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Since election day, an anti-Trump movement has arisen and grown, as the president’s unstable, unconstitutional, racist, and simply bizarre pronouncements and policy-by-Tweet have jolted Americans into action to defend minorities, the sick or disabled and even democracy itself. Collectively, this movement is known as the Resistance, but is made up of both old and new groups loosely allied in opposition to Trump and company.

It can reasonably be argued that it was veterans who started the Trump resistance, and it happened well before Nov. 8, 2016, the night election results stunned many Americans with the most unpopular candidate in presidential history winning the electoral college, and thus the White House.

It was vets who dogged Trump throughout his campaign during 2015 and 2016, and who, unlike many Americans, did not discount the possibility he might win, and did not ignore that his statements and ideas were deeply unamerican and detrimental to the political process and civic stability. Vets making such statements at Trump rallies were summarily removed, along with the non-vet protesters, in many cases right in front of the cameras of the press. In those cases, service to country was NOT greeted with unquestioning gratitude and respect – they got the boot and the crowd’s loud derision like every other protester.

*Using the #VetsAgainstTrump hashtag, vets protest outside Trump Tower in New York City during the presidential campaign in 2016.*

Post election, veteran’s groups only intensified their activities, networking with the groups such as Indivisible that rose out of the election aftermath, but remaining in a key position within the larger movement. Vets groups have the ability to speak authoritatively about Trump’s relationship with the military – five deferments during the Vietnam era, support for the Iraq War and other military foibles – and his underlying antagonism, demonstrated through his policy agenda, to helping those without power or large bank accounts and to fulfilling the promises made to servicemembers about caring for them when their service was completed.
Once Trump was inaugurated and Republican majorities were ensconced in Congress – and soon at the Supreme Court when Neil Gorsuch was placed in the seat stolen from Obama nominee Merrick Garland -- even the very existence of the Veterans Administration as we know it faced threats from Republican- and Trump-supported privatization efforts. In fighting this, vets were joined by many of their brothers and sisters who might never have been involved in activism before, as well as non-vet allies who placed the threats to vets care within a broader framework of their resistance.

Back in March, Maggie Martin, Co-Director of Iraq Veterans Against the War (now renamed About Face: Veterans Against The War) said this about the group’s work in the Trump era:

Veteran activism is on an uptick, from those who got politicized or reactivated around support for Bernie Sanders to new veterans groups emerging from the veterans mobilization to Standing Rock. We want to be a support to these newly engaged folks as well as trying to guide those who aren't already there towards centering those most impacted and viewing the emerging people’s movement through an intersectional lens. We expect to see more people resisting from within the military and other government institutions, considering orders that may be illegal and/or unconstitutional, [and] in order to prepare, we are assessing what resources and support are available for resistors as well as what we can offer as an organization.

Below I detail some of the political work of four veteran-focused groups since the installation of the Trump administration: Common Defense (formerly #VetsVsHate), Veterans for Peace, About Face (formerly Iraq Veterans Against the War) and Vote Vets. What follows is by no means comprehensive, but should serve as a good representative overview of the anti-Trump organizing being led by vets.

COMMON DEFENSE
Common Defense is the new kid on the block among vet activist groups, but its strong presence during Trump’s campaign, when it was organizing under the hashtags #VetsAgainstTrump and #VetsVsHate, gave it a solid start after the election when the resistance movement mushroomed in response. Since then, even before rebranding as a PAC, it networked with non-vet resistance groups and was visible at the Women’s March in January, and in subsequent anti-Trump actions, primarily in the NYC-DC area.

Its mission states that it is “a diverse, grassroots organization of U.S. veterans and military family members who are fighting to preserve the core values we swore to uphold and defend. Together we vow to protect our communities from hate and violence, to serve on the front lines for social, economic, and environmental justice, and to champion a truly equitable and representative democracy.”
Current campaigns being promoted by Common Defense include support for preserving (and strengthening) the Affordable Care Act and DACA (cancellation would impact immigrant servicemembers and veterans), as well as a petition to investigate Trump’s ties to Russia.

On August 16, following the Nazi demonstration in Charlottesville and the death of one of the counter-protesters, @Vets_Vs_Trump was blocked by @realDonaldTrump, the president’s personal Twitter account. The group reported that “As Veterans, we told Donald Trump that the way to honor Heather Heyer is to unconditionally oppose white supremacy & hate. He blocked us.”

They joined a long list of other individuals and groups blocked by @RealDonaldTrump for daring to question or criticize him. Screenshots of the barred status are posted proudly as a badge of honor, and serve only to increase the stature of the blocked account holder among the Resistance.

Facebook: https://www.facebook.com/vetsvshate/
Twitter: https://twitter.com/Vets_Vs_Trump
Web: http://www.commondefensepac.org/

VETERANS FOR PEACE

The 50-year-plus record of Veterans for Peace in opposing tyranny, militarism and injustice is well known to regular On Watch readers. Unsurprisingly, their response to Trump and his administration’s agenda has been as we would expect: continuing that record and welcoming those new to the effort they know so well. They were fighting the long wars in the Middle East and Afghanistan, the always expanding military budget, drone strikes and international weapons deals “before it was cool” and Trump didn’t break their stride.

On Nov. 9, just one day after the election, they distributed a press release with the title “Veterans Challenging Islamophobia Respond to Election.” The statement included this:

Throughout this past year we have called upon Mr. Trump to abandon his divisive anti-Muslim rhetoric. He has done more to legitimize bigotry and create division than arguably any one person has done in the United States in decades.

As people of conscience, we must step up our support for marginalized, discriminated, and disenfranchised communities.

Subsequent releases addressed The Women’s March, and plans for military build-up and increased police militarization.
On Memorial Day, VfP helped organize a massive march to DC. In conjunction with this event, VfP member Matt Hoh, a former Marine Captain (two tours in Iraq) and State Department official who resigned in protest from his post in Afghanistan over U.S. strategic policy and goals, said: “Donald Trump and company are hell-bent on destroying what’s left of our democracy, the environment, and whatever chance we have of world peace. Veterans will not be silent while he does it.”

Veterans For Peace President Barry Ladendorf sent a letter to President Trump requesting a meeting to discuss military policy and to refocus spending on peace and issues at home. The letter said, in part:

We speak for the majority of U.S. citizens, who believe your policies are taking innocent lives and endangering more of our young soldiers, who have already given so much in the needless wars in Iraq and Afghanistan. Now we have sent more Marines into Syria. Your policies are also causing suffering and despair among immigrants, Muslims, communities of color, women, Native Americans, and LGBTQ communities, and if implemented, these policies will further destroy the environment. Ultimately, they make all of us considerably less secure.

To date there has been no response to the request from the White House.

On Sept. 8, VfP was among more than 20 organizations signing a statement opposing the expansion of the federal government’s Countering Violent Extremism (CVE) program. A press release explained that “The joint statement is in response to growing congressional calls to expand CVE to include white supremacist groups -- as such a move would only serve to legitimate a program that actively surveils, profiles, censors, and divides the American Muslim community.”

In August, VfP promoted a “Freeze for A Freeze in Korea” direct action and advocacy campaign in response to planned joint military drills by the US and South Korea, which it called “highly provocative and threatening rehearsals for war involving tens of thousands of soldiers simulating surgical strikes on North Korea.” The call to action explained:

Pyongyang views this as threatening and justification for pursuing its nuclear weapons and missile program.

A proposal on the table to avert war and start talks is “freeze for freeze” in which North Korea suspends its nuclear and missile testing in exchange for halting or scaling back large-scale US-S.Korea joint war drills. A growing number of American officials are calling for this “freeze for freeze,” which has also been proposed by North Korea, China and Russia.

Veterans For Peace is joining with multiple organizations under the Korea Peace Network for A Week of Actions!

As Trump and Kim Jong-un play at brinksmanship, and as this situation continues to ignite, more such activity on this issue is likely.

Facebook: https://www.facebook.com/veteransforpeace
Twitter: https://twitter.com/VFPNational
Web: veteransforpeace.org
IRAQ VETERANS AGAINST THE WAR/ ABOUT FACE: VETERANS AGAINST THE WAR

IVAW was founded shortly after the beginning of the Iraq War and is an organization that the MLTF community knows well, having cooperated on GI rights projects and veteran support activities. The group recently rebranded, changing their name to About Face: Veterans Against the War. The change was announced in August as they prepared to hold their annual convention.

Continuing the legacy of our organization, founded in 2004, this was our first convention since deciding to change the name of our organization from Iraq Veterans Against the War to About Face: Veterans Against the War.

[we were founded to] amplify the voices of active duty service people and veterans who were against an unjust war and under various pressures to remain silent. For over a decade, IVAW has lead the movement of veterans and GIs working to end the US military's occupation of Iraq.

