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ADDRESSING THE SILENT CRISIS: UNDERSTANDING MILITARY SUICIDES AND THE ROLE OF LEGAL ADVOCACY

By Chris McGhee and Kathleen Gilberd

Suicide is an extremely serious problem in the military. Despite Congressional pressure, numerous studies, and the Department of Defense's (DoD) establishment of committees, advisory groups, and prevention programs, the numbers of suicides and suicide attempts among active-duty personnel, reservists and National Guard troops continue to climb. Suicides among military veterans are also on the rise.

THE EXTENT OF THE PROBLEM

Those of us who regularly read the military press encounter frequent reports of military suicides. In May, Military.com reported on the suicide of Army Specialist Austin Valley, who attempted suicide this March while stationed in Poland. His command began a frantic search for him after his family received a suicide note. He was found trying to hang himself. His superiors then transferred him back to Ft. Riley.

According to the Military.com article, "[his] unit's response to Valley's first attempt to kill himself raises questions over whether the Army's suicide prevention efforts provide clear, concise response plans for units. His parents believe he never got the care he needed at Ft. Riley." His family said that he neither received inpatient treatment at Riley nor had much other medical care due to a backlog at the behavioral health clinic. Additionally, they claim he was given almost no support or supervision from his unit. Valley's stepmother, an intensive care nurse who has since resigned her Army Reserve commission, informed the news service, "[the mental health clinics are] backed up in their appointments; they don't have enough manpower. At one point they sent him away because they were so busy that day. The Army just didn't do its job."

Sadly, 30 days later Austin Valley succeeded in killing himself.

This report followed news coverage of clusters of suicides in the Navy in 2022 - four at the Mid-Atlantic Regional Maintenance Center in Virginia within a 28-day period, and ten aboard the aircraft carrier George Washington (which was also undergoing maintenance) within a year. The military press also reported a string of suicides at a remote Army base in Alaska. Ironically, while looking through her files for the latter cases, one author found Navy Times articles from 2012, titled "DoD rethinks suicide law" and 2013, "DoD to centralize suicide prevention efforts." While military suicides have received much public attention recently, the problem is by no means a new one, and the Pentagon's efforts to solve it have been and are found wanting.

In October of 2022, DoD released its most recent annual report on military suicides, covering calendar year 2021, Annual Report on Suicide in the Military CY 2021 with CY21 DoDSER (1).pdf (dspomil). The report stated that there were 519 suicides that year, including 328 active duty personnel, 74 reservists and 117 National Guard members. Although the report noted that these figures were slightly lower than 2020 suicide rates, it acknowledged that active-duty suicides have been on the rise since 2011. The military does not consistently track suicide attempts and suicidal ideation, though counselors and attorneys working with military personnel know these are all too common.

The DoD figures did not include veterans' suicides, which are tracked separately by the VA. The VA's 2022 report, examining suicides through 2020, found that there were 6,146 veteran deaths by suicide

that year. A recent joint study by America's Warrior Partnership, the University of Alabama, and Duke University suggested that the number of veterans' suicides could be twice as high as the VA reported. This discrepancy arises from record errors, misreporting of drug overdose deaths, and similar issues.. Under-reporting of military suicides is highly likely for the same reasons.

UNDERLYING CAUSES

The military suicide report outlined risk factors for suicide and methods to measure them, but it did not delve into the underlying causes present in military culture and mission, such as moral injury and post-traumatic stress disorder (PTSD). Furthermore, the report did not address the impacts of discriminatory and oppressive policies on military personnel. Its overview of risk factors included:

... contextual factors known to be associated with suicide risk in Service members, including relationship, financial, and legal/administrative problems; ineffective life/coping skills; reluctance to seek help; perceived stigma about suicide care/treatment; and access to lethal means. In the case of National Guard personnel, additional contextual considerations include duty status, challenges in supporting a part-time force, geographic dispersion, barriers to accessing care, and limited service member visibility by unit leadership.

The authors suggest that the problems leading to suicide run deeper, and that a real reduction of suicide rates would require addressing basic aspects of the US military and its mission - aspects the military would be unwilling to acknowledge, let alone remedy.

Author McGhee offers six underlying causes:

1. Culture of Compromise, Punishment, and Moral Injury

During one author's tenure in the Air Force, he bore witness to systemic issues that profoundly impacted the morale and well-being of service personnel. Foremost among these was a pervasive culture of corner-cutting. Under immense pressure to accomplish the mission, many, including those in leadership positions, often chose to bypass protocols. This implicit endorsement of compromising integrity became an insidious norm. However, a dichotomy emerged when individuals who took cues from such leadership behaviors faced punitive actions. If caught in the act, they were subjected to Article 15 non-judicial punishment, even if these actions were previously or tacitly endorsed by their supervisors.

The ramifications of such a culture extends beyond mere trust erosion. It inflicts what can aptly be termed as 'moral injuries' to the servicemembers. Every military branch purportedly holds integrity, or its equivalent, as a cornerstone value. When these service members, trained and conditioned to uphold these values, find themselves pushed, often subtly, into dishonest practices for mission accomplishment, the psychological distress is profound. This stark value incongruence between what is professed and what is practiced gives rise to an intense searing tension and frustration within each service member. Moreover, such environments of tacitly endorsed dishonesty inflict deep-seated moral injuries on those who feel compelled to act immorally, directly contradicting the values they vowed to uphold. These injuries aren't just fleeting moments of guilt; they leave an indelible mark on the psyche, challenging the very moral foundation of these individuals.

2. Extreme Operational Conditions in Austere Locations

Beyond the cultural challenges, the physical environments in which many servicemembers are stationed pose considerable hardships. It's a common misconception that only overseas deployments are arduous. In reality, many military installations within the Continental United States (CONUS) offer only bare-bones support systems, making them almost as challenging as some foreign postings.

The austerity of these locations brings with it significant financial and emotional burdens. The costs of maintaining a semblance of normalcy, in the absence of adequate facilities and support, often falls squarely on the servicemembers and their dependents. This strain is so pronounced that many dependents opt for the painful choice of not joining their sponsor at these locations, preferring to bear the pain of separation rather than confront the daily challenges posed by such austere postings. This choice, while pragmatic, further isolates servicemembers, depriving them of their familial support system just when they need it most.

3. The Unending Mission and its Emotional Toll

The relentless operational tempo, beyond just the physical exhaustion it brings, exacts a devastating emotional cost on personnel. When service members view their mission as interminable, with no end in sight, the psychological ramifications are profound. Operating at a frenetic pace for a prolonged period, only to have such levels of productivity and output become the new norm, is not just tiring—it is catastrophically demoralizing.

This high-intensity expectation feels like constant motion on a treadmill, where significant effort appears to leave one standing still. The ever-present demand on servicemembers' time, their unique talents, and the insistence on near-perfect performance is not just daunting; it's fundamentally unsustainable. Yet, this unsustainable demand is paradoxically what's expected. When the natural human response to such pressure – manifesting as emotional and physical distress – surfaces, it's often misinterpreted. Instead of being seen as a cry for support or a signal of burnout, it's frequently labeled as a discipline or performance issue.

Commanders, rather than offering understanding and support, often respond punitively or dismissively, exacerbating the individual's feelings of entrapment and hopelessness. Such reactions further alienate service members, intensifying their sense of isolation and futility, and reinforcing the notion that their well-being is secondary to the unrelenting mission.

4. Unique Service Pressures and the Threat of Imprisonment

The life of a servicemember is inherently distinct from that of a civilian, characterized by a unique set of pressures and constraints. One of the most palpable differences is the pervasive sense of authority that hangs over military personnel. Every service member is acutely aware that disobedience or non-compliance is not just a matter of reprimand or job loss, but can lead to their very freedom being taken away. The ever-present knowledge that their superiors wield the authority to imprison them for non-compliance casts a heavy shadow over their daily duties. This dynamic, while potentially justifiable in the context of military discipline, becomes deeply problematic when juxtaposed with workplace abuses.

Recent years have seen an unsettling array of reports and exposés unveiling a multitude of workplace malpractices within the military. Service members have been subjected to harmful conditions ranging

from exposure to toxic chemicals and noxious burn pits in deployed locations to various other hazards that would be unthinkable in the civilian sector. Such exposures, which would likely lead to significant legal actions and public outcries if they occurred outside military confines, are met with a very different response within it. Not only are these actions protected from the legal recourse commonly available to civilians, but there's also an alarming trend of obscuring such issues from public view.

This disparity where servicemembers are expected to operate under the omnipresent threat of imprisonment for disobedience while simultaneously being denied the protective rights available to their civilian counterparts, magnifies the power disparity and vulnerability they feel. The ensuing feelings of entrapment and lack of agency compound the stress and disillusionment many feel, driving a wedge between their commitment to service and their personal well-being.

