National Lawyers Guild Military Law Task Force

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ON WATCH

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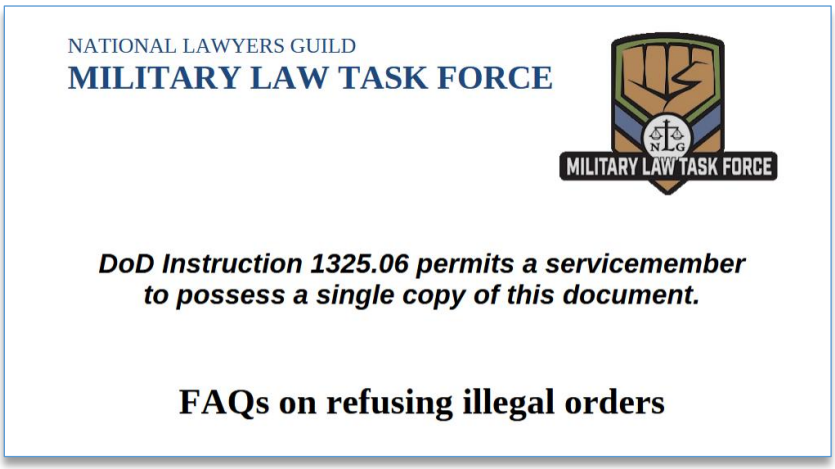

See page 25 for a link to this FAQ document.

TRUMP ADMINISTRATION DEPLOYS THE MILITARY IN SUPPORT OF ITS IMMIGRATION POLICIES

By Jeff Lake

Editor's note: As this issue went to press, the last of the Marines sent to LA were ordered to leave the city.

Over the last few months, the Trump Administration has deployed the military in support of its immigration policy. This article will summarize developments in this area; however, events are happening quickly, and additional events may occur between the time this article is written and when it is published.

On June 6, 2025, ICE agents attempted to enter a garment factory in Los Angeles. Supporters of the workers had gathered outside to protest this action. ICE agents pushed and arrested the head of the Service Employees International Union in Los Angeles, and he was later charged with assaulting them. Other demonstrators appeared at the ICE detention facility. Graffiti was painted on the walls, and some small fires were started. Police responded with "non-lethal" munitions.

On June 7, 2025, President Donald Trump issued a "Presidential Memoranda" entitled "Department of Defense Security for the Protection of Department of Homeland Security Functions." The memo describes alleged acts of "violence and disorder" in response to ICE actions. The memo states, "To the extent that protests or acts of violence directly inhibit the execution of the laws, they constitute a form of rebellion against the authority of the Government of the United States." The memo cites 10 U.S.C. 12406 as authority to call the National Guard into federal service. It goes on to say, "In addition, the Secretary of Defense may employ any other members of the regular Armed Forces as necessary to augment and support the protection of Federal functions and property in any number determined appropriate in his discretion."

10 U.S.C. 12406 states:

> Whenever—
>
> **(1)**
> the United States, or any of the Commonwealths or possessions, is invaded or is in danger of invasion by a foreign nation;
> **(2)**
> there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or
> **(3)**
> the President is unable with the regular forces to execute the laws of the United States;
>
> the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the

> States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

The section requires an invasion or a "rebellion or danger of a rebellion against authority" for it to be invoked. The events preceding the invocation of this section in no manner can be described as a rebellion. In addition, there was no suspension of federal law in Los Angeles. The New York Times opined: "As the governor's spokesman and others have noted, Americans in cities routinely cause more property damage after their sports teams win or lose."

On June 8th, 2,000 National Guard troops arrived in Los Angeles. According to declarations filed in federal court, "it was not clear what role they would play or what orders they were provided," and "there were concerns" that they "did not have the equipment or training necessary to handle the situation." Some people "moved through downtown, setting off commercial-grade fireworks toward federal officers and throwing objects at passing law enforcement vehicles." Some protesters blocked Highway 101. At least 42 people were arrested.

On June 9th, the Governor of California filed a lawsuit against the President, the Secretary of Defense and the Department of Defense asking for declaratory and injunctive relief and a temporary restraining order. (Case No. 3:25-cv-04870-CRB.) Also on that day, Secretary of Defense Hegseth deployed approximately 700 active-duty Marines to Los Angeles and federalized another 2,000 National Guard troops.

On June 12, 2025, Secretary of Homeland Security Kristi Noem arrived in Los Angeles and held a press conference. When asked about the role of troops, the Secretary let the cat out of the bag and stated, "We are not going away. We are staying here to liberate this city from the socialist and burdensome leadership that this Governor Newsom and this mayor placed on this country and what they have tried to insert into this city." She said nothing about a rebellion. When Senator Padilla of California, who had come downstairs from his office, tried to ask a question, the Secretary stated that she did not recognize him and then had him forcibly removed, tackled, and placed in handcuffs. He was later released without charges.

Later in the evening on June 12th, U.S. District Court Judge Charles Breyer issued his Order Granting Plaintiffs' Application for Temporary Restraining Order. Judge Breyer found that section 12406 does not give the President sole authority to determine whether a "rebellion" has or is in danger of occurring or whether the President is unable to execute federal law." Judge Breyer then found that "[t]he protests in Los Angeles fall far short of rebellion." He went on to observe that "Violence is necessary for a rebellion, but it is not sufficient." He concluded,

> "Nor is there evidence that any of the violent protesters were attempting to overthrow the government as a whole; the evidence is overwhelming that protesters gathered to protest a single issue – the immigration raids. While Defendants have pointed to several instances of violence, they have not identified a violent, armed, organized, open and avowed uprising against the government as a whole. The definition of rebellion is unmet."

Judge Breyer granted the restraining order and enjoined the administration from deploying members of the National Guard in Los Angeles and returning control of the Guard to the Governor.

This being the times in which we live, within hours this order was appealed and stayed by the Ninth Circuit Court of Appeals. (Case No. 25-3727.) On June 19, 2025, the Court issued a Per Curiam opinion reversing Judge Breyer. The Ninth Circuit ignored the rebellion requirement cited by the President in his memorandum and refuted by the evidence presented to Judge Breyer. Instead, the court focused only on whether the President "is unable to execute federal law." They held that any "interference with the ability of federal officers to execute the laws" is all that is needed to call in the military.

So, for now, a law that was enacted so that the President could suppress a rebellion can be invoked if anyone "significantly" impedes any federal law enforcement officer. What is "significant" is wholly undefined and of course, completely subjective. Litigation in the case continues and future developments will be noted in *On Watch*.

Without much to do other than to intimidate, on July 7, 2025, the military, along with ICE and Customs and Border Patrol, planned to march through MacArthur Park in Los Angeles purely as a show of force. A leaked Army document states, "On order, 1-18th Cavalry Squadron provides static interagency site protection, mounted mobile security, and Joint Force Land Component Command (JFLCC) Reserve support to Customs and Border Patrol (CPB) and supporting federal agencies, whose intent at MacArthur Park is to demonstrate, through a show of presence, the capacity and freedom of maneuver of federal law enforcement with the Los Angeles Joint Operations Area. (JOA)." According to reporter Ken Klippenstein, because ICE and CBP failed to communicate or coordinate effectively, the military showed up too late. On National Guard member told him, "we parked and then left. Soldiers didn't get out of trucks, [They] stayed in the back of the 5-tons [military trucks] sweating in the heat." Border Patrol Chief Gregory Bovino warned, "Better get used to us now, 'cause this is going to be normal very soon. We will go anywhere, anytime we want in Los Angeles."