During that time, we built a grassroots base of over 3,000 veterans and active duty personnel who have served in the United States military since September 11, 2001, and who have since done an About Face: turning against the wars at home and abroad.

We want to share with you - our movement family - who we are, what we stand for, and where we are going. We want to honor our history, live into our future, and uplift our members and our comrades who are organizing against militarism.

This year's convention was especially exciting as we roll out our new brand we also begin a new era of outreach and organizing at the intersections of US Militarism.

Our ranks are growing and we are ready for what this moment calls us to do.
Earlier in the year, Co-Director Maggie Martin shared about a nonviolent direct action training the group held at Highlander Center in May and explained that “we are developing a community defense program to think about how vulnerable people and people's movements are facing different and heightened threats in the Trump era.”

She expanded on the way the group thinks about its mission:

> We want to connect with organizations that are working on issues at the intersections of militarism, such as how militarism is expanding in our communities in areas like policing and schools, or folks working on environmental issues with an analysis of how militarism props up extraction in places overseas as well as places like Standing Rock.

A major project for the group since 2016 has been #DropTheMIC, which operates within an intersectionality framework, as mentioned in Maggie’s quote at the beginning of this article.

> Iraq Veterans Against the War has initiated conversations across the country through our Drop the MIC campaign that have focused on the root cause that underlines both the occupations by U.S. military abroad and the violence perpetrated in our communities by police right here at home: militarism. Drop the MIC aims to make visible the many ways, both obvious and hidden, that the military industrial complex intersects our lives and our ability to care for ourselves and our communities.

> The Movement for Black Lives policy platform outlines the need and the strategy to divest in the structures that are robbing black people of their lives and invest in what communities need to thrive. “While this platform is focused on domestic policies, we know that patriarchy, exploitative capitalism, militarism, and white supremacy know no borders.”

> Let’s talk together about the real effects of militarism on our local communities, our society and abroad.

IVAW’s Facebook page is one of the best aggregators of war, antiwar and GI Rights news on the site and in its choice of external content to feature shows a serious commitment to keeping its community informed and on the cutting edge of anti-militarism work, whoever is president.

Facebook: https://www.facebook.com/IraqVeteransAgainstTheWar/
Twitter: @VetsAboutFace
Web: http://www.ivaw.org/

**VOTE VETS**

Vote Vets is another veterans organization that has the distinct honor of being blocked on Twitter by the president’s personal account.

> The Commander in Chief can block @VoteVets, the voice of 500k military veterans and families, but we will NOT be silenced.
The group describes its mission:

Started in 2006 and backed by more than 500,000 veterans, military family members and their supporters, the mission of VoteVets.org is to use public issue campaigns to give a voice to veterans on matters of national security, veterans' care, and every day issues that affect the lives of those who served, and their families.

Considerably more mainstream than the other organization in this list – one of their projects is to get vets elected to political office – nonetheless, Vote Vets has joined the fray in publicly opposing many of Trump’s policies and proposals, and generally has been very vocal about calling out his support for white supremacy and unconstitutional discrimination against religious groups and Latino people, especially as those policies impact servicemembers and veterans.

Well funded relative to the others, Vote Vets produces professional videos and graphics that promote their issues. Spokespeople from the organization are not completely blacklisted from corporate media, though they are not as frequent a voice on those platforms as one might hope.

They did get such a voice in 2016 after Trump trashed the family of Cpt. Humayun Khan during the Democratic convention, appearing on television and being quoted in quite a few newspaper articles.

The election did not squelch their vigor in opposing the racist statements and policies flowing from the Trump administration. They actively oppose the Trans ban and support protecting Dreamers through DACA and similar legislation. Using their solid funding wisely, on September 14 they launched a nearly $400,000 ad blitz against privatization of the VA.

A new ad blitz launching today aims to stop efforts aimed at privatizing the Department of Veterans Affairs, in their tracks. The ads, sponsored by VoteVets Action Fund, will be airing nationally and on the internet, with particular attention paid to areas with lawmakers who will be influential in deciding the future of veterans health care. The total buy for the ads is $390,000, with $320,000 on television and $70,000 on the internet. The ads will run, beginning today, for one week.

While the ad is airing nationally, particular attention will be paid to people living in Alaska, Florida, Kansas, Louisiana, Maine, Minnesota, Montana, Nevada, Ohio, South Dakota, Tennessee, Texas and West Virginia.

The first ad, airing on television, features Patrick Cleveland, a Vietnam Veteran.

In the ad, Cleveland explains, “In Vietnam, I counted on my fellow soldiers to help me make it out alive. Here at home, the VA has done the same. They caught my lung cancer early. At another hospital, they would have never known that was connected to Agent Orange. But some folks in DC want to privatize my VA. The VA is better prepared to serve veterans because they know what we veterans have been through. The VA saved my life. Now it’s up to us to save the VA.”

That ad can be viewed, here: https://youtu.be/idKVyrTEuSQ

The second ad, which will appear online, to target a younger audience, features Victor Phillipi, an Iraq War Veteran.
In the ad, Victor says, “When I was a Platoon Leader in Iraq, we had to lean on one another to get through. My PTSD really got worse around some anniversary dates of combat operations I was involved in. That’s when I first went to the VA for treatment. They helped me tremendously through a little bit of some medication and being around other veterans and talking. But some folks in Washington DC are talking about privatizing my VA… And I’m not sure I’d get health care I trust. The way I see it: the VA saved my life. Now it’s up to us to save the VA.”

That ad can be viewed, here: https://youtu.be/_JPi0oDW_mo

Both ads end with the same call to action: “Tell Congress, don’t let Trump privatize my VA. 202-225-3121.”

As proclaimed in a Tweet pinned to the top of their page “The Commander in Chief can block @VoteVets, the voice of 500k military veterans and families, but we will NOT be silenced.”

Facebook: http://www.votevets.org/facebook
Twitter: http://www.votevets.org/twitter
Web: http://www.votevets.org/

WHEN THE RIGHT TURNS REICH

It would be unfair to overlook the much broader population of vets that, while not involved in the same way in opposing Trump per se, nonetheless have stepped forward in condemning the most flagrant evil and chaos he has wrought. This is particularly true as it has become clearer over time that white supremacy and fascism are strong elements of Trump’s agenda and the backbone of his support.

After the Charlottesville “Unite the Right” rally in August, where a counter-protester was killed when a car plowed into the crowd, The Military Times and other media reported that “Vets groups decry hatred, racism in wake of Charlottesville violence.”

Veterans groups on Monday forcefully rejected the views of neo-Nazi and white supremacist groups following reports that the Charlottesville extremist who drove his car into a crowd of counter-protesters briefly served in the military.

“The disgusting displays of hatred and bigotry on display in Charlottesville dishonor all veterans who fought and died to stamp out fascism,” American Legion National Commander Charles Schmidt said in a statement two days after the violent protests in Virginia.

“Americans fought fascism and crushed the Nazis in WWII, and anyone who waves a Nazi flag on our soil is, by very definition, anti-American.”

While more traditional veterans groups like the American Legion, whose members are older and more conservative, tend statistically to be part of Trump’s base – or were on election day -- we may be seeing that support fading with the higher visibility of the neo-Nazi right. Or perhaps they are having to be more circumspect and discerning about their support, and write sternly worded statements when things get too ugly to ignore. That may need to be seen as some kind of progress too.
But, historically and currently, it’s younger people who protest and demand change, and that’s the case with these veterans groups I have profiled, which, excepting Veterans for Peace, are made up primarily of those who served post 9/11. And VfP started when its members were about the same age as the members of the newer groups now – they just kept going because the mission never ended, it just changes its face every few years.

**THE RESISTANCE IS WINNING**

In Star Trek: Enterprise, the mind-controlling Borg warned the soon-to-be victims of absorption that “resistance is futile.” But in the Age of Trump, resistance is clearly finding considerable success, both in gaining strength and numbers, and in stopping or mitigating some of the worst of Trump’s policy enactments or reversals of Obama policies. Vets are a vocal and visible part of this movement, and bring the experience of their past organizing through groups like Veterans for Peace and About Face/Iraq Veterans Against the War, while taking on new challenges.

They are sought out and appreciated for that experience, and for the moral clarity that their voices provide in the national conversation about justice, diversity and inclusion that Donald Trump’s election has elevated to a roar.

*Rena Guay is MLTF’s web administrator and IT consultant, and a longtime peace and justice organizer. She currently is living in Oklahoma where she is creating a new organization called Just Future that aims to bring more cohesion and power to the progressive movement in that red state.*

**DEPARTMENT OF DEFENSE ISSUES NEW CO INSTRUCTION**

**BY BILL GALVIN**

On July 12 the Department of Defense issued a new regulation for the adjudication of conscientious objector applications (DODI 1300.06). The new regulation is essentially the same, mostly word for word identical, but the Instruction itself has been rearranged. When wording has been changed, the new wording is clearer. An official in the office of the Under Secretary of Defense for Personnel and Readiness who worked on revising the Instruction said that the revision came because they felt the previous version was “stale” and they wanted to revise it for clarity and simplicity and to reflect the “current reality,” (though he did not specify what reality he was referring to). He said that they worked on this revision for about a year, and it was thoroughly vetted.

