National Lawyers Guild Military Law Task Force

ON WATCH

Critical Perspectives on Military Law

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Contents

MILITARY VACCINES UPDATE, APRIL 2022

By Jeff Lake

In the Fall, 2021, issue of *On Watch*, I discussed the directives from DoD regarding the COVID-19 vaccine. Basically, all servicemembers are required to receive the vaccine unless they qualify for a medical or religious exemption. As servicemembers have always been required to receive a number of other vaccines, these exemptions are rare and compliance with the directives has been high.

However, two lawsuits have been filed in federal courts on behalf of naval personnel seeking religious exemptions to the vaccine mandate. The cases are *U.S. Navy Seals v. Austin,* filed in Fort Worth, Texas and assigned to Judge Reed O'Connor, and *Navy Seal 1, et al. v. Austin,* filed in Tampa, Florida and assigned to Judge Steven Merryday. Perhaps unsurprisingly, so far these cases are proving successful and the military has been ordered by the Courts to delay enforcement of the vaccine mandate against the plaintiffs.

The Texas case was filed on November 9, 2021. The plaintiffs targeted Judge O'Connor as he had previously ruled that the Affordable Care Act was unconstitutional. Here, the claim is that the plaintiffs have "religious" objections to the vaccine because: "(1) opposition to abortion and the use of aborted fetal cell lines in development of the vaccine; (2) believe that modifying one's body is an affront to the Creator; (3) direct, divine instruction not to receive the vaccine; and (4) opposition to injecting trace amounts of animal cells into one's body." (Order on Preliminary Injunction, Case No. 4:21-cv-01236-O, filed 1/3/22, pp. 3-4.) The court issued a Preliminary Injunction on January 3, 2022, stating: "The Navy servicemembers in this case seek to vindicate the very freedoms they have sacrificed so much to protect. The COVID-19 pandemic provides the government no license to abrogate those freedoms. There is no COVID-19 exception to the First Amendment. There is no military exclusion from our Constitution." (Order on Preliminary Injunction, Case No. 4:21-cv-01236-O, filed 1/3/22, pp. 1-2.) On February 7, 2022, the plaintiffs filed a Motion for Classwide Preliminary Injunction against the entire U.S. Navy barring enforcement of the vaccine mandate or "taking any adverse action against any member of the Navy Class . . . because of their requests for religious accommodation."

Following the injunction, the Navy appealed to the Fifth Circuit Court of Appeals. On February 28, 2022, in a per curiam decision, the Court upheld the injunction. The court rejected the Navy's arguments that it had a compelling interest in requiring vaccinations "both (1) to reduce the risk that they become seriously ill and jeopardize the success of critical missions and (2) to protect the health of their fellow service members." (*U.S. Navy Seals v. Biden* Case No. 22-10077, p. 24.) The Court instead found that partially staying the injunction pending appeal would substantially harm the Plaintiffs.

Of note, the Court concluded the following:

> Finally, the extent to which military expertise or discretion is involved does not militate against judicial review. 'Courts should defer to the superior knowledge and experience of professionals in such matters such as promotions or orders directly related to specific military functions.' *Mindes*, 453 F.2d. at 201-202. To be sure, '[t]he complex, subtle, and professional decisions as to the composition, training, equipping and control of a military force are essentially professional military judgments[.]' *Gilligan v. Morgan* 413 U.S. 1, 10, 93 S.Ct. 2440, 2446 (1973) The Navy may permissibly classify any number of Plaintiffs as deployable or non-deployable for a wide variety of reasons. But if the Navy's plan is to ignore RFRA's protections, as it seems to be on the

> record before us, court must intervene because '[g]enerals don't make good judges – especially when it comes to nuanced constitutional issues.'" *Air Force Officer,* 2022 WL 468799 at 8.

Thus, the Federal Courts are now beginning to weigh in to overrule the military on the issue of COVID-19 mandates.

The Biden Administration applied for a partial stay to the U.S. Supreme Court. On March 25, 2022, the Supreme Court granted this application "insofar as it precludes the Navy from considering respondents' vaccination status in making deployment, assignment, and other operational decisions" pending further litigation in the Fifth Circuit and possibly again at the high court. (*Lloyd J. Austin, III, Secretary of Defense, et al. v. U.S. Navy Seals 1-26 et al., 595 U.S. ____ (3/25/2022.)* Justice Thomas would have denied the application. Justice Alito, joined by Justice Gorsuch, predictably dissented. In a grumpy 10-page dissent, Alito notes concern that the Navy will now be able to sideline all unvaccinated sailors, however he concedes the rationale when it comes to "Special Warfare service members." He is also concerned that more medical exemptions are being given than those for religion. Finally, Justice Kavanaugh wrote separately and concluded, "In sum, I see no basis in this case for employing the judicial power in a manner that military commanders believe would impair the military of the United States as it defends the American people." The case now returns to the lower courts for further litigation; however, the Navy is now allowed to consider vaccination status when making deployment decisions.

Not to be outdone, on the Monday following the Supreme Court's Order on a Friday, Judge O'Connor certified the case as a class action and expanded his injunction to the class. This means that there can be no separations for the 4,095 unvaccinated in the Navy who have requested religious exemptions. However, the injunction is stayed "insofar as it precludes the Navy from considering respondent's vaccination status in making deployment, assignment and other operational decisions" pursuant to the Order from the Supreme Court.

The Florida case was filed on October 21, 2021. The plaintiffs this time targeted Judge Steven Merryday who had previously blocked a CDC order regarding restrictions on cruise ships due to COVID-19. The plaintiffs predictably prevailed in their request for a Preliminary Injunction against enforcement of the vaccine mandate on February 18, 2022.

The claims here are similar to the ones in Texas. The Order states:

> Judged under the governing legal standard, both Navy Commander and Lieutenant Colonel 2 suffer a substantial burden on a sincere religious belief. Navy Commander refuses vaccination to remain true to his faith, which requires the preservation of his body as a temple of the Holy Spirit. Similarly situated and believing that each COVID-19 vaccination is 'religiously unclean according to [Lieutenant Colonel 2's] personal faith,' Lieutenant Colonel 2 refuses vaccination. (Doc. 60-2 at 9) Lieutenant Colonel 2 voices a sincere objection to 'any substance . . . connected with [] aborted fetal cell lines.' In practicing her religious belief, Lieutenant Colonel 2 finds her opposition to abortion irreconcilable with accepting any COVID-19 vaccine." (Preliminary Injunction and Order, Case No. 8:21-cv-2429-SDM-TGW, filed 2/18/22, p. 33.)

