during the draft, of course) objection was based on his religious beliefs. This was an improvement on the 1917 draft law, which required not only that the individual hold religious beliefs against their participation in war, but also that they be a member of a church that had a stated position against war. The improvement in the law and in the actual protections that were afforded to COs beginning in 1940 can be directly credited to CCW's founders, most of whom were members of what we call the Historic Peace Churches: Church of the Brethren, Mennonites and Quakers.

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Even as the draft ended, and is unlikely to return anytime soon, the historic peace churches continue to maintain a strong commitment to and connection with conscientious objection. Still, they are not the typical face of conscientious objection the way it takes shape today, in a post-draft, volunteer military. In short, kids raised in peace churches rarely join the military.

Generally, when kids from religious backgrounds volunteer to join the military, we find that they tend to have been raised in the more mainstream or “just war” Catholic and protestant communities. Although there is some diversity within these communities and real efforts to more rigorously promote a message of peace, often these kids are raised believing that war is a necessary evil, and that when good guys kill, it’s not “murder,” and therefore not a sin or a violation of God’s Commandment.

Clergy may discourage CO

Once they find themselves inside the military culture, though, some begin to revisit or gain a deeper understanding of their faith, and seek a way out. In many cases, because their churches don’t widely advocate for peace, their members in the military, facing a crisis of conscience, struggle to find good counsel. Clergy from these communities, both civilian and military chaplains, will often tell them they don’t qualify as COs, that they are misinterpreting the church’s teachings on war, or that they are just misguided in their beliefs.

Worse, we have seen clergy from “just war” churches advise COs that they have only two options: follow your orders and

pray, or follow your conscience and pray, with the explanation that followers of just war can’t legally be recognized as COs. This counsel offers too narrow an interpretation of CO law and practice, and falls short of the Church’s role as steward of conscience. While we all know that violating one’s orders in the military carries high risk, we are just beginning to understand the profound consequences of violating one’s conscience – wounds to the soul, which have been appropriately named *moral injury* (see sidebar, page 3).

Of course members of traditional “just war” churches can be separated as COs, and routinely are, especially when they have the support of trained and experienced counselors, yet we know that many of these *soldiers of conscience* may not find us. For these reasons, it is clear that these communities, though not as strongly associated with CO historically, are a large share our natural modern constituency, and it is critical that we continue to actively reach out to them and build alliances among them.

Non-religious objectors

Today’s conscientious objectors, though, don’t fit the traditional model in other ways, too. At least half of all COs we work with have no religious or faith tradition whatsoever. Their beliefs against war are solidly secular, and in some cases, strictly atheist. Some of the more common threads we see among these COs are an adoption of a vegan diet and gravitation toward Libertarianism that lead them to conclude that war is wrong. In these cases, just like any other, the applicant’s legal burden is the same: they must prove that they are opposed to their participation in war; that these beliefs developed *after* they joined the military; and that these beliefs are a controlling force in their lives. Their task doesn’t change, whether their moral framework was formed in a pew or from a podcast. Their beliefs and the weight of their individual conscience can be as powerful and compelling as any religious faith.

Take the example of Francesca. She was a young soldier, the daughter of immigrant parents from Mexico. Enlisting in the army seemed like a great opportunity not only to help Fran achieve her personal goals, but also to give back to the country that she felt had given her family so much.

Vegan diet and CO logic

As a young recruit, Fran was introduced to eating vegetarian for health shortly before she shipped to Basic Training. She remained committed to that diet during Basic, and eventually, after investigating further aspects of what she termed a “vegetarian lifestyle,” and learning about Ethical Veganism, she eliminated all animal products from her diet.

As her diet changed, her perspective on her military training also began to change. If she was concerned about the welfare of animals, shouldn’t she be concerned about the welfare of the people she was training to kill? Fran dove headfirst into study of

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What is Moral Injury?

[...] some combat and operational experiences can inevitably transgress deeply held beliefs that undergird a service member's humanity.

Transgressions can arise from individual acts of commission or omission, the behavior of others, or by bearing witness to intense human suffering or the grotesque aftermath of battle. An act of serious transgression that leads to serious inner conflict because the experience is at odds with core ethical and moral beliefs is called moral injury.

More specifically, moral injury has been defined as "perpetrating, failing to

prevent, bearing witness to, or learning about acts that transgress deeply held moral beliefs and expectations" (Litz et al., 2009). Various acts of commission or omission may set the stage for the development of moral injury. Betrayal on either a personal or an organizational level can also act as a precipitant. On a conceptual level, moral injury is different from long-established post-deployment mental health problems. For example, whereas PTSD is a mental disorder that requires a diagnosis, moral injury is a dimensional problem. There is no threshold for establishing the presence of moral injury; rather, at a given point in time, a Veteran may have none, or have mild to extreme manifestations.

