



Spring 2023

Vol. XXXIV No. 2

Contents

MILITARY RECRUITER ABUSE ..... 2

MILITARY COVID-19 POLICY UPDATE ..... 6

ASSISTING SERVICEMEMBERS WITH MILITARY EQUAL OPPORTUNITY COMPLAINTS - PART 2..... 7

MLTF WRITES TO SAN DIEGO UNIFIED SCHOOL DISTRICT RE JROTC INVOLUNTARY ENROLLMENTS..... 16

HOW TO PROTECT ONE’S FUTURE RIGHTS BEFORE OR UPON DISCHARGE FROM THE MILITARY ..... 18

CONGRESS AGAIN BACKS AWAY FROM EXPANSION OF DRAFT REGISTRATION ..... 22

BOOK REVIEW - *THEY ALSO SERVED: VOICES OF THE OVERSEAS LAW PROJECTS FROM THE VIETNAM WAR* ..... 25

ANNOUNCEMENTS ..... 28

ABOUT THE CONTRIBUTORS ..... 28

ABOUT THE MILITARY LAW TASK FORCE OF THE NATIONAL LAWYERS GUILD ..... 29

**They Also Served**  
Voices of the Overseas Law Projects from the Vietnam War

Available in paperback (256 pages) for \$30

Contact Howard De Nike  
[jmdenike@aol.com](mailto:jmdenike@aol.com)  
to place your order

See page 25 for book review.

# MILITARY RECRUITER ABUSE

By **Tori Bateman**

In April 2022, the American Friends Service Committee (AFSC) reopened its “Military Recruiter Abuse Hotline” amid an uptick in calls from young people experiencing military recruiter misconduct. Through the hotline and webform, we are collecting stories over the course of a year from people who have experienced a wide range of misconduct and abuse from military recruiters. This information helps us identify existing barriers to hold recruiters accountable and advocate for change to stop these abuses.

Since launching the hotline, we have received over 100 phone calls, emails, and form submissions. These stories from the public include allegations of a wide range of misconduct and abuse from military recruiters.

## TRENDS IN MISCONDUCT: THE STORIES WE HEARD

By far the largest category of reports is **harassment, including verbally, on social media, and via text**. Of the more than 100 reports AFSC received, 34 were reports of harassment. People have reported that recruiters have repeatedly contacted them after being asked to stop and, in some cases, have escalated conversations after someone says “no” or expresses negative opinions about military service.

Here are some examples:

- In one case, the recruiter called the person “old and fat.”
- Another recruiter sent over 70 text messages in a row, presumably to irritate the recipient with the frequency.
- In other cases, recruiters disparaged the person’s current job, family, or character.
- In two instances, recruiters threatened to show up in person at the potential recruit’s house, providing proof that they knew the person’s address after the person said they weren’t interested. In one of these cases, the person reporting the recruiter says that a text of their home address was followed with, “I’m pull up on ya and then I want you to keep that same energy boy.”
- We’ve also heard from two people involved in retail businesses where employees and customers are being approached by recruiters inside stores.

The second most common complaint received, with 19 reports, is that recruiters are **providing misleading and incorrect information** to potential recruits. They are told by recruiters that they will be sent to a specific location, be given a particular job, or qualify for certain benefits - and ultimately are not given those things. In several cases, the misinformation was intended to pressure a quick signing. Recruiters claimed that if the person did not sign then and there, and with that particular recruiter, they could never join the military. Notably, two of the reports we received specifically named immigration status as one of the reasons they were targeted for this misinformation.

The third largest category, with 12 reports, is that **recruiters encouraged individuals to cheat, lie, or misrepresent themselves in the recruitment process**. This is overwhelmingly done in relation to medical records:

- In one case, a young man was told to stop taking medication by a Marine recruiter, to hide his medical history. He then took the man to a sauna to sweat out the medication, and to a pharmacy to sign papers hiding his medical records.
- In two cases, the recruiters misstated the impact of the Genesis medical records system. The recruiter suggested that medical information shared before the system took effect wouldn't be included or would be held to different standards.
- Some of the people reporting this type of misconduct said they were separated from the military as a result, were re-injured or experienced other medical consequences, and/or experienced stress about their lies being discovered.

While we received smaller numbers of complaints that were not harassment, misleading info, and misrepresentation, many of those that fell outside of these categories were incredibly concerning. Several people reached out to share about inappropriate relationships between recruiters and young people that they were trying to recruit, or other sexual misconduct. In addition to the stories shared by potential recruits, we also received two notes from recruiters themselves - including accusations of abuse by their higher-ups, or having heard admissions from their commanding officers about misconduct.

Several anecdotal trends emerged in the reports received over the past year. In many conversations, people noted that they had strong pro-military views or a strong interest in joining the military but were disheartened by their experiences with recruiters. Many considered changing their minds about military service because of the misconduct they experienced.

There was also a lot of fear and confusion about reporting misconduct directly to the military. Some were worried about getting themselves, or other recruits, in trouble for reporting recruiters for encouraging them to lie about their medical records, because it could expose the lies of those who had followed the advice. There is little information available to the public on how reporting processes work, and their own legal and professional liability for actions undertaken on the advice of recruiters.

## **ARMY RECRUITING COMMAND DATA**

Misconduct by military recruiters is recognized as a problem by the Department of Defense, which receives complaints, conducts investigations, and occasionally doles out consequences. At the end of 2022, I requested data on army recruiter misconduct reports through a FOIA request to the U.S. Army Recruiting Command (USAREC). I received the numbers from FY2020, FY2021, and FY2022, as well as the actions taken in those cases.

In FY 2022, the USAREC office that handles complaints received 904 total complaints about army recruiters. The largest category, with 502 complaints, was "concealed medical information." There were also 92 reports of falsified/forged documents, 97 reports of concealed police records, and 15 reports of coercion, among other numbers.

But those numbers dwarf the numbers of reports that the army ended up taking action. For example, only 12 out of the 904 complaints about concealed medical information were considered "substantiated," just 1.3% of the total.

Anecdotally and based on conversations with USAREC, these low substantiation numbers for medical information concealment are largely due not to the merits of the complaints, but to the lack of written evidence. Compare this 1.2% substantiation rate to the 34.7% substantiation rate for “falsified/forged documents,” which by their nature include physical records of the misconduct.

*Data from USAREC on recruiter abuse reports in Fiscal Year 2022:*

Row Labels	FY22			
	Open	Unsubstantiated	Substantiated	Total
Coercion	4	7	4	15
Concealed Medical Information	121	369	12	502
Concealed Police Record	27	67	3	97
Concealed Prior Service		4		4
Concealment of Dependents	9	11	1	21
False Promise	2	17		19
Falsified/Forged Documents	19	41	32	92
Illegal Testing Procedures or Ringer	3	2		5
Not Qualified for Enlistment	6	21	1	28
Other Than Described Above	39	70	2	111
Parental Consent Falsified	3	7		10
	233	616	55	904

FY22	
Row Labels	Total
<b>Coercion</b>	<b>4</b>
Article 15	1
Counseled-BN Letter of Concern	1
Letter of Reprimand-Brigade	1
Letter of Reprimand-CG	1
<b>Concealed Medical Information</b>	<b>12</b>
Article 15	1
Counseled-BN Letter of Concern	1
Letter of Reprimand-Battalion	3
Letter of Reprimand-Brigade	1
Letter of Reprimand-CG	1
Verbal Reprimand/Counseling	5
<b>Concealed Police Record</b>	<b>3</b>
Counseled-BN Letter of Concern	1
Letter of Reprimand-Battalion	1
Letter of Reprimand-Company	1
<b>Concealment of Dependents</b>	<b>1</b>
Verbal Reprimand/Counseling	1
<b>Falsified/Forged Documents</b>	<b>32</b>
Article 15	3
Counseled-BDE Letter of Concern	2
Counseled-BN Letter of Concern	6
Letter of Reprimand-Battalion	8
Letter of Reprimand-Brigade	4
Letter of Reprimand-CG	1
Verbal Reprimand/Counseling	8
<b>Not Qualified for Enlistment</b>	<b>1</b>
Verbal Reprimand/Counseling	1
<b>Other Than Described Above</b>	<b>2</b>
Counseled-BN Letter of Concern	1
Letter of Admonishment-Battalion	1
<b>Grand Total</b>	<b>55</b>

## RECOMMENDATIONS

As we approach a year of story collection, it's clear that young people in the United States are facing incredible amounts of misconduct at the hands of recruiters. They are also confused about how to report these infractions and anxiety about the consequences they may face after listening to recruiter's instructions or reporting the abuses.