5. From Toughening to Toxicity: A Pervasive Military Culture Devolution

During one author's tenure in the Air Force, specifically in aircraft maintenance, it was observed that more seasoned maintainers felt obliged to "toughen up" airmen brand new to the flightline, often with the intent of preparing newcomers for the rigors of the flightline. Yet what starts as a well-intentioned attempt to shield and prepare them can swiftly spiral into outright abuse. Amplified by the broader cultural dysfunction, as highlighted supra, protective actions are frequently distorted into toxic leadership behaviors.

This trajectory is not isolated to the world of aircraft maintenance. The shift from "toughening" to toxicity is a prevalent phenomenon across branches and organizations within the military. It becomes particularly pronounced in combat-coded units, where the stakes are higher and the operational tempo more relentless. Across these units, various forms of harassment, both verbal and sexual, have become all too commonplace. Dehumanization, overextension leading to burnout, and blatant abuse of authority become the norm rather than the exception. This environment, in turn, exacerbates any latent suicidal ideation among personnel and engenders a deep-rooted fear of seeking help, further entrenching a cycle of silent suffering and institutional neglect.

6. Moral Injuries in Servicemembers: A Consequence of National Strategic Policy.

For many servicemembers, the military is initially perceived as a bastion of freedom and a stalwart defender of democratic principles. However, the experiences of many within its ranks sharply contrast with these idealized visions. Instead of unequivocal moral missions, they find themselves entrenched in interventionist conflicts, witnessing actions that sexualize or glorify violence, and sometimes participating in operations that appear to exploit or marginalize nations and communities viewed as "other."

This profound dissonance between deeply held personal values and the actions demanded by duty can lead to searing moral injuries. Such injuries do not merely challenge one's stance on a particular issue, but shake the very foundation of one's self-worth and identity. They force service members to grapple with a harrowing question: "Have my actions made me a bad person?" While some muster the strength to voice their dissent or adopt roles as conscientious objectors, many others internalize their torment, battling silently with the weight of moral disillusionment. A somber and often unspoken outcome of this inner turmoil is evident in the troubling rates of suicide and suicide attempts among these disheartened servicemembers. Sadly, the military establishment seldom acknowledges or measures the profound impact of these moral conflicts on its personnel.

Author Gilbert , agreeing with these, would add one other cause:

7. A Culture of Bullying and Harassment

For many servicemembers, the reality of military life includes verbal, psychological and sometimes physical abuse from superiors and co-workers. This is especially true for those with perceived weaknesses (anything from medical or emotional problems to small stature), those who are in some way different (by race or skin color, religion, cultural behavior or gender identity) and those perceived as less able to perform their duties. They are often singled out for bullying, ridiculed and threatened, or subjected to hazing such as “blanket parties,” “greasing” and the like. Sexual harassment is endemic, and often intertwined with other forms of harassment. These are not happenstance. Rather, the military uses such abuses in training, glorifying violence, teaching recruits (once they have been broken down by the system) to demean “others” and treat them as subhuman, a predecessor concept to dehumanization of enemies in war. Soldiers, particularly those in combat MOSs, are taught to perceive themselves as strong and superior, and so able to fight and kill without conscience. But this does not end with training; rather, it is ingrained in military culture and tradition.

Despite relatively recent military policies prohibiting all such abuse, few receive help from their commands, and many receive further harassment in retaliation if they are suspected of reporting bullying. With no idea of where to turn for help, and no safe place to escape this behavior, victims frequently experience depression or, particularly with physical abuse, post-traumatic stress disorder. For some, suicide seems the only way out.

As noted above, the military does not delve into the underlying reasons for suicide. This failure is evident in the DoD annual report, which emphasized surface, secondary efforts to counter suicide, including promoting a culture of “lethal means safety,” countering stigma associated with mental health care as a barrier to seeking help, and “fostering a supportive environment” for service members and their families. In addition, it listed elements that should be included in suicide prevention policies and programs:

- 1. Promoting financial readiness:** providing financial readiness training and financial counseling.
- 2. Strengthening access and delivery of suicide prevention and intervention:** increasing confidence and trust in services, encouraging help-seeking behaviors, and reducing stigma.
- 3. Creating protective environments:** increasing social support and promoting lethal means safety.
- 4. Promoting connectedness:** promoting the role of relationships and interpersonal connections.
- 5. Developing coping and problem-solving skills:** teaching and promoting skills to address stress and other issues, particularly among young Service members and those undergoing transitions, such as deployment, separation, or retirement.
- 6. Identifying and supporting members of the military community who are at risk:** equipping members of the military community to assess for and recognize risk factors in their peers, subordinates, clients, and families.
- 7. Promoting reduction in self-harm and reducing future risk:** providing postvention, bereavement support, and education on safe reporting and messaging on suicide.

While these speak to important issues, undertaking these steps would not root out problems more fundamental to the military's mission and culture. Indeed, that endeavor would be antithetical to the US military as it currently exists.

MILITARY POLICIES ON SUICIDE

A good deal of current DoD policy on suicide is contained in [DoD Instruction 6490.16, "Defense Suicide Prevention Program," November 6, 2017; Incorporating Change 3 on February 2, 2023 \(whs.mil\)](#). The Instruction deals largely with standardizing definitions of suicide, attempts and related terms across the services, organizing comprehensive systems for reporting suicides and suicide attempts, and what the Instruction calls "non-clinical suicide prevention." A look at the Instruction's definition of that term provides some insight into the nature of the policy:

Activities including, but not limited to, those that directly address suicide (e.g., training to identify and support those deemed to be at higher risk for suicide); efforts to promote total force fitness by targeting protective factors such as skill development (e.g., building healthy relationships, coping skills, emotional intelligence, effective communication, and resilience); efforts to promote protective environments and healthy climates (e.g., safe storage of lethal means); military dependent support programs; financial readiness; and efforts to address institutional and systematic risk factors for suicide.

The Instruction's text expands on this in Section 7.2.b:

Consistent with DoDI 6400.09, the Secretaries of the Military Departments and the Chief, NGB will collaborate with DSPO to ensure that suicide prevention activities are developed from a relevant evidence-base and have an evaluation capability, based on the criteria in this issuance, in place before implementation within their respective organizations. Prevention activities that are not data-informed or evidence-based must be reviewed for improvement and gather program evaluation data.

(1) Evaluation plans for each suicide prevention activity must be based on a theory of change that is specifically created for that activity. The theory of change must portray the notions of desired outcomes (short-, intermediate-, and long-term) of a program, activity, intervention, or initiative.

The authors include these quotations in part to suggest that DoD offers little practical guidance to the services or commands, that there is little effort to search for underlying causes of military suicide beyond individual servicemembers' problems, and that much of the policy appears to have been written for sociologists and human resource personnel.

There are relatively few specific practical suggestions in the Instruction. Among these is the suggestion, not a requirement, that commanders hold memorial services for members of their commands who die by suicide, and that these be done in a way that does not somehow glorify suicide.

SERVICE REGULATIONS

The various services have created or updated regulations to implement and in some places, expand on DoD policy. The Air Force's policies on suicide prevention are found in [AFI 90-5001 Integrated Resilience 25 Jan 2019.pdf](#), which deals as well with other aspects of "resilience." In addition, the Air Force

maintains a rather practical website on suicide prevention, at [Suicide Prevention Program \(af.mil\)](#). The Navy promulgated OPNAVINST 1720.4B on September 18, 2018, and has more recently created a Navy Mental Health Playbook and other resource materials, at [Suicide Prevention \(navy.mil\)](#). The Marine Corps published NAVMC 1720.1A on October 4, 2022. The Army, having said it would create a policy regulation three years ago, finally published AR 600-92, Army Suicide Prevention Program, [Army Regulation 600-92](#), on August 8, 2023. It is effective as of September 8, 2023, and is described by Military.com as being “short on answers.”

STUDIES, TRAINING, RECOMMENDATIONS MORE STUDIES, MORE TRAINING, MORE....

Over the last several years, in what the authors of this article consider typical military bureaucratic form, DoD has established a number of committees and projects to assess and respond to the problem of suicides. These include a Suicide Prevention General Office Steering Committee, a Suicide Prevention and Risk Reduction Committee, a Defense Suicide Prevention Office, a Defense Workforce Council (which deals with other workforce issues as well as suicide), and a Prevention Collaboration Forum (which also handles other issues), among others.

DoD and its agencies have written a great deal, required a great deal of general training around suicide prevention, and improved suicide data collection efforts in light of Congressional and GAO concerns. In these writers’ view, they have expended a large amount of energy with almost no practical result.