Furthermore, transgression is not necessary for a PTSD diagnosis nor does PTSD sufficiently capture moral injury, or the shame, guilt, and self-handicapping behaviors that often accompany moral injury.

Although the idea that war can be morally compromising is not new, empirical research about moral injury is in its infancy, and there are more unanswered questions than definitive answers at this point. [...]

From "Moral Injury in Veterans at War" by Shira Maguen, Ph.D. and Brett Litz, Ph.D., published in PTSD Research Quarterly, Volume 23 No. 1; 2012

veganism and vegan theory, and learned about the principle of *Ahimsa* – nonviolence. Any time Fran had to train with a weapon, she felt physically sick, but she also felt stuck in the army, not understanding that her beliefs would qualify her for discharge as a conscientious objector.

Finally, after receiving deployment orders and facing the real possibility of taking someone's life, the urgency to follow her conscience and seek discharge was too strong to suppress. Fran reached out to CCW and successfully won an honorable discharge as a conscientious objector.

While not necessarily the traditional path to CO status, the evolution from concern for animal welfare to concern for all life is pretty logical and easy to follow, for both the military brass deciding these cases and those outside of the military who come to their anti-war views from what we would call the left side of the political spectrum. For those COs who come to their objection to war from a more right-leaning perspective, the logic is sometimes more difficult to follow, but their opposition to war and their genuine commitment to living their beliefs is just as strong.

Beyond Ayn Rand

Bobby's initial draft of his CO application was a mix of what seemed like Libertarian buzzwords and self-serving ideology. He wrote about his belief in natural law and property rights, and he questioned killing because he was ordered to do it, not necessarily because he was opposed to it. He discussed how he came to these beliefs through studying and comparing capitalism and socialism.

He decided he was strongly opposed to socialism, but it was clear from talking with him that he was deeply troubled by his continued participation in the military, and that he was an au-

thentically compassionate and caring person. We read each draft he sent us carefully, searching for the gems, digging beneath the references to Ayn Rand, Austrian economics and abolishing the Federal Reserve to uncover the values that were compelling him to resist the military.

After several drafts and many hours of sometimes confusing and even frustrating conversation, Bobby's core beliefs of universal freedom and equality, nonviolence, and individual autonomy rose to the surface. He opposed political and military strategies that claimed to put the good of the "collective" over the good of the individual and backed it up with military euphemisms like "collateral damage" and "necessary consequences."

Bobby was horrified at the idea that an entire wedding party of 400 would be killed by a drone strike in order to assassinate four "high value terrorists." Bobby's new belief system allowed him to see all people, regardless of the country they live in or the uniform they wear, as his equals, deserving of the same rights and freedoms he expected for himself. Because of his newly found beliefs, Bobby could no longer see enemies.

Big-tent CO

The basis for Bobby's objection to war is shared by many of the COs who come to CCW for support. On the surface, their beliefs do not appear to have much in common with the stereotypical picture history has painted for us of a conscientious objector, but they are no less conscientious objectors; their conscience is advising them just as strongly that war is wrong.

Often, they themselves are not as in touch with their own core values that inform their moral and ethical objection to war, and

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ADJUSTMENT DISORDER DISCHARGE: HOW COMMAND RIDES MILITARY OF UNWANTED SERVICEMEMBERS

by Kathleen Gilbert

Adjustment disorder discharge has become the “go to” discharge category for commands wanting to get rid of troublemakers, whistleblowers, sexual assault complainants, ill or injured servicemembers, and other members not of use to commands. At the same time, this is now a relatively convenient avenue for members seeking discharge from the service.

This discharge has essentially taken the place of personality disorder discharge. For decades, commands used that discharge to get rid of unwanted servicemembers – those whose complaints, non-conformity or medical problems made them trouble for their commands. But in 2008, Congress recognized that personality disorder discharge was being used to deny medical benefits to members suffering from

PTSD or other serious illnesses, and so placed constraints on its use.

Under resulting regulations, personality disorder discharge can only be given to combat veterans if the diagnosis is confirmed by a peer mental health professional and reviewed by the service’s Surgeon General. Some services expanded these requirements beyond combat vets. By 2009, adjustment disorder discharge seemed much more attractive to commands and to cooperative military mental health providers.

This was something of a surprise, since the military had not previously used the discharge much – and for many years had not considered adjustment disorders as grounds for discharge at all. Because adjustment disorders are by definition short-term problems, expected to resolve within six months after the end of the stressor which triggers them, and since they are considered eminently treatable, they were normally handled on an out-patient basis without consideration of discharge.

But quite suddenly, with the complications added to personality disorder discharges, military psychiatrists and psychologists began recommending discharge for adjustment disorders, and commands happily followed the recommendations. *Navy Times* noted in August, 2010 that the rate of Other Designated Physical or Mental Conditions discharges (which included adjustment disorders) had risen significantly since the Congressional action, while personality disorder discharges dropped from 1,072 in 2006 to 260 in 2009.