The military must take action to keep young people safe from recruiters, and to ensure that people joining the military have clear, accurate information about what they are signing up for.

Here are two steps the military should take toward that goal:

### **1. Make clear their structure for reporting misconduct to the public.**

The public should be able to easily search online for the relevant contact information and their rights in relation to recruiters. They should also be given clear information on what kind of materials and evidence should be collected in order for the military to take action on an accusation of misconduct. The official USAREC guidance coming out of Ft. Knox, for example, lists the "[usarmy.knox.usarec.mbx.hq-rsd-improprieties@mail.mil](mailto:usarmy.knox.usarec.mbx.hq-rsd-improprieties@mail.mil)" email address for reports of misconduct, but this guidance is not readily accessible by the public and a test general inquiry I made to this inbox was never answered. The "Commander's Hotline" listed on the USAREC website is described generally and does not include information about the potential implications of reporting using this line.

### **2. Provide clear guidance to potential recruits about the personal and professional repercussions for following the advice of recruiters.**

This is especially relevant for cases in which the recruiter tells the recruit to lie about their medical history, and the recruit complies. For many of the reports we've received, young people are nervous to go through official military channels, because of potential retaliation or because they followed recruiter's advice and now feel complicit in the misconduct - even if they did not fully understand what was happening. When potential recruits are given bad advice by recruiters, whether that is to lie about their medical history or otherwise, they should be confident that reporting the misconduct will not have repercussions for them or other people in the same situation. They should also be confident that the recruiting office will be held accountable.

No one should ever face abuse or misconduct from military recruiters. Unfortunately, a year of operating the Military Recruiter Abuse Hotline has shown us that it is all too common for young people to face harassment, lies, and other misconduct as they interact with recruiting stations. As organizations and individuals continue to work to oppose the militarization of youth, it's important that these efforts include advocacy with the Department of Defense and Congress, to ensure that young people have the information and tools they need to keep themselves safe from recruiter misconduct. ■

# MILITARY COVID-19 POLICY UPDATE

**By Jeff Lake**

Recently, the U.S. Military revised its policies regarding COVID-19. This article will summarize these changes and what they mean for servicemembers and their families.

The most recent National Defense Authorization Act, passed by Congress in December, 2022 contains provisions that would rescind the military's policy requiring servicemembers to be vaccinated against COVID-19. Shortly thereafter, on January 10, 2023, Secretary of Defense Lloyd Austin implemented this new policy and issued a memo stating that vaccination against COVID-19 was no longer a service requirement. In addition, the memo states that servicemembers who received general discharges for failure to get vaccinated may apply for a discharge upgrade.

On February 24, 2023, the Pentagon issued a press release directing all services to "formally rescind any policies, directives, and guidance implementing those vaccination mandates as soon as possible, if they have not already done so." The services have a deadline of March 17, 2023 to make these changes.

The services have now announced that they will remove or correct adverse actions related to the former COVID-19 vaccination requirement. In a press release, the Army noted that, "Former Soldiers may petition the Army Discharge Review Board and the Army Board for Correction of Military Records to request correction to their records." Senator Ted Cruz has introduced a bill in the Senate which calls for the reinstatement of all who were separated for refusing to take the COVID-19 vaccine. A similar bill failed last year.

At a hearing of the House Armed Services Committee personnel subcommittee on February 28, 2023, the Under Secretaries of the Army, Navy and Air Force testified along with the Under Secretary of Defense for Personnel, Gil Cisneros. According to military.com, the Navy Under Secretary testified that less than 10 of the more than 2,000 sailors discharged for refusing the COVID-19 vaccine have expressed interest in rejoining the Navy. All the Under Secretaries indicated they have no plans to initiate a special process to reinstate discharged servicemembers. Regarding punishment for those who refused the vaccine without requesting and exemption, Under Secretary Cisneros stated, "Those who refused the vaccine and did not put in a request for accommodation refused a lawful order. In order to maintain good order and discipline, it's very important that our service members go and follow orders when they are lawful, and there are several or thousands that did not." The Under Secretaries for the Army, Navy and Air Force stated that each case will be decided on its own merits.

Given the reversal of policy across all branches of the military, it is unclear how the pending litigation concerning the vaccine mandate will play out. Although the vaccine mandate has been lifted in general, there are still issues where the military operates in foreign countries which have their own rules regarding COVID-19. For example, the Navy's policy allows commanders to "implement Health Protection Measures at any time or manner deemed necessary in support of operational safety and effectiveness." Specifically, a sailor's movement can be restricted "in order to comply with host nation quarantine regulations." Whether the courts will find even these limited exceptions to be constitutional is an open question. Finally, the actual remedies ultimately offered to affected servicemembers may either make a pending lawsuit moot or limit it to narrow issues of redress. As reported by the Dayton Daily News, one attorney representing affected servicemembers stated, "Many of the Airmen violated

direct orders to vaccinate, which is criminally prosecutable, and the statute of limitations for those offenses have not passed.” These issues will have to be worked out in the months ahead either through additional policy guidance from the military or through the courts.

The MLTF will continue to monitor developments in this area. Please continue to subscribe to *On Watch* to receive updates. ■

## **ASSISTING SERVICEMEMBERS WITH MILITARY EQUAL OPPORTUNITY COMPLAINTS - PART 2**

**By Kathleen Gilberd**

Part 1 of this article, published in the winter issue of *On Watch*, discussed Military Equal Opportunity (MEO) complaints and alternative complaint procedures, preparation of formal MEO complaints and documentation to support complaints. This Part provides an overview of the military’s handling of formal complaints, as well as investigations and appeals. Part 3 of this 2-part article, on reprisals and retaliation in MEO cases, will appear in the Summer 2023 issue of *On Watch*.

Basic elements of the MEO complaint system are covered in DoD Instruction 1350.02, though that Instruction leaves much to the individual services’ regulations. It is important to use both the Instruction and the complainant’s service regulation(s) in discussing the process with a client; preparing a complaint; monitoring the progress of the case; and, if necessary, challenging the processing, investigative findings and recommendations, and command decisions on the complaint. Among the important service regs are the Army’s AR 600-20 of 24 July 2020; Department of the Air Force Instruction (DAFI) 36-2710 of 18 June 2020 and an accompanying Department of the Air Force Guidance Memorandum of 30 September 2022; SECNAVINST 5350.16A for the Navy and Marine Corps; OPNAVINST 5354.1H of 3 November 2021 specifically for the Navy; and MCO 5354.1F of 20 April 2021 for the Marine Corps.

It is important to note that the service regulations vary. By way of example, the Air Force, alone of all the services, uses MEO professionals as investigating officers (IOs), rather than having commanding officers (COs) appoint IOs. The Marine Corps, despite the language of the SECNAVINST, labels its Order and the whole subject “Prohibited Activities and Conduct,” and ignores some MEO provisions. It is also worth noting that the service regulations are dense and incredibly detailed in discussion of timelines, process, and various officials’ responsibilities, but that most provide little detail on the standards for and conduct of investigations.

In some cases, service regulations differ from the DoD Instruction as well. For example, the Army and the Navy’s SECNAVINST allow a complainant only seven days to appeal the CO’s decisions on the complaint, although it gives 30 days for the second, final level of appeal. The DoD Instruction allows 30 days. DoD requirements are normally controlling, though if the service reg provides greater rights or protection to the servicemember, its rules apply.

The regs are detailed about timelines for MEO and CO action, the investigation, etc., though failure to comply with the timelines does not appear to be an appealable issue unless command delay leads to loss of witnesses or evidence, witnesses' poor recollection of events, or other problems affecting the outcome of the complaint. Nonetheless, it is worth pressing the MEO and CO to comply with the deadlines, and making a paper trail of such actions.

## **INITIAL PROCESSING OF COMPLAINTS**

Formal complaints are normally submitted to MEO professionals (in some cases called MEO officers, MEO advisors or Equal Opportunity Advisors). If a formal MEO complaint is submitted to the command, Inspectors General, or other personnel authorized to accept a complaint, it will generally be forwarded to the MEO professional for processing. The service regs require that a formal complaint be submitted on the service's form: DA Form 7279 for the Army, AF Form 1587 for the Air Force, NAVMC Form 11512 for the Marine Corps, and NAVPERS 5354/2 for the Navy. While the forms do not offer sufficient space and subject matter entries for the detailed complaints discussed in Part 1 of this article, it is important to use the form and supplement it with the rest of the complaint, witness statements, other evidence and, if appropriate, a legal brief. These should all be listed on the complaint form to keep them from getting "lost."