The same official indicated that their intent with this revision was not to alter the policy concerning conscientious objectors, however, there are a couple of significant changes.

**APPLICATION QUESTIONS**

The biggest change in the new DODI is the elimination of three of the essay questions from the list of questions that conscientious objectors must answer in their written application. The questions that are eliminated in this new DoD Instruction are

*An explanation as to the circumstances, if any, under which the applicant believes in the use of force, and to what extent, under any foreseeable circumstances.*
An explanation as to how the applicant’s daily life style has changed as a result of the beliefs and what future actions the applicant plans to continue to support his or her stated beliefs.

An explanation as to what in the applicant's opinion most conspicuously demonstrates the consistency and depth of the stated beliefs that gave rise to the applicant's claim.

The first of these questions, about the use of force, can be a tricky question. We always advise clients that it is inviting them to either contradict something they said in answering the previous question about what they believe (i.e., I would fight to defend my mother if she were attacked, after stating in the previous question they are opposed to using violence), or inviting them to say something outrageous that is obviously untrue (i.e., I would do nothing to protect my mother if she were attacked because I don’t believe in using violence). So for these reasons, I am happy to see this question go.

But that question was asking CO applicants to seriously engage difficult questions: If you don’t believe in war, what do you do about legitimate threats to personal and national safety and security like the ‘Islamic state,’ for example, or genocide? There certainly is value in encouraging CO applicants to wrestle with these questions in order to clarify their own thinking about this, and also because it is likely these types of questions will come up during the Investigating Officer hearing or the chaplain’s interview.

The other two questions that have been removed ask the applicant to provide evidence of their beliefs.

The legal standard for being a conscientious objector is having a sincere belief against your participation in war. But how can anyone prove what they believe? By its nature, isn’t a belief something that can’t be proven?

From the Instruction:

“3.3. BURDEN OF PROOF.

a. The burden of establishing a claim of conscientious objection as a ground for separation or assignment to non-combatant training and service is on the applicant. To this end, the applicant must establish by clear and convincing evidence that:

(1) The nature or basis of the claim falls within the definition of and criteria prescribed herein for conscientious objection.

(2) Their belief in connection therewith is firm, fixed, sincere, and deeply held” (DODI 1300.06) [Emphasis added].

So while the burden of proof is on the applicant to show that they sincerely believe what they say they believe, the revised DODI has removed the very questions which ask the applicant directly for evidence to support their claim. This could be setting conscientious objectors up for failure unless they receive good counsel. As of this printing, each military branch has left the use of force question and the evidence questions in its essay portion of the application, and generally, applicants will follow the application from their own branch’s regulations and not the one found in the DOD Instruction. Those counseling COs must make sure that the “clear and convincing evidence” that the applicant is required to provide is included within the answers to the other questions if the various branches follow the DOD and delete these questions from their own regulations.
1-O/1-A-O ISSUES

1-O conscientious objectors apply to be discharged, while 1-A-O conscientious objectors apply to remain in the military in a non-combatant status. The previous version of the DODI contained these words: “An applicant claiming a Class 1-O Conscientious Objector status shall not be granted a Class 1-A-O Conscientious Objector status as a compromise” (paragraph 5.5). Those words have been eliminated from the revised regulation. A concern we had was that this revision would appear to allow the military to classify 1-O applicants as 1-A-O as a compromise. The DOD official I spoke with, though, indicated that they had not seen evidence of this happening in the military, so they felt it was unnecessary to retain this specific language in the revised Instruction.

Under the 2007 version of the DODI, 1-A-O conscientious objectors were required to sign this statement:

I have been counseled concerning designation as a Conscientious Objector. Based on my training and/or belief, I consider myself to be a Conscientious Objector within the meaning of the statute and regulations governing Conscientious Objectors and am conscientiously opposed to participation in combatant training and service. I request assignment to non-combatant duties for the remainder of my term of service. I fully understand that on expiration of my current term of service I am not eligible for voluntarily enlistment, re-enlistment, extension or amendment of current enlistment, or active service in the Armed Forces by reason of my a Class 1-A-O Conscientious Objector classification.

The revised DODI requires all applicants for conscientious objector status, including those applying for 1-O status, to sign such a statement. This appears to be a typographical error. The DOD official acknowledged that this was a mistake, that this paragraph should apply only to 1-A-O conscientious objectors, and that it would be fixed next time they reissue the Instruction.

RELIGIOUS BELIEFS

A number of definitions have been revised, and as stated above, for the most part they are essentially the same, but have been edited for clarity. With this revised Instruction, it is evident that the decisions in U.S. v. Seeger, 380 U.S. 163 (1965) and Welsh v. U.S., 398 U.S. 333 (1970) are still having an impact 50 years later. These Supreme Court decisions eliminated the requirement that COs believe in a God-like “supreme being,” and broadened conscientious objector status beyond those whose objections were based on religious faith by allowing for the inclusion of people whose objections are secular – moral or ethical in nature. Since then, while the regulations have continued to use the language of “religious training and/or belief,” they explain that ethical and moral beliefs qualify as “religious beliefs.”

The wording below replaces language in the previous version of the DODI (para. 3.2, Definitions, 2007) about religious training and/or belief:

religious, moral or ethical belief. Deeply held religious, moral, or ethical belief, to which all else is subordinate and has the power or force to affect personal moral well-being. The belief need not have found expression in either religious or societal traditions. However, it should sincerely occupy a place of at least equal 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, moral, or ethical belief” does not include a belief that rests solely upon
considerations of policy, pragmatism, expediency, or political views (para. G.2 Definitions, 2017).

While the meaning is essentially the same as what was stated in the 2007 version of the Instruction, this update more directly reflects the intent of the decades-old Supreme Court victories: Seeger by completely eliminating the references to an “external power” or “being;” and Welsh in the way the language is reframed to give equal weight to non-religious CO beliefs. Maybe this is what the DOD official meant by “current reality” – only a half century later!

IMPLEMENTATION IN MILITARY BRANCHES

Each branch of the military establishes its own regulations to implement this DOD Instruction. The DOD official indicated that each branch should review their CO regulations and may revise them if they feel it is necessary in light of the new DODI. So, until that happens, we won’t really know the full impact of this new DODI. The current regulations are still in effect in each branch, and, for example, they all still retain the three questions that have been omitted in the updated DODI.

Comparing this to the recently revised Air Force Instruction raises a couple of interesting questions. On the one hand, the AFI was completely reorganized, and made more clear, as was the DODI. However, some of the specific changes seem at odds with this new DOD Instruction.

The recently revised AFI, rather than delete questions from the written application, actually has increased the number of questions that must be addressed by those applying for 1-A-O classification. And while new AFI makes it clear that only 1-A-O conscientious objectors must sign the counseling statement about being a 1-A-O conscientious objector, the DODI now requires it of 1-O applicants as well. (Which, although they have acknowledged that to be an “editorial error,” it is nonetheless what the regulation in its current form requires.)

Whether or not the Air Force and the other military branches will reissue their CO regulations to align with the changes found in the new DoD Instruction remains to be seen. We will continue to monitor any developments.

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.
NLG MILITARY LAW TASK FORCE PUBLISHES GUIDE TO CHALLENGING MILITARY SEXUAL VIOLENCE

The following press release was distributed by the NLG national office on behalf of MLTF. While some of the MSV content has been on our website for a while, the project is now complete with a full guide accessible on the web or via a PDF, as well as a brochure containing a short introduction to the material.

The Challenging Military Sexual Violence project was supported by a grant from the National Lawyers Guild Foundation, and the members of the ad hoc committee to produce the material were Kathleen Gilberd, Kathy Johnson, Rena Guay, Brad Thomson and Aaron Frishberg.

SAN DIEGO—In response to the ongoing crisis of sexual assault and harassment in the US military, the Military Law Task Force (MLTF) of the National Lawyers Guild (NLG) has published a practical guide for service members entitled, *Challenging Military Sexual Violence: A Guide to Sexual Assault and Sexual Harassment Policies in the U S Armed Forces for Servicemembers, MSV Survivors and Their Advocates*. With military sexual violence (MSV) still at epidemic levels despite years of Pentagon and Congressional attention, advocates and the MLTF are ramping up their efforts to help servicemembers fight back against the military’s entrenched tradition of sexual violence.