In September of 2020, DoD released [DoDI 6400.09, "DoD Policy on Integrated Primary Prevention of Self-Directed Harm and Prohibited Abuse or Harm," Effective September 11, 2020 \(whs.mil\)](#). This presented a slightly new approach to suicide prevention, by combining it with prevention of and training about “prohibited abusive or harmful acts.” Suicide here is called “self-directed harm,” while prohibited abuse or harm are defined as:

Behaviors characterized by the intentional use of physical force or power, threatened or actual, against a person or group that results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation. Includes behaviors such as sexual assault, harassment, retaliation, stalking, and domestic abuse. In this issuance, prohibited abusive and harmful acts do not include forms of violence that may be required as part of the Profession of Arms. Military Services have flexibility in how this is termed or referenced within their Service policies.

In March, 2022, DoD established a Suicide Prevention and Response Independent Review Committee to evaluate the problem of military suicides and make recommendations to address it, as required by Congressional legislation. In December of 2022, the Committee presented the report and ten recommendations to the Secretary of Defense and, in February of 2023, released its report to the public: Preventing Suicide in the U.S. Military: Recommendations from the Suicide Prevention and Response Independent Review Committee, [SPRIRC Final Report VFinal \(defense.gov\)](#). The report included a lengthy series of recommendations for suicide prevention and response, well beyond the ten first presented to DoD.

The recommendations ranged from creating a task force to “modernize and reform the military promotion system to better reward and select the right people for the right positions at the right time based on demonstrated leadership skills and abilities” to reducing the frequency of reassignments, and from modernizing “the content, delivery, and dosage of suicide prevention education and skill building”

to revising law and regulations on personal firearms use by servicemembers. While DoD has begun to implement some of the recommendations, the process has been extremely slow, and the majority has not yet been addressed.

In May of 2022, DoD published a Prevention Plan of Action 2.0 2022-2024, The Department's Renewed Strategic Approach to Prevent Self-Directed Harm and Prohibited Abuse or Harm: [UPR001360-22 SIGNED \(003\).pdf \(sapr.mil\)](#). Its summary explains that:

This document highlights the Department's new emphasis on integrated primary prevention. Integrated prevention will require finding shared solutions to the problems of sexual assault, harassment, retaliation, domestic abuse, suicide, and child abuse. While this range of harmful behaviors has diverse and unique prevention needs, these harmful behaviors also share many risk and protective factors. The Department will synergize existing prevention activities by strengthening efforts that address these shared factors. This approach will align competing priorities, increase program effectiveness, ensure efficient use of resources, and help leaders cultivate safe and healthy climates across the military community.

While this represents an interesting approach, there is room for concern about it. The plan leaves open the possibility (or, in the military setting, the probability) that important aspects of training and prevention in each area will be overlooked or combined in ways that serve to minimize training.

On March 16, 2023, the Secretary of Defense promulgated a Memorandum for senior pentagon leadership, commanders of combatant commands, and defense agency and DoD field activity directors entitled **MEMORANDUM: NEXT STEPS ON SUICIDE PREVENTION IN THE MILITARY (DEFENSE.GOV)**. In it, Secretary Austin established a two-phase approach to "drive progress and implementation" of the Independent Review Committee's recommendations. For the first phase, he ordered immediate implementation of ten recommendations:

- The Under Secretary of Defense for Personnel and Readiness (USD(P&R)), in coordination with Under Secretary of Defense for Intelligence and Security as appropriate, will expedite the hiring process for behavioral health professionals (SPRIRC Recommendation 6.10).
- The Director, Defense Health Agency (DHA), in coordination with the Secretaries of the Military Departments as appropriate, will expand the availability of care in accordance with DHA Procedural Instruction 6490.12, "Military Behavioral Health Technician Management and Utilization," April 14, 2022, and through further utilization of behavioral-health technicians (SPRIRC Recommendation 6.12).
- The Director, DHA, will improve processes to enhance access to mental health care (SPRIRC Recommendation 6.15).
- The Director, DHA, will improve access to mental health care by improved alignment of clinic scheduling (SPRIRC Recommendation 6.16).
- The Director, DHA, will implement the "episodes of care" model within behavioral health clinics wherein multiple behavioral health appointments are scheduled weekly at the outset of care (SPRIRC Recommendation 6.17).
- The Director, DHA, will amend DHA Administrative Instruction 6025.06, "Suicide Risk Care Pathway for Adult Patients in the Defense Health Agency," August 9, 2022, to ensure the Administrative Instruction's alignment with the pending update of the Department of Veterans

Affairs/DoD "Clinical Practice Guideline for the Assessment and Management of Patients at Risk for Suicide" when it is published, to ensure empirically supported treatment intervention (SPRIRC Recommendation 6.21).

- The Director, DHA, will ensure that military medical treatment facilities screen for unhealthy alcohol use in Primary Care Clinics, in accordance with DHA Procedural Instruction 6025.15, "Management of Problematic Substance Use by DOD Personnel," April 16, 2019 (SPRIRC Recommendation 6.24).
- The Director, DHA, will ensure the availability of evidence-based care for those seeking treatment or support for unhealthy drinking (SPRIRC Recommendation 6.25).
- The Director, DHA, will expand opportunities to treat common mental health conditions in primary care, with a priority to adopt Collaborative Care models (SPRIRC Recommendation 6.27).
- Commanders at all levels must promote mission readiness through healthy sleep throughout the Department, in accordance with DOD Instruction 1010.10, "Health Promotion and Disease Prevention," April 28, 2014 (SPRIRC Recommendation 5.32).

In the second phase, the Memo states, the DoD office of Personnel and Readiness is to establish a Suicide Prevention Implementation Working Group to serve as the primary body for assessing the possible implementation of the remaining recommendations; identify policy and program changes needed to implement these remaining policies; provide cost and manpower estimates for each; identify barriers to their implementation; and identify areas where implementation can be combined with other DoD prevention programs of the Independent Review Commission on Sexual Assault in the Military. The Memo ordered the Working Group to propose an Implementation Plan no later than June 2, 2023. As of this writing, the Plan, if completed, is not available.

As this article goes to press, DoD has published a new memorandum, dated September 26, 2023, but released on the 28th, titled "New DoD Actions to Prevent Suicide in the Military, [New DoD Actions to Prevent Suicide in the Military \(defense.gov\)](#). The memo, while not a directive-type memorandum, nevertheless uses the term "direct" frequently in telling senior military leadership to carry out the lines of effort and many of the recommendations of the Suicide Prevention and Response Independent Review Committee. Only 16 of SPRIRC's recommendations were not "advised for action." Again, there is little new here, and no discussion of underlying causes of suicide of the sort discussed in this article.

CONCLUSION

The military's complete and utter failure to reduce suicides among active-duty, reserve and Guard personnel will continue as long as it is unwilling to address the underlying issues that lead to military suicide. Yet addressing these issues would challenge fairly fundamental issues of the military's culture, training, maintenance of discipline and, fundamentally, its mission.

Military law attorneys and counselors can play an important role in assisting servicemembers who are at risk of suicide, demanding that commands and medical personnel recognize and provide treatment for suicidal ideation, and providing necessary support and advocacy when clients are at risk. Where failures of the mental health system or abusive treatment at commands are at issue, as is very commonly the case, advocates can assist members in raising informal or formal complaints about these problems. Where the members' emotional state makes it difficult for them to stand up

for themselves, advocates can approach commands or medical treatment facilities directly to demand better care. In a period where there has been considerable public attention to military suicides, outside pressure will often cause commands and mental health professionals to address at least immediate problems.

WHY THE GUILD NEEDS TO FIGHT AGAINST PERPETUAL WAR

By Chris Lombardi

The United States is engaged in a perpetual war— with US troops "advising" and fighting in conflicts around the world - and it's escalating fast.

As *The New Yorker* noted in February 2023,¹ a [New Cold War has commenced](#) against China, Russia and Iran. The Department of Defense's [most recent 'National Defense Strategy'](#) (NDS)² plans to use the Pentagon's massive military budget accordingly, both for "kinetic conflict" and for the use of proxy militaries around the world.

The *first* Cold War led to 14 million deaths abroad, in addition to millions of U.S. deaths due to increased poverty in the United States. While it's debatable that the Cold War ever really ended, the ostensible end did shrink the size of the U.S. armed forces and reallocated *some* resources for civilian use. The two decades since September 11, 2001 have seen the military's mission expand under the tag of anti-terrorism, with airstrikes and Special Forces operations from Niger to Northern Cyprus. Now, in the wake of Russia's invasion of Ukraine and China's explicit espionage in the U.S, the new NDS, as described by John Culver³ [for the Atlantic Council](#), "sends a strong message that the world is actively contested now, and that the Department of Defense (DOD) and all of the US government is not just preparing but actively engaging in both kinetic conflict and indirect measures via proxy wars." Last year, [General Mark Milley told Congress](#) they must be prepared for "Great Power Conflict."⁴

How is this the NLG's business? The military-industrial complex already drains massive amounts of U.S. resources, both financial and human, pulling them away from the communities we serve. Why "human" resources? Enlisted servicemembers, engaged in proxy wars and preparation for war, tend to come from

¹ Evan Osnos, "Sliding Into a New Cold War." February 26, 2023
<https://www.newyorker.com/magazine/2023/03/06/sliding-toward-a-new-cold-war>

² U.S. Department of Defense, "National Defense Strategy, Including the 2022 Nuclear Posture Review and 2022 Missile Defense Review." October 27, 2022. <https://media.defense.gov/2022/Oct/27/2003103845/-1/-1/1/2022-NATIONAL-DEFENSE-STRATEGY-NPR-MDR.PDF>

³ "Eight Thing Eight things you need to know about the new US National Defense Strategy" *The New Atlanticist* (Atlantic Defense Council), October 27, 2022. <https://www.atlanticcouncil.org/blogs/new-atlanticist/eight-things-you-need-to-know-about-the-new-us-national-defense-strategy/>

⁴ Jim Garamone, "Potential for 'Great Power Conflict' Increasing, Milley Says." *DOD News*, April 5, 2022.

communities subject to racial and economic injustice. Many joined the military by what's commonly called the "poverty draft," presented with few alternatives.

