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Join the M.L.T.F. at the N.L.G. Convention, August 2-6 in Washington, DC

Two MLTF events on **Thursday, Aug. 3**

- MLTF membership meeting, 1 - 4 pm (room number at MLTF table)
- MLTF social hour, 4 pm - ? at nearby bar

All welcome at both events! Stop by the MLTF literature table anytime to say hello and check out our latest material.

HAZING AND BULLYING IN THE MILITARY

BY KATHLEEN GILBERD

In recent years, considerable public attention has focused on hazing and bullying within the military, particularly in the Marine Corps. Media and Congressional attention followed the suicide of Lance Cpl. Harry Lew, who shot himself six years ago after repeated abuse and taunting by fellow Marines, and the March, 2016 death of Raheel Siddiqui, a Moslem recruit at Parris Island Marine Recruit Training Depot. The Marine Corps claims Siddiqui committed suicide by jumping down a 40-foot stairwell; his family and supporters are convinced he fell while running away from a drill instructor who had struck and bullied him.

The family believes he was bullied because of his religion, pointing to other instances of similar harassment at Parris Island—including a previous case in which the same drill instructor is accused of forcing a Moslem recruit into an industrial clothes dryer and running it, stopping periodically to ask the recruit to confess that he was a terrorist. Siddiqui's death is still under investigation, and there are ongoing investigations of other abuse of recruits at Parris Island. A number of instructors and the former commander of Parris Island's Third Recruit Training Battalion face court-martial for abuse of Siddiqui and others, though the first of these courts-martial has just resulted in an acquittal.

Parris Island Hazing Is Tip of the Iceberg

While the Parris Island scandal and Lance Cpl. Lew's death are the most public incidents of abuse, they are merely the tip of the iceberg. Between January 2012 and June 2015, the Marine Corps received 377 reports of hazing or abuse, about one third of which were officially "substantiated." Unfortunately, the General Accountability Office (GAO), in a 2016 report entitled "DoD and Coast Guard: Actions Needed to Increase Oversight and Management Information on Hazing Incidents Involving Servicemembers," found that DoD and the services did not adequately track the number of hazing incidents. In reviewing DoD and service policies and interviewing servicemembers, GAO also found that the policies generally did not provide clear guidance on what did and did not constitute hazing, including a lack of clarity on the distinction between permissible corrective measures, such as extra military instruction, and hazing.

DoD Definitions of hazing and bullying

On December 23, 2015, the Deputy Secretary of Defense promulgated a memorandum, "Hazing and Bullying Prevention and Response in the Armed Forces," which included DoD definitions of hazing and bullying. Ironically, this memo has not been made available to the public. However, the memo's definitions were repeated in the May, 2016, issue of "The Counselor," the newsletter of the Region Legal Service Office Naval District Washington. According to the newsletter, the DoD memo defines hazing as:

"Any conduct through which a military member or members, or a Department of Defense civilian employee or employees, without proper military or other governmental purpose but with a nexus to military service or Department of Defense civilian employment, physically or psychologically injure or create a risk of physical or psychological injury to one or more military members, Department of Defense civilian employees, or any other persons for the purpose of initiation into, admission into, affiliation with, change in status or position within, or as a condition for continued membership in any military or Department of Defense civilian organization."

Bullying is defined as:

“An act of aggression by a military member or members, or Department of Defense civilian employee or employees, with a nexus to military service or Department of Defense civilian employment, with the intent of harming a military member, Department of Defense civilian, or any other persons, either physically or psychologically, without a proper military or other governmental purpose. Bullying may involve the singling out of an individual from his or her co-workers, or unit, for ridicule because he or she is considered different or weak. It often involves an imbalance of power between the aggressor and the victim.”

While DoD procedures for reporting and responding to hazing and bullying are not spelled out in the newsletter, responses to some forms of hazing and bullying are discussed in DoD Instruction 1438.06, “DoD Workplace Violence Prevention and Response Policy,” dated January 16, 2014. This Instruction provides the most recent publicly available military-wide guidance on these problems, and applies to both military personnel and civilian employees. The Instruction prohibits:

“violent behavior. The intentional use of physical force or power, threatened or actual, against a person or group that either results in or has a high likelihood of injury, death, or psychological harm to self or others”

and

“workplace violence. Any act of violent behavior, threats of physical violence, harassment, intimidation, bullying, verbal or non-verbal threat, or other threatening, disruptive behavior that occurs at or outside the work site.”

Under this Instruction, personnel who engage in or threaten such violent behavior may be immediately removed from the premises and denied re-entry pending completion of an appropriate investigation; they also are subject to removal from federal service and/or criminal prosecution. Workplace supervisors and all personnel are responsible for prevention of workplace violence under the Instruction.

Although the Instruction has been in place for over three years, its implementation has been spotty, at least for military personnel.