The MLTF’s *Challenging Military Sexual Violence* is a detailed guide on the current policies designed to stop military sexual violence (MSV). Authored by MLTF Executive Director Kathleen Gilberd who has conducted MSV workshops for attorneys and counselors nationwide since the 1990s, the guide explains the complex regulations that each branch has developed (and continues to update). It covers both sexual assault reporting and sexual harassment complaints, with additional sections on responding to retaliation for making complaints. The guide is accompanied by an introductory brochure providing an overview of the policies.

“*Challenging Military Sexual Violence* offers no easy or sure solutions—just an honest appraisal of the choices one faces, the possibilities of redress and the pitfalls that may be encountered,” Gilberd stated.

“In recent years, the U.S. military has been tarnished by the public revelation of its history of unpunished sexual abuse within the ranks,” said David Gespass, MLTF board member. “Stories abound of victims who lost their careers when they reported being raped and of their unpunished rapists. Military brass have claimed that they are addressing the problem and have resisted any change to their internal procedures aimed at reducing the prevalence of assault and impunity.”

“Some new protections have been put in place and some remedies are now available, but the system is littered with land mines for victims seeking redress. Our guide was developed to help service members navigate those land mines,” added Gespass.

*Challenging Military Sexual Violence* was produced with the aid of a grant from the NLG Foundation. The guide and brochure are available for free on the organization’s website at nlgmltf.org. Print copies are available for order upon request (a donation is suggested by not required).
UPDATE ON MILITARY TRANSGENDER POLICY

KATHLEEN GILBERD

On August 25, 2017, President Trump issued a presidential memorandum on transgender recruitment and service for the military and Coast Guard, “Military Service by Transgender Individuals,” https://www.whitehouse.gov/the-press-office/2017/08/25/presidential-memorandum-secretary-defense-and-secretary-homeland. The memorandum followed a July announcement, on Twitter, that he would ban transgender service. The announcement by tweet gave no specific direction to the military about implementing a ban, and there was widespread concern about the use of Twitter to establish military policy. The August memorandum stated the policy formally, though it left it to the Department of Defense (DoD) to craft the specifics of the policy.

The memorandum purported to give Trump’s rationale. Trump claimed that, in lifting the military’s long-time transgender ban, President Obama did not show that the change would not affect the military’s functioning and “lethality,” morale and discipline, and resources. It concluded that further study was needed on these issues. Accordingly, the memo ordered DoD to initiate a study of the effect of transgender service, and expressed willingness to reconsider the ban if DoD made convincing arguments that the presence of transgender troops would not affect the military’s mission and functioning. While the wording of the memo is somewhat oblique, it appears to offer DoD the opportunity to discuss the effects of the presence of transgender servicemembers on military functioning and lethality, morale and discipline, etc., as part of the plan it is to present or even separately. The memo stated specifically that rejection of transgender recruits would continue unless DoD “provides a recommendation to the contrary that I find convincing....” and that such a recommendation for a change in policy could be offered b DoD at any time.

Trump’s memo made the current ban on accession of new transgender recruits permanent. It also stated that, as of March 23, 2018, DoD and Coast Guard resources would not be used to fund reassignment surgery for military personnel, unless the surgery was necessary to protect the health of members already undergoing treatment. No mention was made of non-surgical medical procedures such as hormone therapy. Presumably surgical procedures could continue until the March date, though some servicemembers have reported that planned surgeries have been cancelled (apparently prior to the DoD interim memo discussed below).

The memorandum ordered DoD to submit a plan for implementing the policy by February 21, 2018. Among other things, the plan is to determine how to address the status currently-serving transgender personnel. Until then, no action is to be taken to discharge those individuals, and a DoD spokesman has stated that they would be permitted to reenlist if their enlistments expired during the interim period.

On September 14, 2017, DoD published its initial implementing memorandum, “Military Service by Transgender Individuals – Interim Guidance,” https://www.defense.gov/Portals/1/Documents/PDFs/Military-Service-By-Transgender-Individuals-Interim-Guidance.pdf. This interim memo states that, “[f]irst and foremost, we will continue to treat every Service member with dignity and respect.” It states that accession of transgender recruits will “generally” be prohibited under the existing DoD Instruction 6130.03 (medical standards), “subject to the normal waiver process.” Medical treatment for transgender servicemembers is to be provided until March 23, 2018, and DoD Instruction 1300.28, “In-Service Transition for Transgender Service
Members,” promulgated in July of 2016, will remain in effect until final DoD guidance is published. Servicemembers who have completed the transition process and had their gender “marker” changed in the military’s DEERS system are allowed to continue to serve in their preferred gender during the Interim Guidance period. Reenlistment is permitted during this period, and members may not be involuntarily discharged on the basis of gender dysphoria diagnosis or transgender status. The DoD Central Coordination Cell established in 2016 to advise and assist the services and commanders on the policy, is to be reinstated.

Even before the presidential memorandum was published, public opposition to a ban was significant, and several groups filed suits to halt the ban. Cases were initiated by GLAD and the National Center for Lesbian Rights, by the ACLU, and by Lambda Legal Defense and Outserve-Servicemembers Legal Defense Network. A fourth suit was initiated after the presidential memorandum by Equality California. Senators John McCain, Jack Reed, Kirsten Gillibrand and Susan Collins have introduced legislation to prevent discharge of transgender servicemembers and direct DoD to complete its study by the end of the year. A number of Members of Congress, including both Republicans and Democrats, have spoken out against the ban, and polling reported by the Washington Post suggests significant public opposition.

The MLTF will, of course, continue to follow developments concerning any revised policy and the litigation and legislation related to it. Look for continuing updates in On Watch.

_Kathleen Gilberd is a legal worker in San Diego, California, working in the areas of discharge review and military administrative law. She is the executive director of the MLTF._

**MILITARY POLICIES ON DISSENT**

**BY DAVID GESSPASS | REV. DATE: 2017 MAY**

On November 27, 2009, the Department of Defense (DoD) issued Instruction 1325.06, to address the rights of members of the military to engage in free speech and dissent. The instruction canceled and replaced the prior DoD Directive 1325.6, which had been in effect since 1996; the instruction was in turn updated on February 22, 2012. It expresses the current policies and procedures to be followed by the armed forces regarding dissent and freedom of expression. Thus far, the Trump administration has not made any effort to change those policies and procedures which at least recognize that members of the Armed Forces have First Amendment protections. Since Mr. Trump seems to see the First Amendment as a hindrance to governance, one cannot say for how long these policies and procedures will be in effect. The MLTF will stay abreast of any changes and will revise this memo as updates become necessary.

The new instruction does not change very much from the prior versions. It does take into account advances in technology, addressing social media and the like, but the fundamental precepts remain the same. They are:
• The right of free expression is preserved to the maximum extent possible, meaning
• The right is limited by the needs of the military to maintain “good order and discipline”
• Commanders should not be “indifferent to conduct that, if allowed to proceed unchecked, would destroy the effectiveness of” their units
• The extent to which one’s freedom of expression is permitted relies on the discretion (one may say whim) of individual commanders

These presumed “principles” have not changed.

The new instruction lists the same punitive provisions of the UCMJ that can apply as did the directive, albeit with slightly different language, and warns that there may be other criminal provisions as well. It lists UCMJ Articles 82 (Solicitation), 89 (Disrespect toward a commissioned officer), 91 (Insubordinate conduct toward a warrant officer, noncommissioned officer or petty officer), 92 (Failure to obey an order or regulation), 101 (Improper use of a countersign), 104 (Aiding the enemy), and 117 (Provoking speeches or gestures).

The Instruction notes that there are criminal provisions in Chapter 18 of the U.S. Code that apply “to all persons.” The Code provisions remain the same, but the descriptive language changes somewhat. These changes in description are in sections 1381 (enticing desertion and harboring deserters), 2385 (advocating overthrow of the government), 2387 (activities affecting the armed forces generally) and 2388 (activities affecting the armed forces during war).

Taken together, these provisions can, within the military, arguably swallow the right of free expression entirely. In practice, they do not necessarily do so, but their very existence – and their inclusion in the Instruction – can intimidate people so they do not engage in protected conduct.

When planning or considering a particular protest or course of conduct, it is always helpful to consult with a lawyer to find out just what the potential consequences are. We emphasize that what one does is up to the individual, but no one should make decisions rashly or without understanding what risks are being taken. Further, the fact that individual commanders are expected to use their judgment as to what is, or is not, permitted can lead to widely disparate conclusions and policies in different commands.

Nevertheless, there are some fairly straightforward activities that are protected and others that are not.

• **Periodicals.** If a periodical is distributed through official outlets like post exchanges and military libraries, no individual issue can be banned. There may be an exception for “sexually explicit” material, but a process must be followed to determine what qualifies before something can be banned.