Similar to the 5th Circuit, Judge Merryday had no problem brushing aside the concerns of the military. The Order goes on as follows:

> In opposition, the defendants claim that preliminary relief 'would encourage other members to attempt to bypass the military's process and ask courts to enter similar injunctive relief, which

> 'in the aggregate present the possibility of substantial disruption and diversion of military resources[.]' (Doc 74 at 36) (citing *Parrish v. Brownlee,* 355 F.Supp. 2d 661, 669 (E.D.N.C. 2004)). But no injury to the public results from recognizing a person's constitutional or statutory right of from 'encouraging' a person to vindicate that right in federal court, especially when the statute creating the right expressly authorizes such judicial vindication. Further, to the extent a 'substantial disruption' results from the defendants' systemic failure to assess a religious exemption request 'to the person' the 'harm' suffered by defendants results only from the defendants' own failure to comply with RFRA. By enacting RFRA, Congress guaranteed each service member 'appropriate relief' from an infringement on the service member's Free Exercise. To say the least, an attempted evasion of judicial review strongly disserves the public interest." (Preliminary Injunction and Order, Case No. 8:21-cv-2429-SDM-TGW, filed 2/18/22, pp. 45-46.)

So much for judicial restraint when it comes to the military.

Following this, the government applied for an emergency stay pending appeal. Again, the government's request was denied. Judge Merryday wrote the following:

> In sum, the declarations, both bulky and full of numbers, say little or nothing about, for example, the marginal risk, if any, the Navy Commander, who is triumphantly fit and strong, who is robustly healthy, who is young, who has already caught and recovered from COVID-19 with only trivial symptoms, who has commanded the same destroyer 'underway' on a 300-day mission with a 320-sailor crew, and who has designed and implemented successfully and anti-COVID protocol customized to the needs of his vessel cannot serve – consistent with his sincerely held beliefs – without vaccination as a reasonable accommodation that both preserves the compelling governmental interest and reasonably accommodates the free exercise of religion." (Order, Case No. 8:21-cv-2429-SDM-TGW, filed 3/2/22, pp. 16-17.)

Once again, according to this Judge, the military's facts and numbers must give way to a "triumphantly fit and strong" Commander who does not feel like obeying orders.

It is important to note here that some courts are ruling in favor of servicemembers with truly outlandish "religious" claims – such as "divine instruction" not to receive the vaccine and claims that the vaccines are derived from aborted fetal cell lines. As Eugene Fidell points out, it could be argued that common drugs such as Tylenol and Advil, Maalox and Pepto Bismol, Tums and Priolosec, Lipitor and Albuterol and even Ivermectin are derived from such lines. The Vaccine Mutiny - The Bulwark Contrast these recent court decisions with the intense scrutiny given to conscientious objectors when they attempt to invoke religion as part of a C.O. claim. If the plaintiffs continue to prevail, there could be huge restrictions on how the military commands and disciplines its servicemembers based on religious claims. There are currently 3 votes for this at the Supreme Court.

As always, the editors of *On Watch* will continue to monitor developments concerning this issue and will report them in subsequent issues. Be sure that your membership is current in order to receive the latest information.

THE PRIVACY ACT AND THE SELECTIVE SERVICE SYSTEM

By Edward Hasbrouck

The Federal Privacy Act of 1974 (5 U.S.C. §552a) is applicable to the Selective Service System (SSS) and to its system of records concerning registrants. But neither the potential value nor the potential risks of using the Privacy Act to force the SSS to keep records of claims by registrants for deferment or exemption from military service has been recognized by draft counselors[1], lawyers, or legal workers.

The Privacy Act establishes procedures by which people who have registered (or who have been registered) with the SSS can request classification, deferment, or exemption by the SSS (even before the SSS is carrying out classification or exemption), submit evidence in support of these claims, require the SSS to keep records of these claims and all of the evidence submitted in support of them, and make a concise entry in SSS records, which the SSS is required to retain and include whenever the record is disclosed, as to the claim(s) they have made, how they believe they should be classified, or other matters.

The Privacy Act applies to all Federal agencies, not just the SSS. The Privacy Act was enacted in 1974, after the last inductions into the U.S. military. It was not intended to be used by individuals to force the SSS or other Federal agencies to keep records of "premature" claims. But this is one of its uses.

The Privacy Act could be especially useful for those registrants who plan to respond to an order to report for examination or induction by making a claim for classification as a conscientious objector (CO) or some other deferment or exemption, and who want to make a claim and/or submit evidence to the SSS in advance, before the SSS is processing such claims or wants to receive them.

Using the Privacy Act could also have significant adverse legal consequences, however, and registrants or potential registrants should be advised of, and think carefully about, the risks they are taking, before they submit a Privacy Act request to the SSS.

Registering, acknowledging, or responding to any communication from the SSS, or submitting additional claims or evidence to the SSS — including through a Privacy Act request — is a high-risk strategy. The general advice of most criminal defense attorneys is to remain silent (and contact a lawyer immediately) if questioned by any law enforcement agency. My advice to most people faced with registration[2] is not to register until just before their 26th birthday[3] unless they have to register sooner to qualify for some government program they decide is a higher priority than their opposition to the draft, and not to communicate with or acknowledge receipt of any communication from the SSS until then.

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1 For general information about draft counseling and some of the circumstances in which an individual is likely to seek draft counseling and/or legal advice, see, "Draft Counseling and Decisions about Selective Service: Resources and advice for draft counselors and counselees", <https://hasbrouck.org/draft/counseling.html>.

2 "Advice about Selective Service registration: I don't want to be drafted. What should I do?", <https://hasbrouck.org/draft/advice.html>.

3 "Decisions about Selective Service to make before your 26th birthday", <https://hasbrouck.org/draft/26.html>.

Claims and supporting information submitted through a Privacy Act request can make a record with the SSS that, if and when a registrant is ordered to report for examination or induction, *might* end up supporting their claim for reclassification, deferment, or exemption.

On the other hand, the situation in the world, the nature of the wars being fought, and the registrant's beliefs, goals, situation in life, and strategy with respect to the SSS may all have changed by the time an order to report arrives. The criteria for the classification being sought may have changed in the meantime, and the same evidence may end up being used against that claim, or being used against a registrant at trial or sentencing, if they are later prosecuted. Registering with the SSS in the hope of pursuing CO classification or another deferment or exemption if drafted is a high-risk gamble. "Locking in" that claim through a Privacy Act request ups the ante on that gamble.