Those are also the communities subject to the most militarized police, and where Junior ROTC (JROTC) programs are [too often hailed as lifesavers for struggling schools](#). In 2022, there existed 1,600 Army AJROTC units, 619 Navy JROTC units, 794 Air Force AFJROTC and 260 Marine Corps MCJROTC units (60% of whom are likely to enlist). JROTC, regarded by supporters as creating a role model for youth of color, becomes a substitute for other programs that might provide *real* discipline, excellence and community. Meanwhile, NLG's Military Law Task Force works to support service members, both through individual casework and advocacy. Our work challenges oppressive military policies, service-wide racism and sexual assault/harassment, and supports those seeking discharge from the military or individual or collective dissent. We train counselors and attorneys, we develop legal materials and self-help materials for GIs, and work with ally groups to get the anti-war message to servicemembers. This ongoing resistance to U.S. war-making will need to redouble in the face of perpetual war.

The perpetual war is already here, of course. It's in Africa, where the U.S. has multiple "[cooperative security locations](#)" with drones, surveillance aircraft, landing facilities for U.S. special forces, in addition to at least 29 named bases. [The U.S. Africa Command \(AFRICOM\)](#), headquartered in Stuttgart Germany, is described by Africa specialist Lion Summerbell as "the [second most expensive unified command](#) after CENTCOM (which covers the Middle East and Central Asia) and [oversees the largest number of combat operations](#)."⁵ [AFRICOM-trained officers were central](#) to the [military coups that have swept the continent](#) in the past few years, from Guinea to Niger to Gabon.

The perpetual war is in Okinawa, which the U.S. Indo-Pacific Command (PACOM, like AFRICOM) [calls "The Western Pacific"](#) and is digging in, [expanding current bases over local objections](#) and planning [new 'Marine Littoral Regiments'](#) of around 2,000 troops, the latter to conduct "reconnaissance and strike forces in contested maritime theatres." (That word *contested* again.) Those Marines might, like [Colin Powell](#), have gotten their start in urban JROTC.

The perpetual war is in Atlanta, Georgia, whose [proposed "Cop City" training facility](#) "would include shooting ranges, spaces for militarized drills, and a mock city complete with buildings and roads to allow APD to practice urban warfare tactics. The current plans for this facility would be larger than those of the NYPD and LAPD put together. NLG is already engaged in the struggle against Cop City, representing those arrested in the months of protest and supporting opponents' proposed referendum to allow Atlantans to determine its fate.

The perpetual war is in Texas, at the U.S.-Mexico border, where the U.S. is fighting against nationals of neighboring countries - using troops who, from the Border Patrol to the National Guard, swore an oath to protect the U.S. Constitution but ended up abusing immigrants instead. The NLG's National Immigration Project is also active on this big domestic front, as Texas' Operation Lone Star adds National Guard troops to the [Texas Guard's "border enforcement"](#) campaign and [includes intelligence efforts](#) that routinely [violate federal law](#).

⁵ Lion Summerbell, "Drones Over Djibouti." *Democratic Left*, Summer 2019 <https://www.dsausa.org/democratic-left/drones-over-djibouti/>

Most of the above began before the new NDS, but things are escalating quickly. “Operation Atlantic Resolve,” the (widely popular) support of Ukraine, has seen thousands more U.S. troops sent to Europe with a potential 3,000-troop call up of [U.S. reservists to active duty](#), some of them discharged personnel in the Individual Ready Reserve. Meanwhile, warns NLG member Marjorie Cohn, troops in the U.S.’ numerous bases in Japan, Indonesia and South Korea are conducting drills to prepare for a possible Chinese invasion of Taiwan.

Cohn argues that [the U.S. war against China](#) has already begun, citing Harvard Korea wonk [Simone Chun](#): “Since the Obama administration’s ‘pivot to Asia’ in 2012, 60 percent of U.S. naval forces have been transferred to the Asia-Pacific, and 400 of the 800 U.S. military bases worldwide and 130,000 troops ‘are now circling China,’ Chun writes. The U.S.’s “goal is to force China’s hand by triggering and escalating a hybrid war on multiple fronts, including military, [technology](#), economy, information and media.” Whether or not Chun’s assessment is correct, the information war appears ongoing.

When long-simmering tensions become all-out war, the need for NLG support and action tends to explode. After September 11, 2001, many NLG chapters were called to support Muslim communities, and the Military Law Task Force strengthened its support of the GI Rights Network, which had long been responding to calls from servicemembers in need and had partnered with MLTF in 1996 in responding to the emergent crisis of military sexual trauma. When the U.S. invaded Iraq in 2003, tens of thousands of calls poured into the G.I. Rights Hotline; many of those calls came from members of the National Guard and Reserves, the “one weekend a month” forces that have supplemented active-duty personnel since the end of the Cold War and which comprised nearly half those deployed to Iraq and Afghanistan. Throughout both wars, MLTF and other NLG members supported anti-war dissenters and resisters, whether in uniform or on the streets. The infrastructure for such support isn’t built overnight.

In addition to the 1.3 million active-duty troops, the U.S. is amply supplied with civilians at threat of such escalation, between the one million members of the Guard and Reserve, recent veterans who haven’t yet fulfilled their eight-year obligation, and those 60% of JROTC members slated to enlist. Those civilians live in communities served by NLG chapters, and deserve our attention even without any war authorization. The military’s chosen civilians are often subject to the racism and misogyny that plague the active-duty military, including sexual harassment and assault (a [recent New York Times investigation](#) was headlined “Military Acknowledges More Sexual Abuse in JROTC Programs”). Efforts by DoD to address either tend to be suspended with any new war authorization, as more reserve and Guard forces are deployed and “Support Our Troops” ribbons and yard signs bloom.

The infrastructure to respond to war authorizations is lacking. The G.I. Rights Network, which comprised in 2006 more than a dozen nodes staffed with attorneys, activists and volunteers, has shrunk back to the level that existed in 1995, when this author was on staff at the now-defunct Committee for Conscientious Objectors. Back then, we could fit *all* of the organizations answering the Hotline into a good-sized conference room; the Network’s upcoming conference, in October, expects similar numbers. But the few with full-time staff now report being swamped with calls: the need hasn’t evaporated, only changed. Should the national commitment to “Great Power Conflict” become more explicit, the need will increase *geometrically*, as will the need for Guild members to provide legal assistance to resisters and dissenters. MLTF, which specializes in the latter, has drafted a new Contingency Plan for Warfare, to help us all prepare.

Every NLG chapter or committee is affected by this perpetual war, and all members - especially those in states full of military bases, like California, Texas, and North Carolina - can be part of the latter plan. You can secure training in the basics of military law (MLTF can help), and be on call for cases as needed. (All are welcome to join the MLTF or one of its committees (e.g. Anti-Racism, Gender Justice, Suicide and Moral Injury). Even if you don't work in reach of a military community, your state will have enough people affected by an authorization to keep you busy; hook up with local NGOs, whether abolitionist orgs, veterans' groups or branches of the [National Network Opposing the Militarization of Youth](#). By joining this effort, you'll be doing what the Guild does best - fighting for the most disempowered at a critical moment.

THE F-35 MEANS WAR

By James Marc Leas

The US keeps fighting wars. Plenty of them: More than 251 US military interventions abroad since 1991 are listed in a report issued by the Congressional Research Service called, "[Instances of Use of United States Armed Forces Abroad, 1798-2023](#)." That averages to more than 8 US military deployments overseas per year.

[A Note from the Author follows this article.](#)

The 251 does not include covert operations and US sponsored coups, like the one in [Ukraine in February 2014](#). Nor does it include domestic wars, like the vicious daily assaults on [6,663 children and adults living in Vermont cities and towns](#) conducted by the Vermont Air National Guard with F-35 jets. It does include Afghanistan, Iraq, Syria, Libya, Yemen, Lebanon, Somalia, Niger, Haiti, and many other US interventions.