• **Distribution of materials.** Of more interest to activists (depending on what activity you are interested in) is that materials can be banned from distribution through unofficial channels if a commander decides they create a clear danger to the loyalty, discipline or morale of military personnel or materially interfere with the accomplishment of the military mission.

This can obviously encompass all manner of material questioning the role or mission of the U.S.
Military. There are, however, a couple of caveats. First, possession of such material cannot be prohibited absent a determination that it is going to be distributed, in which case it can be impounded. (Some commands have concluded that possession of more than one copy of any material implies distribution.) Second, the fact that the material is critical of government policies or officials is not, by itself, grounds for prohibition of distribution. Still, the line between mere criticism and creating a clear danger is, at best, blurry. Indeed, it may be that how effective the criticism is will determine when it becomes a clear danger. One can claim incessantly that US military adventures in the Middle East are counterproductive, violative of international law and serve only to enrich arms merchants but, so long as everyone does their job and the adventures continue, commanders may not care. But, if personnel start questioning what they are risking their lives for and whether it is worth it, that same material could be deemed dangerous.

• Off-post gathering places. During the Vietnam War, coffeehouses sprang up outside military bases in the US and overseas that encouraged resistance to the war and provided legal assistance to deserters and resisters. While they were run by civilians, they were engendered by resistance within military ranks. Thus, while they encouraged such resistance and hoped to expand it, they did not initiate it.

The rulers of the country do not want such gathering places to be replicated. Thus, the instruction authorizes commanders to place “off-post gathering places” off limits when they engage in activities such as “counseling, encouraging, or inciting Service members to refuse to perform duty or to desert; pose a significant adverse effect on Service members’ health, morale, or welfare; or otherwise present a clear danger to the loyalty, discipline, or morale of a member or military unit.” Significantly, these are examples of the kinds of activities that could result in such sites being placed off limits, but the list is not exhaustive. That is to say, even if no one engages in these precise activities—and it is hard to imagine what else there might be—there is no guarantee you won’t be placed off limits. For example, one could well argue that warning people of the potential for sexual violence and the lack of effective remedies may have “a significant adverse effect” on the morale of one or more members.

• Unions are still prohibited and commanders are not permitted to engage in collective bargaining. That may be one reason why the military can violate its contracts with its members with impunity (see Stop Loss) while members can be prosecuted criminally for missing work or quitting their jobs.

• Writing. The instruction quite reasonably prohibits members from writing for publication, including electronic publication, while on duty or while using government equipment. It also quite reasonably permits it for anyone off duty and using their own equipment.

Once again, however, there is a vague caveat that, “if such a publication contains language the utterance of which is punishable under Federal law or otherwise violates this Instruction or other DoD issuances,” a member may be disciplined. So, to be sure you are in compliance, all you need is an encyclopedic knowledge of federal criminal law and DoD regulations. No need to worry.

• Demonstrations on post are generally prohibited. However, activities (presumably including demonstrations) are, by the terms of the instruction only prohibited if they interfere with the military mission or present a clear danger to loyalty, discipline or morale. While that leaves a possible defense to a claim that a particular demonstration was lawful, it seems unlikely any commander or judge would buy it.
• **Demonstrations off-post.** While the instruction talks about what military personnel are prohibited from doing if they want to participate in demonstrations off-post, it is perhaps better to put it in positive terms. That is, personnel are free to participate in demonstrations and other such activities off post with certain prohibitions. The easy ones are that you cannot be in uniform, on duty, or in a foreign country, nor can you say or do things that imply you are representing the military.

There are two other prohibitions that are pretty vague and uncertain. If the “activities constitute a breach of law and order” or if “violence is likely to result,” military personnel cannot participate. Of course, the breach of law and order, if there is one, will likely happen during the demonstration and, if past is prologue, such a breach will only be engaged in by a small number of participants or, quite possibly, law enforcement. And how one can know beforehand that violence can result is a mystery as few, if any, demonstrations announce a plan to engage in violence beforehand. Moreover, law enforcement often predicts violence as a means of reducing the size of demonstrations without any real justification.

• **Advocacy and association.** Military personnel are prohibited from actively advocating supremacist, extremist or criminal gang doctrine, ideology or causes. They are specifically not to advocate anything that attempts to create discrimination on the basis of race, creed, color, sex, religion, ethnicity or national origin (evidently, the president is exempt). Notably, sexual orientation and gender identity are not included, though one could argue they are subsumed by sex. Further, ironically for the military, personnel may not advocate the use of force or violence and may not seek to deprive others of civil rights. Interestingly, having gang tattoos is defined as active participation in gang activities.

Commanders are admonished to look for signs of any violations covered by the instruction and to intervene early if they see such signs, primarily through counseling. The instruction states that “[w]hile mere membership or possession of literature [associated with criminal gangs or extremist organizations] normally is not prohibited, it may merit further investigation and possibly counseling to emphasize the importance of adherence to the Department’s values and to ensure that the Service member understands what activities are prohibited.” On the one hand, early intervention can certainly result in addressing problems before they get out of control. On the other hand, the admonition may well prompt commanders to act precipitously, warning people engaged in protected activity. That can lead to self-censorship, as people fear their protected First Amendment activities will get them into trouble.

**CONCLUSION**

The First Amendment necessarily admits of only narrow exceptions. Members of the military are somewhat more constrained than are private citizens, but their freedoms of speech and association are also protected, and constitutional rights are of no value if they are not exercised. Particularly because commanders are given broad discretion and the instruction itself draws few bright lines, even members of the military should not be afraid to test the limits of what is permitted and what is not. That does not mean that people should violate the specific limits that are placed on those rights by the instruction. Rather, it means that any action taken should be done consciously, with the risks understood and the arguments in favor of the action well thought out.

The MLTF is committed to defending the First Amendment rights of military personnel who choose to resist US imperialism and its current policy of perpetual war. We will do all we can to provide the best
possible guidance as to the possible consequences of any planned action or activity and to defend anyone who faces adverse consequences.

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ON WATCH 40 YEAR RETROSPECTIVE: 1977 – 2017

The following two articles were originally published in July 2017 as online features. MLTF Executive Director Kathy Gilberd surveyed trends and highlights from the back issues, and Rena Guay, MLTF’s web administrator and On Watch production editor, mused about the process of designing On Watch and transitioning to digital publishing realities. See the web version for photos of issues from the archive.

ON WATCH AT 40: A LOOK BACK AT FOUR DECADES OF PUBLISHING RADICAL MILITARY LAW

BY KATHY GILBERD

In July 2017, the Military Law Task Force (which started in 1970, see “Born in Vietnam,” On Watch, October 2015) and friends celebrate the 40th anniversary of On Watch, an invaluable resource for the Task Force and the military law and GI Rights counseling communities. It’s been a time of many adjustments for the US military, with changes in policies affecting LGBT, women, troop recruitment, and veteran services, but there is a hopefully unsurprising consistency and insistency to MLTF’s perspective and communications in that time. We have always been and remain active in seeking and supporting rights and justice for all service members, protecting resisters and whistleblowers, and challenging the violent culture within and the imperialist activities of our military.

This overview takes a look at the breadth of articles and practice guides carried in On Watch for the last four decades. Its author has been involved with On Watch since 1979, both as an editor and its most frequent writer. A sidebar piece by Rena Guay, production editor for On Watch since 2009, reports on the digital side of MLTF publications – itself fraught with frequent changes – and a proposed project to create a catalog of articles and scan all the extant issues from the era before desktop publishing and make them available on the website.
BEGINNING

MLTF’s news publication debuted with the name On Watch in July of 1977. Vol. I, No. 1, introduced the newsletter and included, among other things, a detailed article on the Pendleton 14, a group of Black Marines court-martialed for an attack on what they understood was an on-base meeting of the local Ku Klux Klan. It was written by attorney Howard DeNike and the Pendleton 14’s Legal Defense Fund.

Founded and produced by law students and faculty at Antioch Law School, On Watch was published monthly and then bi-monthly through April of 1978. It included practice articles on handling discharge proceedings based on alleged homosexuality or homosexual acts and analyzed LGB rights cases of that period, including Saal v. Middendorf. In addition to news briefs about military law and policy, articles covered anti-unionization legislation and regulations, benefits for incarcerated veterans, a challenge to military racism by court-martial victims under Article 74(b) of the UCMJ, and Article 138 complaints. The January-February, 1978 issue discussed the settlement in Lipsman v. Brown, in which the Army agreed to amend its discharge regulation, AR 635-200, to require that personality disorder discharges be based on diagnoses by physicians with psychiatric training and that personality disorder discharges normally be fully honorable.