Now, all of the Marines have left Los Angeles and only 250 National Guard remain. However, the precedent has been set.

On July 4th, the President signed a new federal budget into law. This budget includes a 265 percent increase to ICE's current detention budget and $45 billion to build new immigration detention centers. This is a larger amount than the entire federal prison system. Spending on ICE enforcement is larger than that of the Marine Corps and indeed larger than the military budgets of most nations.

Meanwhile, the administration continues to militarize the southern U.S. border. Previously, a strip of land about 63 miles long near Fort Bliss in El Paso, Texas, was incorporated as part of the Fort. In addition, in April, another strip of land along 200 miles between New Mexico and Mexico was militarized. Now, two more areas of land are being militarized according to the New York Times. One strip of land along the border of Arizona will become part of the Marine Air Station in Yuma. Another strip of land will become part of Joint Base San Antonio in Texas. It seems likely that the entire border will simply be militarized soon and without much protest by Congress.

Finally, as this article is being prepared, a new immigration holding facility has been constructed in the Florida Everglades. As part of immigration enforcement, Florida Governor Ron DeSantis has proposed

using military JAG officers as immigration judges in the state. While touring the facility with the Governor, the President commented on the proposal, saying, “He has my approval.” This proposal was met with skepticism from most military law commentators, who pointed out the Posse Comitatus Act, which prohibits the military from acting as law enforcement, would bar the use of JAGs as judges. The only exception to this is the invocation of the Insurrection Act – which the administration has not done. Mother Jones interviewed Raquel Aldana, a law professor at the University of California, Davis. Ms. Aldana stated that if the administration were to invoke the Act, “The reality is that, once he does, the powers can be unlimited, and we are in a military state.” According to Mother Jones, the Florida National Guard has not yet received orders for JAGs to act as judges. The current plan assumes that JAGs could be trained in six weeks – which does not seem realistic. There is also the question of impartiality since JAGs report to the President. Indeed, the whole plan may be just for show.

It is clear that the military is being integrated into civilian law enforcement, despite what used to be clear statutory authority prohibiting such use. As the Congress and the Courts will not use their power to stop this, it will no doubt continue. As Border Patrol Chief Bovino said, “It’s going to be normal very soon.” The Constitutional implications are grave, and we are on the verge of rule by decree enforced by the military.

The MLTF stands ready to assist those in the military who are concerned about orders to conduct law enforcement activity against civilian residents of the United States. Whether it is counseling regarding discharges or potentially illegal orders, servicemembers should be referred to the MLTF or other allied organizations. As always, please maintain your membership to continue to follow this story in future issues of *On Watch*.

STATEMENT ON THE USE OF THE NATIONAL GUARD AND ACTIVE-DUTY TROOPS TO CONTROL THE OPPOSITION TO I.C.E. AND D.H.S. ATTEMPTS TO REMOVE UNDOCUMENTED WORKERS.

The Military Law Task Force of the National Lawyers Guild is opposed to the use of military forces to "put down" or "control" the heartfelt reactions by community members to workplace immigration raids in Los Angeles and other cities.

The Trump administration claims the use of the troops is necessary because local police are incapable of protecting the masked, non-uniformed, but heavily armed, federal forces from ICE, DHS, ATF and the FBI. Nothing could be further from the truth.

In California, for example, Governor Gavin Newsom has denounced the use of military troops as a dangerous escalation of the confrontations. We agree. We remember how National Guard Troops fired on student anti-war protestors at American universities.

The MLTF will be developing a more comprehensive plan of action, including the use of Article 138 of the UCMJ and the Nuremberg Principles. For now, we pledge our support for members of the National Guard and the active-duty military personnel who are opposed to attacking and killing those who oppose the illegal and immoral removal of undocumented workers.

It is important for servicemembers to recall in these moments that each step in a chain of orders must be legal for their orders to be legal – including whether those orders are issued under the appropriate authority.

Service members with questions about illegal or unjust orders can contact the MLTF at (619) 463-2369 for a referral to an attorney to discuss their rights.

SUPPORTING CONSCIENTIOUS RESISTANCE

By Chris Lombardi

Air Force veteran Aneesa Ahad approached the U.S. Capitol. It was Friday the 13th, the day before tanks were scheduled to roll through D.C. for the 250th anniversary of the U.S. Army—also the 79th birthday of the President. Ahad, who'd come with her 16-year-old daughter, Nusret, wore a "Veterans Against Fascism" T-shirt, among hundreds of other veterans who held signs saying "Benefits Not Bullshit" or "People Not Parades." They gathered under the banner "VETS SAY MILITARY OFF OUR STREETS."

The second week of June 2025 brought the moment many of us have been dreading, and trying to prepare for, ever since the Trump Administration slouched back into Bethlehem. First, the unprecedented deployment of the National Guard and the U.S. Marines in Los Angeles; as the MLTF noted, this was meant to 'put down' or 'control' the heartfelt reactions by community members to

workplace immigration raids in Los Angeles and other cities. (See Statement in this issue of *On Watch*.) Then, on June 14th, on the 250th anniversary of the U.S, Army, came an unusual deployment in Washington itself: actual tanks and Army soldiers, many dressed in uniforms of prior centuries, the military parade long desired by President Trump -- the president who has increasingly treated the U.S. military like his private militia.

Nusret Ahad wrote in a statement shared with *On Watch:* "I protest because I believe that money should be building up communities — not feeding the ego of a man or the image of a nation that's breaking from the inside out. And as someone who's watched their own mother struggle with military PTSD, I believe we owe our veterans more than parades and empty gestures. We owe them care. We owe them healing. We owe them peace. Putting them on display like props dishonors what they've carried home."

As millions of Americans held No Kings protests against the Trump Administration, VFP and MLTF were opening the door for military personnel who want to join them. The day before the planned parade, Ahad was "storming' the U.S. Capitol with other vets, including Veterans for Peace director Michael McPhearson. In all, 60 veterans were arrested crossing police lines at the Capitol that day – including Aneesa and her daughter. 87 year old veteran John Spitzberg, whose walker was seized by police, told the press "I'm just beginning, my friend." That was true for all of us, it seemed.

The need is clear: after the June 7 activation of the National Guard, the G.I. Rights Hotline saw a surge in calls. "It was nonstop," Richard Morgan, director of the Center on Conscience and War, told me. Steve Woolford, counselor for Quaker House Fayetteville, wrote that "People are understandably worried about the military being turned against citizens, in part due to Trump's suggestion that he would use troops on 'the enemy within.' People are hoping that US military members will refuse any such orders." Like MLTF's Illegal Orders FAQ, Hotline offices are careful in what they recommend to callers.