ILLEGAL, IMMORAL, UNJUST

In 1967 [Martin Luther King spoke out against the Vietnam War](#):

They ask -- and rightly so -- what about Vietnam? They ask if our own nation wasn't using massive doses of violence to solve its problems, to bring about the changes it wanted. Their questions hit home, and I knew that I could never again raise my voice against the violence of the oppressed in the ghettos without having first spoken clearly to **the greatest purveyor of violence** in the world today -- my own government.

In a video interview in 2019, Bernie Sanders said "[the two worst foreign policy disasters were based on lies that came from the White House](#)." He specifically named the lies leading to the wars in Vietnam and in Iraq and their disastrous effects on our soldiers. He went on to say he will work "to stop the United States attacking Iran." He called for the US to bring Saudi Arabia together with Iran "to work out a diplomatic solution not a military solution."

Wasting Countless Lives. Wasting Trillions of Dollars

The wars don't just kill and maim soldiers and civilians. They enrich the arms dealers, like Lockheed-Martin, who use a tiny part of the money they receive for lobbying to get more contracts. The US spends more than the next 10 countries combined on war.

War Transfers Wealth from The Poor to the Rich

The wars rocket up our national debt. Since 2001, the US spent \$8 trillion on wars. The scheme turns billions of dollars in taxes collected from working-class taxpayers over to pay the interest on the debt to already-wealthy bond holders. The icing on the cake: the bond holders get to pay no federal tax on the interest income from those treasury bonds.

The mounting federal debt is constantly used as pretext to cut Social Security and Medicare, delay action on climate, refuse canceling student debt, cut child care, deteriorate infrastructure, cut veterans' health care, and reduce funding to state and local governments.

War is a Climate Killer

The US military is one of the largest emitters of greenhouse gases in the world. A larger emitter than most countries. The US Air Force is the chief emitter among the military services. It's the climate killer in chief.

But it's not just the vast amount of fuel burned for training flights. No. The wars vastly increase those emissions.

War and War Spending Must Stop Now

As former President and 4-star General Dwight D. Eisenhower said in a speech on April 16, 1953: "Every gun that is made, every warship launched, every rocket fired signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and not clothed."

GROUND THE F-35

To accomplish anything positive, the war spending and the US interventions must stop now. To save the planet from wildfires and floods. For jobs and the economy. Everything worthwhile is held up by spending for war and US deployments. To protect the climate and to advance education, health care, housing, the environment, and labor, racial, and gender rights, campaigns of every kind must include a call for an end to the US wars and the spending for wars.

Ground the \$1.8 trillion F-35! Stop funding war and the war profiteers! Stop the US wars and the US proxy wars based on lies now! Bring all the troops home now! And keep them home.

Write or call your public servants and demand an immediate halt to F-35 training in cities.

Governor Phil Scott 802-828-3333 **Chief of Staff** <Jason.Gibbs@vermont.gov>

Submit your report & complaint to the online F-35 Report & Complaint

Form: <https://tinyurl.com/5d89ckj9>

See all the graphs and in-your-own words statements on the F-35 Spring-Summer 2021 Report & Complaint Form (**513 responses**): <https://tinyurl.com/3svacfvx>.

See links to the graphs and in-your-own words statements on all four versions of the F-35 Report & Complaint Form since Spring 2020, with a total of 1670 responses from 658 different people plus 77 more so far on the form that remains active now.

- Senator Bernie Sanders 800-339-9834 <Senator@sanders.senate.gov>
- Senator Peter Welch 888-605-7270 Chief of Staff <patrick.satalin@mail.house.gov>
- Rep. Becca Balint <RepBeccaBalint@mail.house.gov>
- Burlington City Council <citycouncil@burlingtonvt.gov>
- Burlington Mayor Miro Weinberger <mayor@burlingtonvt.gov>
- Winooski Mayor Kristine Lott <klott@winooskivt.org>
- S. Burlington City Council Chair Helen Riehle <hriehle@sburl.com>
- Williston Selectboard Chair Terry Macaig <macaig@msn.com>
- VT Senate President Philip Baruth <Philip.Baruth@uvm.edu>
- VT House Speaker Jill Krowinski <jkrowinski@leg.state.vt.us>
- Attorney General Charity Clark <Charity.Clark@vermont.gov>
- States Attorney Sarah George <Sarah.fair.george@gmail.com>
- Vermont's Federal Prosecutor <usavt.contactus1@usdoj.gov>
- Adjutant General Brig Gen Gregory C Knight <gregory.c.knight.mil@mail.mil>
- Major J Scott Detweiler <john.s.detweiler.mil@mail.mil>
- Wing Commander Col Dan Finnegan <daniel.finnegan@mail.mil>
- Vermont National Guard Inspector General Lt. Col. Edward J Soychak <edward.soychak@us.af.mil>
- US Air Force Inspector General Lt. Col. Pamela D. Koppelman <pamela.d.koppelman.mil@mail.mil>
- Air Force Secretary Frank Kendall <Frank.Kendall@us.af.mil>

A NOTE FROM THE AUTHOR

Several lawsuits on these issues have invoked the National Environmental Protection Act (NEPA). Unfortunately, that law does not allow the court to address the harm itself; it only requires the agency to inform the public of the harm, such as in an environmental impact statement. At best the court can require the agency to supplement its EIS to provide the missing information about harm.

A different legal strategy may be worthwhile to consider: to seek to enforce the military's own discipline that protects civilians from military operations. That discipline is the same as the law of war - but without any exceptions. The international law of war does not protect civilians from all military operations; it has to be during an international armed conflict. But a DoD Directive makes enforcement of the law of war mandatory in all military operations, with no exceptions:

DOD DIRECTIVE 2311.01

DOD LAW OF WAR PROGRAM [DoDD 2311.01, "DoD Law of War Program," July 2, 2020 \(whs.mil\)](#)

Section 1.2., POLICY, states that:

It is DoD policy that:

- a. Members of the DoD Components comply with the law of war during all armed conflicts, however characterized. In all other military operations, members of the DoD Components will continue to act consistent with the law of war's fundamental principles and rules, which include those in Common Article 3 of the 1949 Geneva Conventions and the principles of military necessity, humanity, distinction, proportionality, and honor.
- b. The law of war obligations of the United States are observed and enforced by the DoD Components and contractors or subcontractors assigned to or accompanying U.S. Armed Forces.
- c. The DoD Components implement effective programs to prevent violations of the law of war, including: . . .

Military training is included as an "operation" in [the DoD definition](#).

I don't know of a case seeking to enforce DoD discipline to protect US citizens on US soil from US military training operations. In Vermont the posture may be better than in Washington state because the training here is under the authority of the governor, and both federal law (32 USC 501) and Vermont law (20 VSA 361) require the Vermont Air National Guard to comply with the DoD discipline.

If you might be interested in filing or working on a case to enforce the DoD discipline version of international law, please contact me at 802- 734-8811 or <https://vermontpatentlawyer.com/>.

CLASS ACTION SUITS MAKING A SPLASH FOR “BAD PAPER” VETERANS

By Ana Maria Bondoc

Discharge upgrade advocates are alert to the latest innovations in correcting errors and injustices in the military records of veterans with other than fully honorable discharges. These barriers block access to the benefits otherwise earned through service. First, [Hamill v. McDonough](#) challenges VA’s longstanding refusal to consider new evidence if VA previously denied veteran status under 38 CFR § 3.12. This is the infamous character of discharge (COD) regulation, which effectively denies healthcare and compensation even to veterans with service-connected disabilities. For an overview of the overlap and differences between COD and discharge upgrade or record correction, see [this resource by Swords to Plowshares](#).

Second, [Farrell v. Austin](#) continues the fight to reverse the effects of discriminatory treatment of LGBTQ+ veterans under the so-called “Don’t Ask, Don’t Tell” (DADT) policy and its predecessors. Going beyond the familiar arguments for correcting individual inequities and injustices at the administrative level, *Farrell* challenges agency inaction following the repeal of DADT in 2011. The arguments are based on the equal protection and procedural due process clauses. In sum, it is illegal for the Department of Defense (DoD) to have failed to systematically remove from DD214s, references to sexual orientation, and other information. The petition seeks to enforce the right to privacy and restore access to vital benefits.

The questions are already rolling in from impacted veterans and family members. Professor Yelena Duterte, Director of the Veterans Legal Clinic at the University of Illinois at Chicago School of Law serves as counsel for the proposed *Hamill* class. She noted that since her team filed the class action, the VA has taken affirmative steps to provide due process going forward. “We are hopeful that this is the first step in a broader resolution to help all veterans who face this situation,” she explains. However, folks report that they are receiving confusing letters from the VA, referencing prior denials of veteran status. These letters often do not mention *Hamill* and leave the recipients wondering what action to take, if any.