KEEPING ON

After a period of reorganization, MLTF moved its office and On Watch to San Diego, where publication began again in August 1979, with Charles (Ted) Bumer and Kathy Gilberd as editors. During this period, with relatively little GI movement activity, the newsletter focused on a range of military law issues, including the looming presence of draft registration and the military’s policy on homosexuality. Articles ranged from a review of Selective Service regulations and editorials opposing draft registration to DoD’s urinalysis policy to the elimination of the Catlow-Russo defense (used as a defense by soldiers who were involuntarily enlisted as a court-ordered alternative to jail or prison). In the 1980’s, increased attention was given to draft registration, with analysis of Selective Service regs, review of the Solomon Amendments, four primers on defense of registration resisters, articles on the first prosecutions (Ben Sasway, David Wayte, Gillam Kerley and others) and an analysis of the “active enforcement” prosecutions of randomly-selected non-registrants by draft resister and MLTF member Gillam Kerley.

On Watch also carried editorials on the tasks of the anti-draft movement. One such piece was “Why Am I Here? Why Are You Here? Introducing Politics into Draft Counseling” by attorney David Cooper; another was “Racism and Class Bias in Conscientious Objection Cases,” by Kathy Gilberd. Military and veterans law continued to be a focus, however, with articles on Agent Orange litigation, AWOL policies and military search and seizure, as well as continuing analysis of changing regs and litigation on homosexuality, the military’s conduct of anti-lesbian “witchhunts,” and discussion of strategies for organizing within the military. The December 1982 issue included a detailed discussion of DoD’s significant revision of discharge regulations, which remain the underpinnings of today’s discharge system. In December 1984, On Watch reprinted “Black American Soldiers in Vietnam,” by Professor Gill of Tufts University, originally featured in the Indochina Newsletter. A new manual produced by MLTF, the Midwest Committee for Military Counseling, and several other NLG committees—Fighting Back: Lesbian and Gay Draft, Military and Veterans Issues—was reviewed in the May 1985 issue.
In August, 1985, On Watch ran its first article on military HIV (then HTLV-3) policy, critiquing the Navy’s practice of discharging sailors with AIDS on the basis of information they gave to military doctors about gay sex, written by attorney R. Charles Johnson. He discussed, in particular, the case of Bryan Kinney, whose gay discharge and subsequent litigation, handled by MLTF and ACLU members, roused significant public opposition to the military policy. The next issue, in April, 1986, announced DoD’s policy change in response to that opposition—members could no longer be administratively separated or disciplined for information given to health care personnel in the course of HTLV-III evaluation. That issue also discussed an unsuccessful MLTF challenge to the military’s new policy of HTLV-III testing of all personnel.

Attorneys Bill Smith and Tom Turcotte increased our coverage of VA law during this period; Bill Smith, for example, wrote detailed analyses of the new Veterans Judicial Review Act and the Court of Veterans Appeals.

Publication slowed down in the 1990’s, with some years having only a single issue. An undated (probably 1992) issue, Volume XV, Numbers 1-2, focused on lessons of the Gulf War for military attorneys and counselors. It included articles on counseling CO’s during wartime, gay discharges during the war, immigration consequences of desertion and related offenses, a report of a post-war conference on counseling and resistance, and similar articles. The following issue and the November, 1995, issue carried On Watch’s first substantive pieces on military sexual harassment, by Kathy Gilberd and by Harold Jordan. On Watch covered President Clinton’s interim policy on homosexuality in 1996, and discussed options for the permanent policy which was to follow.

In November 1996, On Watch published an overview of VA claims by Tom Turcotte, which remains a useful MLTF memo to this day. That issue also carried a memorial article for Ted Bumer, one of On Watch’s editors.

THE IRAQ WAR ERA

From 1997 through 2002, MLTF underwent a significant hiatus, and On Watch temporarily ceased publication, as a co-chair’s family health problems and Ted Bumer’s death left us without part of our leadership. In 2003, however, with the coming of the Iraq War, Task Force members Marti and Luke Hiken revived MLTF, and resumed publication of On Watch. At this point, On Watch became digitized and available online, so that the MLTF website archive includes issues back to the Spring 2003 issue. Given the war and the increased need for legal assistance with discharges, resistance cases and AWOLs, On Watch included a heavy emphasis on those issues. The first On Watch of this period, an extensive issue in Spring 2003, carried articles on counseling conscientious objectors during wartime, discharge upgrading, and a discharge checklist. The next issue, published that winter, included material on stop loss policies by Teresa Panepinto, conscientious objection, the GI rights hotline and GI resistance. The following issue, a year later, covered military psychiatric policies and an overview of Don’t Ask, Don’t Tell, along with articles on war crimes and military resistance.

In 2007, On Watch shifted formally to online publication, and for a year published shorter but more frequent issues; the January issue focused on an analysis of the Ehren Watada resistance case by Eric Seitz, the February issue focused on military criminal law with an overview by Jim Klimaski and an article by Steve Collier on handing one’s first court-martial, “a progressive lawyer’s dive into the belly of the beast.” A double issue in May included an article by Harold Jordan and Amy Holmes on an
international anti-bases conference and a review of medical discharges and retirement by Kathy Gilberd. An overview of VA cases and the first of a series on involuntary discharges made up the September/October issue, The January/February 2008 issue continued the series on involuntary discharges, announced Ehren Watada’s district court victory, and included an analysis of the use of mercenary contractors by students at Cornell University Law School. The May/June issue had a detailed discussion of military policy on sexual assaults and recounted MLTF’s legal support for IVAW’s Winter Soldier Investigation.

In January 2009, On Watch published James Branum’s extensive review of Army AWOL policies. That summer’s issue continued the involuntary discharge series and analyzed the situation of US war resisters in Canada.

David Gespass’s summary of the Marc Hall case (an Army rapper whose anti-stop-loss lyrics were considered threats) and the Alexis Hutchinson case (an Army mother who refused to deploy to Afghanistan because she could not find care for her ten-month old daughter) were carried in the January/February 2010 issue. The issue also carried an analysis of changes in personality disorder discharges, mandated by Congress, which required second opinions and service surgeon general general review of these discharges where combat vets suffering from Post-Traumatic Stress Disorder or Traumatic Brain Injury might have been misdiagnosed.

MANNING CASE AND THE DEMISE OF DADT

The following issue, in March/April, continued coverage of the Hall case, reviewed the changing state of Don’t Ask, Don’t Tell, and provided a practical guide to hardship discharges. Don’t Ask, Don’t Tell was analyzed again in the next issue, along with an article on preparing for discharge upgrades before separation.

In March 2011, On Watch gave extensive coverage to the gradual death of Don’t Ask, Don’t Tell, took a look at post-Iraq War conscientious objection litigation, and discussed the Chelsea (then Bradley) Manning case. The summer issue included a lengthy discussion of GI resistance and made a call for amnesty. September’s issue proudly announced “DADT Dead: Victory after 18-year battle,” and in subsequent issues Jeff Lake followed the dismantling of the policy and the problems still facing LGB troops. Both the September and December 2011 issues covered counter-recruitment work in local high schools.

New DoD policies on sexual assault were highlighted in the March 2012 issue, along with Bill Galvin’s analysis of the rising number of conscientious objection cases. That June’s issue carried a memorial for Karen Detamore, a long-time MLTF activist and attorney, and Kit Anderton’s extensive analysis of the new Integrated Disability Evaluation System, as well as an article on the military’s increasing use of adjustment disorder discharges in place of personality disorder discharges to rid itself of “problem” servicemembers. In September, On Watch continued its coverage of the Manning case and provided a detailed analysis of emergency federal litigation for military personnel by Louis Font. The December issue analyzed sexual assault and sexual harassment, gave an update on the Manning case, and included an outline and flowchart on involuntary administrative discharges.

Becca von Behren wrote “Navigating the VA” for the March 2013 issue, and Kathy Johnson analyzed the role of women in combat and in the military. The June issue included an overview of minority enlistment discharges by Emily Gallagher, pre-trial motions in the Manning case (in which the military
judge ruled that 1,000 days of pre-trial detention did not violate speedy trial rights) and articles on sexual assault and on veterans’ organizing. The December issue reviewed the Military Whistleblower Protection Act and Article 138 complaints.

In March 2014, Reber Boult discussed his experience with ROTC as a substitute teacher: “A Day with JROTC: Training ‘Gangsters’ for Capitalism;” and Kathy Gilberd gave a detailed analysis of sexual assault policies in the then-new National Defense Authorization Act. The June issue carried James Branum’s practice guide on non-judicial punishment, and Deborah Karpatkin took a look at trends in conscientious objection cases. September’s issue reprinted MLTF’s letter to the Department of Defense’s Military Justice Review Group (written at DoD’s request), suggesting basic changes in the UCMJ, along with an article by Jim Klimaski on retaliation for those who make sexual assault or harassment complaints. In December, On Watch published Maria Santelli’s article on conscientious objection among secularists, and MLTF announced its sponsorship of a campaign to save public schools from militarism and corporatization.