Generally, complaints must be submitted within 60 days of the conduct complained of (or the most recent event in a series of prohibited conduct). The Marine Corps allows submission of a complaint within 90 days. The services give the CO the authority to accept late applications if the circumstances warrant.

The DoD Instruction requires that the MEO professional take several steps on receipt of a formal complaint:

- Provide the complainant with information on the policies and procedures for a complaint of reprisal under DoD Directive 7050.06.
- Explain the investigative process to the complainant.
- Give the complainant information on support resources, such as counseling and referrals, both within the military and without.
- Explain appeal rights to the complainant.
- Refer the complaint to the appropriate commander or supervisor within three duty days of receipt of the complaint.
- Monitor the progress of the subsequent investigation and keep the complainant informed of its status.
- Comply with the service's specific policies and procedures.  
(DoD 1350.02, Section 4.2.a)

Most service regs also require the MEO professional or the CO to advise the complainant that making false allegations or stating false facts is punishable under the UCMJ. For example, the AR specifically notes that punishment under the UCMJ may be appropriate for knowingly submitting a complaint with false information or allegations. (Section 6-6.h) Complaint forms require that the complainant swear to the contents, which increases the possibility that the command will claim the complaint was a false official statement. The warning and requirement of an oath can certainly have a chilling effect, making it important to discuss the issue, and ensure accuracy of the complaint, before it is submitted.



The Instruction states that each complaint is to be processed under the privacy requirements of DoD Instruction 5400.11 and the Privacy Act of 1974. (DoDI, at Section 4.2) In the Army, the MEO professional or CO is to advise the complainant that information will be shared only with those who have a legitimate “need to know.” (AR, Section 6-6.b.(3).(d).2.b)) The Air Force places greater limits on confidentiality, as witnesses may see the complaint.

In the Air Force, the MEO/IO is to “ensure the complainant identifies the basis of unlawful discrimination that is alleged to have occurred...”, ensure that he or she provides specific allegations, and “frame the allegations with the concurrence of the complainant,” suggesting that the MEO officer is to craft the complaint. The tendency of MEOs to want to write or edit the complaint exists in all the services. As noted in Part 1, the better practice is for the complainant and counsel or counselor to fill out the complaint form and prepare any additional writings in advance, avoiding the possibility of misstatements or omissions by the MEO professional.

Upon receipt of a complaint, the CO initiates an investigation of the complaint within five days, to the extent practicable, (three days in the Navy) and also forwards the complaint “with a detailed description of the facts and circumstances, to a level in the organization which has a legal office (e.g., a GCMCA or agency headquarters)” in the same time period. (DoDI, Section 4.2.b)

In the Navy, the CO has one duty day from receipt of the complaint to examine it and decide if it should be dismissed, referred to another agency or accepted for further action. He or she then initiates either a preliminary inquiry or command investigation, both as set out in the Manual of the Judge Advocate General. (JAGINST 5800.7F, usually called the JAGMAN).

With the Marine Corps, the CO receiving the complaint has three duty days to decide to dismiss the complaint or accept it for further action. (MCO, Section 3.15) A Marine’s complaint may be dismissed as “not under the purview,” that is, if the complainant is not covered by the Order, or neither the CO nor the Marine Corps has jurisdiction or authority to provide a remedy. (Here, a complaint should be referred to the relevant agency with subject matter and personal jurisdiction.) Other grounds for dismissal include a complaint which duplicates one previously filed or resolved; a complaint of institutional discrimination, which must be referred to MPE for guidance on how it should be submitted; a complainant’s failure to cooperate; a complaint submitted later than 90 days after the discriminatory conduct, though there is no mention here of command discretion to accept a late complaint; or voluntary withdrawal of the complaint.

Interestingly, in the Marine Corps, the CO has great discretion in deciding how to handle a complaint once it is “accepted:” whether to order that it be handled through informal Conflict Management or formal Complaint Resolution. (MCO Section 3.17) Section 3.3, states that “[c]ommanders will consider the complainant’s requested remedy/outcome, but ultimately are responsible for determining and directing the appropriate resolution process in accordance with this Order.” There is no such language in the SECNAVINST or the DOD Instruction, and this would make an interesting challenge or appeal issue. Section 3-18 of the MCO lists factors which a CO should consider in deciding between these methods; these include, among other things, whether there is credible evidence of the prohibited conduct; whether the complainant participated in the conduct; whether the complainant also committed prohibited conduct, and whether the conduct was verbal, physical or both. Where the CO feels a formal investigation is appropriate or concludes that he or she needs more information to make these determinations, the complaint should be processed under the formal Complaint Resolution process,

with the CO appointing an IO. Again, there is no language in the SECNAVINST or DoD Instruction leaving formal vs. informal resolution to the CO.

The AR has no language allowing a CO to dismiss a complaint; rather, it states that, upon receipt, the CO will either conduct an investigation personally or “immediately” appoint an IO, under the provisions of AR 15-6.

MEO complaints involving sexual harassment are generally processed through the MEO system, though complainants are also referred to sexual assault/harassment programs for support and assistance. The Army, for example, refers complainants to SHARP. The Air Force, at Section 1.3.24.13 of the DAFI, requires that sexual harassment complainants be referred to the Sexual Assault Prevention and Response (SAPR) office for support and victim advocacy, which the MEO office does not provide. At the same time, the complaint should also be referred to the MEO office for processing and investigation of the complaint. The DAFI repeatedly states that the SAPR and MEO offices should communicate regularly on each case.

Nothing in the regs suggests that additional witness statements, evidence, issues or reports of further prohibited conduct may not be submitted to the IO during the course of the investigation.

## **MEO INVESTIGATIONS**

After appointing an IO, or referring the matter to an Air Force MEO for investigation, the CO must monitor the investigation, unless it requires referral to one of the criminal investigative agencies, such as NCIS or CID, due to allegations of criminal offense(s). The CO is to ensure timely completion of the investigation, normally within 30 days after it is begun, or 14 days if the complaint involves sexual harassment. If the investigation cannot be completed within that time, the CO must make an extension request in writing, generally for another 30 days, and provide progress reports every 14 days to the next higher commander. When a request for an extension is granted, the CO must also inform the complainant and alleged offender of the length of the extension and the reason it was requested. The Army and Marine Corps follow these steps, but the Air Force requires that complaints be processed within 20 days, unless the shorter time frame for sexual harassment complaints applies (DAFI, at Section 4.15.2) and the Navy OPNAVINST states that investigations should be completed within 14 days of initiation.

The Air Force, unlike the other services, leaves the investigation in the hands of an MEO professional. Under Section 4.15.2 of the DAFI and its definitions, the Installation EO office will complete “clarification” within 9 days of receipt of the complaint. Clarification is defined as the “[p]rocess of gathering information regarding a formal equal opportunity complaint to determine whether credible evidence exists and/or that unlawful discrimination occurred.” The MEO office, rather than the CO, then determines whether or not the complaint is substantiated. Clarification must be completed within 20 days or the Installation EO Director will inform the installation commander of the need for additional time, and provide progress reports every 14 days until the case is closed.

Before initiating the investigation, the IO (or MEO professional in the Air Force) must obtain legal advice and consult with the MEO professional. In the Army, for example, the IO is to meet with the command’s Staff Judge Advocate or legal advisor to discuss the conduct of the investigation. He or she must also meet at the outset with the MEO professional, who will provide suggested questions for interviews. While these are referred to as suggestions, the AR also says that the IO “will” use these questions with

witnesses, complainant and alleged offender, chain of command and third-party personnel. (AR 6-6.c.(4)) The MEO professional is also to ensure that the investigation focuses directly on examining the validity of the allegations. Unfortunately, these provisions are not always followed, and investigators will sometimes focus on the character and behavior of the complainant rather than the allegations in the complaint.

The DoD Instruction provides virtually no guidance on the conduct of the investigation itself. In the Navy, IOs are to follow the investigative guidance in the JAGMAN. The Army, in Chapter 6 of the AR, provides the greatest detail about investigations and also refers IOs to the procedures and standards for investigations in AR 15-6. The AR, at Section 6-6.(1), states that:

“The purpose of any investigation of unlawful discrimination and harassment is to determine to the maximum extent possible what actually occurred, to assess the validity of allegations made by the complainant, to advise the commander of any leadership or management concerns that might contribute to perceptions of unlawful discrimination, and harassment, poor command climate, and to recommend appropriate corrective actions. The appointing authority is responsible for ensuring the investigation is complete, thorough, and unbiased.”