Even if you are already registered, staying silent and avoiding any further engagement with the SSS may be the safest option[4] for most people navigating the maze[5] of the SSS. But I understand that some people may, despite the risks, want to document and force the SSS to acknowledge their claim in advance, even if the claim and supporting evidence will be ignored until the individual is actually ordered to report for examination or induction. In particular, a Privacy Act request, appeal, and notice of dispute, as explained below, is the closest an individual can get to "registering as a CO", if that's what they really want to do.

SSS RECORDS SUBJECT TO THE PRIVACY ACT

Using the Privacy Act successfully requires careful attention to the procedural requirements. There is little case law[6] for guidance, and few lawyers have expertise or experience with the Privacy Act. You (and any draft counselor you are working with) should start by familiarizing yourself with the Privacy Act statute (5 U.S.C. §552a), the SSS Privacy Act regulations and notices, and the "records schedules" governing retention by the SSS of registration records and records of Privacy Act requests.

SSS records about individual registrants, including any classification records, are included in a "system of records" called the Registration, Compliance and Verification (RCV) System.[7] Privacy Act rules specific to the RCV are contained in a System Of Records Notice (SORN), the most recent version of which was published at 82 *Federal Register* 29971-29972 (June 30, 2017).[8] General SSS rules and procedures for Privacy Act requests are included in 32 CFR § 1665 (last revised February 18, 1982).[9]

Retention of RCV records is governed by Records Schedule DAA-0147-2015-0004.[10] Retention of records

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4 "Deciding whether or not to register with the Selective Service System: Options to consider, and reasons some people choose each of these options", <https://hasbrouck.org/draft/options.html>.

5 For a map of this maze, see, "Flowcharts of draft registration and Selective Service procedures and choices", <https://hasbrouck.org/draft/media/flowcharts.html>.

6 For a biased but useful treatise from the government's perspective on Privacy Act case law, see <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition> or the most recent edition linked from <https://www.justice.gov/opcl/privacy-act-1974>.

7 See the Privacy Impact Assessment (PIA) for SSS records (August 2017) , available at <https://hasbrouck.org/draft/SSS-Privacy-Impact-Assessment-2017.pdf>.

8 Available at <https://hasbrouck.org/draft/SSS-RCV-SORN.pdf>.

9 Available at <https://hasbrouck.org/draft/SSS-Privacy-Act-regs.pdf>.

10 Available at <https://hasbrouck.org/draft/SSS-records-disposition-authority-2016.pdf>. See also SSS Records Schedule NC1-147-81-1 for SSS registration cards, November 1981 version available at

related to Privacy Act requests for amendment of records is governed by Records Schedule DAA-GRS-2013-0007-0007 promulgated by the National Archives and Records Administration (NARA) as part of NARA General Records Schedule 4.2, item 090.1.[11]

(I've posted copies of these documents on my Web site[12] for convenience, but they could be revised at any time. Revisions to SORNs and Privacy Act regulations are published in the *Federal Register*. Current versions of all approved Records Schedules are available on the NARA Web site.[13])

Other Federal laws impose additional requirements related to the collection, maintenance, use, and sharing of personal information by Federal agencies, but without creating any private right of action for aggrieved individuals. In particular, the SSS appears, at least as of early 2022, to be in violation of the Computer Matching Act, which requires annual cost-benefit reviews and reporting to Congress of data-sharing agreements, such as those the SSS has with other Federal agencies.[14] In 2020, the SSS appointed a "Data Governance Board and Data Integrity Board", presumably to conduct the reviews required to bring the SSS into compliance with the Data Matching Act.[15] But in its February 2022 response to a Freedom Of Information Act request, the SSS said it could find no record of any of the required reviews or reports having been completed or submitted.[16]

REQUEST FOR ACCESS TO SSS RECORDS

An individual may not be sure, and might be mistaken even if they think they are sure, whether or not they have registered or been registered with the SSS as a collateral consequence of some other action such as applying for a driver's license or learner's permit or matriculating at a state college. The notice that they were being registered, or would be registered when they reached age 18, may have been deeply buried in the fine print at the end of a long form that few people read in its entirety.

It's possible for an individual to use the Privacy Act to request a copy of their own SSS records, in order to find out if they are registered, but this is generally neither necessary nor advisable.

The most difficult element of any violation of the Military Selective Service Act (MSSA) for the government to prove at trial is likely to be knowledge of the requirement alleged to have been violated: the requirement to register or to report address changes, the order to report for examination or induction, etc. The "specific intent" element of the MSSA means that, unlike with respect to most laws, ignorance of the law is a defense in these cases. More than that, the government has the burden of proving actual knowledge on the part of the defendant of the specific requirement of the MSSA that the defendant is accused of violating. An individual should be very cautious about taking any action — such as registering, signing for a registered letter or opening an e-mail message (e-mail messages can contain tracking code that tells the sender if they have been opened) from Selective Service, making a Privacy

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<https://hasbrouck.org/draft/SSS-records-disposition-authority-1981.pdf>.

11 Available at <https://hasbrouck.org/draft/DAA-GRS-2013-0007.pdf>.

12 See links at <https://hasbrouck.org/draft/privacy-act.html>.

13 NARA, "Records Control Schedules (RCS)", <https://www.archives.gov/records-mgmt/rcs>.

14 These requirements and the failure of many Federal agencies to comply with them were discussed in GAO report 14-144, "Computer Matching Act: OMB and Selected Agencies Need to Ensure Consistent Implementation", January 2014, <https://www.gao.gov/assets/gao-14-44.pdf>.

15 Selective Service System Data Governance Board and Data Integrity Board Charter, July 15, 2020, <https://www.sss.gov/wp-content/uploads/2021/08/DGB-Charter-July-2020.pdf>.

16 Response to request FOIA-22-12, <https://hasbrouck.org/draft/SSS-FOIA-response-17FEB2022.pdf>.

Act request, or writing to the government or making public statements about nonregistration — that could provide evidence of their knowledge of SSS general requirements or individual orders.

A Privacy Act request by an individual for their own registration record is likely to create a record evidencing their knowledge of the registration requirement, and may provide the SSS with a more current address that will make it easier for them to serve them with an order to report. It will generally be safer to have some other trusted intermediary – such a draft counselor, lawyer, or legal worker – make inquiries to the SSS (not through the Privacy Act) to find out if they are already registered. Perhaps surprisingly, any registrant's name, Selective Service Registration Number, date of birth, and classification (if any) are available on request to any member of the general public. This is enough information to tell whether they are registered and, if so, to confirm that they have not been classified. (This might be seen as a necessary preliminary to requesting amendment of their record to show a classification request, as discussed below. But since nobody is being classified, and no current registration records include any classification information, this is isn't strictly necessary.)