Individual service regulations on bullying and hazing have not been updated since the 2015 DoD memorandum, and do not use the same definitions. Advocates will want to compare DoD and service regulations to use the more helpful definitions. For example, Army policy, found in [AR 600-20, “Army Command Policy,”](#)¹ gives these definitions at section 4-19:

“(1) *Hazing*. Any conduct whereby a Servicemember or members regardless of service, rank, or position, and without proper authority, recklessly or intentionally causes a Servicemember to suffer or be exposed to any activity that is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to participate in any such activity is also considered hazing. Hazing need not involve physical contact among or between military members or employees; it can be verbal or psychological in nature. Likewise, it need not be committed in the

¹ http://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r600_20.pdf

physical presence of the victim; it may be accomplished through written or phone messages, text messages, email, social media, or any other virtual or electronic medium. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator. Without outside intervention, hazing conduct typically stops at an identified end-point.

“(2) *Bullying*. Bullying is any conduct whereby a Servicemember or members, regardless of service, rank, or position, intends to exclude or reject another Servicemember through cruel, abusive, humiliating, oppressive, demeaning, or harmful behavior, which results in diminishing the other Servicemember’s dignity, position, or status. Absent outside intervention, bullying will typically continue without any identifiable end-point. Bullying may include an abuse of authority. Bullying tactics include, but are not limited to, making threats, spreading rumors, social isolation, and attacking someone physically, verbally, or through the use of electronic media.”

Despite these definitions, commands, services and some of the service regulations may use the terms bullying and hazing interchangeably. As GAO found in 2016, many servicemembers remain unclear on the definitions.

Although the regulations ignore this in their definitions, the GAO report also discussed the “sometimes correlated” relation between hazing and sexual assault, referring to its March, 2015, report on sexual assault. There, GAO found that hazing sometimes escalated into assault, and recommended that DoD revise its sexual assault policy to address how hazing could constitute sexual assault. Similarly, a 2014 study on sexual assault by the RAND Corporation discussed the extent to which hazing might lead to or constitute sexual assault.

Regulations and service policies

As noted above, AR 600-20 provides policy for the Army. Secretary of the Navy Instruction (SECNAVINST) [1610.2A of 15 July 2005](#)² sets out policy on hazing for both the Navy and Marine Corps. It is supplemented by [NAVADMIN 034-13](#)³, on reporting and tracking hazing and bullying incidents. Marine Corps policy is also contained in [Marine Corps Order 1700.28B, “Hazing,”](#)⁴ The Air Force uses [AFI 1-1, “Air Force Standards,”](#)⁵ and Air Force Memorandum, “Air Force Policy on Hazing,” as well as [Air Education and Training Command Instruction 36-2909, “Recruiting, Education, and Training Standards of Conduct.”](#)⁶

Commanders required to investigate allegations

Under the service regulations, commanders who receive reports of hazing or bullying are required to conduct investigations in each case. If the hazing or bullying is substantiated, commanders may take disciplinary or administrative action, or no action at all. All of the services treat hazing and bullying as a

² <https://doni.daps.dla.mil/Directives/01000%20Military%20Personnel%20Support/01-600%20Performance%20and%20Discipline%20Programs/1610.2A.pdf>

³ <http://www.public.navy.mil/bupers-npc/reference/messages/Documents/NAVADMINS/NAV2013/NAV13034.txt>

⁴ <http://www.marines.mil/Portals/59/Publications/MCO%201700.28B.pdf>.

⁵ http://static.e-publishing.af.mil/production/1/af_cc/publication/afi1-1/afi1-1.pdf

⁶ [Air Education and Training Command Instruction 36-2909, “Recruiting, Education, and Training Standards of Conduct](#)

violation of Article 92 of the UCMJ (disobedience of orders). Some of the service regs point out that hazing/bullying may also be penalized under Article 93 of the UCMJ (cruelty and maltreatment), Article 128 (assault), Article 124 (maiming), etc. Complaints of hazing or bullying must be reported to service headquarters, and Equal Opportunity offices are used to track incidents.

The regulations attempt to distinguish hazing and bullying from legitimate behavior such as command-authorized training and corrective actions. The SECNAVINST, for example, sets out activities that do not amount to hazing or bullying, including “command-authorized or operational activities; the requisite training to prepare for such missions or operations; administrative corrective measures; extra military instruction; athletics events, command-authorized physical training, contests or competitions; and other similar activities that are authorized by the chain of command.” Not unsurprisingly, it is a common defense to allegations of bullying that the behavior falls within these exceptions.

Some of the regulations emphasize the importance of treating victims of hazing or bullying respectfully and avoiding re-victimization. Some state that victims are entitled to the assistance available to victims and witnesses of crimes. The SECNAVINST requires that victims who report hazing or bullying be advised of their rights immediately and offered, among other resources, legal advice and victim/witness advocacy services. The Army reg, on the other hand, does not include such language.

Complaints receive inconsistent enforcement

Unfortunately, the DoD and service policies are not always followed, and victims of hazing or bullying often have difficulty in reporting and remedying their situation. This is compounded by the fact that hazing or bullying often leaves its victims psychologically and physically vulnerable. Given this, the assistance of an attorney or other advocate can make a significant difference in victims’ ability to demand correction of the problem.

Generally, victims may report abuse and bullying to the command, to military law enforcement, or to the Inspector General. While EO is used to track reports and data, it is unlikely that they provide a good reporting option; AR 600-20, for example, clearly states that these are not EO complaints.