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the process of articulating a successful CO application can be long and winding. But they get there. And the more cases like Bobby’s that we work with, the better we are getting at facilitating that process.

It is our job to make sure that every CO who comes to us for help – from the “traditional” religious objector to the vegan who can no more readily kill a human than an animal to the Ron Paul revolutionary – is granted the opportunity to live true to his or her conscience.



Maria Santelli is director of the Center on Conscience & War and is a counselor on the GI Rights Hotline in Washington, DC. Before coming to DC, she founded the New Mexico branch of the GI Rights Hotline which served as leading voice statewide on issues affecting servicemembers and veterans, including conscientious objection, military sexual violence, post-traumatic stress disorder, and truth in recruitment.

Definitions

In the current Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-5), adjustment disorders are grouped under the general category of “trauma- and stressor-related disorders,” which also includes post-traumatic stress disorder. DSM-5 lists the following criteria for adjustment disorders:

A. The development of emotional or behavioral symptoms in response to an identifiable stressor(s) occurring within 3 months of the onset of the stressor(s).

- B. The symptom or behaviors are clinically significant, as evidenced by one or both of the following:
1. Marked distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation.
 2. Significant impairment in social, occupational, or other important areas of functioning.
- C. The stress-related disturbance does not meet the criteria for another mental disorder and is not merely an exacerbation of a preexisting mental disorder.
- D. The symptoms do not represent normal bereavement.
- E. Once the stressor or its consequences have terminated, the symptoms do not persist for more than an additional six months.

(As of this writing, many military psychiatrists and psychologists continue to use the outdated DSM-IV-TR for diagnostic purposes. While DSM-IV-TR did not include adjustment disorder with stress-related disorders, leaving it as a separate category, the diagnostic criteria are essentially the same.) DSM-5's examples of adjustment disorder-inducing stressors include, among other things, the termination of a romantic relationship, marked business difficulties, or living in a crime-ridden neighborhood.

Until recently, discharges for adjustment disorder fell under the Convenience of the Government category of "Other Designated Physical or Mental Conditions." In the most recent revision to its discharge Instruction, DoD renamed ODPMC "Conditions and Circumstances not Constituting a Physical Disability." DoD 1332.14, Encl. 3.3.a.(8) provides for this discharge for non-disability conditions that "interfere with assignment to or performance of duty." (Service regulations include AR 635-200, Chapter 5-17, "Other Designated Physical or Mental Conditions;" AFI 36-3208, Chapter 5-11, "Conditions That Interfere with Military Service;" MILPERSMAN 1910-120, "Convenience of the Government – Physical or Mental Condition;" and MARCORSEPMAN, Chapter 6, 6203.2, "Condition Not a Disability.")

Voluntary discharge

In most of the services, adjustment disorder is thought of as a command-directed discharge, and there are no specific provisions for member-initiated voluntary discharges. The Navy alone includes member-initiated requests for discharge in its policy (1910-120.2.b.(2)). Sailors may request discharge when their attending military physician believes the condition exists and "obviates the member's potential for continued naval service." Discharge requests will be considered only after all medical treatment options have been exhausted. The medical documentation must show that the condition leaves members incapable of completing military service.

In all services, however, it is possible for members to pursue this discharge. In many cases, it is helpful to begin with an independent civilian evaluation diagnosing the disorder. This can be

used with the military's mental health professionals, whose diagnosis and recommendation are the essential element of the discharge. Commands generally follow these military medical recommendations, often doing so when there are no significant performance problems in the members' records. When commands prove recalcitrant, a letter from an attorney or advocate, accompanied by the civilian evaluation and referring to the military medical recommendation, may change the command's mind. Failing that, an Article 138 complaint or Congressional inquiry may be used to put pressure on the command.

Involuntary discharge

With increasing frequency, commands are using adjustment disorder discharges as involuntary separations. As was the case with personality disorder discharges, these are often handled sloppily by military medical personnel and commands, so that it may often be possible to challenge the discharge.

Psychiatric requirements

DoD 1332.14, Encl. 3.3.a.(8).(c).1 states that separation for a mental condition under this section requires a diagnosis by an authorized mental health provider, using the DSM, concluding that "the disorder is so severe that the member's ability to function effectively in the military environment is significantly impaired." Thus the DoD Instruction requires both severity and a resultant significant impairment in performance. The Army, Air Force and Marine Corps regulations are in accord, but the Navy's MILPERSMAN 1910-120 is not consistent, requiring only medical documentation that the condition renders the member incapable of completing obligated service - there is no reference to severity. Using the DoD Instruction, advocates can still argue in Marine cases that the discharge is inappropriate where the medical evidence does not state that an adjustment disorder is of such severity.