The AR also explains that “[t]he investigating officer will conduct a comprehensive investigation and must an [sic] attempt to interview every individual who may have firsthand knowledge of the facts surrounding the validity of the allegations. The investigating officer, on the advice of their legal advisor, may seek to interview everyone who may have relevant information concerning the relationship between the complainant and the subject. The investigating officer will interview the subject after interviewing witnesses, so that they will have a complete understanding of the alleged incident. If needed prior to the conclusion of the investigation, the investigating officer should conduct a second interview of the complainant and the subject. The investigating officer may choose to re-interview certain witnesses for clarification of conflicting statements. Should unit policies or procedures be called into question as contributing factors to perceptions of unlawful discrimination or harassment, the investigating officer will interview responsible members of the chain of command.” (Section 6-6.c.(5))

The DAFI at Section 4.15.3 states that clarification “includes interviewing or taking statements from persons who may have information relevant to the case” and gathering data from records or reports. The Equal Opportunity Practitioner may use information gathered from other investigations in conjunction with (but not in lieu of) their own clarification process to establish a preponderance of credible evidence. Credible evidence is defined as evidence that is believable, confirmed, and corroborated.”

The AR states that “Findings of substantiated complaints will meet the standard of proof of the ‘preponderance of the evidence’ standard.” This means that the findings must be supported by a greater weight of evidence than supports a contrary conclusion, that is, evidence that, after considering everything that is presented, points to one particular conclusion as being more credible and probable than any other conclusion. The ‘weight of the evidence’ is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating such factors as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.” (Section 6-6.c.(12))

Similarly, the Navy's definition in its OPNAVINST is that “[a] substantiated finding occurs when a preponderance of the evidence supports (more likely to have occurred than not occurred) the

complainant's allegation of a violation of law, regulation or Navy policy or standards. The documented facts indicate that a violation occurred." And the Marine Corps MCO's definition states that substantiated/substantiation is "[a] determination by a commander (O-5 and above)... that a preponderance of the evidence supports the truth of a complainant's allegation."

In the Army, at the completion of the investigation, the IO is to review all of the evidence, determine whether or not the investigation fully addressed all the allegations, and then make factual findings and recommendations.

Experience shows that these investigations may go astray. In some cases, IOs fail to interview all of the witnesses named in the complaint, or otherwise keep the investigation to the IO's idea of a "bare bones" inquiry. In other cases, IOs may look more closely at the complainant's character, behavior and mental health than at the allegations in the complaint. IOs have been known to be more protective of the offender or command than of the complainant. Although some regs require that the IO focus only on the matters complained of, the AR, as quoted above, states that "[t]he investigating officer, on the advice of their legal advisor, may seek to interview everyone who may have relevant information concerning the relationship between the complainant and the subject." This seems an open invitation to look at the complainant's motives for making a complaint.

The IO will meet with the MEO professional to review the report, then provide it to the SJA or legal advisor to conduct a legal review. The report goes to the CO, who is to determine whether the investigation is complete or requires further work; if it is complete, the CO will then decide to approve all or part of the findings and recommendations. In most services the CO decides if the complaint is substantiated, although in the Air Force the MEO/IO makes that determination.

The purpose of the legal review is to determine if:

- "The investigation complies with all applicable legal and administrative requirements.
- "The investigation adequately addresses the complaint.
- "The evidence supports the administrative findings concerning the complaint. Commanders will direct investigating officer to obtain additional information if the finding is not supported.
- "The investigation conclusions and recommendations are consistent with the findings.
- "Any errors or irregularities exist and, if so, their legal effect, if any.
- "The complainant and alleged offender were informed, in writing, of the results of the investigation, including whether the complaint was substantiated, unsubstantiated, or dismissed.
- "The complainant and alleged offender were advised of their right to appeal."  
(DoD Instruction, Section 8.1)

Upon completion of the investigation and command (or Air Force MEO) determination, the command will advise the complainant and alleged offender of the results, their appeal rights and their right to request a copy of the investigative report, with redactions as deemed necessary to comply with the Privacy Act.

## APPEALS

The DoD Instruction states at Section 5.2.b. that the complainant or offender may file an appeal within 30 duty days of notification of the complaint's disposition. The military departments are told to establish initial and final appeal procedures, subject to the following:

- “(1) The first level of appeal will be at least two organizational levels above the level at which the appellant is assigned, when practicable.
- “(2) The appeal procedure is not an adversarial process that provides for personal appearances or hearing rights.
- “(3) The final appeal authority will decide the appeal based on the written record and any written arguments submitted with the appeal. The appeal authority may sustain or overrule the finding, or remand the matter for further fact-finding.” (DoDI Section 5)

The Navy's OPNAVINST provides that the complainant and/or alleged offender may request a redacted copy of the investigation, which must be provided within 14 days of the request. If the request is made during the appeal period, that period will be adjusted to run from receipt of the requested report. The other service regs do not mention such a “reset” of the appeal period.

Under the DAFI, Air Force appeals must be submitted within 30 days of notification of the decision on the complaint, though the Installation Commanders may allow late appeals. According to the AR, Army appeals must be submitted within seven days of notification of the investigation's findings and the command's actions to resolve the complaint, or notice of denial of the first appeal. Similarly, the Navy requires that appeals be submitted within seven days of notification of the completed investigation and command determinations. The Marine Corps allows 30 days from notification of the CO's disposition of the complaint. A final appeal may be filed within 30 days of receipt of written notice of the first appeal authority's decision.

Seven days seems insufficient for preparation of an appeal in all but the simplest of cases. An Army or Navy complainant may want to request the 30 duty days allowed in the DoD Instruction. This should normally be done in writing, with a request for a written response. Where the command refuses the additional time or fails to answer the request, as much of the appeal as possible should be submitted within seven days. That initial appeal could reference the request for the time allowed by DoD and include a statement that the appeal will be supplemented with evidence and arguments that could not be prepared on short notice.

The Air Force uses three levels of appeal: Installation Commanders, MAJCOM Vice Commanders (MAJCOM/CV) and SAF/MRB are authorized to decide appeals. However, “[e]xcept in extraordinary cases, there is no next-level appeal when the commander of both the complainant and the offender is the MAJCOM/Direct Reporting Unit Commander.” The Navy has two levels of appeal, the first to the CO of the command two organizational levels above the complainant, “when practicable.” The second is the Secretary of the Navy or his or her designee. Under the AR, Army appeals are initially made to the first commander in the chain of command with special court-martial convening authority. A second, final appeal would go to the ACOM, ASCC or DRU commander with general court-martial convening authority. The final appeal authority may sustain or overrule the investigation's findings or order further fact-finding. In the Marine Corps, there seems to be only a single level of appeal, to the officer with General Court-Martial Convening Authority (GCMCA), who also reviews all complaints. (MCO, Encl. 2, Chapter 5, Section 10)

Air Force appellants must submit appeals through the Installation Equal Opportunity Office to the lowest level of command authorized to decide the appeal. Section 4.30.5 of the DAFI states that appeals may not normally be made to the Inspector General: “The Inspector General system is not an available channel of review unless there was an abuse or mishandling of the established process for appealing formal military equal opportunity complaints.” This suggests that deviation from the DoD Instruction or significant delays might be matters to take to the Inspector General.

The DoD Instruction gives virtually no guidance on the content of appeals or whether or not they may contain new evidence and issues. The language of Section 5, quoted above, suggests that new evidence, being outside the written record, should not be added on appeal. Section 8 does mention that COs whose decisions are appealed are to explain “[w]hat, if any, new evidence was provided by the complainant or alleged offender [on appeal] that was not readily available during the investigation?” (DoD Instruction, Section 8.2)

Army appeals are reviewed based on the record and any written arguments submitted with the appeal, which might suggest that new evidence is not considered on appeal. (AR, Section 6-6.e) However, Section 8.2. of the DoD Instruction says that COs whose decisions are appealed are to explain “[w]hat, if any, new evidence was provided by the complainant or alleged offender [on appeal] that was not readily available during the investigation?”

The Air Force’s DAFI, at Section 4.30, states that a complainant may appeal findings of unsubstantiated allegations and an offender may appeal findings of substantiated allegations. Section 4.30.2 requires that an appeal be submitted in writing and “will contain no more than 3 single spaced pages,” though supporting documentation, presumably including additional evidence, may be attached. The DoD Instruction includes no limits on the length or brevity of the appeal.