As the administration keeps escalating these tactics, with Guard troops deployed in Hawaii and in Florida's "Alligator Alcatraz," the pressure on the Hotline continues. And it's affecting already-deployed troops: of the 72 ARNG troops whose terms are up, "two have now left the Guard and 55 others have indicated that they will not extend their service," the *New York Times.* Reported in July. "In one incident that several soldiers said occurred early in the deployment, 60 troops were awaiting transport to planned immigration raids in Ventura County when a Latino soldier approached officers in charge of the mission. He told them that he strongly objected, and he offered to be arrested rather than take part in the operation. Eventually, they said, he was reassigned to administrative tasks." Guard officials told the *Times* that that "the moral injuries of this operation, I think, will be enduring."

On Watch first reached out to Aneesa Ahad because she coordinates VFP's new Conscientious Resistance Working Group. Ahad, who enlisted in 1996 as an IT specialist, soon realized the military's mission was incompatible with her core values: "I didn't want to use my programming skills to help kill someone." Ahad's conscientious-objector application was denied, but she still connected afterward with Veterans For Peace. She spoke to me from Bellingham, Washington, where she staffs the Whatcom Peace and Justice Center and runs its counter-recruitment Alternatives to Military Service project. When she and I first spoke it was June 9, two days after Trump mobilized the National Guard in L.A. She told me she was headed to D.C. with her daughter, to enact some conscientious resistance of their own.

Nusret writes: “I hope our action reminds people that they’re not alone — that it’s okay to speak up. That resistance can look like a protest in D.C., or like smiling at your immigrant neighbor. That courage doesn’t always come with a microphone — sometimes it comes quietly, in choosing kindness over cruelty, or truth over silence.”

In a July interview, Ahad told me she’s been contacted by dozens of servicemembers in the weeks since June 14, many asking about conscientious objection. She tells them CO is a complex and difficult process, and refers them to organizations like MLTF and Center for Conscience and War. But many are looking for what to do in the case of manifestly illegal orders. This surge in interest has been widely covered, including in *The War Horse*, which noted accurately “For U.S. troops conflicted about their service, following their conscience can be costly.”

There’s a wide range of organizations working to construct support for troops hoping to resist. They include not just the “usual suspects” like MLTF and VFP, but The Chamberlain Network, Do Not Turn On Us, and The Orders Project, the latter part of the National Institute for Military Justice.

Do Not Turn on Us. Nonviolence icon Lisa Fithian, author of *Shut It Down*, is putting her decades of organizing experience behind the Call the Courage campaign. The campaign, first devised when Trump started planning to invoke the Insurrection Act, pivots on UCMJ’S Article 90 and 92, or “the right to disobey an illegal order violating the U.S. Constitution.” Working with VFP and About Face, DTOU is reaching out with actions at military bases or NG/Reserves trainings, showing up with one-page handouts that say “Honor Your Oath” and “Do Not Turn on Us.” Those words resonate, said VFP director McPhearson, who described one young reservist telling him: “I will not! Won’t turn on you.” DTOU’s Action Guide is a toolkit with how-to tips and guides to *find* the nearest base or training locations. The guide links to MLTF, of course, as well as About Face’s Military Resistance Support Network. Elsewhere on its extensive Linktree (https://linktr.ee/donotturnonus), DTOU offers our Know Your Rights guide, resources from the International Center for Nonviolent Conflict for “members of security forces,” and encrypted feedback forms via AirTable.

The Chamberlain Network was founded in 2024 to “connect veterans on a local, state, and national level towards active civil service”: “We use this network to protect and enhance our American democracy.” This mission attracted dissenting servicemembers to their Against Military Immigration Detention Campaign. The website quotes an army veteran, “I fear that using military facilities to house migrants in substandard living conditions and making service members perform duties to guard these locations – something that is outside their normal military roles, will have a ... devastating effect on our servicemembers.” TCN’s Lend Your Voice campaign offers resources to those speaking out against domestic deployments, as well as the destruction of federal-government agencies like the VA.

The Orders Project and National Institute for Military Justice. The Orders Project, founded in 2020 under Trump 1.0, is now a part of NIMJ, which was founded in 1991 in the aftermath of the Tailhook and Aberdeen sexual-abuse scandals. After Trump returned to power, NIMJ hired a new Orders Project director: retired judge advocate-general, Geoff De Weese, who articulated its goals: “The Orders Project is organized to help connect military members, at all levels of command and across all services, with experienced attorneys who can provide them with confidential legal advice.” TOP publishes a sourcebook for attorneys and counselors; When De Weese spoke to *On Watch* he shared the hope that TOP and MLTF could work together. “These are hard times.” De Weese also works closely with NIMJ’s

Trans Representation Project, designed to help trans personnel navigate the hazardous options offered them by the Pentagon. De Weese said he's had a handful of National Guard troops approach the project, a number he expects to increase. He added that servicemembers need to ask themselves, "What if I'm ordered to seize voting machines?", since that was a never-issued executive order drafted for President Trump in 2020, long before today's super-compliant DoD. The possibility of that feels real, given the Department of Justice's demands for election data and possible politically motivated investigations or prosecution of election officials. Today's military, directed by a former Fox News host, is less likely to act as former Secretary Mark Milley did in 2020.

NIMJ co-founder David Sheldon told *On Watch:* "This administration has gone so far off the rails, you know, they're in wagon wheels, and that's where they're trying to take us back to." Or at least to 2004 and 2006 'when the government was taking a hard turn to torture people in black sites." Back then, Sheldon added, "It wasn't DoD that was writing any of those authorizations. It was DOJ and the civilians and OGC and DOD I know took a hard stance of, *no, we're not going to do that*." … But now, "It's crazy. It's completely unlawful." Currently, like MLTF, Sheldon's practice is focused on servicemembers' rights: "Discharge Review Board applications, a lot of Privacy Act and Federal Tort Claims Act, Military Claims Act…." The firm's press statement on illegal orders leads with Army Field Manual 27-10: "The fact that a person acted pursuant to order of his government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible." Unlike MLTF's own post, Sheldon's statement goes on to explicitly discuss possible legal precedents (Nuremberg trials, *U.S. v. Calley*) and possible options for redress via the Military Whistleblower Act and the Board of Correction of Military Records. "I never think, *Wow, this is going to be a cake walk,"* Sheldon told me, echoing many of us. "It's [more] like *this is going to be a pain in the butt."*

The "usual suspects"— MLTF, VFP, About Face — still offer a wealth of resources, like About Face's library of videos and contextual readings (including a few by this author) and VFP's working group, chaired by Ahad. McPhearson and Ahad both told me that by September, Conscientious Resistance will have a higher profile. "In the next few months," Ahad told me, "Look for events that'll steal the spotlight."

For now, Ahad hopes that we're inspired by her daughter's words: "I hope we stop surrendering our power to the few at the top, and start recognizing the strength in community — in everyday people standing together for something better."

MLTF Statement on U.S. bombing of Iran

June 23, 2025

The Military Law Task Force of the National Lawyers Guild unequivocally condemns the bombing of Iran by U.S. forces– a clear violation of both US and international law, executed without democratic approval or a legitimate national security justification. The attack threatens the lives of tens of millions of people -- the vast majority civilians -- in Iran and neighboring countries.