Where victims report the problem themselves, they may find that their superiors want them to go through the chain of command to do so, a frustrating and sometimes very ineffective method. Victims may want to use their commands’ open-door policies, which sometimes require walking a complaint through the chain of command, but do not require revealing the nature of the complaint to anyone other than the commander. Advocates, of course, may communicate directly with the commander and, where useful, with the command staff judge advocate or legal officer as well.

Because the policies are not well followed, and many commands may have only passing familiarity with the requirements of the regulations, it helps to be clear in reporting that the complaint is one of hazing or bullying. Reference to the service and DoD regulations may help commanders to remember that there are specific provisions to be followed and that complaints must always be investigated. Where commanders are unresponsive, or part of the problem, Article 138 complaints may be appropriate. (See On Watch, December, 2013, for an overview of [Article 138](#).⁷)

IG investigations may also be helpful, but their conduct and results vary widely from office to office. In

⁷ <http://nlgmltf.org/military-law-library/publications/article-138/>

making IG complaints, it is important to provide a full written explanation of the problem, with witness statements where possible, copies of any other documentation of the hazing or bullying, and a list of witnesses whom the IG should interview. Follow-up contact with the IG, particularly from an attorney or advocate, may be helpful in keeping the investigation on track. Some attorneys and advocates prefer not to use the IG, since a report which finds the complaints unsubstantiated may make other complaint procedures more difficult.

In part as a result of the 2016 GAO report, the 2017 National Defense Authorization Act legislated “Improved Department of Defense Prevention of and Response to Hazing in the Armed Forces.” Section 549 of the Act requires the establishment of a database on hazing incidents, improved training on hazing, and annual reports to Congress. The measure’s training and annual reports are intended to encourage reporting of hazing incidents, including anonymous reporting, although methods of anonymous reporting are not described. It remains to be seen whether these provisions will improve implementation of overall policy. Intervention by advocates and attorneys may well provide more impetus for commands to follow the rules.

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NEW AIR FORCE CO INSTRUCTION

BY BILL GALVIN

In April the Air Force issued a new conscientious objector Instruction (AFI 36-3204). While the *Summary of Changes* states, “This publication has been substantially revised and requires a complete review,” and there are some changes of significance, the overwhelming majority of the publication is identical to the prior version, albeit somewhat rearranged.

Most of the changes are editorial in nature, and appear generally to make the policy clearer. One such clarification pertains to the Counseling Statements concerning designation as a conscientious objector that CO applicants are required to sign (Appendices 3 and 5). Under the old Instruction, commands have sometimes insisted that 1-O conscientious objectors sign the statement for 1-A-O conscientious objectors. This revision makes it clear which statement is required for each status.

Some of the editorial changes seem to make the standard more inclusive of a greater diversity of beliefs. For example, the previous language directed those evaluating the CO applicant to consider “participation in religious activities,” whereas the new Instruction adds “or other belief system activities” (para. 5.2.6.3).

The updated Instruction begins with a new chapter, **Roles and Responsibilities**. While these are delineated throughout, as they always have been, this addition provides a good, easy to find reference point.

NON-COMBATANT 1-A-O STATUS

The most significant change in the policy concerns 1-A-O conscientious objectors — those who would stay in the military in a non-combatant role.

Paragraph 2.3 of the new Instruction specifies that those who no longer have time remaining on their military commitment must apply for 1-O status (discharge) rather than 1-A-O. Of course, it is unclear why such people would be applying for conscientious objector status at all if their time in service is about to end.

Paragraph 2.4, “**Applying for Noncombatant Training and Service,**” is a new addition, stating that “The applicant will explain on his/her application in detail what benefit his/her continued service (to include new duties and responsibilities) would be to the Air Force. Reviewing officials will provide recommendations on the validity of the applicant’s continued active duty service, so that final approving authorities can make a determination that is in the best interest of the Air Force.”

As part of their application, conscientious objectors are required to provide written answers to a number of questions, including six detailed essay questions, in which they state their beliefs, explain the development of those beliefs, and provide evidence from their lives to demonstrate the depth and sincerity of those beliefs. In this updated AFI, the following requirement has been added to the first essay question in which the applicant must explain the beliefs that have prompted them to seek CO status: “If applying for noncombatant service, the reason why the applicant wants to continue active duty service and in what capacity, how remaining on active duty won’t adversely affect their beliefs or the beliefs of others in the unit, and why it’s in the best interest of the Air Force to remain on active duty until completion of their current enlistment (enlisted) or furthest ADSC (officers)” (para A2.2).

This new requirement, asking the conscientious objector to propose a new assignment and to justify why their staying in will not harm the Air Force, is something new, and appears to codify the anti-conscientious objector bias that we know already pervades the armed forces.

Although it may be little more than semantics, as the AFI on CO always has allowed the Air Force to discharge 1-A-O conscientious objectors if there was no suitable assignment for them, the new Instruction appears to allow the Air Force to classify 1-A-O applicants as 1-O when the Air Force feels it does not have an appropriate job for them, and not because they hold 1-O beliefs: “If noncombatant duties cannot be established or validated for continued active duty service, the option to discharge an approved applicant under (1-O) CO status may be utilized by the final approving authority” (para. 2.4).