The status of *Hamill* is that VA recently conceded the proposed class meets Rule 23 requirements. At the same time, VA argued that by making changes to its nonbinding procedures manual, known as the [M21-1](#), VA had mooted the plaintiffs’ claims. In addition, VA views precedential decision-making as the superior method of resolution. Therefore VA opposes class action certification in this case. Professor Duterte added, “As we have worked with veterans with lower than honorable discharges, like Mr. Hamill, it is clear that they have not been afforded the same appellate rights as other claimants. We filed this class action to ensure that the VA provides all veterans the opportunity to be heard, appeal their decisions, and obtain judicial review.”

Turning to *Farrell*, which was filed on August 8, the status is that DoD has not yet responded to the complaint. They did announce a [new webpage](#) which will collect resources. Its launch on September 20th was reportedly timed to coincide with the 12th anniversary of the repeal, not the lawsuit. Although improvements are promised, details remain scant and there is still no change in the process to apply for an individual record correction. Perhaps a cynical view is that DoD has taken a page out of VA’s book by attempting to moot claims when faced with a class action lawsuit.

Advocates worry that DoD will commence automatic reviews without giving veterans a meaningful opportunity to be heard. At greater risk are the thousands of veterans with minor or pretextual misconduct on their personnel records, rather than explicit indications of discrimination based on sexual orientation. DoD's renewed outreach efforts may exclude them altogether. Said Elizabeth Kristen, Director of the Gender Equity and LGBTQ Rights Program Legal Aid at Work and counsel for the proposed class,

"Veterans who were wrongly discharged under 'Don't Ask, Don't Tell' deserve better. They deserve access to benefits, they deserve privacy, they deserve to be respected and acknowledged, and, above all, they deserve to be proud of their honorable service. The Plaintiffs in this case have experienced the barriers of anti-LGBTQ+ policies for far too long and need to have the treatment, access, and support that they rightfully earned for their military service."

Veterans who meet the below description are encouraged to email lgbtqvets@legallaidatwork.org or complete [this online form](#) if they are interested in joining as named plaintiffs:

- 1) Discharge was based on sexual orientation (SO); or
- 2) Has an indicator referencing SO on their DD214; and
- 3) Has not already obtained a correction removing the SO indicator.

DoD estimates that between 1980 and 2011, roughly 60,000 veterans were affected by the now defunct policies tied to actual or perceived sexual orientation. Though far from a guarantee that it will take the same approach in *Farrell*, DoD recently settled the [Kennedy](#) and [Manker](#) class actions on behalf of certain post 9/11 veterans with mental health conditions whose discharge upgrade applications it denied. The pending settlement in [Johnson](#) follows this pattern.

As a final note, there are veterans who may belong to both classes. This is because VA still has not finalized the updates to its COD regulation, after having requested public comment and having held public listening sessions [over 2 years ago](#). Through inaction, VA has allowed a law that explicitly discriminates based on sexual orientation, to remain.

MLTF STATEMENT ON GENDER JUSTICE

Persons of all genders have assisted or served in the U.S. Military since its inception and have been part of servicemembers' struggles for equality and fair treatment for all of that time. However, the same issues that deny justice based on gender in the structure and culture of U.S. society are also found in the military, often in exaggerated forms.

SEXUAL ASSAULT AND HARASSMENT

Perhaps the most pervasive problem facing people in the military is the problem of sexual assault and sexual harassment. The Department of Defense's own reports reveal that 8,942 service members reported they were sexually assaulted in 2022, and the DoD admits that only a small percentage of those assaulted actually make reports. As of 2023, in 9 of the last 10 reporting years, total sexual

assaults in the military have increased. This is despite Congress's efforts to create a sexual Assault Prevention and Response Program (SAPR) or Sexual Harassment and Assault Response and Prevention Program (SHARP) in all branches of the military.

For example, following the killing of Vanessa Guillen on base at Fort Cavazos (formerly Fort Hood) after telling her family she was being sexually harassed, an Independent Review Commission was set up to investigate. The Commission found that: (1) the implementation of the SHARP Program had been ineffective due to command climate on the base; (2) there was strong evidence that incidents of sexual assault and harassment are significantly underreported; (3) the Army SHARP Program is structurally flawed; (4) the mechanics of the Army's adjudication process involving sexual assault and sexual harassment degrade confidence in the SHARP program; and (5) the command climate has been permissive of sexual harassment / sexual assault.

Those who do report incidents of sexual assault and/or harassment are routinely subject to retaliation from other servicemembers or commanders. In the words of the Independent Review Commission, "The overwhelming majority of these interviewees lacked confidence in the SHARP reporting system and believed that a justifiable fear of retaliation, ostracism, embarrassment and breach of confidentiality greatly inhibited reporting sexual harassment and sexual assault."

EQUAL OPPORTUNITY

According to the latest DoD report, women in the military comprise only 17.3% of active-duty personnel. Among officers, the number is 19.2%. Women in the military report pervasive sexism and discrimination. Similar discrimination affects non-binary servicemembers, though this is not well documented.

According to a 2021 study by the Georgetown Institute for Women, Peace and Security, the culture of the military has been shaped by long-held cultural practices. The study summarizes these as follows:

"Society has long conceived of military service, and combat participation in particular, as a rite of passage that 'turns boys into men,' linking masculinity with ideas of strength, courage, and violence. Military culture, its formal and informal socialization practices, rewards aggressive behavior by explicitly tying together the notions of manhood and violence. Therefore, the military can be understood as a gendering, gender-granting, or gender-defining organization that implicitly and often explicitly equates being a man with being a soldier vis-a-vis feminine civilians. The admission of women into the military threatens to erase this gendered division of men as warriors and women as civilians."

These reports were corroborated by the Independent Review Commission. When conducting interviews of soldiers at Fort Cavazos, the commission wrote, "When female Soldiers spoke up about their concerns, they were frequently shut down and essentially drowned out by the male Soldiers. There were many incidents when a courageous female Soldier would speak up regarding her experiences with the SHARP Program or flaws in the program, only to be contradicted and even ridiculed by other male members of the group in front of both the interviewer and the JAG Officer annotating responses. . . . The responses of the male Soldiers primarily revealed a satisfaction with the status quo and their belief that it is incumbent on female Soldiers to adjust to the male environment since they volunteered to join the Army."

This culture of straight male dominance is necessary to create soldiers who are willing to obey orders

unquestioningly and to kill. By objectifying women and treating women and non-binary people as “other” and inferior, a culture of “macho” mentality is created that motivates male soldiers to fight wars not in their interests.

GAY, LESBIAN, TRANSGENDER AND NON-BINARY SERVICEMEMBERS

The U.S. military has traditionally banned gay, lesbian and transgender people from serving in the armed forces. The wrong sexual orientation or gender identity was grounds for courts-martial and discharge from the military. In the 1990’s, Congress adopted the “Don’t Ask, Don’t Tell” policy for the armed forces. Even under this policy, servicemembers continued to be discharged for their sexual orientation. Lesbians were investigated and discharged at higher rates than gay men, often in mass witch hunts. Some of these discharges continue to negatively impact former service members as many are unable to receive benefits to which they otherwise would be entitled to.

Recently, the military has purported to accept transgender recruits. However, this policy was temporarily halted by an Executive Order issued by Donald Trump. This Order was rescinded by President Biden in January, 2021. The actual implementation of the policy purporting to accept transgender servicemembers still is not entirely clear and it is too early to tell if this policy will even remotely achieve equality within the service branches. Given the experiences of cisgendered women and lesbians, this seems unlikely.

REPRODUCTIVE HEALTHCARE ACCESS

The U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* has had an outsized effect on women in the military. Some of the military’s largest installations are in states where abortion is now banned.

Federal law prohibits service members from receiving most abortions through their military health care, and military doctors are not allowed to perform abortions. Whether abortion is available locally or service members must travel out of state, they must seek command approval for an "administrative absence" to obtain an abortion off base. While current policy encourages commanders to grant such requests, they are still at the command's discretion. Obviously, current military policy is a huge impediment to pregnant service members seeking abortion care.

CONCLUSION

The culture of the U.S. military is hostile to and dangerous for women, lesbians, transgendered and non-binary servicemembers. Despite attempts to address this situation in recent years, the efforts have failed to protect these servicemembers or change the prevailing culture. Until there is a determined and sustained commitment to uproot and destroy the culture of sexism in the military, the problems discussed above will continue. The MLTF, along with our allies, stand ready to assist those within the military who may be affected or at risk by this sexist culture.

MILITARY MEDICAL MALPRACTICE CLAIMS – A SABOTAGED SYSTEM

By Jeff Lake

In the September, 2021, issue of On Watch, I discussed the then-new rules for submitting claims for personal injury or death caused by healthcare provided by the DoD. In the October, 2022 issue of On Watch, I reviewed the updated rules for submitting claims. This article will discuss the current state of this system.