These bombings, carried out despite United Nations prohibitions on use of force against another nation, have already led to threats of retaliation, endangering the 40,000 U.S. servicemembers stationed in the Gulf, across bases in Qatar and Bahrain and the Naval Fifth Fleet. Military communities everywhere are wondering what they'll be ordered to do next.

As the situation evolves, The MLTF will continue to support those within the military who oppose this misuse of U.S. military force. We encourage members of the military who are troubled by potentially unlawful illegal orders to refer to our FAQ on refusing illegal orders and to seek legal advice. We invite other lawyers and legal workers to join us in this work.

We commit ourselves to continue our work to provide relevant training materials and other support for those who will be receiving calls from service members with moral, ethical, and legal concerns about these actions, including our allies at the GI Rights Hotline, as well as other attorneys. We will also be ready to provide legal support for servicemembers engaged in free speech actions in opposition to this war.

Resources for servicemembers from the MLTF:

FAQ on refusing illegal orders

MLTF's U.S. Military "Know Your Rights" guide (PDF)

The right of dissent and protests in the military

GI Rights Hotline: 877-447-4487

ARTICLE 138 -- SERVICEMEMBERS' TOOL FOR REDRESS

By Kathy Gilberd and Aaron David Frishberg, Esq.

Complaints under Article 138 of the UCMJ are among the most powerful means of redress available to servicemembers; they tend to be taken more seriously by commands than other forms of complaint, since they must be reported to service headquarters, and they give servicemembers making the complaint considerable control over the processing of the complaint.

Sometimes the mere mention of an Article 138 complaint is enough to bring command attention to members' problems. Ironically, this is also one of the least known methods of complaint—members are not taught about it in military justice trainings and, indeed, many soldiers and sailors believe that the UCMJ ends at Article 134 (the general punitive article).

Service regulations provide specific requirements for these complaints and their review. These include Army Regulation (AR) 27-10 of 8 January 2025; the Manual of the Judge Advocate General (JAGMAN, or JAGINST 5800.7G with Change 2) of 1 December 2023 for the Navy and Marine Corps; and Department of the Air Force Instruction (DAFI) 51-505 of 28 August 2024. Coast Guard regulations for Article 138s are found at United States Coast Guard Judge Advocate General Military Justice Manual (COMDINST) M5810.1H of 9 July 2021**,** at Chapter 25**.**

There are both procedural and substantive differences among the regulations, and counselors and attorneys would do well to review the specific service reg at issue before preparing a 138. In particular Department of the Air Force Instruction 51-505 cautions that it is a complete revision, and should be reviewed completely.

BROAD RANGE OF COMPLAINTS

A complaint under Article 138 can address a broad range of wrongs within a command. There need not be a direct violation of a military regulation or law. And while the commanding officer is the one against whom the complaint is brought, the actual wrong may be his or her failure to control subordinates or redress a wrong committed by personnel under his or her authority.

The Army's provisions for Article 138 are found in AR 27-10, Chapter 19, Sec 19-4.*c* defines a wrong as a discretionary act or omission by a commanding officer, under color of Federal military authority, that adversely affects the complainant personally and that is

1) In violation of law or regulation;

2) Beyond the legitimate authority of that commanding officer;

3) Arbitrary, capricious, or an abuse of discretion; or

4) Materially unfair.

Under AR 27-10, Sec 19.4.*d* the complaint must be made within 90 days of the discovery of the wrong.

For the Navy and Marine Corps, the provisions for Article 138 are contained in JAGMAN, Chapter 3, along with the provisions for complaints under Navy Regulation Art. 1150 for complaints against a

respondent who is superior in rank or command but is not the servicemember's commander. Section 0303.g defines a wrong as:

> Any act, omission, decision or order, except those excluded by subsection 0304.(c) [covering acts not the subject of Art. 138 complaints], taken, caused, or ratified by a respondent [the member's commanding officer], pursuant to naval authority, that: "(1) Results in personal detriment, harm, or injury to a subordinate Service member; and (2) Is a violation of law or regulation; unauthorized; arbitrary; capricious; or an abuse of discretion; or unjust.

Air Force provisions are found in DAFI 51–505, which states that an Airman has a statutory right to submit a complaint under Article 138 for a discretionary act or omission by a commander, that adversely affects the member personally, and that, for example, is:

> 1.3.2.1 A violation of law or regulation;
>
> 1.3.2.2 Beyond their legitimate authority;
>
> 1.3.2.3 Arbitrary, capricious, or an abuse of authority; or
>
> 1.3.2.4 Clearly unfair or unjust.

The Coast Guard Judge Advocate General Military Justice Manual, Chapter 25, subsection A.2 states that a wrong is

> "[a]ny act, omission, decision or order [with certain exclusions] taken, caused or ratified by a commanding officer, under color of that officer's military authority that (1) results in personal detriment, harm or injury to a military subordinate; and (2) is without statutory or regulatory basis, unauthorized, an abuse of discretion, arbitrary and capricious, unjust or discriminatory."

While some of these regs identify specific wrongs not mentioned in the others the breadth of the language allows such wrongs to be complained of in any service. The scope of the regulations is impressive – complaints may be made when, for instance, a commander does not ensure adequate health services for his or her troops; does not prevent senior non-commissioned officers from harassing members; arbitrarily denies leave; or admonishes members for participating in protected political activities.

SOME GRIEVANCES EXCLUDED

All of the services list grievances that are not appropriate subjects for or do not constitute a 138 complaint. These include, among other things, situations in which other means of appeal or redress are available, such as performance evaluations (where rebuttals may be made), non-judicial punishment (which includes its own appeal process), or administrative discharge (with its own notice and response provisions). Other inappropriate complaints vary slightly from service to service. The JAGMAN, for instance, includes acts that are not final, general policies of the Department of Defense or Department of the Navy, etc.

All of the services include non-judicial punishment and courts-martial, but the Army reg points out that an Art. 138 will lie when a suspended NJP sentence is vacated, there being no other remedy available, and the DAFI notes that Art. 138 is appropriate in reviewing deferral of post-trial confinement. However,

the Air Force includes in its list of complaints not recognizable under 138 any complaints against the reviewing officer for failure to resolve a 138 complaint properly, though failure to forward a complaint to the Secretary may be the subject of a 138 complaint. In contrast, the other services do not seem to limit members' right to complain against the reviewing officer. Complaints deemed inappropriate should be forwarded to the Office of the Staff Judge Advocate at service headquarters for final action.

The JAGMAN and DAFI provisions specifically state that 138 complaints may not request as redress the imposition of disciplinary action against another, or changes in final military records, whereas the Army regs and Air Force regs provide that the availability of a Board for Correction of Military Records petition does not make a complaint improper.

PROCEDURE UNDER ART. 138

Article 138 complaints are made in two stages. First, the aggrieved member must bring the matter to the commanding officer in writing, usually in a letter or memo referencing Article 138. Second, if the command fails to provide full relief, the member submits a formal complaint to the officer exercising general court-martial convening authority (GCMCA) over the commanding officer. The complaint must normally be made within 90 days of discovery of the wrong, excluding time that the letter requesting redress is in the hands of the commanding officer. In the Air Force, there is a 90-day time limit to submit a letter of redress, and then 90 days to submit a complaint after the command acts or fails to act. Late complaints will sometimes be accepted if there is good cause for the delay.