REQUEST FOR AMENDMENT OF SSS RECORDS

To be sure that it is retained by the SSS, a request must be made by the individual to whom the records pertain, and must be worded explicitly as a Privacy Act request for amendment of records. A letter that begins, "I request that I be classified as a conscientious objector" will be thrown away without a trace. Appropriate language to use would be something like this:

> Pursuant to the Privacy Act of 1974 (5 U.S.C. §552a) and regulations of the Selective Service System at 32 CFR § 1665.4, I hereby request that incomplete and/or inaccurate records pertaining to me which are contained in the Registration, Compliance and Verification (RCV) System be amended to indicate that I am entitled to classification as a conscientious objector (1-O).

A similar request could be used to indicate a request for any other Selective Service classification, or to request that other statements be added to your records with the SSS: "I believe that the Military Selective Service Act is unconstitutional", "I believe that building, maintaining, and threatening to use nuclear weapons is a violation of international law", "I believe that military conscription is unconstitutional in the absence of a declaration of war by the U.S. Congress", "I registered under protest", "I was registered involuntarily by the Motor Vehicle Bureau", "my registration does not indicate that I approve of the draft or am willing to be drafted", or whatever an individual wants to say.

The SSS probably won't want to retain voluminous materials submitted in support of such a request. To make it harder for the SSS to separate supporting documentation from the request and throw it away, it's probably best to number the entire package including the request and supporting materials with a single continuous sequence of page numbers (in the manner familiar to lawyers and legal workers as "Bates numbers"), with the signature page at the end as the last numbered page.

It's also a good idea to remind the SSS of its obligation to retain the request:

> I remind you that this request is subject to Records Schedule DAA-GRS-2013-0007-0007, promulgated by the National Archives and Records Administration (NARA) as part of NARA General Records Schedule 4.2, item 090. Pursuant to this section of the GRS, this request (including all of the supporting information incorporated within this request, all of which is integral to the request) must be retained by you at least as long as the record to which it pertains is retained, which pursuant to Records Schedule DAA-GRS-2013-0007-0007 for records included in RCV is until I reach age 85.

Keep in mind that the purpose of a Privacy Act request for amendment of SSS records to request a particular classification is *not* to get the SSS to act on the claim for deferment or exemption — which it won't do — but solely to force the SSS to keep a record that the claim was made, and of whatever documents were submitted with the Privacy Act request, for whatever evidentiary value these may have, for better or worse, in later administrative or court proceedings.

The SSS will respond to any such request with a summary notice that the request has been denied because the requester has not been classified and no claims are being accepted or processed.[17]

APPEAL OF DENIAL OF REQUEST FOR AMENDMENT

In order to get the right to add a statement of dispute to their record (see below), an individual must next submit an administrative appeal of the denial of their Privacy Act request to the Director of the SSS within 180 days of the notice of denial. Like the initial request, this must be worded explicitly in terms of the Privacy Act:

> Pursuant to the Privacy Act of 1974 (5 U.S.C. §552a) and regulations of the Selective Service System at 32 CFR § 1665.5, I hereby request review of the denial of my request dated _____ for amendment of the records pertaining to me which are contained in the Registration, Compliance and Verification (RCV) System. According to the notice of denial of my request dated _____, my request was denied because I have not been classified and no claim has been accepted. However, the records pertaining to me are incomplete and/or inaccurate in failing to record that, whether or not my claim has been "accepted", I have requested classification as a conscientious objector (1-O), and in failing to record the details of that claim including the supporting evidence incorporated in that claim.

An incidental benefit of submitting such an administrative appeal, in the eyes of some registrants, is that it will force another person at SSS headquarters to read (or at least skim) the appeal and the original request.

Like the original request for amendment, this appeal will be summarily denied.

NOTICE OF DISPUTED RECORD

Once an individual's administrative appeal is denied, they have the right to put a "concise" statement in their SSS record indicating that they dispute the record, and why they dispute it. The Privacy Act requires the SSS to keep this notation in their records and include it whenever it discloses information from its records pertaining to that individual.

The SSS may not be prepared to comply with these requirements of the Privacy Act, so it is probably best to remind them of their obligations when submitting a request for a notice of dispute:

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17 "Determination of a person's status as a conscientious objector is part of a classification process which is not in effect at this time. We cannot accept unsolicited documents pertaining to any classification. We are returning your letter." SSS standard response letter L005, "Conscientious Objector - Claim", p. 27 of the SSS Registrant Inquiries Manual as released in response to 2014 FOIA request, <https://documents.theblackvault.com/documents/sss/sss-rimanual.pdf>.

> Pursuant to the Privacy Act of 1974 (5 U.S.C. §552a) and regulations of the Selective Service System at 32 CFR § 1665.5, I hereby request that you add the following concise statement of dispute to your records pertaining to me, and include it whenever information pertaining to me is disclosed: "This record is disputed because it does not indicate that I have requested classification as a conscientious objector." If any member of the public requests information concerning my Selective Service registration or status, the Privacy Act requires you to inform them that your records about me are disputed because they do not indicate that I have requested classification as a conscientious objector.

I would welcome feedback from anyone who has gone through this process or assisted others through it.

PERSONNEL PROVISIONS OF THE 2022 NATIONAL DEFENSE AUTHORIZATION ACT

By Kathleen Gilberd

At the end of 2021, after some surprising back-room negotiations, Congress passed the 2022 National Defense Authorization Act (NDAA). The January issue of *On Watch* discussed military justice provisions of the Acts, including some designed specifically to protect survivors of sexual assault and sexual harassment. This article looks at some of the other personnel provisions from the NDAA. As is often the case, a number of these reflect Congressional and public concern over the military's failure to protect the rights, health and safety of servicemembers; and as is often the case, it remains to be seen whether the Department of Defense will give more than lip service to those provisions.

DOMESTIC VIOLENCE, SUICIDE AND "RELATED" ISSUES

There has been considerable concern about spouse and child abuse in military families in the past few years, and Congress addressed these problems at some length in Section 549 of the Act. In addition to mandating reports, research and other things, it requires that the services:

- create or change regulations to make violation of civilian protective orders punishable under the UCMJ;
- develop a standardized process to ensure consistency in screening and documenting initial allegations of domestic abuse;
- document allegations "regardless of the severity of the incident" for presentation to installation Incident Determination Committees;
- oversee and monitor these committees;
- create regulations using a reasonable suspicion standard for Family Advocacy Programs to report allegations to these committees and develop clear definitions of that standard.