In the Navy, “[a]n appeal may be submitted on any legal or equitable grounds based upon a perception that existing DoD or DON regulations were incorrectly applied in the particular case, that facts were ignored or weighed incorrectly or on any other good faith basis.” (OPNAVINST, Chapter 5, Section 6.f) The OPNAVINST also states that “In addition to the NAVPERS 5354/2 [the complaint form], documentation such as statements of witnesses, personnel record entries, etc., that may be helpful in resolving an appeal, may be submitted to the appellate authority by the party requesting the appeal. The appellant must submit a statement detailing the reason for the appeal.” (Chapter 5, Section 6.c)

The AR gives slightly more detail on appeals, allowing the complainant to appeal any findings of unsubstantiation due to failure to reveal or examine all of the facts of the case, or “that the actions taken by the command on [his or her] behalf were insufficient to resolve the complaint.” However, the complainant may not appeal on the basis that actions taken against the offender were inadequate.

An Army appeal is to be “brief,” and is submitted on DA Form 7279 to the CO who conducted the investigation or appointed the IO. That CO has three days to refer the appeal to the appellate authority, who has 14 days to review the case, and provide written “feedback” to the appellant.

The Marine Corps’ MCO gives additional detail:

“Either party may appeal the CA’s administrative findings on the following bases: any legal or equitable grounds based upon a good faith belief that existing DOD or DON regulations were incorrectly applied in the particular case; that facts were ignored or weighed incorrectly; that remedial action ordered by a

commander was insufficient under the circumstances; or on any other good faith basis...

“a. The individual making the appeal bears the burden of providing evidence that establishes the basis for the rebuttal of facts.

“b. Dissatisfaction with the disposition of a complaint does not constitute a valid basis of appeal.”  
(OPNAVINST, Chapter 5, Section 10)

Where the complainant and counsel or counselor conclude there are appellate issues not permitted by the service’s reg, it is possible to argue in the appeal that the DoD Instruction sets no limits on issues, and since it is controlling and gives the complainant greater rights than the service reg, all appellate issues should be allowed.

For the services where brevity is required, one could again argue that the DoD places no such limits on the length of an appeal. With or without that argument, it may be useful to submit a legal brief as an attachment or exhibit to the appeal, to expand on issues in the appeal or raise additional issues. If the brief is prepared by an attorney or a legal organization, that fact in itself may give the appellate authorities pause. Similarly, noting that copies of the appeal have been sent to an attorney or legal organization, to a civil rights organization such as the NAACP, and/or to a Congressional representative may lead to a more careful review of the appeal.

In preparing an appeal, the complainant or an independent private investigator may talk with friendly witnesses who were interviewed by the IO, to determine whether the reports of their interviews were accurate and complete and document any omissions or misstatements through new statements. Witnesses who were named in the complaint but not interviewed may be asked for written statements about the discriminatory conduct, and about the fact that they were not interviewed. With unfriendly witnesses’ statements in the IO’s report, other, new witness statements can be used to counter harmful comments or show the witnesses’ motives for siding with an offender. Where the investigation made attacks on the complainant’s character, behavior or motives, it is important to counter these with new witness statements or documentary evidence.

## **CONCLUSION**

The MEO complaint process is challenging and rife with problems and errors. As noted throughout, the Instruction and regulations are cumbersome and confusing. To deal with this, complainants need a lot of support through the process which seems designed to deter complaints. However, with care, the MEO complaint process can be used against offenders and incalcitrant commands. ■

# MLTF WRITES TO SAN DIEGO UNIFIED SCHOOL DISTRICT RE JROTC INVOLUNTARY ENROLLMENTS

By Rick Jahnkow, Project YANO

In December 2022, a front-page article in the *New York Times* reported that many high schools with Junior ROTC have [made the program mandatory](#) for students. Examples were given of dozens of schools where more than 75 percent of students in a single grade have been placed in the program. One of the schools was in the San Diego Unified School District, where community activists have complained about involuntary JROTC enrollments for over a decade.

In January 2023, at the request of the [San Diego-based Project on Youth and Non-Military Opportunities](#) (Project YANO), two attorneys representing the Military Law Task Force sent a letter to the San Diego Unified School District expressing concern over the district's JROTC enrollment practices. Reprinted below, the letter notes that the California Education Code expressly prohibits requiring any student to take a military science course. Separately, Project YANO and several other San Diego community groups have called on the school district to investigate the issue and take steps to guarantee that no student will be enrolled in JROTC without first obtaining fully informed consent from the student and a parent. As of March 14, 2023, there had been no official response from the school district and, thus, local groups were planning a public campaign for action by the school board. In addition, federal legislation is being discussed by an ad hoc national coalition that would force schools with JROTC to make it entirely voluntary. For more information, email [contact@projectyano.org](mailto:contact@projectyano.org)

## MLTF Letter to SDUSD re: JROTC

January 25, 2023

San Diego Unified School District  
4100 Normal Street  
San Diego, California 92103

Dear SDUSD:

We are writing in our capacity as attorneys with the Military Law Task Force of the National Lawyers Guild. We are concerned that high school students may be involuntarily enrolled in Junior Reserve Officers' Training Corps (JROTC) by the San Diego Unified School District.

United States Army JROTC was first created on a national level by the National Defense Act of 1916. It was expanded to all branches of military service by the ROTC Vitalization Act of 1964 (10 USC Section 2931 et. sec.) and was further refined by the National Defense Act of 2007.

At all times JROTC was and remains an entirely voluntary program in high schools.

The JROTC program is controlled by the United States Department of Defense.

As recently as 2021 Chapter 102 of USC Title 10 was described in a report to the United States Congress as follows:

The Junior Reserve Officer Training Corps (JROTC) is a voluntary high school program of instruction administered by the Department of Defense (DOD)



through the military departments. See Congressional Research Service, December 15, 2021.

The requirement that JROTC be voluntary is codified in California in the Education Code. The California Education Code explicitly states at Section 51750:

The governing board of any school district maintaining a secondary school may establish in the school classes in military science and tactics complying with the laws of the United States made and provided with reference to Reserve Officer Training units in educational institutions.

No student enrolled in any such school shall be required to enroll in any course in military science and tactics.

Enrollment occurs when a student is listed on a class roster or is in any way assigned to attend a class. Consequently, no student may be required to attend a JROTC class or enter a JROTC classroom unless that student has already voluntarily agreed to enter a JROTC class or classroom.

We trust that the SDUSD is committed to abiding by the laws of the State of California and the laws of the United States. We understand that in 2008 Terry Grier, then Superintendent of San Diego Schools, reiterated that JROTC is voluntary, citing the same code section we cite above, California Education Code section 51750. A copy of his memo is attached.

We seek assurance that the JROTC policy set forth by Superintendent Grier remains in effect, and that no high school student is ever required by the SDUSD to participate involuntarily in any way in the JROTC program.

Respectfully,

Jane R. Kaplan, Esq.

Matthew J. Rinaldi, Esq.

MJR/hc cc: Project  
YANO

As you know, this past year the Board of Education has been approached by parent and students questioning the district's practices when scheduling students into Military Science Courses. We are asking that you take the steps prior to the beginning of the 2008-2009 school year.

1. Make sure that no student is placed in a Military Science class without first obtaining fully informed consent from the student **AND** a parent or guardian of the student (in accordance with California Education Code sec. 51750).
2. Make sure that before a student enrolls in a Military Science class, they **AND** their parents or guardian are informed that the course is a nonacademic elective and does not provide credit that counts toward meeting general college or university admission requirements in the state of California.

If we do not have a Military Science registration permission form that outlines these guidelines, I would suggest that a committee of high school principals work with Nellie Meyer to develop such a document and require both students **AND** parents to sign it prior to registering them for Military Science class.

In addition, SDUSD has been notified by the California State Department of Education that in the future Military Science, band, cheerleading, flag, etc. classes can no longer count as substitute credit for a physical education graduation requirement.

Thank you for your assistance and please call me should you have questions. ---Terry Grier

Terry B. Grier, Ed.D.  
Superintendent  
San Diego Unified School District  
4100 Normal Street  
San Diego, CA 92103

## **HOW TO PROTECT ONE'S FUTURE RIGHTS BEFORE OR UPON DISCHARGE FROM THE MILITARY**

**By Karen Kadish**

This article gives some general information about what you can do before being discharged from the military in order to give yourself the best shot at attaining Department of Veterans Affairs (VA) benefits or a discharge upgrade.