The first step in a complaint, the letter of redress, may be done very informally, but formal, memo-format letters are preferred. The letter must in most cases be submitted via the chain of command, though members are free to "walk" the complaint up the chain of command without revealing its contents to intermediate superiors. (Some commands with "open door" policies allow members to see the commanding officer without going through the entire chain of command.)

The letter should outline the problem complained of, with any documentary evidence showing the problem, and should ask for specific redress. Thus a member who complains about inadequate medical care should describe the problem in detail, might submit as evidence a statement from a co-worker who heard a superior refuse the member access to sick call, and could ask for redress such as an immediate medical appointment, a training for command personnel on the right to medical care, and an apology from the offending superior.

In the Army, commanding officers must respond to the letter of redress in writing within 15 days; If a final response is not possible within that time, an interim response must be provided, giving commands an "out" when they are not anxious to respond. In reserve commands, there is a 60-day time limit for a response. In the Navy and Marine Corps, response must be within 30 days. Air Force regs provides that within 30 days the officer must respond either on the merits, or extending an additional thirty days for further investigation, which step may be repeated. A formal complaint is warranted if the commander fails to reply within the specified time limit (or a reasonable time), denies redress, or denies part of the redress.

POLICIES FOR RESOLUTION

Navy policy is to resolve complaints at the lowest possible level. Similarly, JAGMAN Sec. 0302 (d). Coast Guard Military Justice Manual, Chapter 25, subsection B.1 states that it is the policy of the Secretary of the Department of Homeland Security to resolve complaints of wrongs at the lowest level.

In the Army, as stated above, commanders must respond in writing within 15 days. AR 27-10 points out that the right to file a complaint under 138 is statutory, and that "[c]ommanders will not restrict the submission of such complaints or retaliate against a Soldier for submitting a complaint." AR 27-10 19-3.*b*. Needless to say, restrictions on submission or refusal to accept a 138 letter or complaint, or retaliation for the submission, constitute grounds for a 138 complaint.

Once a letter of redress is submitted, commands will sometimes seek to negotiate with members, offering or giving some of the relief requested (occasionally all of it), while at the same time finding that relief is not warranted. This allows the command to show that the complaint was without merit, while reducing the member's incentive to go forward with a complaint.

In the Army, the formal complaint, addressed to the officer with general court-martial convening authority over the commanding officer, is submitted to him or her via "any superior officer;" the Army reg defines this as any officer superior to the complainant. The same reg, however, also states that the complaint should be submitted to the complainant's immediate superior officer. In the Navy and Marine Corps, the complaint must be submitted via the chain of command, including the respondent. The Air Force allows submission directly to the GCMCA or via any commissioned officer superior to the commanding officer.

The intermediate officer receiving the complaint may, in the Army, Navy and Marine Corps, grant any redress he or she is authorized to give, and must note this in the transmittal memo. The JAGMAN provisions allow each recipient in the chain of command to take 10 working days to prepare endorsements, which must be provided to the complainant. The Air Force permits the intermediate officer to add pertinent documentary evidence and information about the availability of witnesses or evidence, but not to make any comment on the merits of the complaint.

Military memo format is suggested for complaints in the Army reg; the JAGMAN requires that sailors and Marines use the specific format provided in its Appendix A-3-a. The Air Force regulation, at Sec. 3.3 provides that for an informal complaint, the format of Attachment 1 (T-2) be followed.

In general, as in the Army regulations, the complaint must:

- be in writing and be signed;
- identify the complainant as a member of the armed forces;
- give his or her current military organization and address, as well as the organization at the time of the wrong;
- identify the commanding officer who is the subject of the complaint;
- indicate the date a written request for redress was submitted, along with the fact that the request was refused in whole or in part and the date thereof, or that no response was received within 15 days (or a reasonable time);

- include a statement that it is a complaint pursuant to Article 138 and the appropriate service reg;
- "clearly and concisely describe the specific wrong complained of;" and
- state the specific redress requested.

The letter of redress, command refusal, if any, and supporting documentation should be attached.

The Coast Guard Manual for Military Justice, Chapter 25, provides that a complaint must be couched in temperate language, and be confined to pertinent facts, and contain (a) the specific wrongs alleged, and the specific redress required, followed thereafter by explanatory information concerning the relief requested, and (b) all relevant evidence, including affidavits, statements, and documents, attached to the complaint in numbered enclosures.

Under the Army regulations, complainants may have advice from military attorneys, or JAGs, and JAGs may assist in drafting the complaint, but they will not represent the complainant in subsequent proceedings. The other regs are silent on this, but JAGs will often assist in preparing letters of redress and complaints in all services. Civilian counselors or counsel may be involved throughout, but AR 27-10 states that they may only be present, and may not participate, in any subsequent proceedings (such as investigation of the complaint).

REVIEW OF THE COMPLAINT

The GCMCA may reject a complaint if it is deficient, that is, if it does not substantially meet the requirements of the Article and AR 27-10, although the reg allows that officer to waive some deficiencies. (AR 27-10, Sec. 19-10.*d;* JAGMAN sec. 0306.2.) Coast Guard Military Justice Manual, Chapter 25, subsection D.10 provides that the Officer Exercising General Court Martial Jurisdiction (OEGCMJ) may waive any requirement of the complaint except those affording a benefit to complainant.

However, in the Army, certain deficiencies may not be waived:

1) When the complainant is not a member of the armed forces (see para 19–4*a*.)
2) When the complaint does not allege a wrong (see para 19–4*c*.)
3) When the complaint does not identify the commanding officer of the complainant who is alleged to have committed the wrong.
4) A failure to specifically state the redress the complainant seeks from the GCMCA.

(AR-27 Sec. 19-10.*d.*)

Even when complaints are found deficient, they must be reported to headquarters. The JAGMAN permits the GCMCA to waive any provisions of Chapter 3, except those that provide a benefit to the complainant.

Where the GCMCA finds a complaint deficient, it should be returned to the complainant with an explanation of the deficiency and of any other procedure that may be used to complain about or appeal the wrong. If the GCMCA finds the complaint inappropriate because another avenue of appeal is available, he or she will normally refer the members to the other appeal process, though action on the complaint is not prohibited.

STANDARDS OF REVIEW

In reviewing complaints under Article 138, the Army reg states that GCMCAs are to apply a presumption that the commanding officer acted properly if the evidence made available by the examination does not establish the validity of the complaint.

The Air Force reg similarly provides that the respondent commander is presumed to have acted lawfully, and that the standard of proof is by a preponderance of the evidence. The Coast Guard Manual of Military Justice, Chapter 25, subsection B.1 states that there is a presumption of administrative regularity.

For the Army, the nature and method of the investigation are left to the discretion of the GCMCA. AR 27-10, sec. 19-12.*b*. If he or she chooses to delegate the investigation, it must be conducted in accordance with AR 15-6. The JAGMAN permits the GCMCA to appoint an investigating officer. In accordance with JAGMAN sec. 0306 (g) the GCMCA will apply a preponderance of the evidence standard of proof. The nature and method of the investigation depends upon the seriousness of the allegations. JAGMAN Sec. 0306 (g). In the Coast Guard, the Military Justice Manual provides that the extent and nature of the inquiry is within the discretion of the OEGCMS and depends on the seriousness of the alleged wrong, the extent of the investigation by the chain of command subordinate to the OEGCMS and the exigencies of operations.