In the section defining Noncombatant duties -- the types of jobs that one who is classified 1-A-O could perform -- these words have been deleted from the new regulation: “Service in a medical department of the armed forces, wherever performed” (p.22).

By reducing the number of jobs available to conscientious objectors who want to continue to serve in a noncombatant field and requiring them to justify their continued service, it could appear that the general intent is to discharge 1-A-O conscientious objectors, perhaps making it a virtually nonexistent status.

Paragraph 5.2, **Justification for Approval**, adds the following new language: “To approve an assignment to noncombatant training and service based on conscientious objection (1-A-O) the reviewing authorities must find that an applicant’s moral and ethical beliefs objects to participation as a

combatant in war in any form, but whose convictions are such as to permit military service in a non-combatant stratus.” This is a good reminder to counselors assisting 1-A-O applicants that the CO must be clear about why their conscience will allow them to continue to serve in the military.

OTHER CHANGES

Routing the case file: For those *not* on active duty, the routing has been changed: (para. 3.10):

-- For applicants assigned to the Air Force Reserve Unit Program (Cat A): AFRC/A1KK Workflow (afrc.a1kk@us.af.mil), via email. [Previously it was HQ AFRES/DPAA, Robins AFB GA 31098-5000]

-- For ANG officers and airmen: NGB/A1PP, Joint Base Andrews MD 20762. [Previously it was HQ ANGRD/DPM, Andrews AFB DC 20331-6008]

-- For reserve officer and airmen assigned to IMA positions and the PIRR: ARPC/DPA, 18420 E. Silver Creek Ave Bldg 390, Buckley CO 80011 [Previously it was HQ ARPC/DPA, 6760 E. Irvington Pl #1500, Denver CO 80280-1500].

Timing of Discharge: The new AFI states that the goal of the Air Force is to discharge COs within 10 duty days of the approval of their application (par. 6.1). While this is great news for those who are anxious to get out, this could pose challenges (which we already have observed) for some who are essentially forced to uproot their families with little more than a week’s notice.

Veterans Benefits: Title 38, U.S.C., Section 5303 denies VA benefits to conscientious objectors who refuse to perform military duty, wear the uniform, or fail to obey lawful orders. While this has been reflected in the regulations for decades, and COs have been required to sign a counseling statement acknowledging that they understand it, new wording has been added to the revised AFI (para. 3.7.1), as well as the counseling statement (Attachment 4): “When a member is separated pursuant to a CO status, The Department of Veterans Affairs will determine what veterans benefits, if any, a member is entitled to receive.” While this may be simply a redundancy, CCW has received at least one call from a discharged Marine CO whose service was characterized as fully honorable and did not violate any orders while on active duty, yet was initially denied his earned benefits by the VA because he was discharged as a CO. We do not know if this was an isolated case, or if it reflects a new policy of discrimination against or harassment of conscientious objectors that is now codified in this revised AFI.

Assignment: Paragraph 3.3.3 explicitly states “an applicant shall be required to comply with active duty or transfer orders in effect at the time of his or her application or subsequently issued and received.” The previous AFI was silent on this matter, and this new Air Force policy is in contrast with Army policy, which is to retain CO applicants in their unit, making for easier processing, since the local chain of command does not change.

Screening: While the regulations have always called for a screening of the applicant’s personnel records, the new AFI adds more detail: “Review the applicant’s entire record to include all recent personnel actions taken by the applicant or on behalf of the applicant and provide this information to the investigating officer. Use all military personnel databases (e.g., Military Personnel Data System (MilPDS), Case Management System (CMS), Personnel Records Display Application (PRDA)) in the comprehensive review of the record” (para. 3.7.3).

Psychiatrist report: The previous AFI (para 3.2.9) required a “specific comment” from the Investigating

Office about the psychiatrist report, and “what bearing, if any, it had on the conclusions reached.” That has been deleted from the new Instruction.

The **definition of religion** in Attachment 1 has been revised, and is now identical to that found in DODI 1300.06: “Belief in an external power or ‘being’ or deeply held moral or ethical belief, to which all else is subordinate or upon which all else is ultimately dependent, and which has the power or force to affect moral well-being. The external power or ‘being’ need not be one that has found expression in either religious or societal traditions. However, it should sincerely occupy a place of equal or greater value in the life of its possessor. Deeply held moral or ethical beliefs should be valued with the strength and devotion of traditional religious conviction. The term ‘religious training and/or belief’ may include solely moral or ethical beliefs even though the applicant may not characterize these beliefs as ‘religious’ in the traditional sense, or may expressly characterize them as not religious. The term ‘religious training and/or belief’ does not include a belief that rests solely upon considerations of policy, pragmatism, expediency, or political views.”

In the previous AFI, the first and last sentences were identical, but the middle read, “The external power or being need not be a deity in the conventional usage. It may be a sincere and meaningful belief that occupies a place parallel to that filled by the God of another, or, in the case of deeply held moral or ethical beliefs, beliefs held with the strength and devotion of traditional religious conviction. Religious training and belief may involve only moral or ethical beliefs even though the applicant may not characterize these beliefs as religious in the traditional sense, or may expressly characterize them as not religious.”