### **WHY IS IT IMPORTANT TO PLAN AHEAD?**

The VA, the Discharge Review Boards, and the Boards for Correction of Military/Naval Records will look to documents from your time in the military as evidence. It can be hard to get those documents after you are discharged – especially if a lot of time has gone by since you separated. Therefore, preparing early by collecting this type of evidence can be helpful if you may later want to apply for VA benefits or for a discharge upgrade. You also want to make sure while you are in service that you get medical care for injuries, make reports if you are harassed or experience a traumatic event, and keep journals, notes, or take photos of injuries you incur or symptoms you are experiencing..

### **IN-SERVICE MEDICAL TREATMENT AND MEDICAL RECORDS**

- Reporting in-service injuries, symptoms, and mental health struggles to medical providers when they happen helps to later establish that a disability began during your active-duty service. Whenever you go to the doctor in service, they make notes that become part of your Service Treatment Records. If your disability is noted in your in-service medical records, it will assist your VA service-connected disability claim.
- You can request a full copy of your Service Treatment Records to keep for your records.
- When applying for a discharge upgrade, it is key to show that you were suffering from mental health or traumatic brain injury symptoms at the time of the misconduct that led to your discharge. This is because of policy guidance such as the [Hagel](#) and [Kurta](#) Memoranda. Seeking out mental health treatment and having those symptoms documented while you're still in service, whether it be through a military or a civilian provider, will increase your likelihood of success.
- If you were sexually harassed, assaulted, or raped in the service, it is helpful to document that experience should you need to prove that it happened as part of your VA claim or discharge upgrade. Each base has a Sexual Assault Response Coordinator (SARC) Office which can be a resource to you in these situations. Even if you don't want to pursue criminal charges against the perpetrator, you have the right to file a restricted report documenting what happened with that office. Keep a copy of that report for later use. If you are uncomfortable seeking assistance from the military, consider reaching out to civilian resources instead, such as a local rape crisis center, and hold onto copies of any communications that you have with those providers.
- Exit examination – a servicemember is given a medical examination before they are discharged from the military. At this examination, it is important to disclose any injuries, symptoms, mental health problems, or medical conditions that you experienced during service, even if you did not seek or receive any treatment for them.

- Some servicemembers seek civilian medical care during their active-duty service. Civilian medical records can also be instrumental in demonstrating service-connected conditions or disabilities. If you have received civilian medical care or been hospitalized in a civilian hospital, try to get a copy of those medical records now. At minimum, write down the name of the doctor or hospital that provided you with medical care and the dates of treatment.
- If you have received mental health or substance use treatment while in service, these records may not be included in your Service Treatment Records. If they are not included, you should use DD Form 2870 “Authorization for Disclosure of Medical or Dental Information” to request copies of these records directly from the mental health or substance use clinic.

### **OMPF AND DISCIPLINARY PAPERWORK**

- Personnel records (known as Service Record Book (SRB) or Official Military Personnel File (OMPF)) are essential. You should be able to get a copy of these records from your online accounts. You can later request a copy of these records using Standard Form (SF) 180, but your request may be delayed or redirected to your service branch if you are a new veteran.
- If you have received non-judicial punishments, letters of counseling, or other disciplinary actions, keep the copies that you are given.
- If you had a civilian or military (JAG) attorney to represent you at any disciplinary proceedings, note down the name and contact information of the attorney in case you want to get in touch with them later to get more details about the disciplinary action.
  - If you had a JAG for a court-martial or administrative separation process, ask your JAG if they have noticed any procedural issues in your case that they believe the military handled improperly. If so, ask for a memorandum describing the issues. This could be the basis for a propriety or error argument before the discharge review board or board for correction when you are requesting a discharge upgrade.
- Make sure to keep a copy of any awards you were given and any paperwork describing the reason why you were given that award. This can provide corroboration of your meritorious service or sometimes of stressor events that may contribute to later symptoms of Post-Traumatic Stress Disorder (PTSD).

### **PAPERWORK RELATING TO DISCHARGE**

- If you go through an administrative separation or court martial, keep copies of the records from the separation process. In general, a discharge packet should include Staff Judge Advocate review of the discharge recommendation, the command’s recommendation, and attachments. The attachments usually include documents relating to the discharge and any disciplinary actions that led to the discharge.
- Ensure that you have a copy of any charge sheets, military or civilian investigative records, and any transcripts of court proceedings.
- Many servicemembers waive their right to counsel during the discharge process. While it can seem to be the best way to expeditiously be discharged, be aware that discharge review boards do sometimes interpret this waiver as an admission of culpability.
- If given the opportunity, ensure that your DD-214 is accurate, and that the DD-214 includes all awards, accolades, deployments, and other meritorious contributions.

## CONTACT INFO OF FRIENDS, FAMILY MEMBERS, AND FELLOW SERVICEMEMBERS

- Friends, family members, and fellow servicemembers can be invaluable sources of evidence when you are applying for VA benefits or for a discharge upgrade. The people in your life may have observed certain events, may remember you telling them about the event, or may have noticed changes in your health or behavior. Keeping track of their names and contact information will make it easier for you to reach back out later to get statements from them to support your application.
- Many units have websites, Facebook pages, or other social media that allows former servicemembers to keep in touch with other members of their unit. Keeping in contact with your unit by joining the Facebook page or other social media can make it easier to find fellow servicemembers even if a lot of time has gone by.
- If there is someone in your chain of command who is supportive of you or who has been an ally while you are going through administrative separation, make sure to keep their name and contact information. Their statement could be very helpful if you later apply for VA benefits or a discharge upgrade.

## AFTER YOUR DISCHARGE

Even once you have been discharged, there are steps you can take to preserve evidence that may help you file a VA benefits claim or an application for discharge upgrade.

- Go to a doctor to get evaluated for a Traumatic Brain Injury (TBI), PTSD, or other mental health conditions if you think you might have one of these conditions. A diagnosis of these conditions shortly after discharge could help entitle you to liberal consideration by the Discharge Review Boards.
- Note: Sometimes it can be beneficial to wait several years to apply for a discharge upgrade with your military branch. The Boards often look at your accomplishments and contributions post-service when considering your discharge upgrade application. Allowing time for yourself to build up a good record post-service may put you in the best spot strategically to apply for your discharge upgrade.

## CAN I GET VA BENEFITS WITHOUT A DISCHARGE UPGRADE?

If you received a less than honorable discharge and you have not gotten your discharge upgraded, or you have been denied a discharge upgrade, you may still be eligible for certain VA benefits and programs.

- Even with an Other than Honorable (OTH), Bad Conduct (BCD), or Dishonorable discharge, you may be able to get access to VA health care. The VA has discretion whether to find you eligible for VA benefits in a process called a [Character of Discharge Determination \(COD\)](#). You can ask the VA to conduct a COD to determine whether your service should be considered “honorable for VA purposes.” Reach out to a local Veterans Service Office for more information about the VA’s COD process.
- If you received a General Under Honorable Conditions discharge, you will be eligible for all VA benefits you would otherwise have received with a fully honorable discharge, with the exception of GI Bill education benefits.
- Veterans with an OTH are eligible for VA healthcare for conditions that are found by VA to be service connected. This is referred to as “Chapter 17” eligibility. To get access to this healthcare,

you will need to apply for service-connected disability compensation from VA and have them make a determination that your disability is related to your time in service.

- Veterans who are suffering from mental health conditions due to deployment or military sexual trauma are eligible for mental healthcare at Vet Centers, regardless of their discharge characterization.
- In addition, any veteran who has had a positive COD who is at imminent risk of suicide can go to any VA or non-VA health care facility for emergency health care at no cost, so long as they meet certain length-of-service requirements (2 years for non-combat veterans, 100 days for combat veterans). Veterans who experienced military sexual trauma may get emergency health care if they are at imminent risk of suicide no matter their characterization of discharge.
- You may be eligible for housing assistance from the VA even if you have an OTH or a BCD from a Special Court Martial, including rental assistance and a housing voucher. Reach out to a local Veterans Service Office for more information about VA's housing benefits.

### GENERAL TIPS

- Consider uploading records and documents in a digital format to a location that you will continue to have access to. Physical records are often lost or damaged when you move or relocate, but digital records may be easier to keep for years to come.
- Keep names and contact information of the people you served with. Even if you might think you'll never forget your fellow servicemember's name, with the passage of time details can get fuzzy!
- Consider writing a journal entry or making a note on your computer, signed and dated right before your discharge describing what you went through while you were in the military. It will be useful later to have a record of your memories from closer in time to your military service. This can help you corroborate a stressor event, remember relevant dates or locations, and remember what you experienced.
- If you are suffering from physical or mental health symptoms following your discharge, seek treatment. Medical records from after your time in service can be used to corroborate your symptoms, particularly if you seek treatment shortly after your discharge.