In the Navy and Marine Corps, the GCMCA is to ensure the complainant has been provided all endorsements and their enclosures, as well as any adverse evidence developed in the convening authority's investigation; the complainant then has an opportunity to rebut any adverse information. Similarly, the Coast Guard Military Justice Manual, Subsection 25.E.4 provides that a complainant is entitled to receive a copy of any new matters developed by the OEGCMJ inquiry, and an opportunity to rebut any new matter within ten working days.

An Army GCMCA must make specific findings as to whether the act complained of was in violation of law or regulation or otherwise a wrong as defined in the regulation, and describe the factual reasons for the findings. He or she must act personally on the complaint, as in the Navy and Marine Corps, and must notify the complainant in writing of the action taken on the complaint. The Army GCMCA also must forward the complaint, findings and related documents to the Office of the Judge Advocate General, who will review the file on behalf of the Secretary of the Army. TJAG may return the file for further information, further investigation, or other action.

If the evidence made available by the examination does not establish the validity of the complaint, a respondent is presumed to have acted properly.

In the Navy and Marine Corps, the GCMCA reports the results of the complaint to the Secretary of the Navy via the Office of the Judge Advocate General. Similarly, the Air Force GCMCA must forward the final results of his or her action to HQ USAF/JAG for Secretarial review and disposition, actions not discussed in the regulation.

Finally, the complainant, respondent and GCMCA are to be informed of the final disposition of the complaint in the Army, Navy and Marine Corps (presumably this is done in the Air Force as well). In the Navy and Marine Corps, the Secretary reviews the GCMCA's action, using the standard of abuse of

discretion. The Secretary may set aside actions favorable to the complainant only if they were beyond the authority of the officer granting the redress. The Secretary may also order further proceedings on a complaint or direct that all or part of the redress be granted.

The JAGMAN notes that action by the Secretary is final (1) when the Secretary approves the GCMCA's action; (2) indicates that review is final; or (3) takes no action within 90 days of receiving notice that the GCMCA returned the complaint to the complainant because it did not allege a wrong that is a proper subject under Article 138, requests improper relief or is otherwise deficient. JAGMAN Sec. 0307 and 0308.

The JAGMAN further requires that the GCMCA act on the complaint within 60 days of receipt, with any delay explained in the report to the Secretary. One basis for delay provided in the Manual is the presence of an ongoing court-martial or other inquiry that may shed light on the matters raised in the complaint. Here, the JAGMAN allows a delay of 10 days beyond the conclusion of the court-martial or inquiry, or 90 days from the date the GCMCA receives the complaint, whichever is earlier.

Article 138 complaints may be brought only by one complainant against one respondent; joint 138 complaints are specifically prohibited in the JAGMAN. (If the complainant believes more than one respondent has committed a wrong, he or she must file separate complaints against each.) Some advocates are concerned that submission of parallel complaints by an aggrieved group of servicemembers might be seen as a violation of the provisions of the military's anti-union regulation, DoD Instruction 1354.01.

The Navy, unlike the other services, has a parallel provision for complaints of wrong against officers who are not the complainant's commanding officer. JAGMAN Sec. 0302.b. The JAGMAN provisions for 138 complaints are generally used for these complaints, which are brought under Navy Regulation 1150(4).

Needless to say, commands and GCMCAs may try to use the details of the regulations to defeat Art. 138 complaints, though in most cases these must still be reported to service headquarters. But the regs can also be used to strengthen 138 complaints, to protest against efforts to harass members who use the complaint procedure, and to hold commanding officers and their superiors accountable for wrongs.

IN HONOR OF ANN FAGAN GINGER AT AGE 100

By Peter Goldberger, MLTF, Ardmore PA

Let us honor Ann Fagan Ginger as she celebrated her 100th birthday on July 11, 2025! In my estimation, Ann should be appreciated as one of the most outstanding figures in the history of the National Lawyers Guild. Her intellect, courage, creativity, and determination make her a worthy role model for all those who strive to combine the highest professional standards with a dedication to steady principles and a relentless determination to uplift and serve the powerless and oppressed.

Born in 1925, Ann was part of an in-between generation for the Guild, 15 or so years younger than the Old Leftists who were among NLG's founders in the 1930s, and 15 or so older than the New Left

generation that rejuvenated and remade the Guild in the 1960s and '70s. When Ann graduated law school at the University of Michigan in 1947, the Red Scare was ascendant. Already facing more than enough challenges as a talented woman in the legal profession at that time, it would have been much easier for Ann to "go along and get along" by abandoning or suppressing her progressive principles, as many others did in that time. But she wouldn't and didn't. After a few years practicing labor law in Ohio, she moved with her then-husband, a radical historian, to Boston for his job at Harvard. A couple of years later, the couple was forced to leave over their refusal to sign affidavits swearing they were not Communists.

That's how Ann landed in New York, where she was hired as the half-time administrator for the Guild. To the credit of the too-often sexist all-male leadership of the time, her talents did not go unnoticed. Within five years Ann had been named editor of *The Guild Practitioner*, NLG's long-form journal. Also in the late '50s, she argued and won a case before the U.S. Supreme Court upholding the due process rights of one of her old Ohio clients who had been targeted by the state's own "Un-American Activities Committee." In 1962, Ann was the only female attorney to attend the first interracial meeting of civil rights lawyers to be held in the South, co-sponsored in Atlanta by the Guild and Dr. King's Southern Christian Leadership Council. There, she advocated for the Movement to embrace women's rights as well.

Moving to Berkeley following a divorce, Ann created and maintained the Guild's *Civil Liberties Docket*, a unique and essential compilation of otherwise unavailable pleadings and decisions arising out of the civil rights movement and other civil liberties litigation. But she was not just a scholar and editor. In October 1964, when asked to give legal advice to the University of California students thronging the campus as part of the Free Speech Movement, Ann climbed onto the roof of a police car (stranded in the middle of the crowd), grabbed a microphone, and loudly told the assembled protesters that the First Amendment gave them a right to refuse official orders to disperse. (The photo of Ann standing atop the police car, available at https://fsm-a.org/Person_pages/Ann_Fagan_Ginger.html, is priceless.)

Few lawyers in their career can fairly claim to have contributed a single truly original idea or concept. But I give Ann credit for two more, in addition to designing and maintaining the *Civil Liberties Docket*. In the early 1960s, she was one of those who envisioned how elements of administrative law, military law, constitutional law, habeas corpus, and federal criminal law could together make a new area of specialization called "draft law." This, of course, was not an abstract intellectual concept, but rather was seen as a critical weapon in support of the growing movement to oppose the Vietnam War. And then again, in the 1980s, Ann had the vision to combine elements of public international law, military law, and constitutional law to form a unified field she called "peace law." These efforts both supported activists in their campaign against nuclear weapons and encouraged greater appreciation for the United Nations and other treaty-based mechanisms to advance human rights and to impede future conflicts. In this, she honored the Quaker traditions of her father's heritage. At numerous Guild gatherings and in other forums throughout the 1960s to the early 2000s, Ann spoke up and spoke out forcefully in support of these and other ideas.