By way of background, until recently, servicemembers have been prevented from bringing claims against the government for injuries incurred incident to service. The case of *Feres v. U.S.* (1950) 340 U.S. 135 reasoned that to allow such lawsuits would involve “the judiciary in sensitive military affairs at the expense of military discipline and effectiveness.” This decision still stands today and its reasoning is known at the “Feres doctrine.”

The idea for allowing military personnel to collect personal injury awards due to military medical malpractice originated with the SFC Richard Stayskal Medical Accountability Act. Sergeant Stayskal was diagnosed with pneumonia when the correct diagnosis would have been cancer. This cancer is now advanced. This bill was part of the NDAA of 2020. There is now an administrative system whereby servicemembers can submit claims for compensation if they have been injured by malpractice in the military healthcare system. Sergeant Stayskal filed a claim under the bill named for him – and was denied earlier this year. His claim is now on appeal.

The current rule governing the filing of military medical malpractice claims can be found at 32 C.F.R. Part 45. I discussed this rule in my 2021 article and noted revisions to it last year. The Navy has a web page which details how to submit a claim: [Medical Malpractice Claims \(navy.mil\)](https://www.navy.mil/submit-claim)

Sergeant Stayskal’s situation is typical of those who have submitted claims so far. According to the Army, Navy and Air Force, 502 medical malpractice claims have been filed. Only 17 have resulted in financial payments to survivors. 134 claims have been denied and are closed. The others, 351 claims, are under or eligible for appeal or have been withdrawn. Needless to say, a system which to date has compensated 3% of those who submit claims is not providing justice.

In an interview with Stars and Stripes, former Congressperson Jackie Speier, who sponsored the original bill in Congress in 2020 stated, “What’s so painful is that the Stayskal Act was a huge win for our service members, but the administrative system that has been created has really sabotaged it.”

On July 26, 2023, the Department of Defense issued DODI 6025.13 entitled “Medical Quality Assurance and Clinical Quality Management in the Military Health System.” [DoDI 6025.13, "Medical Quality Assurance and Clinical Quality Management in the Military Health System," July 26, 2023 \(whs.mil\)](https://www.whs.mil/Portals/0/DoDI%206025.13%20-%20Medical%20Quality%20Assurance%20and%20Clinical%20Quality%20Management%20in%20the%20Military%20Health%20System%20-%20July%2026%2C%202023.pdf) This document spells out the current structure of the Military Health System and includes policies to be followed. One of these is the reporting of military medical malpractice claims. Section 2.3.c. details the data to be provided as claims come in and move through the system.

The issuance of this new Instruction is perhaps a response to an August, 2022, GAO performance audit which found that DoD’s Defense Health Agency “did not always adhere” to its quality management process because of unclear policies and procedures. Now that the policies and procedures have been clarified, it will be interesting to see if military healthcare improves.

On January 23, 2023, Congressperson Darrell Issa introduced the “Healthcare Equality and Rights for Our

Heroes Act.” This bill would allow service members to sue for personal injury or death “arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions . . . provided at a covered military medical treatment facility . . .” This bill is an admission by some in Congress that the administrative system that is now in place is not adequately addressing the problem it was meant to solve. To date, this bill has 8 co-sponsors.

As always, the MLTF will continue to monitor developments in this area. Please continue to subscribe to *On Watch* to receive up to date information regarding this important issue.

SCHOOL BOARD BANS INVOLUNTARY PLACEMENT OF STUDENT IN JROTC

By Rick Jahnkow, Project YANO



On August 29, 2023, the San Diego Unified School District Board of Education approved a resolution that, effectively, bans the enrollment of any student in the Junior Reserve Officers' Training Corps program without first obtaining fully informed consent from the student and a parent or legal guardian.

The impetus for proposing the resolution came from a front-page New York Times article published in December 2022, titled, "Thousands of Teens Are Being Pushed Into Military's Junior R.O.T.C." Enrollment data obtained by The Times indicated that some San Diego high schools were among those that were automatically placing students in the program.

Community groups in San Diego did further research and received confirmation that hundreds of students at one inner-city school were being automatically enrolled in JROTC. The groups contacted the district and asked for action to end the practice. They pointed out that, according to The Times, involuntary placement in JROTC appeared to be taking place at schools "attended by a large proportion of nonwhite students and those from low-income households." They also noted that automatic JROTC enrollment at San Diego schools was in violation of section 51750 of the California Education Code, which states that "no student . . . shall be required to enroll in any course in military science and tactics."

The resolution that was eventually adopted by the school board was largely based on a draft written by the groups protesting involuntary JROTC enrollment (See end of this article for text of resolution). It establishes that no student may be enrolled in the program without first obtaining fully informed consent from the student and a parent or guardian. Furthermore, the form used to elicit such consent must identify the military nature of the program and include "a complete and accurate description of the program's requirements and expectations that are imposed on students." Previously, the district's JROTC office produced a "consent" form that contains no such information and the community groups in San Diego will be demanding that the district adopt an entirely new form that is consistent with the adopted board resolution.

Groups that were key to getting the resolution passed included the Project on Youth and Non-Military Opportunities (Project YANO), Association of Raza Educators, and the San Diego Chicano/Latino Concilio on High Education. The Military Law Task Force also sent a letter to the school board seeking assurance that "no high school student is ever required by the SDUSD to participate involuntarily in any way in the JROTC program."

For more information on the San Diego campaign, write to contact@projectyano.org. For information on an national organizing packet that will soon be produced for local groups, visit the Taskforce to End Compulsory Military Training in Schools (TECMITS) at www.endcom.org.

TEXT OF ADOPTED RESOLUTION:

**BOARD OF EDUCATION
SAN DIEGO UNIFIED SCHOOL DISTRICT**

In the Matter of Enrollment of Students in)
Junior Reserve Officers' Training Corps (JROTC)) **RESOLUTION**

WHEREAS, it has been the practice in the San Diego Unified School district to allow credits to be awarded for Junior Reserve Officers' Training Corps (JROTC) military science courses that are counted toward meeting state requirements for high school physical education; and

WHEREAS, Section 51750 of the California Education Code states that "no student . . . shall be required to enroll in any course in military science and tactics"; and

WHEREAS, in accordance with California Education Code Section 51750, it is the policy of the San Diego Unified School District that no student shall be enrolled in JROTC without obtaining the fully informed consent of the student and the student's legal guardian.

NOW, THEREFORE, BE IT RESOLVED that the District, in consultation with its secondary school site administrators, shall ensure options are available to provide adequate resources for secondary schools to offer physical education to all students who either require or desire the class, pursuant to California Education Code section 51241(b)(2); and

BE IT FURTHER RESOLVED, that the San Diego Unified School District shall annually compile and make public JROTC enrollment data, broken down by school and grade level on the Office of Graduation website; and

BE IT FURTHER RESOLVED, that the fully informed consent of the student and the student's legal guardian shall be obtained via a signed consent form that is submitted to the high school before the student is enrolled in JROTC; and

BE IT FURTHER RESOLVED, that any form used to obtain such consent shall acknowledge that the program is a voluntary, non-academic elective that cannot be required, and provide a method for the student and legal guardian to indicate whether or not JROTC is being chosen in place of regular physical education; and

BE IT FURTHER RESOLVED, that any such consent form shall identify JROTC as a leadership program designed by the military and conducted by retired military officers, and present a complete and accurate description of the program's special requirements and expectations that are imposed on students, including the scope of voluntary activities and time commitments that may fall outside regular school hours; and

BE IT FURTHER RESOLVED, that in any course catalog or student’s transcript, the class shall be clearly labeled as “JROTC”; and

BE IT FURTHER RESOLVED, that, because a student who has initially enrolled in JROTC may not wish to continue in subsequent years, automatic re-enrollment shall never be done; and if a student does wish to continue in the program, a new informed consent form for the student must be obtained and placed on file at the school BEFORE each subsequent JROTC enrollment is allowed; and

BE IT FURTHER RESOLVED, a student’s enrollment in JROTC shall not occur because the school has failed to provide the student with sufficient options for a physical education class.

Approved and adopted by the Board of Education of the San Diego Unified School District, San Diego, California, at a public meeting thereof duly called and held this 29th day of August 2023.