### ONLINE RESOURCES

There are resources available online to give you more information about VA benefits and discharge upgrades. The websites below may be a good starting place:

- Upgrading Your Discharge: <https://www.swords-to-plowshares.org/guides/upgrading-your-discharge>
- Correcting Your DD-214 or Discharge if You Were Discharged Under DADT: <https://www.swords-to-plowshares.org/guides/dd214-corrections-for-veterans-discharged-under-dont-ask-dont-tell-and-prior-policies>
- VA Character of Discharge Determination: <https://www.swords-to-plowshares.org/guides/va-character-of-service-determination-an-alternative-to-discharge-review>
- Ordering Court-Martial Transcripts and Military Investigative Records: <https://www.swords-to-plowshares.org/guides/ordering-courts-martial-transcripts-and-military-investigative-records>

# CONGRESS AGAIN BACKS AWAY FROM EXPANSION OF DRAFT REGISTRATION

BY EDWARD HASBROUCK

**March 2023** - For the third time in the last six years, proposals<sup>1</sup> to expand the current Selective Service registration requirement to include young women as well as young men were included in versions of the annual National Defense Authorization Act (NDAA) for Fiscal Year 2023, but were removed in back-room House-Senate leadership negotiations.

As in 2016 and 2021, the 2022 proposals to expand Selective Service registration to women were bundled into 2,000-page drafts of the NDAA without any hearings or floor debate in either the House or Senate, and without any consideration of the alternative proposal to repeal the Military Selective Service Act and end draft registration entirely.<sup>2</sup> Despite bipartisan sponsorship in both the House and Senate in the last two sessions of Congress, repeal of Selective Service has yet to receive a hearing or floor consideration.

Again in 2022, as in 2016 and 2021, provisions to expand Selective Service were removed from the final draft of the NDAA negotiated by House and Senate leaders and presented to both chambers in December for take-it-or-leave-it final approval. The NDAA for FY 2023, as enacted, makes no change to Selective Service requirements.<sup>3</sup>

This doesn't mean that debate about what to do about draft registration is over. Indeed, Congress has never really begun to debate the issue. This means only that members of Congress have, yet again, avoided facing up to the reality that, whether they like it or not, draft registration is an abject failure.

Expanding draft registration to women is still a bad idea that won't go away until Congress ends draft registration entirely.

Congress has punted again, as it did in 2016 and 2021, but the ball is still in play. This issue could be raised during consideration of the annual NDAA — or, preferably, through freestanding legislation that would allow more in-depth consideration and debate — this year, next year, or ten or twenty years from now.

The future of Congressional consideration of draft registration is especially uncertain because both the lead advocate for expanding draft registration to women, Rep. Jackie Speier (D-CA), and the lead House Democratic sponsor of the Selective Service Repeal Act, Rep. Peter DeFazio (D-OR), chose not to run for re-election in 2022. This makes it critically important to urge other members of Congress to take up the lead in reintroducing and co-sponsoring the Selective Service Repeal Act. As of this writing (March 2023),

---

1 See links to bills at “Legislative proposals related to Selective Service”, <https://hasbrouck.org/draft/legislation.html>

2 “Selective Service Repeal Act”, H.R. 2509 / S. 1139, 117th Congress, <https://www.congress.gov/bill/117th-congress/house-bill/2509>

3 “National Defense Authorization Act for Fiscal Year 2023”, <https://www.congress.gov/117/bills/hr7776/BILLS-117hr7776enr.pdf>

the Selective Service Repeal Act has not yet been reintroduced in the current session of Congress.

In the House, Rep. Speier has been succeeded as Chair of the Subcommittee on Military Personnel of the Armed Services Committee by Rep. Jim Banks (R-IN).<sup>4</sup> Banks is a "don't draft our daughters" opponent of expanding Selective Service to women, although he has said in prior years that this issue isn't his priority.<sup>5</sup> The new ranking minority member of the House Military Personnel Subcommittee is Rep. Andy Kim (D-NJ). Rep. Kim was the only Democrat on the Subcommittee to vote against expanding Selective Service to women in 2022 the last time it was voted on, but has not (yet) endorsed the Selective Service Repeal Act. Rep. Ro Khanna (D-CA), who has not yet taken a public position on Selective Service but who asked the most critical questions about the issue<sup>6</sup> following an otherwise one-sided hearing in 2021<sup>7</sup>, also remains on the House Armed Services Committee.

In the Senate, Sen. Elizabeth Warren (D-MA), who has not yet taken a public position on Selective Service, continues to chair the Subcommittee on Personnel of the Senate Armed Services Committee.<sup>8</sup>

More antiwar feminists are speaking up for an end to Selective Service, further undermining the bogus claim that preparation for larger, longer, more unpopular wars than people would be willing to fight is somehow a feminist policy. Notably, in 2022 the National Organization for Women<sup>9</sup> joined the many other endorsers of the Selective Service Repeal Act.<sup>10</sup>

For now, unless and until Congress changes the law, all male (as assigned at birth) U.S. residents are still required to register with the Selective Service System within 30 days of their 18th birthday, and report within 10 days every time they change their address until their 26th birthday<sup>11</sup> — although few do.<sup>12</sup> Draft boards continue to be appointed to administer a possible draft.<sup>13</sup>

The Selective Service System has managed to evade meaningful scrutiny of its purpose or fitness for

---

4 "Rogers, Smith, announce subcommittee rosters for 118th Congress", press release, February 1, 2023, <<https://armedservices.house.gov/news/press-releases/rogers-smith-announce-subcommittee-rosters-118th-congress>>

5 Emily Brooks, "Defense bill that would make women register for draft largely supported by Republicans", Washington Examiner, September 22, 2021, <<https://www.washingtonexaminer.com/news/defense-bill-draft-women-republican-support>>

6 "Recommendations of the National Commission on Military, National, and Public Service, Committee on Armed Services, House of Representatives, Hearing held May 19, 2021, Questions Submitted by Members Post Hearing", <<https://www.govinfo.gov/content/pkg/CHRG-117hrg47820/pdf/CHRG-117hrg47820.pdf>>

7 Edward Hasbrouck, "House Hearing on Selective Service", Antiwar.com, May 19, 2021, <<https://www.antiwar.com/blog/2021/05/19/house-hearing-on-selective-service/>>

8 See <https://www.armed-services.senate.gov/subcommittees>.

9 "Resolution to the National Organization for Women on ending military draft registration", <<https://now.org/wp-content/uploads/2022/09/RESOLUTION-TO-THE-NATIONAL-ORGANIZATION-FOR-WOMEN-ON-ENDING-MILITARY-DRAFT-REGISTRATION.pdf>>

10 See list of endorsers at <<https://hasbrouck.org/draft/repeal.html>>.

11 "FAQ: Frequently asked questions about the Selective Service System and the military draft (required military service)", <<https://hasbrouck.org/draft/SSS-FAQ.html>>

12 Edward Hasbrouck, "Compliance, noncompliance, and enforcement of Selective Service registration", <<https://hasbrouck.org/draft/compliance.html>>

13 Edward Hasbrouck, "Know your draft board", <<https://hasbrouck.org/draft/draft-board.html>>

purpose throughout forty years of failure since it was brought out of “deep standby” in 1980.<sup>14</sup> In the absence of a movement for abolition of the Selective Service System, it could keep going for another forty years on institutional inertia and Congressional reluctance to throw in the towel and admit defeat in the face of quiet but pervasive and persistent popular disregard for the law.

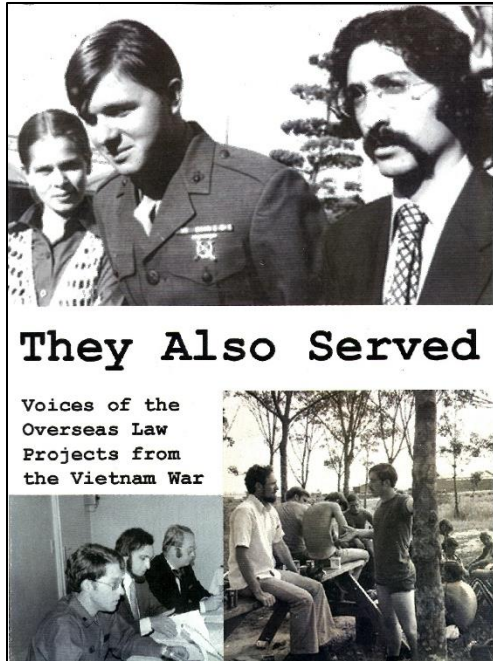
U.S. war planners assume that a draft is always available as a fallback. Ending Selective Service registration and contingency planning and preparation for a draft would help reign in planning for endless, unlimited, unpopular wars. But that isn’t likely to happen unless the failure of draft registration becomes more widely recognized, and unless Congress sees more visible signs that young women will resist any attempt to expand draft registration, and older people will support them in their resistance.