DoD 1332.14, Encl. 3.a.(8).(f) specifically requires that discharge documentation must include evidence of inability to function effectively *because of* the mental condition. Presumably, given the language of section (c).1, this is a psychiatric determination, rather than one which should be made by the command. The Army regulation does not mention this requirement; the MILPERSMAN section notes that discharge packages must include counseling statements showing deficiencies related to the condition.

The Marine Corps regulation does not include the requirement of a medical finding that the condition interferes with (or is so severe that it interferes with) performance of duties. It does, however, require that the medical opinion conclude the member's condition is beyond his or her control (though this is not always followed).

As a rule, military psychiatrists and psychologists are familiar with the language required for a discharge recommendation,

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and often use boilerplate language from the regulation to describe severity. Where they do not, however, lack of mention of severity and its relation to performance of duties may provide a basis for challenging the discharge.

When working with members who have received adjustment disorder diagnoses, it is always useful to question the accuracy of the military diagnoses, to determine whether they over-diagnose occupational problems or a willingness to make complaints, or whether they under-diagnose more serious disorders warranting medical retirement. An independent civilian evaluation (or more than one) is always important in challenging adjustment disorder discharge.

Performance requirements

The mere existence of an adjustment disorder, even a severe one, is not sufficient for discharge; there must be a showing of (resultant) performance problems. AFI 36-3208, 5-11, for example, states that a recommendation for discharge “must be supported by documents confirming the existence of the condition or disorder and...explain the adverse effect on assignment or duty performance. This explanation should detail the effects on member’s performance, conduct (on and off duty), inability to adapt to military environment, or other reasons that would limit the member’s potential for completing his or her enlistment.” The Air Force Instruction further states that the psychiatric conclusion of severity causing significant interference with performance cannot take the place of (command) explanation of the adverse effect on performance. (5-11.9)

Command requirements

In the Marine Corps and Air Force, commands may ignore medical recommendations for adjustment disorder discharge (or other Conditions and Circumstances not Constituting a Physical Disability discharge), though this is not common. In the Navy, where the discharge may be based on operational unsuitability or assignment screening findings (findings that a member is not worldwide deployable), COs who believe that members have potential for further service may submit a package with the CO’s recommendation for retention. The package is reviewed by NAVPERSCOM and the Chief of Naval Operations, and retention may be granted if it serves the needs of the Navy (1910-120.3.f and g). For the Air Force, AFI 36-3208, section 5-11 requires that commanders who do not follow psychiatric recommendations for discharge must have the decision reviewed by the discharge authority.

Counseling and opportunity to overcome deficiencies

DoD 1332.14, Encl. 3.3.a.(8)(a).2 states that separation processing “will not be initiated until the enlisted Service member has been formally counseled on his or her deficiencies and has been given an opportunity to correct those deficiencies.” Further, the Instruction requires that separation may occur only if “[o]bserved behavior of specific deficiencies [is] documented in appropriate counseling or personnel records. Documentation will include history from supervisors, peers, and others, as necessary to establish that the behavior is persistent, interferes with assignment to or performance of duty, and has continued after the enlisted Service member was counseled and afforded

News

&

Notes

Send member news, resources and tips to the editors at editors@nlgmtf.org

Steering Committee election

The results of MLTF’s first electronic election were announced on October 20. James M. Branum, Kathy Gilberd, Kathy Johnson, Jim Klimaski, Jeff Lake, Dan Mayfield, and Jeffrey Segal were elected/re-elected to the Steering Committee. Thirty-two members voted, a record high for our organizations. Previously, SC elections were held at membership meetings during the annual NLG convention, but the lack of a quorum at these meetings prompted a change in policy, so that more members could participate.

More information about the SC members can be found at nlgmtf.org/about/leadership

Successful crowd-sourced fundraiser

A fundraising campaign organized by MLTF member Rena Guay successfully raised 110% of its goal of \$5500, dedicated to six months of salary for part-time executive director Kath-

leen Gilberd. An additional \$660 for this campaign was received by snail mail. Fifty-five funders contributed to the campaign. Thanks to all who donated and/or shared the campaign on social media and email!

Other MLTF fundraising efforts continue.

MLTF speaks

MLTF co-founder, and former NLG president David Gespass spoke at the University of Arkansas School of Law at the invitation of the NLG student chapter there. His talk addressed the militarization of the police in the US and the continued expansion of US imperialism across the globe.

Many MLTF members are available to speak for NLG chapters and other organizations interested in our work and issues. Contact our office at email@nlgmtf.org or phone 619.463.2369.

an opportunity to overcome the deficiencies.” ((c)1.b) The Instruction states that the counseling must be in writing ((c).2). (See also Encl. 4. part 1.b.(2), which discusses the potential for rehabilitation.)