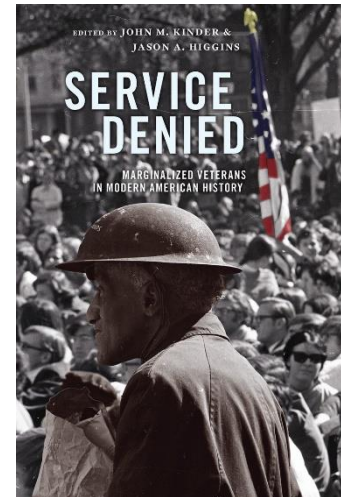
BOOK REVIEW

VETERANS HISTORY YOU SHOULD KNOW

By Chris Lombardi

Service Denied: Marginalized Veterans in Modern American History

JOHN M. KINDER and JASON A. HIGGINS
University of Massachusetts Press, 2022
256 pp; Hardback and Paperback



When I heard this book existed, I knew it was for MLTF. The reason is explained by the editors in their introduction, “Veterans in the Margins of Modern American History”: Of the national icon that is The Veteran, named as a motivating force at the VA and many in Congress, Kinder and Higgins write: “For all its apparent clarity, the myth of the veteran’s experience obscures the diversity and of veterans’ lives.” The “Veteran” rhetoric, stripped of such diversity and complexity, is often used to tamp down any critiques of U.S. policies. Their book adds back some of that diversity and complexity - and delivered to this author a series of “Why didn’t I know that?” moments.

Why didn’t I know....

- That the New Deal included something called “The Economy Act,” which sharply cut veterans’ pensions? Or that the Act, whipped up in 1931 by the already-evil U.S. Chamber of Commerce, was particularly devastating for those who fought in the U.S. wars against Spain and in the Philippines, with Congressional testimony for the bill bemoaning their “so-called disabilities?” Barbara Gannon’s Chapter One, “So-Called Disabilities: Spanish War Veterans and the Economy Act,” highlights the targeting of vulnerable veterans just after World War I, as what U.S. historians call “the modern era” was beginning. Gannon outlines the challenges of being one of the United Spanish War Veterans (USWV): in July 1933, the start of the first fiscal year governed by that Act, 174,000 SWVs were dropped entirely off the pension rolls, and 124,000 had their compensation cut from 50-75%. The struggle against the bill, Gannon notes, was exacerbated by tensions between USWV and the then-upstart World War I-based Veterans of Foreign War (VFW), tensions that continued after the VFW’s mighty lobbying efforts succeeded in mitigating the effects of the Economy Act - until the Disabled American Veterans (DAV) famously called for unity among all veterans, “I care not what war it might have been.” She ends the chapter wondering whether such unified support is possible now: “Who will stand with [tomorrow’s veterans] when someone proposes the Economy Act of 2033?”
- That during Red Summer in 1919, Black veterans in Chicago “took positions at 35th and State, waiting to ambush white rioters” shooting at Black communities? This information is part of Robert Jefferson’s “New Frontiers for the New Negro,” centered on the political education of one witness to those events, author of the (still-unpublished) *The World War Memoirs of Jesse L. Fraser*. Jefferson frames Fraser’s story with invaluable context, including W.E.B. Du Bois’ partnership with Fraser in the struggle to restore the reputation of the 365th Infantry.

- Why didn't I know about the poetry of shell-shock victims in Plattsburgh, New York, calling out their maltreatment in Army hospitals? In "The Unseen Army Neuropsychiatry, Patient Agency, and World War I," Evan P. Sullivan interferes with the common understanding of soldier PTSD by charting what he calls "writing resistance," including Hospital, where they were taken as part of a national reshuffling of those suffering from "anxiety neurosis": "We ask you people for whom we fought/While we give you a little light/If you had to live in a 'Nut Ward'/Tell us — would you think it right?" Two hundred Dansville patients even asked their members of Congress to intervene, which Sullivan finds notable if unsuccessful; authorities' dismissal of patient concerns, he writes, bled over into the approach favored by the Veterans' Bureau, with its emphasis on 'rehabilitation' defined by a return to "productivity."
- Why didn't I know about the servicemembers in World War II discharged for enuresis (bedwetting)—356,000 in the Army alone? John Kinder, one of *Service Denied's* editors, gives us a picture of troops subject to stigma, medical harassment and queer-baiting. "Out of place, beyond conscious control, 'unhygienic' and hinting of deeper pathologies, enuresis threatened the military's fiction of invulnerability."
- Why didn't I know more about the Vietnam POWs who made up the "Peace Committee of Southeast Asia" in 1973? In "Pawns in Their Wars," Juan David Coronado delves into the "Tumultuous Experiences of Vietnam POWs," including a sketch of the internal structure of the Vietnam-directed Peace Committee that quotes former prisoner and anti-war activist [Bob Chenoweth](#): "[Prisoners] been subjected to the military mentality for so long" that they replicated command hierarchies.
- Why didn't I know that the All-Volunteer Force was originally a Republican idea? John Worsencroft does, and his "The Wrong Man in Uniform': Antidraft Republicans and the Ideological Origins of the All-Volunteer Force, 1966–73" gives us the details of what became the Council for a Voluntary Military, with odd bedfellows including CORE, SANE, Young Americans for Freedom and their godfather Milton Friedman – the last identified as "perhaps the most influential voice" on the issue. It all feels a precursor to David Kiernan's "The 'Patriot Penalty': National Guard and Reserve Troops, Neoliberalism, and Manufactured Precarity in the Era of Perpetual Conflict." Kiernan reports on the era in which we're currently living and working, with real-time examples like the 2004 armor-shortage crisis in Iraq and reservists whose families are failed by TriCare. And Jason Higgins' "Prisoners after War: Veterans in the Age of Mass Incarceration" will feel familiar to those whose clients are contending with the drug war on top of their military service.

Much of the rest of *Service Denied* might similarly be familiar to MLTF members, especially Heather Marie Stur's "Red, White, Lavender, and Blue LGBT Soldiers and Veterans and the Fight for Military Recognition," Kara Dixon Vuic's "Our First Sister: Lynda Van Devanter and the Vietnam Veterans of America's Women's Project"; and the coda, "#IAMVanessaGuillen." Each chapter might deepen your understanding of its subject as it did mine.

Kinder and Higgins' book is not just a worthwhile addition to your library. College syllabi should grow from it. Its insights fill out the map of so much that still needs to be done.

MLTF ANNOUNCEMENTS

MLTF MEMBERSHIP MEETING

The MLTF will hold its annual membership meeting via Zoom on Monday, November 13, at 10 am PST, 1 pm EST. Task Force members and anyone interested in our work are welcome to attend. The meeting will include discussion of MLTF's current work as well as suggestions and proposals for future projects. For information, contact Kathleen Gilberd at kathleengilberd@aol.com.

NOVEMBER 13 CLE WEBINAR ON MILITARY RESISTANCE

The meeting will be followed by a CLE webinar on resistance and dissent in the military; details on this will be available soon. Proposed speakers include Jeff Paterson of Courage to Resist, MLTF's James M. Branum and Siri Margerin, and Kathleen Gilberd. For information on the program and registration, contact James Branum at [girightslawyer -at- gmail -dot- com](mailto:girightslawyer-at-gmail-dot-com).

GI RIGHTS NETWORK CONFERENCE

MLTF members are invited to the GI Rights Network's annual conference, which will be held virtually the weekend of October 26 to 29. The conference will combine some social events with discussion of ways to expand the network and military law training sessions. If you're interested in attending, please contact Kathleen at kathleengilberd@aol.com.

ABOUT THE CONTRIBUTORS

Ana Maria Bondoc is the Senior Staff Attorney at The Veterans Consortium Discharge Upgrade Program, sponsored by DAV Charitable Service Trust. She trains and mentors pro bono attorneys representing veterans before the Discharge Review Boards (DRBs) and the Boards for Correction of Military/Naval Records (BCM/N Rs).

Kathleen Gilbert is a legal worker in San Diego, handling discharge review and military administrative law cases. She is the executive director of the Military Law Task Force and serves on the board of the GI Rights Network.

Rick Jahnkow is a member and former staffperson for two San Diego-based anti-militarist organizations, the Project on Youth and Non-Military Opportunities and the Committee Opposed to Militarism and the Draft.

Jeff Lake is Chair of the MLTF. He is in private practice in San Jose, California.

James Marc Leas is an NLG attorney member in private practice in Vermont.

Chris Lombardi has been writing about war and peace for more than 20 years. Her work has appeared in The Nation, Guernica, the Philadelphia Inquirer, ABA Journal, and at WHYY.org. The author of *I Ain't Marching Anymore: Dissenters, Deserters, and Objectors to America's Wars* (The New Press).

Chris McGhee served 20 years on active duty in the United States Air Force as a tactical aircraft maintenance specialist on F-16 fighter aircraft. During his career Chris performed various positions related to aircraft maintenance including an assignment as a technical instructor, as well as roles in leadership, quality assurance, and maintenance management. Since retiring in 2018 Chris has been a vocal advocate for the treatment of servicemembers with a goal of reducing unnecessary stress and holding the DOD accountable for the conditions, cultures, and environments they levy upon servicemembers. Chris created the 20 Years Done blog, and in 2020 the 20 Years Done podcast. In May of 2022 Chris graduated from the University of Maine School of Law.

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

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 (\$45), or \$25 annually for non-members.

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

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

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

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

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

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

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

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 to make a one-time or a recurring donation.

Thank you!