I’m confident that young women will resist draft registration, as young men have done for decades. It’s up to us to educate, agitate, amplify, and provide legal support and defense for their resistance. ■

---

14 Edward Hasbrouck, “The History of Draft Registration and Draft Resistance Since 1980”, <<https://hasbrouck.org/draft/background.html>>





**A REVIEW OF *THEY ALSO SERVED:  
VOICES OF THE OVERSEAS LAW  
PROJECTS FROM THE VIETNAM WAR***

ED. BY HOWARD J. DE NIKE, AND JUDITH MIRKINSON  
(2022, IMBRUGLIA PRESS)

**By James M. Branum**

Like many Gen-X (and younger) peace activists, I have long found inspiration in the example of the effective anti-war/pro-servicemember activism that occurred during the Vietnam War era.

A variety of techniques were used including the publication of underground newspapers and the creation of GI coffee houses, but an under-examined aspect of this work is the efforts of lawyers and legal workers to provide support for this movement, especially in an overseas context. This was

an important factor in the pre-internet era, in which physical presence was of critical importance in providing effective support.

*They Also Served* helps to bridge this gap in our historical consciousness, by giving space for those who were there to tell their stories of service for peace and justice.

The book is organized into four sections focusing on different geographical areas: Vietnam (1970-1972), The Philippines (1971-1972), Japan and Okinawa (1971-1974), and Europe (1972-1976), as well as an appendix of a report written by movement members in Okinawa in 1974. Each of the sections includes several essays, mostly written by lawyers and legal workers, but some written by GI clients themselves. (Andy Berman’s story of enlisting in the Army to resist from the inside was especially vivid.) Some of the essays are also accompanied by black and white photographs.

Organizationally, these efforts were driven by two organizations: LMDC (Lawyers Military Defense Committee) and the Military Law Office of the National Lawyers Guild, which did its work in cooperation with PCS (Pacific Counseling Service). These organizations worked together in a collegial manner but also took different approaches, with the LMDC focusing on the ACLU-style approach of looking for the best “test cases” to create good case law, while the NLG’s approach focused more on grassroots organizing, not only against war itself and military injustices, but also in building connections between the local communities in Japan, Okinawa and the Philippines who had been hard-hit by the US military presence in their countries.

The essays chosen for this anthology are unique and vivid, packed with details and memories, but for the sake of brevity I will share a few “big picture” observations I took from reading the book:

1. The role of the draft was an important factor in this story, but not always in the ways a reader might expect. While some of the clients were draftees, many were not. The draft also likely played a role in pushing many young lawyers to join the project, many of whom were seeking to

work against the injustice that excused them from the draft but left their friends to be drafted.

2. The issue of drugs was a pressing concern for many of the clients of these projects. Unfortunately, due to the easily detectable odor of marijuana being smoked, more and more servicemembers were turning to hard drugs during this era. The military sometimes went after drug users in the military but mostly ignored the problem.

3. The racial dynamics of this time were rough. Many of the essays told stories of abusive treatment by US servicemembers of local populations, but also told many stories of racist abuse by commanders and NCO's against troops of color. There were also stories of racial segregation in the surrounding communities, and how the US military gave its tacit approval to this arrangement.

Also worth noting is that several of the essays acknowledged racial shortcomings of the movement, most notably by failing to hire more people of color to staff their overseas offices.

4. Those participating in these projects took tremendous risks in doing the work, often being surveilled by the US government and by the host countries. And in the case of the work in the Philippines, several who worked in the offices were arrested, interrogated, and eventually deported after Ferdinand Marcos declared martial law in 1972. We now know that US military law enforcement was involved in these interrogations, and also likely directly requested that the legal activists be arrested and deported.

5. Most of the overseas workers were physically safe during their time overseas, but there were exceptions, with the perpetrators of violence often being unknown assailants who seemed to have no interest in stealing money or valuables (and hence were likely acting on the behalf of the US authorities).

6. Access to military bases was often denied to activists, but lawyers (after persistent pushing) were normally allowed to come on base to meet with their clients. (This is one factor that hasn't changed much in the last 40 years!)

7. Access to entire countries was never something that could be assumed by the movement. The US military freely used its coercive power to make the governments of South Vietnam, The Philippines, Japan, and Germany take action against movement members. These actions included denial of visas, deportations, and arrests, but also more generalized harassment.

8. Cultural work was a key part of the struggle. The visits of the FTA tour to the Pacific region led to increased visibility and awareness of the anti-war movement. There was also growing awareness in the movement of the importance of intercultural solidarity with the peoples of the host countries, many of whom had been displaced by the building of US military bases.

9. Those who participated in these projects spoke glowingly of the ways that their involvement with the movement influenced the course of the rest of their lives. Many of these people were very young (in their 20's) at the time, and thankfully many of them are still raising hell for the sake of peace and justice.

While the world has changed a lot since 1976 (coincidentally the year I was born), these stories are still very relevant to us today. US troops are still stationed throughout the world and engaged in the work of defending the empire. And wherever those troops are, there will be those who question and even resist injustice. While today's work is mostly taking place via the Internet and cell phones, we can still learn a lot from the examples given in *They Also Served*, particularly in seeing their deep practice of solidarity.

I strongly recommend this book. ■

**Available in paperback  
(256 pages) for \$30**

**Contact Howard De Nike  
jmdenike@aol.com  
to place your order**

## ANNOUNCEMENTS

### DEADLINE EXTENDED

#### MILITARY LAW TASK FORCE JOB ANNOUNCEMENT

The Military Law Task Force of the National Lawyers Guild is seeking a law student or other legal professional to update its Military Sexual Violence self-help literature – a memo, guide and promotional brochure. The current materials can be found on our website:

- [Challenging Military Sexual Violence](#)
- [Responses to reprisals for sexual assault reports](#)

The updates must include the more important changes from the most recent DoD Instructions and Directives as well as recent changes mandated by the NDAA.

The MLTF has allocated \$1,000.00 for payment for the self-help guide and brochure when this work is completed. An additional \$500.00 is available for work on the memo.

An email of interest as to which project or both and a writing sample must be submitted to MLTF Chair Jeff Lake at [JeffLakeJD@gmail.com](mailto:JeffLakeJD@gmail.com) by **April 17, 2023**.

## ABOUT THE CONTRIBUTORS

**Tori Bateman** is the Policy Advocacy Coordinator at the American Friends Service Committee, where she covers the Just Peace policy portfolio.

**James Branum** is a member of the MLTF Steering Committee. He is in private practice in Oklahoma City, Oklahoma.

**Kathleen Gilbert** is a legal worker in San Diego, working in the areas of military complaints, discharges and discharge review. She is the executive director of the Military Law Task Force.

**Edward Hasbrouck** is a legal worker in San Francisco with the Identity Project (PapersPlease.org). He has been a member of the NLG and the MLTF since the early 1980s, when he was an organizer with the National Resistance Committee and co-editor of Resistance News. He publishes a Web site about the draft, draft registration, draft resistance, and the Selective Service System at [Resisters.info](http://Resisters.info).

**Karen Kadish** is a Staff Attorney at Swords to Plowshares in San Francisco, CA. She assists veterans with applications for VA benefits and discharge upgrades.

**Jeff Lake** is Chair of the NLG Military Law Task Force. He is in private practice in San Jose, California.

**Editorial/Production:** Kathleen Gilbert, Rena Guay, and Jeff Lake edited this issue. Digital production by Rena Guay.

## 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/](http://nlgmtf.org/onwatch/).

Editors: Kathleen Gilberd, Rena Guay and Jeff Lake.

### CONTACT

Kathleen Gilberd, Executive Director  
730 N. First Street, San Jose, CA 95112  
email@nlgmtf.org; 619.463.2369

*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.*

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

**[www.nlgmltf.org](http://www.nlgmltf.org) | [facebook.com/nlgmltf](https://facebook.com/nlgmltf) | [twitter.com/military\\_law](https://twitter.com/military_law)**

**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, GIs and veterans.

**SNAIL MAIL:** Send a check or money order to **MLTF, 730 N. First Street, San Jose, CA 95112**

**ONLINE:** Visit [nlgmtf.org/support](http://nlgmtf.org/support) to make a one-time or a recurring donation.

Thank you!