Ann authored more than a dozen books, including a full-length biography of her early mentor, NLG co-founder and radical immigration law expert Carol Weiss King (U. Colo. Press 1993). She also served as editor of a two-volume anthology on *The Cold War Against Labor* (1987), and the Guild's 50th Anniversary retrospective, *The National Lawyers Guild: From Roosevelt Through Reagan* (Temple U.

Press 1988). In 1965, she created the independent nonprofit Meiklejohn Civil Liberties Institute in Berkeley, to hold and expand her archives of materials, which today can be researched through the university libraries at Berkeley, Michigan, and San Francisco State.

Ann continued into her late 90s to appear and speak at conferences, including a World Beyond War gathering in Oakland in early 2024. Her example is an inspiration to me and many others, although few if any of us will ever fully live up to her standards of intellectual creativity, boundless energy, and stalwart devotion to principle.

A NOTE ON CHANGING MILITARY EQUAL OPPORTUNITY REGULATIONS

By Kathleen Gilberd

Following the president's early Executive Orders on Diversity, Equity and Inclusion (DEI) and on 'protecting' women, a number of military regulations, including some Military Equal Opportunity (MEO) regulations, were revised to eliminate language and often training around these issues. 'Lethality' became the catchword of the day for Department of Defense (DoD) and some service statements.

PENDING CHANGES

But much more is to come. On April 23, 2025, Secretary of Defense Hegseth issued a memo to the services in which he announced that he was undertaking a comprehensive review of MEO and EO regs. Restoring Good Order and Discipline Through Balanced Accountability The memo required each service to review its MEO and civilian EO regs by June 7 to "identify areas for reform, provide plans to streamline the investigative process, timely address problematic behavior and mitigate undue mission impacts." Proposed changes to the regs were to be forwarded to DoD for review by that date.

At a minimum, the memo required that MEO and EO complaints be timely dismissed if "unsubstantiated by actionable, credible evidence;" that favorable personnel actions for alleged offenders not necessarily be withheld if "the preliminary or a subsequent investigation does not indicate that the complaint is likely to be substantiated;" and that administrative and/or disciplinary action be considered for complainants who knowingly making false complaints.

While we don't know how the services will interpret these requirements, this writer expects the results to undermine the MEO process, limiting the rights of complainants and likely offering protection to those accused of discrimination or harassment. Streamlining investigations may well mean limiting the command-directed investigation of complaints, and very likely limiting the time available to complainants to rebut erroneous findings or recommendations. It is likely that "undue mission impacts" refers to the effects of investigations on the accused, rather than the complainant. And the existing DoD and service regs already contain language designed to warn complainants about the consequences of false statements. As previously noted in On Watch, this cannot help but have a chilling effect.

June 7 has come and gone. Drafts of revised MEO regulations may now be sitting at DoD or undergoing final review. But no revised DoD or service regulations have been issued in keeping with the Hegseth

memo. There are no recent changes to the DoD Directives referenced in the memo. The single Instruction mentioned was revised on April 23, but only in keeping with EO 14168, on defending women. Here, administrative changes were made to the language of DoDI 1400.25 vol 1614; these did not address any of the changes required by Hegseth's memo of that date

More significantly for our work, the DoD Instruction on MEO , DoDI 1350.02 of 9-4-2020, with Change 1 of 12-20-2022, has not been revised as of this writing. We have no information about when new service regs will be released.

RECENT CHANGES

But there have been some pre-June 7 changes that need to be taken into account, though only one of those published after the April 23 memo is based on its requirements—and that one is not a MEO regulation. It is likely that revised MEO policies will be published fairly soon. These future changes should differ significantly from the recent changes, and may expand the impact of those changes based on earlier Executive Orders.

For the Navy, OPNAVINST 5354.1H, of 3 November 2021, "Harassment Prevention and Military Equal Opportunity Program," was replaced by 5354.1J on 5 June 2025, 1J states that "[t]his is an expedited revision to ensure compliance with Executive Orders released by the President of the United States." It specifically references Executive Order 14151, "Ending Radical and Wasteful Government DEI Programs and Preferencing." 1J specifically states that the revision "removes gender identity as a basis for prohibited discrimination and discriminatory harassment complaints. There is no mention of changes to the MEO complaint procedures.

Marine Corps Order (MCO) P5354.1G of 11 May 2024 was revised with an Admin Change 1 on 11 April 2025. This change was meant to bring the regulation into compliance with Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government." In addition, it deletes terms such as "diversity" and "inclusion," but has little or no substantive change to complaint procedures.

Department of the Air Force Instruction 36-2710 of 23 May 2024, "Equal Opportunity Program," and Air Force Policy Directive 36-27 of 30 May 2024 appear to be the most recent versions of Air Force MEO policy.

For the Army, AR 600-20, "Army Command Policy,' was revised effective 6 February 2025 to remove the Sexual Harassment/Assault Response and Prevention Program. That section is now an entirely new regulation, AR 600-52, effective 11 February 2025. It appears to include a number of changes from the version in 600-20. In addition, DEI and "accessibility" language and programs were eliminated throughout AR 600-20. Its section on relations between soldiers of different ranks was moved to AR 600-35, Chapter 4.

The new AR 600-52 does include changes to MEO procedures, though not in keeping with the Hegseth memo. For example, paragraphs 1-6*d*, 3-10, and 9.2 'clarify' notification procedures for retaliation reports. It also changes responsibilities for some sexual assault service personnel, updates the expedited transfer request policy (paragraph 4-3), and expands eligibility to choose a restricted report (paragraph 3-4).

But the Army has made changes consistent with the April memo in one related regulation, "Procedures for Preliminary Inquiries, Administrative Investigations, and Boards of Officers," which covers command-directed investigations of misconduct and may be used to investigate MEO complaints. AR 15-6, *Army Regulation 15 – 6, effective 22 June 2025, now includes a specific "credibility assessment" of complaints or allegations before an investigation is begun (paragraph 1-8), with a detailed definition of credibility not found in AR 600-20 or AR 600-52 (Glossary of Terms). It adds language to existing provisions on false allegations and a new concept of "repeated frivolous allegations" (both in paragraph 1-10). These and other changes will make the MEO process more difficult for complainants and will likely discourage servicemembers from submitting complaints.

On July 17, DoD issued DoD Directive 1020.02E, Change 3, "Civil Rights and Equal Opportunity in the DoD," replacing DoDD 1020.02, "Diversity Management and Equal Opportunity (EO) in the Department of Defense." The new Directive's purpose is to "establish policy and assign responsibilities to provide an overarching framework for addressing unlawful discrimination and promoting equal opportunity…" for DoD civilian EO programs and its MEO program for servicemembers. Interestingly, it does not really do that, nor does it implement the changes required by Secretary Hegseth's April memo.

Instead of referencing and implementing that memo, the new Directive uses Trump's Executive Orders 14168 (defending women) and 14173 (ending DEI) to require elimination of "gender identity" as a prohibited basis of discrimination and to remove the words "diversity," "diversity management" and "inclusion" from DoD's EO and MEO regulations. It also eliminates the DoD Diversity and Inclusion Management Program, and updates "organizational titles and references." Changes to the affected EO and MEO regulations have not been made as of this writing.