Rebuttal: While the right to rebut anything in the record upon receipt of the Investigating Officer’s report remains, the new AFI deletes language that makes it clear that the applicant is afforded rebuttal rights at any time adverse information is added to the case file. Nonetheless, this right is protected by the DODI, paragraph 7.7: “Any additional information other than the official service record of the applicant considered by the Secretary of the Military Department concerned that is adverse to the applicant, and that the applicant has not had an opportunity to comment upon or refute, will be made a part of the record and the applicant shall be given an opportunity to comment upon or refute the material before a final decision is made.”

With many of these revisions, the intent is vague. Some seem to be supportive or simply neutral; others, like removing the explicit reference to rebuttal rights throughout all levels of review, could make the process more challenging for a CO than it already is. Regardless of the intent the Air Force may have had in revising various parts of this Instruction, our job remains clear: to provide both technical and community support for COs in the Air Force who take the courageous stand to follow their conscience.

Bill Galvin is Counseling Coordinator with the Center on Conscience & War in Washington, DC, and serves on the board of directors of the GI Rights Network.

DOD TRANSGENDER POLICIES TO BE DELAYED?

BY KATHLEEN GILBERD

Under policies promulgated by then-Secretary of Defense Ash Carter, the military services are to begin accepting transgender recruits by July 1 of this year. According to a June 30, 2016, memorandum announcing the policies, new recruits will need to have completed medical treatment and to have been stable in their identified gender for 18 months, as certified by their doctor, before enlistment. Beginning in June, 2016, the policies also allowed transgender personnel already in the military to serve openly, and made provisions for medical transitions for current members. Now, however, the recruit accession policy seems to be in question.

On May 8, Deputy Defense Secretary Robert Work issued a memorandum ordering the Secretaries and Chiefs of the services to report their plans for acceptance of new recruits, including an assessment of the services' "readiness to begin accepting transgender applicants." According to a May 21 article in USA Today, the memo stated that the planned policies would be put into effect "unless they cause readiness problems that could lessen our ability to fight, survive and win on the battlefield." Some observers, including one of the architects of the 2016 transgender policy, are concerned that this may provide an opportunity for the Department of Defense to back away from accepting transgender recruits.

The services' reports were due May 31, and have not been made public at this writing. However, a June 1 article in Military Times which referred to anonymous military sources indicated that there is some pressure for a delay, particularly from the Army and Marine Corps. One of the defense officials who spoke with Military Times said that a number of practical matters and funding, rather than institutional opposition to the policy, are at issue. The article suggested that such a delay might be indefinite.

Two transgender cadets, one at West Point and the other at the Air Force Academy, are scheduled to graduate in May but have been told they will not be commissioned as officers because the services have yet to establish policies for their accession.

Ironically, a RAND Corporation study commissioned by the Pentagon last year found that accepting transgender troops would have a "minimal impact on readiness and health-care costs" for the military. RAND estimated that there are about 6,000 transgender troops serving in the military, and that a "negligible" number (about 130) would not be available for deployment while undergoing gender transition treatment. (DoD now estimates that transgender servicemembers number about 7,000.)

On June 7, three retired Army generals, Major General Gale Pollock, Lt. General Claudia Kennedy, and Brig. General Clara Adams-Ender, urged DoD to implement the recruitment policies on schedule. Comparing the provisions for transgender personnel to the end of "Don't Ask, Don't Tell," they stated, "Military and political leaders insisted that lifting DADT would undermine cohesion, recruitment and retention, but none of these concerns were borne out and the change was uniformly hailed for improving readiness. Similar fears were recycled about inclusive policy for transgender troops, but yet again, the fears turned out to be wholly unfounded."

CHELSEA MANNING RELEASED – REJOICING TEMPERED BY REALITY

BY DAVID GESPASS

On May 17, 2017, Chelsea Manning walked out of Fort Leavenworth thanks to the commutation of her sentence by outgoing President Barack Obama. The seven years she spent in confinement were far less than the 35 she was sentenced to, but far more than was warranted. It is more cause for relief than celebration that, after being subjected to inhuman and degrading treatment for much of her time in confinement, she was finally released. At the same time, those who approved of and carried out the infamous “[Collateral Murder](https://collateralmurder.wikileaks.org/)”¹ video of U.S. personnel strafing and killing two Reuters reporters and nine others, some of whom were trying to assist the original victims were never charged or disciplined as the undeclared war raged on.

If motive were a factor in sentencing, Manning would not have served a day. What she did, while ruled a violation of the Uniform Code of Military Justice, was done out of a justified sense of outrage of what was being done in all our names by the U.S. military. One can argue about whether she could have found a better way to address the wrongs she saw. But one cannot dispute that her motives were selfless. What was learned from the video was something the U.S. military refused to provide to Reuters – an answer to what had happened to their correspondents. In any rational world, the sin of stonewalling the fate of the reporters by the U.S. would be deemed far more, as it were, deadly than Manning’s sin of revealing it.