In 2015, amid official commemorations of the Vietnam war, On Watch published David Gespass’ history of the MLTF; the article ended by pointing out that “GI’s are, in ever larger numbers, feeling the same disaffection and opposition to the military today that they did to the war in Vietnam. And the Guild, through the Military Law Task Force, will do its part to assist them in transforming their disaffection and opposition into effective resistance.”

2016 saw issues analyzing the role of women in combat, and the military after Don’t Ask, Don’t Tell; trends in conscientious objection cases and the implications of Hobby Lobby and the Religious Freedom Restoration Act for conscientious objectors; the then-new transgender policy and Chelsea Manning’s case. Issues so far in 2017 have looked at the implications of the Trump administration for the GI rights advocacy community, new sexual assault provisions of the 2017 National Defense Authorization Act and military policies against hazing and bullying. The summer issue carried a memorial for Teresa Panepinto, whose work helped build the GI Rights Network and sustain MLTF. It also included an outline of the work MLTF proposes to do to prepare for increased warfare in the Trump era—everything from updating its memos on dissent and discharges to creating rapid response teams for resistance and conscientious objection cases.

CONCLUSION

Over the years, On Watch has reflected the breadth of MLTF’s work, and analyzed specific campaigns such as support of resistance to the Iraq and Afghanistan wars, challenges to military sexism, homophobia and sexual violence, and support for veterans’ rights. On Watch stands alone as a publication building progressive military law skills for attorneys and counselors, at the same time bringing the Guild’s political perspective to military personnel policies and the military “mission.”

We will continue to publish – via whatever means are current and most accessible – for the foreseeable future, as long as service members need information and support and as long as their legal advocates need reliable resources and peer guidance.

We rely on memberships and donations to sustain our publications and other activities. If On Watch has provided you with useful information during its 40 years, please consider a donation. Any amount is much appreciated.
LAST MINUTE ANNIVERSARY, OR HOW I GOT KATHY GILBERD TO EVALUATE 40 YEARS OF ON WATCH ARTICLES IN TWO WEEKS

BY RENÉE GUAY

I have a rather inconvenient habit of thinking up great ideas that require a lot of work to implement. OK, I think they are great, and sometimes I get corroboration. One such recent idea, which came to me early in July of 2017, was listing On Watch articles in a spreadsheet, searchable by title, date, author, topic, etc.

I mocked up a sample, looked all the way back to 2003, where my digital archive ends, and got more enthused about the concept, because I realized that, in practical terms, MLTF has produced some pretty impressive content in that time, considering the small membership base and minimal financial resources available. I got so enthused, in fact, that I had another idea: What about going back beyond the digital archive I had access to, and listing articles from the beginning .... hold on, when was the beginning, anyway?

Of course, the person to ask was Kathy Gilberd, MLTF’s executive director who has been with the organization, if not from the beginning, at least relatively close to it. Intrigued by the idea of a searchable catalog that would likely be pretty useful to her as a regular writer for MLTF, answerer of phone calls, etc., she looked in her carefully preserved paper archive and found that Vol. 1, No. 1 was dated July 1977.

July, you say? In a year ending in "7?"

Yes, we realized, we were actually in the 40th anniversary month of On Watch! I think we both had a rather mixed reaction to this – because actually celebrating the occasion, beyond our party of two, would involve some quick attention.

But, enthused as we were, we got on it, or rather Kathy got on it (with me providing encouragement and some editorial tweaking) and she has produced a historical overview of the publication, titled "On Watch at 40: A look back at four decades of publishing radical military law." In time to get it published as an online exclusive while it's still actually July!

I think her overview is quite impressive itself, and think you will enjoy reading it, and maybe feel some pride at what your dues, your writing, even your reading, has helped produce within the pages of MLTF’s newsletter/journal.

Meanwhile, I want to make just a few comments about my history of working on On Watch, which has primarily been as the digital production editor, since the fall of 2007 – so yes, coming up on an anniversary in that regard too (presents optional).

DESIGN AND DIGITIZING

Today’s On Watch is a much simpler design than I developed in earlier years, even two years ago. This evolution was somewhat forced by financial concerns – production costs needed to be
reduced significantly – but also by the new way that many readers are accessing content now – on mobile devices rather than on paper, or even by viewing a PDF replica of the paper version on a large monitor. So this year --and this transition is still in process -- you will see less focus on the PDF version, and more on a web-based version of articles that is responsive to the small screens that more and more readers are using. These will be linked together to produce a web-based "issue" that can be read successively, if desired. We'll still produce the PDF (and paper copies from it to distribute at events), but the design will be simple. No more two-column pages, unnecessary graphics, or visual flourishes. The Microsoft Publisher program has been abandoned and production is done in Word.

Now, me getting Kathy to look back through and review the contents of her pre-computer paper copies, as well as the 2003 – 2017 digital files of On Watch, constituting the entire archive, did not leave me with nothing to do, because she sent those paper copies to me and I'll be digitizing them for your (eventual) perusal. As you might imagine, especially if you've ever tried to scan an aged document on colored paper, this is a considerable task! Damn my bright ideas!

Which brings me back to that original idea about the catalog of On Watch articles. We are working on it, but it's a time intensive project as well, so it will be a while unless we get an overwhelming clamor for the resource, and the financial means to make it happen faster. (Donate here!)

Access to the catalog will be a perk of membership – MLTF doesn't have that many perks to entice joining, so it's nice to add a (presumably) useful resource for those who support and sustain the organization.

So, hopefully in the not too distant future, a MLTF member can navigate to the online catalog, search and find that article they remember reading maybe five years ago, but which would be SO useful right now. And, because you know five years can entail a lot of change in military law, the record would also point to more recent articles on the topic.

Let's call it an anniversary present, to ourselves, because, dang, MLTF members and friends have produced some excellent and significant material over the past 40 years. Congratulations!

A NOTE ON “THE VIETNAM WAR” DOCUMENTARY SERIES

By Jim Klimaski

Got my invitation to the preview of Ken Burns and Lynn Novick's new documentary. So I went. The ticket, which you had to pick up at the Kennedy Center just before the showing, gave you an indication to where this was going: "Bank of America presents The Vietnam War." There, it finally admitted to what we in the anti-war movement at the time already knew. My mind flashed back to the burning of the Bank of Amerika branch in California.

But that was not all that caused me concern. There was the listing of the underwriters of the series. After the usual public television sponsors, the last one had the screen to himself in letters at least twice the size of any of the previously listed credits — DAVID KOCH. There, that said it.
We were presented with clips from five of the episodes for a total of 45 minutes of preview. The total viewing time is to be 18 hours. They have captured some tremendous footage of the war and many of the interviews were gut wrenching. There even were interviews with former NVA and NLF (VC to the filmmakers) members. But even in this preview one can get an idea where this documentary is going. The war was an innocent mistake, but we could have won it if it wasn’t for the bad press. There was President Johnson commenting about the "fake news" spread by the press in reporting the Tet Offensive. "We won, dammit!" Oh, then why did you quit the race for re-election?

The anti-war actions were covered — Kent State, the Pentagon March in 1967 and others from various cities around the country. Some of military that were interviewed recognized we were fighting on the wrong side.

Should you watch it? Yes, but don’t expect a strong political analysis. After the preview there was a panel made up of Sen. McCain and former Senators John Kerry and Chuck Hagel. It was not at all enlightening and people were heading for the door before it ended. The filmmakers and Sharon Rockefeller, the President of the Corporation for Public Broadcasting, couldn’t praise the Bank of America enough. With the Veterans dying off, the door on this chapter of our history can now be closed. So they say, so they want. So they can make the same mistakes in new wars.

Jim Klimaski was a co-founder of the MLTF and is the principal in the law firm Klimaski and Associates, P.C., located in Washington, DC. He practices in the fields of military law, employment law, security clearances, and freedom of information and privacy law.

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Online Feature

RESOURCES FOR VIEWING AND CRITICAL REACTION TO “THE VIETNAM WAR“ SERIES

A collection of websites, publications, stories, posts, rants, concerns and other responses by Vietnam-era vets to the PBS documentary by Ken Burns and Lynn Novick.

AVAILABLE OCTOBER 1ST
VISIT NLGMLTF.ORG/PBSVIETNAMWAR

“If there was ever a time that our bodies were ‘put upon the gears and upon the wheels, upon the levers, upon the apparatus,’ as Mario Savio once said, it was during our GI Resistance. Disobeying orders, going awol, deserting, crushing the morale of lifers, and refusing to do ANYTHING, all helped to break down the entire military by the end of 1973....and it wasn’t just about the war, it was about the system. ‘FTA, Forever. We said it, we lived it, and we meant it.’