Congress combined domestic abuse with a number of other issues in Sections 549A and 549B, which call for development of Annual Primary Prevention Research Agendas and the establishment of a Primary

Prevention Workforce to study and prevent "interpersonal and self-directed violence," including sexual harassment and assault, domestic violence, child abuse, "problematic juvenile sexual behavior," workplace violence, suicide and substance abuse. Under 549A, DoD is to establish a research agenda each fiscal year, setting out priorities for research projects in each of the services. Emphasis is to be given to "cross-cutting interventions across the spectrum of interpersonal and self-directed violence." The Workforce, mandated by 549B, is to "provide a comprehensive and integrated program across the Department of Defense enterprise [sic] for the primary prevention of interpersonal and self-directed violence." While these sections do not discuss the nature of possible links between problems such as sexual assault and substance abuse, they obviously suggest that common causes exist. Unfortunately, we cannot expect that the military will look to its own culture, training and mission as underlying causes.

Section 559E requires that DoD report to Congress by June 1, 2022, regarding its efforts in training and education on sexual assault, sexual harassment, extremism, domestic violence, diversity, equity and inclusion, military equal opportunity, suicide prevention and substance abuse, a list not quite identical to the issues covered in 549A and B.

Separately, section 738 mandates an independent review of suicide prevention and response efforts at military bases, setting up an independent committee composed of non-DoD personnel to make the review. The Secretary of Defense is to select a group of installations for review, including at least one base from each service and including remote installations outside the contiguous United States (which indicates without saying that suicides among military personnel in Alaska will be studied). The committee is to review not only base prevention efforts, but also factors which may lead to suicide. It will report and make recommendations to DoD no later than 270 days after it is established, and then report to Congress within 330 days after its establishment.

Section 726 requires standardization of the definitions DoD uses for suicide, suicide attempts, and suicidal ideation. DoD is to issue regulations mandating "exclusive and uniform use" of these definitions. The section does not include any language on the definitions themselves. The definitions must be developed within 120 days of enactment of the NDAA, and DoD is to report to Congress within 180 days of enactment regarding the definitions, a description of the process used to develop them, a description of the methods used to gather data on instances of suicide, attempts and determination of ideation, and an implementation plan to ensure the definitions are used.

RACISM AND EXTREMISM

"Human relations" training for servicemembers is required under section 552, to be conducted in basic training and periodically thereafter. The term is used to include "race relations, equal opportunity, opposition to gender discrimination, and sensitivity to hate group activity." In addition, unit commanders now have the responsibility to prevent or respond to impermissible activity involving a discriminatory motive. While this is already covered in recent regulations, the section also creates a new 10 USC 2001 to codify the requirements. In addition, Section 552 requires that potential recruits be given information about the oath of office or enlistment's implications for equal protection and civil liberties guaranteed by the Constitution. Recruits must be informed that they should not enlist or accept a commission if they cannot support these guarantees.

Section 572 of the Act requires that DoD work with a federally-funded research organization to conduct a study of the number of servicemembers who identify as Latino or Hispanic, together with a comparison of how each service recruits these individuals, and their rates of retention and promotion.

On a slightly separate note, section 549L focuses on the problem of bullying in the armed forces, amending section 549 of the 2017 NDAA, adding the term "bullying" after "hazing" in that section. DoD reports to Congress are to cover bullying as well as hazing, and to describe how each service identifies and documents hazing or bullying incidents, the effectiveness of each service in addressing the problems, and the services' plans to improve hazing and bullying prevention and response.

MEDICAL ISSUES

Self-initiated referrals for mental health evaluations are covered in section 704 of the Act. It amends 10 USC 1090a (which gives requirements for command-initiated mental health examinations) to allow servicemembers to refer themselves for evaluation by requesting referral from their commanding officer or supervisor (assuming that person is above E-5 in grade or rank). COs or supervisors are required to make the referral as soon as practicable after a request. Members may request a referral "on any basis," though the section specifically mentions concerns about fitness for duty, occupational requirements, safety, and significant changes in performance or behavioral changes that might be related to mental health issues. Referrals are to be made similarly to other medical referrals, with the intent to protect members' confidentiality much as possible. Expedited procedures are required if the request is made on the basis that the member is a potential or imminent threat of harm to self or others.

Section 524 states that DoD must incorporate a formal appeals process into its policies for the Integrated Disability Evaluation System, including the right to a formal hearing. It is not clear from the section whether this is in addition to or simply an expansion of existing Formal Physical Evaluation Board hearings. The current disability regulation, DoD Instruction 1332.18, and underlying statutes state that service members who are found unfit for duty are entitled to a formal hearing, an FPEB, to contest the findings of an Informal Physical Evaluation Board (IPEB). Members who are found fit may request a FPEB hearing but are not entitled to one. A plain reading of the section would entitle members found fit by the IPEB to a formal FPEB hearing as well.

Under section 740, DoD must conduct a study on the incidence of breast cancer among active-duty personnel who served between January 1, 2011 and the date of enactment of the NDAA and were diagnosed with breast cancer during that period. The study is to include demographic information, comparison with cancer rates in the civilian population, identification of "potential factors associated with service" that might increase the risk of breast cancer, and an identification of service locations overseas that might involve airborne risk factors (burn pits are specifically mentioned). The study will also include evaluation of the advisability of digital breast tomosynthesis, as well as recommendations for prevention, early detection, awareness and treatment of breast cancer.

Section 742 requires a Comptroller General study of DoD's implementation of requirements to reform the military health care system included in several recent NDAAs. The study will assess how and to what extent DoD has implemented or is implementing the reforms, and examine DoD's evaluation of its effectiveness. The Comptroller General is to report to Congress about its study no later than May 1 of next year.

VACCINATIONS

Section 716 establishes a DoD system to track and record data on vaccine administration, including tracking of vaccinations, adverse reactions, and refusals to take vaccines, Individual members' electronic health records are also to be updated with vaccination information. This system is to be established by January 1, 2023, and a report on the development of the system and administration of vaccines is to be sent to Congress within 180 days of enactment of the NDAA.

Under section 720, the Secretary of Defense is to develop uniform standards for exemptions from mandatory COVID-19 vaccinations for medical, religious or administrative reasons.