The Army normally uses “developmental counseling statements” to record such counseling. In the Air Force, documentation of performance problems, etc., may be shown by evaluation(s), counseling statement(s), training records, statements from instructors or supervisors or peers, or other administrative actions or documentation. The Air Force Instruction specifically points out that counseling must predate the discharge recommendation, and “[t]he discharge case must contain documentation of the counseling tailored to the specific condition or mental disorder, i.e., reason for discharge.” The Navy policy requires formal counseling with use of NAVPERS form 1070/613 (a counseling statement) concerning “performance deficiencies related to the physical or behavioral condition, and states that “The CO must provide the member reasonable time to overcome deficiencies (if possible) as reflected in appropriate counseling or personnel records.” (1910-120, 2.b.(1))

Failure to provide adequate and timely counseling is common in adjustment disorder discharge cases, and can provide a basis to challenge the discharge. For example, commands that counsel members for the first time only days before discharge notification clearly have not provided an opportunity to overcome the performance problems, as required by service regulations and the DoD Instruction. Commands that fail to include a warning about potential discharge in one counseling statement have not fulfilled the requirements of the regulations.

Occasionally, commands will fail to counsel members at all prior to initiating discharge proceedings. Raising these issues may only provide a delay in the proceedings, while commands provide the necessary counseling and time to overcome difficulties before re-initiating discharge proceedings. But the delay may provide members time for civilian evaluations, documentation of actual performance, or a real improvement in performance.

Special provisions for combat-area servicemembers

Congress has shown its concern over misuse and overuse of adjustment disorder and similar discharges. As a result, the DoD Instruction has expanded the special provisions governing personality disorders to all other mental disorders not constituting a disability. Under the current DoD Instruction, members who have served or are serving in an imminent danger pay area must have the diagnosis corroborated by a peer or higher-level mental health professional and endorsed by the service’s Surgeon General ((c).4).

The assessments must address PTSD and “other mental illness co-morbidity” ((c).4.c), and members may not be separated under this section for a mental condition if service-related PTSD is diagnosed, unless they are found fit by the disability evalua-

tion system. This provision has not made its way into all of the service regulations, and it is not clear that military doctors and commands are consistently following it.

Retaliation for sexual assault reports

Congress has pressed the military to examine the use of involuntary administrative discharge as retaliation for making complaints of sexual assault. As a result, servicemembers should be given an opportunity to state that they believe the discharge is so retaliatory, in which case the separation should be reviewed by an officer who is a general court-martial convening authority.

Some services now include questions about possible retaliation in the statement of awareness/waiver of rights forms given to servicemembers with discharge notification letters. The Air Force Instruction’s section on Conditions that Interfere with Military Service specifically mentions that a GCMCA must review the discharge if servicemembers allege that the discharge is in retaliation for an unrestricted (non-confidential) report of sexual assault. (5.12)

Notification procedure

The Notification Procedure is used to process adjustment disorder discharges, which means that members are not entitled to hearings before administrative discharge boards unless they have been in the service for six years. Instead, members may submit written statements (and any supporting evidence they wish) challenging the discharge. In addition, they have the right to consult with military counsel, who will sometimes, but not always, assist in crafting a statement; and they are entitled to see all of the documents to be forwarded to the discharge authority in support of the discharge.

Common wisdom has it that statements are of little value in challenging admin discharges, but this is not always the case. Lawyerly statements or briefs pointing to errors in the diagnosis or in the command’s adherence to the regulations, supported by documentation such as civilian evaluations, statements by other members familiar with the clients’ work performance, evidence that the discharge may be retaliatory for whistleblowing or sexual assault/sexual harassment complaints, etc., can have a significant impact.

Characterization

The character of discharge for Conditions and Circumstances not Constituting a Physical Disability is “type warranted by service record.” If a general discharge is contemplated, DoD requires that the notice provide the member with specific factors in the service record which warrant the characterization, unless characterization is determined on the basis of standardized numerical scoring of performance evaluations. (8.c). The specific service regulations do not all mention this requirement.

Op-Ed: On Modernizing the US Nuclear Arsenal

By David Krieger, Truthout

The *Los Angeles Times* ran front-page articles on November 9 and 10, 2014, on modernizing the US nuclear arsenal. The first article was titled, "Costs rise as nuclear arsenal ages." The second article was titled, "Arsenal ages as world rearms." Both were long articles and the authors made the case that there is no choice but for the United States to modernize its nuclear arsenal, delivery systems and infrastructure at great expense to taxpayers, estimated at \$1 trillion over the next three decades.

The authors, reporters for the newspaper, write, "The Defense Department's fleet of submarines, bombers and land-based missiles is also facing obsolescence and will have to be replaced over the next two decades, raising the prospect of further multibillion-dollar cost escalations." This statement might be acceptable as a quote from a Defense Department official or in an opinion piece, but it hardly reflects the objectivity of professional reporters. It sounds more like an unattributed statement from a Defense Department official or from a "defense" corporation press release.