While in confinement, Manning suffered through months of solitary confinement and was then placed in a men’s prison despite her diagnosed gender dysphoria. She was eventually allowed to change her name and have limited hormone therapy, thanks to public pressure and legal action. Until she was released, however, she remained incarcerated with men and was forced to conform to male grooming requirements. In short, she was not merely confined, but she was subjected to conditions that aggravated her situation, even leading to two attempted suicides.

With it all, we rejoice at her release, but our rejoicing must be tempered by the cruel reality that she suffered far too much for revealing the truth. It must be tempered by our recalling that other political prisoners, like Leonard Peltier, still languish in prison. It must be tempered by our recalling the unknown number of innocents who have been killed by U.S. drones. It must be tempered by our recalling that U.S. aggression creates more “terrorists” than it kills. And it must be tempered by recalling that Chelsea Manning suffered for standing up against the American war machine.

Thus, it is not enough for us to have joined in celebrating her release. It is our duty to take up the banner and to engage in the fight against U.S. imperialism, to save future Chelsea Mannings from having to decide between principle and liberty. We wish her well as she embarks on her new life, as a woman at liberty, however scarred by her ordeal.

David Gesspass is former president of the National Lawyers Guild and a member of the NLG Military Law Task Force steering committee.

¹ <https://collateralmurder.wikileaks.org/>

REPORT ON GI RIGHTS HOTLINE ANNUAL CONFERENCE

BY ANNE COWAN

Editor's note: MLTF members attending the GIRN conference this year were Anne Cowan, Aaron Frishberg, Kathy Gilberd, Barbara Goldberg, Jim Klimaski, and Siri Margerin. Photos by Siri Margerin.

The [GI Rights Network](http://girightshotline.org) [girightshotline.org] held a very successful annual meeting on May 18-21 at Stony Point Center, just north of New York City. Stony Point Center is an Intentional Village which includes permanent residents, diversity, healthy living, farming and conference facilities. Meals were delicious, weather perfect and meeting/sleeping accommodations very comfortable.



Eighteen participants represented the five current nodes of the GIRN; MLTF, IVAW, Civilian Medical Resource Network, and a veteran working on a future GIRN node. Ryan Holleran, an IVAW member from Portland, OR, who also works with GI Voice (Coffee Strong) in Seattle, shared his ideas for forming a new node of the Hotline in Portland. He found enthusiasm, encouragement and ongoing support from the GIRN.

Prior to the serious business of games, fun and relaxing in the evening, there were workshops with information for counseling on the Hotline, and lots

of discussion about how to improve the structure of the Hotline, how to attract new counselors and possible modes of training new counselors. There was also a meeting of the GIRN Board and of the GIRN Council.

Workshops included the topics of Military Sexual Trauma, Extended Advocacy for Clients, VA Disability Benefits, National Guard cases, Article 138, Dissent within the Military and Use of Civilian Medical Resource Network (CMRN).

Howard Waitzkin, director, Laura Muncy, staff, and Jon Reisdorf, volunteer and GIRN counselor in Arcata, CA, presented an update on using the CMRN. Case studies show that the independent health evaluations made available through CMRN have been critical in many cases. Half of all their cases include suicidal ideation. Waitzkin suggested that more GI Hotline counselors should do the Intake Interviews of the clients whom they refer. The Intake is the first step after the referral has been entered into CMRN. This is completed using online questionnaires and can be conducted by those without further mental health credentials. CMRN demonstrated exactly how this is done.

Jon Reisdorf led a workshop on how he has used intensive advocacy for select clients. This means that he becomes more involved, making calls, writing letters and using personal contacts on behalf of the client. He has been successful in some very complicated cases where help beyond phone conversations with the client was needed. He develops a rapport, understanding their story so a plan of action is developed. He finds that the telling of the client's personal story to the military can be effective.

Steve Woolford led a discussion of Reserve and National Guard cases. The most frequent issues dealt with are the commuting distance regulations and general grievances. Use of Article 138 was encouraged.

A summary of a new data collection project of the Center for Conscience and War was presented. The goal of this new project is to better the analysis of statistics of their Hotline work. This evolved into a discussion of how data should be tracked by the entire GIRN.

A special honor was to have David Coombs tell us about his work representing Chelsea Manning, via Skype. He reports that Chelsea Manning is now doing well and is working to get on with her life. She remains in the military on appellate leave, although she is not required to wear a uniform and can travel as she pleases. All present thanked Coombs for his work and agreed that he was an excellent choice to represent Manning.

Important discussion took place concerning the future of the Network. In spite of increased number of calls this past year and fewer counselors, the Network is functioning well with quality counseling. It seems critical that there be ongoing training of new counselors and that there is a system to support those new counselors who are not part of a local node.

Better use of the Helping Out listserv for counselors and use of social media were discussed with many opinions, pros and cons.

The Annual Conference of the GIRN is a place for those interested in justice in the military system to get together, learn more and be generally supported in their work.

Anne Cowan is a GI Rights Network counselor and MLTF member in Manhattan, Kansas.



MLTF CONTINGENCY PLANNING FOR WARFARE

One of the predictable things about Trump is that he is unpredictable. Another is that he seems to be setting us on a path for increased wars and militarism, though the specifics are unpredictable. We are seeing more troops on their way to the Middle East, troop increases contemplated for Afghanistan, massive bombings in Syria and Afghanistan, threats aimed at North Korea ... and on and on.