Ward Reilly, Vietnam 71-74. Leader in antiwar movement ever since.
The U.S. military, during its war in Vietnam, witnessed such a high level of disintegration that Col. Robert Heinl was caused to write in the Armed Forces Journal in 1971:

“By every conceivable indicator, our army that now remains in Vietnam is in a state approaching collapse, with individual units avoiding or having refused combat, murdering their officers and non-commissioned officers, drug-ridden, and dispirited where not near mutinous.

Elsewhere than Vietnam, the situation is nearly as serious...Sedition, coupled with disaffection within the ranks, and externally fomented with an audacity and intensity previously inconceivable, infests the Armed services."

This rebellion had many causes and little central leadership. The early voices of dissent came from veterans of the fighting who saw the political reality on the ground. Spec. 4 Jeff Sharlet, trained to be a translator of intercepted messages for the Army Security Agency in 1963-1964, returned to civilian life and started the newspaper Vietnam GI, an explicitly anti-war paper that circulated widely. Master Sgt. Green Beret Donald Duncan returned in 1965 to tell Ramparts magazine, “The whole thing was a lie. We weren’t preserving freedom in South Vietnam. There was no freedom to preserve.”

The horrors of the war, from the massacres of civilians and the murder of prisoners to the destruction of entire villages, rattled many U.S. soldiers, draftees and enlistees alike. Spontaneous acts of resistance increased. In 1967 Vietnam Veterans Against the War (VVAW) was formed, and at its peak had over 25,000 members.

Stateside, three soldiers at Fort Hood refused orders to Vietnam in 1966 and became known as the Fort Hood 3. In the same year Capt. Howard Levy at Fort Jackson refused to train soldiers heading to Vietnam and Pvt. Howard Petrick was threatened with court-martial for having anti-war literature in his locker. In 1967 Pvt. Andy Stapp at Fort Sill was court-martialed for refusing to open his locker, which MPs broke open with an ax, uncovering a stash of anti-war literature.
The civilian anti-war movement was not slow to respond. In early 1968 Fred Gardner and Donna Mickelson opened the UFO in South Carolina, the first anti-war coffeehouse designed to attract counter-culture GIs at Fort Jackson. Its success led to the creation of anti-war coffeehouses and counseling centers at most major U.S. military bases, which nurtured and supported the growing GI movement. It is these coffeehouses which are the focus of Douglas Parsons' new book, Dangerous Grounds.

The coffeehouses brought together civilian organizers and active duty military personnel in a national network. It was the only ongoing organization with the ability to connect soldiers from different bases and branches of the service, providing not only a space for outreach but also an off-base location for planning events and producing anti-war newspapers. Financing was provided by the United States Servicemen’s Fund (USSF), which allowed for the mass printing and distribution of literally hundreds of anti-war papers focused on a GI audience. What we now simply call “the GI movement” was larger and more nuanced than just the network of coffeehouses, but these centers were a durable aspect of the “externally fomented” sedition referenced by Col. Heinl.

Parsons tells the story of USSF and the coffeehouses by focusing on three; the UFO in Columbia, South Carolina near Fort Jackson, the Oleo Strut in Killeen, Texas near Fort Hood and the Shelter Half in Tacoma, Washington near both Fort Lewis and McChord Air Force Base. By telling the parallel stories of the coffeehouses, the politics of the towns where they operated and the scope of the anti-war movement at each base, Dangerous Grounds effectively shows what worked well and what failed. Only the Shelter Half existed in a town with a large left-wing support movement; both the Oleo Strut and the UFO had to battle the local politicians, and the staff of the UFO were ultimately arrested and jailed. All three aided large GI resistance movements, but Fort Hood ultimately built the most successful movement.

Fort Hood was especially volatile, for reasons unique to the U.S. war in Vietnam. While much of the resistance came from draftees, who were in for two years, far more sustained rebellion came from GIs who had enlisted and were in for three years. Many enlisted because the draft seemed inevitable and young men wanted to choose a particular branch of service. Far more were facing some form of criminal charges, and were given the choice of jail or enlistment. They were hardly volunteers.

In the years of the Vietnam War, U.S. soldiers only faced one mandatory tour of duty in the combat zone. A draftee went through training, did a tour of duty, and then had only a few months until discharge. Enlistees came back from Vietnam, deeply affected by their experience, and still faced more than a year of additional time in uniform. At Fort Hood, with over 40,000 soldiers, it is estimated that in the late sixties over 15,000 were restless, disaffected Vietnam veterans.

When soldiers from Fort Hood were ordered to riot control duty in Chicago in 1968, the situation was explosive. Hundreds of soldiers, many of them Black combat veterans, gathered for a “rap session” that lasted all night; in the morning 43 were arrested and charged with disobeying orders. The response throughout the base was nearly open rebellion. The Oleo Strut went on the help organize demonstrations in Killeen and produced thousands of copies of Fatigue Press, the newspaper written and distributed by GIs.

The story of the movement and the coffeehouses which supported it is not widely known. As someone who worked at the Shelter Half and on the staff of the USSF, I can vouch for the close to pinpoint accuracy of Dangerous Grounds. Parsons should have conducted more live interviews; he
only spoke to six people, only one of whom was a veteran, relying primarily in the written record. He would have learned much from vets who worked at the coffeehouses, like Hal Muskat, and from more organizers, like Judy Olasov, who worked at the UFO, set up a coffeehouse at Fort Leonard Wood, and then worked at the Shelter Half. Parsons has not written a complete account.

Dangerous Grounds also suffers from some omissions. There is little exploration of the role of left-wing parties in the coffeehouses or in the GI movement, despite the fact that the Progressive Labor Party, the Socialist Workers Party and the Spartacist League all sent cadres into the military. He misidentifies Andy Stapp as a convert to the Socialist Workers Party when in fact Stapp joined the Workers World Party. This small detail had a major impact when Stapp’s group, the American Serviceman’s Union, became significant at Fort Lewis.

Dangerous Grounds also makes no mention of the NLG, despite the fact that the Guild sent law students to most coffeehouses during the summer of 1970 and helped establish the Pacific Counseling Center, which brazenly sent organizers to the Philippines. In the epilogue, Parsons covers the GI Rights Network and mentions Coffee Strong at Fort Lewis (now Lewis/McChord) and Under the Hood at Fort Hood, but he makes no mention of the Military Law Task Force. Finally, Parsons’s book is well-written, but it cannot be called a compelling read.

Despite these limitations, Dangerous Grounds is important and full of useful information. For a more complete and compelling introduction to the GI movement during the Vietnam War, I have to recommend David Zeiger’s excellent DVD, Sir! No Sir! Parson’s himself pays Zeiger’s film the ultimate compliment – he draws on it extensively.

Matthew Rinaldi worked at the anti-war coffeehouse at Fort Lewis from 1969 to 1971 and was on the staff of the USSF from 1971 to 1973. He became an attorney in 1983 and is currently on the MLTF steering committee.

2017 NLG CONVENTION REPORT

BY JEFF LAKE


The Convention was highlighted by awards given to Oscar Lopez Rivera (Arthur Kinoy Award) and the Water Protector Legal Collective (Law for the People Award). Both awardees inspired Guild members to continue the struggle for justice here in the U.S. and around the world. The MLTF sent its greetings as follows:

“The Military Law Task Force rejoices at the release of Chelsea Manning. But our joy is tempered by the knowledge she spent seven years in brutal...
confinement for exposing the ugly face of US imperialism. It is tempered further by all those political prisoners still languishing in our prisons and jails.”

The MLTF did not sponsor a workshop or major panel at this convention. However, as usual, the MLTF literature table was staffed and featured a variety of MLTF publications and information. Many thanks to MLTF Treasurer Libby Frank for being a stalwart at the table.

Finally, the Convention featured an impromptu demonstration at the Department of Justice building. Attorney General Sessions had been set to give an outdoor press conference at the time of the demonstration, but the conference was moved inside for unexplained reasons! MLTF members joined the rest of the Guild in this spirited event and hopefully this energy will sustain us in the year ahead.

ANNOUNCEMENTS

DOD ISSUES NEW GUIDANCE FOR REVIEW BOARDS

On September 14, 2017, the Department of Defense issued a policy memo with guidance for the Discharge Review Boards and Boards for Correction of Military/Naval Records, requiring “liberal consideration” of claims based in whole or in part on mental health conditions, sexual assault or sexual harassment. If properly followed, it should increase the chances of successful upgrades or changes of reason for discharge for many vets. The memo is available at https://www.defense.gov/Portals/1/Documents/pubs/Clarifying-Guidance-to-Military-Discharge-Review-Boards.pdf.
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/.

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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.

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HOW TO DONATE

Your donations help with the ongoing work of the Military Law Task Force in providing information, support, legal assistance and resources to lawyers, legal workers, GI’s and veterans.

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Thank you!