In fact, there is a viable option that was not touched upon in the articles. The United States could choose instead to fulfill its legal obligations under the 1968 Nuclear Non-Proliferation Treaty to negotiate in good faith to end the nuclear arms race at an early date and to achieve complete nuclear disarmament. This would not be easy, but it would be far preferable to continuing the nuclear arms race through the 21st century. For the United States to convene such negotiations would demonstrate leadership in moving the world away from nuclear Armageddon and toward compliance with international law.

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Since performance problems may result in lowered performance evaluations and other adverse personnel entries, one cannot always assume that this discharge will be fully honorable. Servicemembers and advocates can argue in the discharge statement that any performance problems result from the mental disorder (as required for the discharge), and should not be considered in characterization. This can be supported by civilian mental evaluations showing that the performance problems resulted from the disorder and were not intentional.

Chronic adjustment disorder

In 2013, DoD revised one of its disability Instructions, DoD 1332.38, to designate chronic adjustment disorder as a potentially compensable disability, requiring referral to a medical evaluation board and disability evaluation proceedings. This Instruction was cancelled in a recent revision to military disability policy, but chronic adjustment disorder should remain a disability condition. (See ALARACT 178/2013 for Army policy.)

In pursuing this option, "defense" corporations would likely suffer shortfalls in their profits, but the huge sums proposed to be spent on the modernization of the US nuclear arsenal could be shifted to providing for the basic needs of the poorest citizens and for restoring the country's deteriorating infrastructure. The truth is that nuclear weapons are obsolete for providing 21st century security against terrorist organizations, failed states, environmental destruction or climate chaos.

Do we really want to pass along the threat of nuclear warfare, by accident or design, which could destroy civilization, to our grandchildren and their grandchildren? Enough is enough. It is time, as Einstein argued more than a half century ago, to change our modes of thinking or face "unparalleled catastrophe."

No country has the right to threaten the future of civilization and complex life with weapons of massive destructive power. Modernization of the US nuclear arsenal is not the only choice we have. A far better and saner choice is to end the nuclear weapons era, and that can only be done by diplomacy and negotiations for a nuclear weapons-free world.

Rather than creating a financial feeding frenzy for "defense" contractors and essentially throwing away a trillion dollars over the next three decades in the illegal pursuit of nuclear modernization, the United States could choose now to lead the world in seeking planetary nuclear zero. This would be a worthy pursuit for a great nation.

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The condition is not commonly diagnosed by military psychiatrists or psychologists, and chronicity is an appropriate question to address in independent civilian evaluations.

Conclusion

Adjustment Disorder discharges are often subject to abuse by commands for purposes of retaliation. However, this discharge can also be used by service members affirmatively if they are suffering from adjustment disorder. Attorneys and counselors should be prepared to confront both possibilities.



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.

2014 CONVENTION REPORT

MLTF EXPLORES CURRENT MILITARY TRENDS AND FUTURE OF OUR WORK



With the military cutting forces and degrading discharges to save money on benefits, the need for MLTF services grows, despite reduction in funding.

By Libby Frank

Increasingly, the U.S. military is attempting to save money by depriving soldiers of a lifetime of benefits, in some cases for relatively minor misconduct. By pushing out soldiers with less than honorable discharges or even general discharges, the military can avoid having to pay millions of dollars in benefits. Reports indicate that the annual number of misconduct discharges is up more than 25% since 2009 and is at record levels.

The Military Law Task Force discussed this and other issues at the National Lawyers Guild's 2014 Law for the People Convention in early September. During the Task Force's annual membership meeting during the convention, attendees learned that the Army plans to cut its forces by 80,000 troops by 2017, and top officials said it may cut 100,000 additional troops as a result of federal budget cuts. Of particular concern is the growing trend of the military pushing soldiers out with less than honorable discharges as they seek to reduce the ranks. This issue came up as part of a free-ranging discussion on the current military situation and its implications for our work.

Also on Thursday, the Military Law Task Force hosted a workshop on discharge upgrades. The workshop included panelists Ray Parrish, Marian Neudel, Jim Klimaski, Becca von Behren and moderated by Kathy Gilberd. Marian, Jim and Becca are all attorneys working in military law. Ray is a veteran and vet counselor with decades of experience.

Grassroots guidance for Steering Committee

During the membership meeting, the group agreed to the following points of direction from the membership meeting to the MLTF steering committee:

- a) given the changing nature of the work in which we are engaged in, we should allow some flexibility in framing priorities;
- b) the MLTF should engage in increased political analysis of issues of concern;
- c) we invite the steering committee to consider the issues of veterans' justice and the militarization of the civilian police

force as additional issues of concern in the coming year; and

- d) we want the MLTF to be responsive to the changing and fluid situation of U.S. militarism and imperialism.