The MLTF Steering Committee has given some thought to what we should be doing to prepare for a period of increased military threats and warfare. We have come up with an ambitious plan to expand our membership, update old and create new training materials and legal memos, develop training webinars, and build closer working ties with ally groups, all so that we are prepared to respond to increased military action in a timely way.

If we are going to make this happen, we need your help. Please look over the plan and consider volunteering for one of the projects--writing or updating a legal memo, working on a webinar on conscientious objection, acting as a liaison with one of our ally groups, or whatever seems workable for you. If you're willing to help, with a big project or a little one, or if you have ideas for other projects that should be on this list, please contact Kathy Gilberd at email@nlgmtf.org or at 619-463-2369.

MLTF CONTINGENCY PLAN

A. Collaboration

1. GI Rights Network – work with Hotline to expand the number of trained counselors
2. Resistance and Vets Organizations (IVAW, Vets for Peace, Courage to Resist, Military Families Speak Out, etc.)
3. Sexual Assault Advocacy and Support Organizations
4. Psychiatric evaluation service providers
5. NLG International Committee

B. Expand Capacity

1. Personnel - Reach out to current and former MLTF members, and to Guild members generally, about joining in the work.
2. Counseling materials
 - a. Update existing material:
 - Dissent memo
 - Discharge memos
 - NJP and appeals
 - Whistleblower memo
 - AWOL discharge policies
 - Sexual assault/sexual harassment
 - Conscientious objection memos
 - Stop loss materials
 - Military and immigration memo
 - Military psychiatric policies
 - Consider revision to Helping Out Manual
 - b. Create new material
 - Reservist material

- Reservist medical issues
- Activation deferments and exemptions
- AWOL defenses and mitigation
- Resistance cases
- Bullying and hazing
- Counseling CD and website section
- Webinars
 - court-martial defense training
 - conscientious objection
 - civil litigation training

3. Rapid Response Teams

Create teams to respond in conscientious objection and other resistance cases and to support dissent activities

C. Develop Self-Help Materials for Servicemembers

- a. Discharges
- b. Grievances and complaint procedures
- c. Dissent
- d. Consider blog for GI's

IN MEMORY OF TERESA PANEPINTO

BY JANE KAPLAN, STEVE MORSE AND KATHLEEN GILBERD

We remember Teresa as a passionate advocate for social justice, generous with her expertise and friendship, and a sweet, but uncompromising, fighter for justice.

Teresa grew up in Altamont, New York, with her social worker parents and two brothers. She graduated from Willamette University in Oregon. After college she joined Peace Brigades International (PBI) to support the human rights of workers, indigenous activists, and others. With PBI, she worked in Colombia putting her life very literally on the line to provide non-violent accompaniment for Colombian activists during a period when that country had one of the highest rates of targeted killings in the world. She described that experience as teaching her to be a better advocate.



From 2000 to 2004 Teresa worked in Oakland as the GI Rights Program Coordinator for the now-closed Central Committee for Conscientious Objectors (CCCO). The events of September 11, 2001, brought an influx of people seeking to do GI rights counseling. She trained numerous volunteers in the Bay Area and around the country in non-directive military counseling, assisting servicemembers with discharges, grievances, and dissent. Her work served to set up counseling groups in a number of cities, some of which continue today. Teresa mentored and built personal connections with all these counselors, providing support and assistance as they handled complex military law cases. Counselors who trained with her speak of her as a strong advocate and a dedicated teacher, who brought life to dry legal issues

and worked with real compassion for her clients. She delved deeply into the details of military regulations and law; for example, she provided extensive legal assistance to Camilo Mejia, the first post-9/11 US soldier to publicly resist after having been in combat.

Teresa was key in building GI counseling as a movement, that developed in parallel with the growing anti-war movement following the 2003 US invasion of Iraq, and in parallel with the growing number of soldiers seeking legal help, many of whom were traumatized by war, opposing the war and/or going AWOL as they faced multiple deployments. Teresa's work helped lead the way to the formation of the national GI Rights Network, (www.girightshotline.org) which continues to provide counseling to many servicemembers.

Teresa's interest in military law and human rights led her to law school, and she obtained her J.D. at Boalt Law School in 2007. During that time, she began to work with the National Lawyers Guild's Military Law Task Force, soon serving on its steering committee and helping it to expand its work on military law and veterans rights. With MLTF, she trained counselors and attorneys in military law, researched and wrote key legal memoranda, and helped the Task Force in a leadership transition. Her dedication to the MLTF and to servicemembers and vets made her an inspiration to the organization.

As a member of the Bay Area Military Law Panel, she maintained the Panel's commitment to the pro bono counseling of active duty personnel, believing they were underserved by other programs. She had compassion and understanding for the crises her clients were facing, while never losing sight of the political context that put them in that situation. She was always available to offer her thoughtful counsel for legal strategies and to provide military law training. Even as pain impacted her life, Teresa remained cheerful and supportive to colleagues and friends. She liked to give gifts that she had crafted herself.