Section 736 requires that administrative discharge of servicemembers for failure to obey an order to receive a COVID-19 vaccination must be honorable or general under honorable conditions. This provision applies to discharges received from August 24, 2021 through two years after enactment of the NDAA.

"MISSING" SERVICEMEMBERS

Publicity and military studies about the death of Vanessa Guillen and other soldiers at Ft. Hood brought to light, among other things, the fact that missing soldiers are normally written off as AWOL without any consideration of the possibility that they are missing for other reasons. (An analysis of the Independent Review Committee's report about conditions at the base can be found on the MLTF website: Fort Hood: A Toxic Culture - Military Law Task Force (nlgmltf.org) .) Section 548 of the NDAA requires DoD to instruct each of the services to make a comprehensive review of its policies for determining and reporting servicemembers as "missing, absent unknown, absent without leave, or duty status-whereabouts unknown." Local bases and commands will also be required to review such policies. The section also requires commands to share information about missing personnel with local and national law enforcement agencies and to ensure that missing servicemembers are added to the Missing Persons File of the National Crimes Information Center database.

CONCLUSION

It remains to be seen whether the military has the willingness and ability to implement the reforms included in these provisions in any substantive way. Its difficulty in following personnel provisions of previous NDAAs leaves room for skepticism. As always, the Military Law Task Force will monitor DoD's and the services' implementation of these personnel provisions, and report on the results in *On Watch*.

WHITE SUPREMACY AND THE U.S. MILITARY: A HISTORY

By Chris Lombardi

Last December, when DOD issued its updated instructions on extremism, DoD Instruction 1325.06, MLTF's response noted that the instruction "fails to mention 'racism' or 'white supremacy' but instead defines extremist activities as "to deprive individuals of their rights" and "advocating widespread unlawful discrimination based on race." This was nearly a year after insurrectionists wielding Confederate battle flags stormed the US. Capitol, nearly a quarter of whom were current or former members of the U.S. military.

> Readers may also want to look at MLTF's earlier memo, White supremacy and racism in the military, (published in September 2021).

In his confirmation hearing soon afterward, Defense Secretary Lloyd Austin vowed to banish "racists and extremists" from the military. January 6th exposed a core truth, as recently articulated by Human Rights Watch: "Racism and a fear of growing diversity in the United States was at the heart of the violence." And post-January 6th research by the University of Maryland and the Department of Homeland Security found that of the military-affiliated January 6th participants, nearly 60 percent were either members of anti-government militias or white-supremacist groups. (Islamic affiliations, it's worth noting, were in the single digits.)

The December instruction, consistent with DOD buzzwords on the subject — *Diversity. Equity. Inclusion* — appears determined to make the armed forces as color-blind as its public image, one phrased simply by a veteran on the 1946 *Superman* radio show: "We were crawling up those islands, in those trenches, the color or creed of the guy behind you didn't matter." Lt. Col. Troy Mosley puts it even more simply: "People are rarely more equal than when they serve their country."

Right-wing critics, some of them veterans, complain that Defense is "too woke," words repeated on the Fox News stations blaring at most military bases. Meanwhile, according to AP, DOD processed more than 750 complaints of discrimination by race or ethnicity from service members in the fiscal year 2020 alone.

Like me, Troy Mosley found his calling in the 1990s. Mine came in 1995 when I joined the staff of the Central Committee for Conscientious Objectors, just as Mosley was in Officer Candidate School a with the Army Medical Service Corp. I'm a democratic socialist from the Bronx; Mosley's from Jacksonville, Florida, and joined Army ROTC when he got to Florida A&M University, following in the footsteps of his Army veteran father. We couldn't be more different on the surface; yet we both spend most of our time now writing and thinking about military injustice.

As I write, Mosley's new book *The Armed Forces and American Social Change* is on my desk, right next to *A Field Guide to White Supremacy*. When I reviewed *Field Guide* last year, I wished it included a section on the military alongside its policing and immigration chapters. This article is my modest effort to provide that section.

To begin with, the U.S. military's first job was to kill those who got in their nascent nation's way, many of whom were people of color. The military's precursor forces – state militias and British Army conscripts – fought against Native Americans, in the French and Indian War and in defense of settler colonialism. It's true, and much publicized, that the Colonial Army wasn't all white: a Black sailor named Crispus Attucks

died in the 1770 Boston Massacre, and one 1778 strength report showed 755 “Negroes” in fifteen different infantry brigades. “Among them there is the strangest mixture of Negroes, Indians, and Whites, with old men and mere children, wrote one Pennsylvania captain of New England’s battalions. It was, he wrote, “a shocking spectacle.”

But some of those troops were equally shocked to be spending most of their time actively helping European settlers claim Indian land. My New Press history of military dissent includes Simon Girty, a “half-breed” interpreter near Pittsburgh who deserted rather than take part in the now-notorious Squaw Campaign under General Edward Hand, as well as William Apess, son of a Black mother and Pequot Indian father, who wondered “why I should risk my life, my limbs, in fighting for the white man, who had cheated my people out of their land.”

Until the 20th century, the new U.S. Army earned most of their medals fighting off Native Americans, whether actively helping European settlers claim Indian land or facilitating “Indian removal” in battle upon battle. One example is the 1832 Black Hawk War, whose combatants included militia captains and future opponents Abraham Lincoln and Jefferson Davis. Even the Civil War, purportedly fought to end slavery, featured massive disrespect for Black troops and a continued emphasis on killing Natives; then the American military moved on to the business of empire, drafting Black troops to fight in the Caribbean and the Philippines (where one joked to the *Navy Times,* “We’re here to pick up the white man’s burden!”). Even then, they still served under White officers, ignoring even qualified Black officers such as West Point graduate Charles Young, veteran of the 1863 U.S. Colored Troops.

That last fact did not escape Young’s friend W.E.B. Du Bois, whose NAACP magazine *The Crisis* went on to highlight the issue after the United States entered World War I. Du Bois, who’d seen deep roots between war and racism in his 1916 essay “The African Roots of War,” nonetheless became a booster, hoping that brave service would earn Black servicemembers some measure of equality. But when the war’s 380,000 uniformed African-Americans, who served in all branches of the U.S. military, were met instead by a resurgent Ku Klux Klan and the violence of Red Summer during which at least 13 veterans were lynched and sparked massacres from coast to coast, it was clear that they were if anything *more* vulnerable, with racist attacks sometimes sparked by the simple act of wearing one’s uniform in public.