We discussed getting our membership more engaged. Several suggestions included asking for specific help on projects (e.g. researching a specific topic) or making calls to MLTF members to find out what they're doing and how they would like to connect to the work of the committee. We also discussed increasing the amount of online discussion and shifting some decision-making to online.

Fundraising to maintain the office and the very important work of our executive director, Kathy Gilberd, was a major concern for discussion. The fundraising subcommittee, led by Aaron Frishberg, continues to pursue foundation grants. James Branum introduced a crowd-sourced fundraising drive created by SC member Rena Guay on Indiegogo.com. All members of the Task Force will be encouraged to spread the word about this campaign to all their contacts and through social media.

Chicago: City of the people

The NLG's 2014 Law for the People Convention was held at the Crowne Plaza Metro, located on the edge of Greektown. The convention's location in a major city, close to public transportation, restaurants and entertainment seemed to please most people. In between workshops and plenaries there were organized tours of the Puerto Rican Community, the Westside, neighborhood murals and labor history, resulting in a good balance between meetings where serious work got done and opportunities for attendees to enjoy the city.

The NLG was pleased to welcome keynote speaker Karen Lewis, president of the Chicago Teachers Union, on Thursday evening. Karen was elected president of the 30,000 member union in 2010 and led a very successful teachers strike in 2012. A product of the Chicago Public Schools, she taught high school chemistry for 22 years. Articulate and gutsy, she is a true inspiration. The Friday luncheon featured the music and narrative of Maggie Brown, the daughter of the legendary late Chicago jazz leg-

A National Call: Save Civilian Public Education



Educating the public about the Militarization and Corporatization of our schools - www.savecivilianeducation.org

MLTF JOINS CAMPAIGN TO SAVE US PUBLIC SCHOOLS FROM RAMPANT MILITARIZATION AND CORPORATIZATION

The Military Law Task Force of the National Lawyers Guild has joined dozens of educators, writers and prominent activists, along with anti-militarism organizations, to sign a [national call to save civilian public education](#). From Noam Chomsky to Tom Hayden, Cindy Sheehan and Col. Ann Wright, to Iraq Veterans Against the War, Veterans for Peace and War Resisters League, signers are seeking to draw attention to developments in the educational system that could have disastrous long-term social and political consequences.

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end Oscar Brown Jr. For over 20 years she has toured nationally with her one-woman show, "LEGACY: Our Wealth of Music" which follows the history and evolution of African American music. Saturday evening the entertainment was provided by a blues band.

Conclusion: Increased need for military law workers, response disappointing

While the 2014 Convention Chicago was a good event, and Task Force events were well-conceived, I think I speak for everyone in expressing my disappointment in the turnout at the MLTF's discharge upgrade workshop. At a time when record numbers of servicemen and women are getting pushed out with less than fully honorable discharges as the military tries to downsize and save money, we need many more people doing the work of the Military Law Task Force; not less.

We have much work ahead, particularly in light of our uncertain financial situation.



Libby Frank is an anti-war and counter-recruitment activist in Chicago.

Over the last several decades, the Pentagon, conservative forces, and corporations have been systematically working to expand their presence in the K-12 learning environment and in public universities. The combined impact of the military, conservative think tanks and foundations, and of corporatization of our public educational systems has eroded the basic democratic concept of civilian public education. It is a trend that, if allowed to continue, will weaken the primacy of civilian rule and, ultimately, our country's commitment to democratic ideals.

The signers of this statement believe it is urgent for all advocates of social justice, peace and the environment to recognize the dangerous nature of this problem and confront it with deliberate action.

The threat to civilian education

The most aggressive outside effort to use the school system to teach an ideology with ominous long-term implications for society comes from the military establishment. Over the last two decades, with relatively little media coverage or public outcry, the Pentagon's involvement in schools and students' lives has grown exponentially. Now, for example:

- Every school day, at least half a million high school students attend Junior ROTC classes to receive instruction from retired officers who are handpicked by the Pentagon to teach its own version of history and civics. These students are assigned "ranks" and conditioned to believe that military and civilian values are similar, with the implication that unquestioning obedience to authority is therefore a feature of good citizenship.
- Armed forces academies are being established in some

public schools (Chicago now has eight), where all students are given a heavy dose of military culture and values.