In 2008, after law school, Teresa went to work for Swords to Plowshares in San Francisco, one of the country's largest veterans advocacy organizations. She served first as a benefits advocate, and then as legal director from 2010 to 2015, sustaining and expanding a strong legal department to provide indigent veterans with representation in discharge upgrades and claims for VA benefits. Her colleague Kate Richardson said of her, "She was a passionate social justice activist and veterans' rights advocate, and such a kind soul."

In addition to military and veteran clients, her volunteer work covered immigration, disability and civil rights issues.

Teresa died unexpectedly in a hospital in Oakland on April 3, 2017, with her loving family and a circle of close friends by her bedside. She was 41.

A Bay Area memorial is planned for Teresa:

Teresa's Celebration of Life

Saturday, July 15, 2017

2 p.m. - 6 p.m.

Sequoia Lodge, 2666 Mountain Boulevard, Oakland, 94611

*We will be having a potluck, please bring something to share

RSVP: emilyanugent -AT- gmail -DOT- com or: <http://tinyurl.com/y7hysnor>

MLTF MEMBERS RECOGNIZED AS “CHAMPIONS OF JUSTICE”

BY ON WATCH EDITORIAL STAFF



Law Firm of Carpenter and Mayfield awarded "Champions of Justice" award. L to R: Cat Brooks, SF NLG Interim Director; Maryam Khajavi, NLG Attorney; Constance Carpenter, Partner, C&M; Dan Mayfield, Partner, C&M; Jeff Lake, Associate, C&M; Eloisa Perez, Paralegal, C&M; Michelle Phillips, Paralegal, C&M; Carlos Gonzales, Investigator, C&M; Abenecio Cisneros, NLG Attorney. Cat and Abenecio were emcees. Maryam practices independently in the C&M office and introduced the awardees at the event.

The San Francisco Bay Area Chapter of the National Lawyers Guild held its annual Testimonial Dinner on April 29, 2017. As part of the program, the Law Office of Carpenter and Mayfield was recognized as “Champions of Justice.” The office is the legal and political home of longtime MLTF Steering Committee members Dan Mayfield and Jeff Lake. Jeff also serves as an editor for On Watch. The Bay Area Military Law Panel recognized Dan and Jeff “for their leadership and for their always excellent and inspiring work in military law.”

Jeff and Dan were touched by the recognition and the kind words of all who attended and took out ads in the dinner journal. The work now continues (see the Contingency Planning article on page 14 in this issue of On Watch) as Dan and Jeff get back to the daunting tasks at hand. They hope to see everyone at the NLG Convention in D.C. in August!

Dan Mayfield and Constance Carpenter met at NLG-NEC meetings in 1978-1979 when Dan was a National Staff member and Constance was the Far(out) West Regional Vice President. Dan moved to California after falling in love with San Jose and Rita Swencionis, who had been the Santa Clara County NLG Office Staff person. Constance and Dan opened their office in 1982; the office opening announcement included the Preamble to the Guild Constitution, and they have continued to present the firm as a Guild Law Office for 34 years.

Jeff Lake joined the firm in 1984, Carlos Gonzales has worked with the firm as a Private Investigator for 30 years, and Michelle Phillips as the legal assistant for 8 years. Constance, Dan and Jeff have been active in Guild work, serving as Regional VP on the NEC, various Guild Legal Defense Committees and officers in the Anti-Sexism Committee and Military Law Task Force. The attorneys have been mentors for

South Bay Guild Law Students, and present regularly at Guild programs, workshops and national conventions. Jeff and Constance were part of a Guild Delegation at the IADL Conference in Cuba, and Dan on a Guild Delegation to Cuba in 1979 and Venezuela in 2006. Firm members have been a NLG presence in many South Bay organizations, including San Jose Peace and Justice Center, Silicon Valley Toxics Coalition, Santa Clara County Pro-Choice Coalition, and Santa Clara County Bar Association.

In their spare time, the firm practices family law, juvenile law, and criminal defense. They have received numerous awards and recognitions from the local and state bar associations, CAIR, LACY, Pro Bono Project Silicon Valley and other community organizations.

Editors note: The SF Area NLG chapter announced the dinner and recognition awards with an [article on their web site](#), detailing the contributions of the Carpenter and Mayfield firm.

ANNOUNCEMENTS

MLTF resources updated

MLTF has just revised two of its older legal memos which are available on our website's military law library (militarylawhelp.com):

- [Military Policies on Dissent](#) by attorney David Gespass
- [Military Psychiatric Policies and Discharges](#) by Kathleen Gilberd

Our long-awaited self-help guide, "Military Sexual Violence — a Guide to Sexual Assault and Sexual Harassment Policies in the US Armed Forces for Servicemember, MSV Survivors and their Advocates," and an accompanying brochure, will be available in early July. It will be posted at nlgmtf.org/military-law-library/. Readers who are interested in working on this issue are encouraged to call the Task Force at 619-463-2369 or email us at nlgmtf@gmail.com.

THE MILITARY LAW TASK FORCE of THE NATIONAL LAWYERS GUILD

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

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

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

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

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

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

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

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

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