White supremacy as an *ideology* was evolving. The postwar years rejuvenated the Ku Klux Klan, which happily recruited servicemembers and veterans. As World War II approached, segregation survived; a secret agreement between FDR and NAACP President Walter White allowed for the establishment of separate-but-equal training camps and racially specific draft quotas, with White promising *sotto voce* that the organization would not test the 14th Amendment implications of military segregation. As the NAACP wrangled with the War Department about the make-up of the new “colored units,” white rage continued, including the March 1941 lynching at Fort Benning of Private Felix Hall.

Meanwhile chapters of a Black-led “March on Washington Movement” against military segregation formed, swelled, and prepared to fill the Capitol with 100,000 supporters. After Roosevelt issued an executive order banning discrimination in defense industries, the march was called off but not the movement, led by labor leader A. Philip Randolph. When military segregation was abolished in 1948 by President Harry Truman’s Executive Order 9981 (“In the selection and training of men for service, there shall be no discrimination on account of race or color”) today’s officially color-blind military was born, with the inherent paradox that racism’s disparate power structures can’t be wiped out by presidential signature. And the military’s singular way of managing its personnel, from Article 15 to courts-martial, continued to incorporate patterns of injustice, some familiar in MLTF cases.

Black veterans knew all this in their bones. They included NAACP hero Medgar Evers, who in 1943 shipped off to Europe as part of the Red Ball Express, a strategic corps charged with showing up in active theatres and transporting needed supplies for the invasions of Europe. When Evers first showed up at basic training he was classified only as "Laborer," like most Black servicemen at the time. He knew about the Navy's Port Chicago 50, who'd been court-martialed for challenging their working conditions after a deadly munitions explosion. The civil rights movement Evers joined, led and died for was full of other people who'd fought military segregation and injustice, including A. Philip Randolph and his right-hand man Bayard Rustin.

That movement cut deep tranches inside the military in subsequent years, notably during the Vietnam War – a war which also reminded some of the racist implications of the military mission. The Department of Defense declared that "race relations" in the military had become a priority, especially after an epidemic of on-base conflicts they blamed on "black militants." In an effort to co-opt "black consciousness" into something that improved morale, it established the Defense Race Relations Institute, tagged by historians as "the most progressive and forward looking race relations experiment in existence." Through its service-wide schools, trainings and materials, DRRI asked White troops to take responsibility for their own racism—creating a backlash not unlike the "too woke" talk of today. DRRI was investigated and shut down after six years, shifting responsibility and discretion to individual commanders.

Some of those white troops went home and founded the late 20th-century white supremacist paramilitary underground— one whose military connections were clear in 1995, when two Gulf War veterans dove a truck loaded with explosives into central Oklahoma City and blew up the Alfred P. Murrah Federal Building, killing 168 people, including 19 children. Timothy McVeigh was a dedicated White supremacist, who sold the neo-Nazi Bible *The Turner Diaries* at gun shows and was planning to follow the bombing by attending a white-supremacist camp run by that book's author.

The white-power movement McVeigh joined after the Gulf War had been jump-started by Vietnam vets like Louis Beam, whose tract "Leaderless Resistance" laid down the map for decades of so-called "lone wolf" attacks on power lines, water systems, and "enemy" institutions including synagogues. Powered by early Internet messaging, they were unafraid to say out loud the quiet part of 1970s/1980s concern about "affirmative action" and "states' rights." And despite a handful of convictions, the movement has contributed to a broader far-right political ecosystem, from hard-core explicit Nazi forums like "Atomwaffen" and "Patriot Front" to the warm-fuzzy mutual-aid networks supporting public-health disinformation. A 2020 Pentagon study found such groups threading the military, from the Marines to the Florida National Guard. That study also included the Oath Keepers, whose leaders are now under indictment for January 6th.

What is DoD doing about this? In addition to Instruction 1325.06, DOD commissioned studies like the DHS one above and appointed a Deputy Inspector General for Diversity and Extremism. A short-lived Countering Extremism Task Force started the process of other more thorough changes, including more thorough background checks for recruits, training DoD personnel to recognize signs of "extremist activity," and paying some attention to the troops' transition to civilian life. Those changes, outsourced to allied agencies, are due to be rolled out sometime this summer. It's hard to know whether the resulting changes will do more than scratch the surface of the problem.

Meanwhile, Fox News keeps blaring at most military bases, repeated by troops who asked at the March anti-racist stand-down: "But what about those violent Black Lives Matter people?"

In 1995, Lt. Col. Troy Mosley was a young Army captain finishing up his Officer's Advanced Course, just as the country was adoring General Colin Powell after his victory in the Gulf War. A career in the military looked bright, he thought: Every unit had an equal-opportunity division. In his book published 23 years later, Lt. Col. Mosley also looks at other military prejudices, from sexism and "Don't Ask, Don't Tell" to the rollercoaster of transgender service under the Trump administration. He also talks about Islamophobia, a new layer added by the Gulf Wars to the white-supremacist cake. His tone is both optimistic and urgent, appropriate in this post-January 6th moment.

For MLTF and the communities we serve, we need to contend with an institution suffused in the rhetoric of "diversity and inclusion," but struggling to honestly confront what that might mean. That struggle could be about the central contradiction of what they see as the military mission: If no "othering" and less trauma, what then?

PRACTICING MILITARY LAW AS ANTI-MILITARIST WORK

By James M. Branum

The study and practice of Military Law tends to be viewed through one of three different philosophies/conceptual frameworks: (1) the Legalistic approach which views the field primarily through the lens of the US Constitution's military provisions[1] (which assume that the military's function is moral, lawful and legitimate), (2) the Pragmatic approach which sees the field pragmatically and amorally (which might be called the "hired gun" approach, in which practitioners fight for the side of whoever is paying them, no different than any other area of law) and (3) the anti-Militarist approach, which sees the field through the lens of anti-Imperialism and other struggles for social justice. Most analysis of the area of Military Law has focused on the legalistic and pragmatic frameworks, but I will be exploring the third approach.

Militarism is defined as:

> *the belief or the desire of a government or a people that a state should maintain a strong military capability and to use it aggressively to expand national interests and/or values. It may also imply the glorification of the military and of the ideals of a professional military class and the "predominance of the armed forces" in the administration or policy of the state*[2]

Militarism has long been part of US American history, but the philosophy and its movement have grown and contracted at various points in time, with a fast escalation of intensity from World War 2 onward, as the United States has transitioned from being a continental empire to being a global super power.

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[1] See US Constitution Article 1, Section 8 for a delineation of Congress' military powers. Also see Article 2, Section 2 for a brief discussion of the President's role as commander in chief.