- A network of military-related programs is spreading in hundreds of elementary and middle schools. Examples are the Young Marines and Starbase programs, and military programs that sneak into schools under the cloak of Science / Technology / Engineering / Math (STEM) education.
- Military recruiters are trained to pursue “school ownership” as their goal (see: “Army School Recruiting Program Handbook”). Their frequent presence in classrooms, lunch areas and at assemblies has the effect of popularizing military values, soldiering and, ultimately, war.
- Since 2001, federal law has overridden civilian school autonomy and family privacy when it comes to releasing student contact information to the military. Additionally, each year thousands of schools allow the military to administer its entrance exam — the ASVAB — to 10th-12th graders, allowing recruiters to bypass laws protecting parental rights and the privacy of minors and gain access to personal information on hundreds of thousands of students.

The threat to public education

Efforts by groups outside the school system to inject conservatism and corporate values into the learning process have been going on for a number of years. In a recent example of right-wing educational intervention, The New York Times reported that tea party groups, using lesson plans and coloring books, have been pushing schools to “teach a conservative interpretation of the Constitution, where the federal government is a creeping and unwelcome presence in the lives of freedom-loving Americans.” (See: nytimes.com/2011/09/17/us/constitution-has-its-day-amid-a-struggle-for-its-spirit.html)

Corporations have been projecting their influence in schools with devices like Channel One, a closed-circuit TV program that broadcasts commercial content daily to captive student audiences in 8,000 schools. Some companies have succeeded in convincing schools to sign exclusive contracts for pizza, soft drinks and other products, with the goal of teaching early brand loyalty to children. A National Education Policy Center report issued in November 2011 documents the various ways in which business/school partnerships are harming children educationally by channeling student thinking “into a corporate-friendly track” and stunting their ability to think critically. (See: <http://nepc.colorado.edu/publication/schoolhouse-commercialism-2011>)

The development of this corporate-friendly track dovetails with a radical corporate agenda to dismantle America's public education system. States across the country are slashing

educational spending, outsourcing public teacher jobs, curbing collective-bargaining rights, and marginalizing teachers' unions. There is a proliferation of charter and “cyber” schools that promote private sector involvement and a push toward for-profit schools where the compensation paid to private management companies is tied directly to student performance on standardized assessments. The cumulative effect is the creation of institutions that cultivate a simplistic ideology that merges consumerism with subservience. (See: www.motherjones.com/politics/2011/12/michigan-privatize-public-education)

The corporatization of education via charter schools and the administration sector growth at universities is another troubling trend for public education. Diane Ravitch's book *Reign of Error* (www.npr.org/2013/09/27/225748846/diane-ravitch-rebukes-education-activists-reign-of-error) and Henry A. Giroux's newest book, *Neoliberalism's War on Higher Education*, (See: www.truth-out.org/opinion/item/22548-henry-giroux-beyond-neoliberal-miseducation) give pointers to the doubtful role of corporate values in public education.

Why is this happening? Giroux notes that “Chris Hedges, the former *New York Times* correspondent, appeared on *Democracy Now!* in 2012 and told host Amy Goodman the federal government spends some \$600 billion a year on education — “and the corporations want it.”

Stopping these threats

There is reason to be hopeful about reversing this trend if we look, for example, at some of the successes in grassroots efforts to curb militarism in schools. In 2009, a coalition of high school students, parents and teachers in the very conservative, military-dominated city of San Diego succeeded in getting their elected school board to shut down JROTC firing ranges at eleven high schools. Two years later, the same coalition got the school board to pass a policy significantly limiting military recruiting in all of its schools. Though such initiatives are relatively few in number, similar victories have been won in other school districts and on the state level in Hawaii and Maryland.

There are also some organizations supporting efforts to introduce history and civics lessons from a progressive perspective, such as the Zinn Education Project (See: www.zinnedproject.org) and Rethinking Schools (See: www.rethinkingschools.org). And a small movement is working against Channel One and the commercialization of the school environment (e.g., www.commercialalert.org/issues/education/ and www.obligation.org/).

As promising and effective as these efforts are, they pale in comparison to the massive scale of what groups on the other side of the political spectrum are proactively doing in the educational environment to preserve the influence of conservatism, militarism and corporate power.

Save civilian public education

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It is time for progressive organizations, foundations and media to confront this and become equally involved in the educational system. It is especially important that more organizations unite to oppose the growing intrusion of the Pentagon in K-12 schools and universities. Restoring the primacy of critical thinking and democratic values in our culture cannot be done without stopping the militarization and corporate takeover of public education.



Stop the militarization of our schools

"Please consider endorsing and sharing this call within your networks. The military is escalating plans for Department of Defense programs to impact children as young as preschool while teachers unions are struggling against charter school privatization and austerity cutbacks. Privatization and militarization go hand in hand! Learn more about these DoD programs at http://bit.ly/nnomy_mrtm"

The National Network Opposing the Militarization of Youth (NNOMY), convener of national call



Download, read, and distribute the National Call to respond to increasing military, corporate and conservative influence in our public schools.

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.

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

-  www.nlgmltf.org
-  facebook.com/nlgmltf
-  twitter.com/military_law



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