[2] "Militarism" *Wikipedia*, https://en.wikipedia.org/wiki/Militarism.

Since militarism is the dominant philosophy of most mainstream political power, the following facts should not surprise us:

- FACT: Total US military spending is 48% of the actual discretionary US federal budget in 2022[3]
- FACT: 39% of global military spending is done by the USA, which is nearly 3 times as much as China spends and more than 10 times as much as Russia spends[4]
- FACT: Between 150,000-200,000 US troops are believed to be currently stationed overseas[5], with more than 40,000 troops being assigned to "classified" missions (as of 2017) for which the US government refuses to provide information.[6]
- FACT: It is impossible to know the true number of overseas US military installations, but there are 38 known named major overseas military bases, and at least 1000 unnamed installations.[7]

Anti-militarism questions all of this. It argues that high levels of military spending have consequences in the lack of spending used for meeting human needs, and in fueling war and conflicts around the world.

Anti-militarism also questions the view that the nation's imperial interests are in line with the interests of humanity as a whole. In fact empire itself is called into question. "Empire" is not a word often used in modern US American political discourse, but it is our reality. Our constitution (despite its high-minded lofty rhetoric) has for more than 200 years provided a system that has denied its colonial subjects (which currently include those who live in the American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the US Virgin Islands, and the District of Columbia) an equal voice as those who live in the "50 states" of the US American empire. And of course there is our nation's history and ongoing practice of disparate treatment of people who do not share the dominant class' gender, race, ethnicity, religion, sexual orientation, sexual identity, or wealth. This kind of stratified society is always part of Empire.

The role of empire goes further though than the USA's formal colonies (and its mistreatment of its own people in the 50 states), as the role of US American hegemony (enforced through both economic and sometimes military means) has resulted in many nations having their leaders removed from power due to US interventions.[8]

So, given our nation's imperial reality, an important question looms: how can one ethically practice in this area of law?[9]

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[3] See https://www.warresisters.org/sites/default/files/docs/fy2022piechart_b.pdf.

[4] See https://en.wikipedia.org/wiki/List_of_countries_by_military_expenditures.

[5] See "Number of Military and DoD Appropriated Fund (APF) Civilian Personnel Permanently Assigned By Duty Location and Service/Component (as of September 30, 2021)". *Defense Manpower Data Center.* November 17, 2021. https://dwp.dmdc.osd.mil/dwp/api/download?fileName=DMDC_Website_Location_Report_2109.xlsx&groupName=milRegionCountry

[6] "Opinion: America's Forever Wars" New York Times (Oct. 22, 2017) https://www.nytimes.com/2017/10/22/opinion/americas-forever-wars.html

[7] https://en.wikipedia.org/wiki/List_of_United_States_military_bases

[8] https://en.wikipedia.org/wiki/Timeline_of_United_States_military_operations

[9] Too often legal ethics is framed solely as being about compliance with the ethical rules of legal practice, rather than the broader aspects of morality that go beyond the rules.

I believe the answer is found in the preamble of the constitution of the National Lawyers Guild which states:

> *The National Lawyers Guild is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the end that human rights and the rights of ecosystems shall be regarded as more sacred than property interests.*
>
> *Our aim is to bring together all those who regard adjustments to new conditions as more important than the veneration of precedent; who recognize the importance of safeguarding and extending the rights of workers, women, farmers, and minority groups upon whom the welfare of the entire nation depends; who seek actively to eliminate racism; who work to maintain and protect our civil rights and liberties in the face of persistent attacks upon them; and who look upon the law as an instrument for the protection of the people, rather than for their repression.*[10]

Unpacking this further, there are a few core elements worth considering:

1. The Guild's approach focuses on "progressive" change, meaning change that takes place over time. Certainly, there have been beautiful moments in world history when revolutionary change happened quickly, but more often than not, change has required persistent and creative action over an extended period of time.
2. The Guild's approach also focuses on "basic" changes, which means that there are no sacred subjects that are off-limits. We can and should critique and seek to radically change elements of our society that are not working in furthering human needs.
3. We seek to use the law itself as a tool for liberation, rather than for repression.
4. Finally, we hold human rights (and the rights of ecosystems) as our highest ideals. Nothing, not even the mythical "economy" should trump this value.

So in considering the realm of military law, we have a challenge in applying these principles. Some of the difficult questions that arise include:

1. What does "progressive" change mean in the context of an oppressive institution, such as the US military?[11]
2. Is there a danger that small reforms in an oppressive institution might serve to placate society so that bigger changes remain undone?[12]

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[10] National Lawyers Guild Constitution (updated 2022) https://www.nlg.org/wp-content/uploads/2022/03/UPDATED-CONSTITUTION-2022.pdf

[11] Some have gone as far as questioning whether a Guild approach should be to call for "military abolition" in the same way that many today speak of the goal of defunding or even abolishing the police.

[12] This fear has been often cited by police abolitionists, who have argued that many police reforms are ineffective and serve to further insulate law enforcement from consequences for racist policing. *See* Thompson-DeVeaux and Maggie Koerth "Is Police reform a fundamentally flawed idea?" FiveThirtyEight.com (June 22, 2020) https://fivethirtyeight.com/features/is-police-reform-a-fundamentally-flawed-idea/.

3. Is it appropriate to fight for the rights of mistreated individuals who are entangled within this system, even when those same individuals may not want to leave the system completely?
4. How do we work with anti-oppression movements, both inside and outside the military itself?
5. What boundaries do we adhere to in our work? How do we stay on the right side of both the law and conscience?

These are not easy questions to answer, but they have been the ones we at the MLTF have been wrestling with since the founding of the MLTF in the Vietnam war era. This quest has required that we continually balance the concerns of pragmatism and idealism, but also the concerns of the individual and society as a whole. This means that pragmatically we have to deal with the law (and regulations) as it is, but it also means that our ideals demand that we seek to change or even attack (through litigation) the law when it is unjust or when it is furthering the ends of the empire. And this tension means that sometimes we will fight for the rights of those who are being wrongly discharged (based on discriminatory grounds), even as we also work for the end of the military as we know it today.

To practice military law as an anti-militarist is not always easy or comfortable. But, it is a good place to be in. When we engage in this work, we are struggling on behalf of justice. We are fighting for the rights of individuals to be free from mistreatment, oppression, and involuntary servitude. But we are also working for the sake of the broader movement for peace and for the end of the empire as we know it today.

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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 interests.

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