CONCLUSION

As noted above, it is very likely that the pending revisions will limit the rights of MEO complainants and give commands further incentives to protect those accused of harassment or discrimination. *On Watch* will cover these changes as the regulations become available.

In the meantime, servicemembers affected by discrimination, harassment and sexual harassment necessarily live under a good deal of uncertainty. MEO procedures will remain available, albeit limited, but many commands are aware even now that changes are coming and that the rights of and protections for complainants are being eroded. Whether or not the MEO process will remain a viable remedy for discrimination, harassment and sexual harassment, victims may want to consider alternatives such as Article 138 complaints and/or Inspector General complaints. While these may be bounced back to MEO professionals and local commands, servicemembers can argue that they are still available remedies and that, given the uncertain future of MEO, other complaints cannot be denied simply because the MEO system exists.

WHY I DO MILITARY LAW

By David Gespass

Every generation needs to learn its own lessons and often thinks it has insights and experiences that are not just new but have sprung up out of nowhere. It is a weakness of youth. But nothing, at least since the big bang, comes from nothing and learning from the past is the best way to move forward.

As Angela Davis pointed out, every generation stands on the shoulders of those who have gone before, and that means the new generation can see farther if it makes use of those shoulders.

For my generation, particularly among students, the massive opposition to the Vietnam War may have appeared novel, if not unique. But there has always been opposition to war generally, and imperialist war particularly. History shows that when countries fight, they are rich men's wars and poor people's battles. The fact we now have a so-called all volunteer military does not change that.

My generation may have thought that the anti–Vietnam War GI movement was unique, but it had antecedents. Most notably, the back home movement after World War II, with the government attempting to move troops from Europe to Korea to stop Chinese expansion was met with massive opposition, both within the military and at home. Eventually, the U.S. was forced to accede to the demands of the movement. And, after the Russian revolution and Russia's exit from the war, Wilson's attempt to deploy troops to fight the Bolsheviks, ill-conceived and incoherent, sparked similar protest.

When I was working in Japan with the Guild's military law office – when the draft was pretty much ended – the armed forces radio and television service ran ads urging people to re-up. The pitch was that jobs were hard to find, medical insurance was too expensive, and the best option remained staying in for another hitch.

But conditions in the military reflect the problems of society and the effects of those problems are often magnified when you are the tip of the spear. That means that, when there is dissent in the civilian sphere, there will be dissent in the military and the dissent there will be dealt with more harshly precisely because, as US economic domination declines, it is ever more relied upon by US imperialism to maintain its dominant position in the world. And that means that military dissidents' needs for effective representation are as great or greater than the needs of striking workers or people protesting the torture and murder of George Floyd or Israel's genocidal assault on Gaza. Indeed, opposition to the Gulf War built inside and outside the military. Few join the US armed forces in hopes of fighting. They join because they need jobs or they want training and recruiters sell them on those things, not mentioning that their primary responsibility is war fighting.

Which gets me, at long last, to some of the issues involved in representing GI resisters. Military law is curious. In general, it provides far more in the way of due process than most civilian courts, but the trade-off is that almost anything can be deemed criminal. If you quit your civilian job, you can lose benefits. If you quit your military job, you could face felony charges. If you miss civilian work, you can lose pay or be fired. If you miss military work, you can face misdemeanor charges.

I therefore think that it is important to make use of all the procedural tools that military law makes available.

Most important, if you have a client facing court martial, they will have a military lawyer. As civilian counsel, you are lead, but the military lawyer can get all the witnesses for you to interview without having to track them down. Preparation for trial is obviously much easier. And this includes not just preparation on the guilt phase, but finding witnesses to testify for sentencing, what is called "extenuation and mitigation," if your client is found guilty. I have friends whose practice is exclusively doing mitigation in capital cases. In the military, much of that can be done with the cooperation and assistance of military counsel at a fraction of the time and expense.

The military can also enforce subpoenas on members anywhere in the world and anywhere in the US. That includes civilians who knew your client before enlistment. These days, I don't think you have to get them to testify in person in the court. Remote testimony and stipulation can serve the same purpose.

I will make one last point. The military hates being exposed. When we were in Japan, some 50 sailors refused to sail on the aircraft carrier Midway and missing ship's movement is a serious criminal matter. The defense for our client, whom my wife represented, was that the Midway carried nuclear weapons in violation of the status of forces agreement between Japan and the U.S., the Japanese having a curious aversion to nukes. Therefore, we argued, the order to board the ship was illegal and every member had not just the right, but the duty, to refuse illegal orders. Anyway, this was of interest to the Japanese press. The motion to dismiss was denied and our client then pled guilty in accordance with a pretrial agreement. In extenuation and mitigation, when asked why he didn't board, he said it was because of the weapons. The judge immediately halted the hearing, met (as I recall) ex parte with the prosecutor, returned and closed the courtroom, sending Japanese reporters on their way. Ultimately, the conviction was reversed because our client was denied his right to a public trial. I have always remembered, since then, that raising a political defense is a responsibility, but giving a court some kind of procedural means of avoiding addressing the politics can be the path to victory.

REMEMBERING DAN SIEGEL

By Howard J. DeNike

Editor's Note: Dan Siegel was a longtime MLTF member and supporter who passed away on July 2, 2025. We will miss him.

Many have appropriately noted the passing of distinguished National Lawyers Guild member Dan Siegel. But few accounts reference his time spent with the NLG's Military Law project in the Philippines between 1971 and 1972, where he advised and represented uniformed Navy and air force personnel during the Vietnam War. Working alongside activists from Pacific Counseling Service offices were set up in Olongapo near U.S. Naval Base Subic Bay, and in the town of Balibago at Clark Air Force Base, to defend sailors and airmen facing courts-martial for opposing the U.S. war then raging in Southeast Asia. Additional Guild members, Barbara Dudley, Sandy and Lana Karp, Doug Sorenson, and Eric Seitz also staffed the two offices.

In one sensational case the Philippine NLG project represented a half dozen U.S. military members from both Subic and Clark who revealed that, contrary U.S. treaty obligations, atomic weapons were being transported through the Philippines.

Ultimately, the project was forced to close when in September 1972, martial law was declared by Philippine president Ferdinand Marcos, causing the arrest and deportation of Dan's successor NLG lawyer Doug Sorenson.

The first-person essay titled "How Vietnam Taught Me to Hate My Country," (together with other accounts by project members) recount this portion of Dan's outstanding lifetime in the law, and may be found in the volume *They Also Served: Voices of the Overseas Law Projects from the Vietnam War*, available through Amazon.

MLTF ANNOUNCEMENTS AND NOTES

ON ILLEGAL ORDERS

The Military Law Task Force has published a pamphlet for servicemembers, "Frequently Asked Questions on Illegal Orders." It explores the difficult question of determining whether an order is illegal, the consequences of refusing, and alternatives to refusing.

MLTF also recommends The Orders Project's "Sourcebook for Advising Military Personnel," which provides a detailed discussion of orders violations and related areas of military law, designed for attorneys and military counselors.

KNOW YOUR RIGHTS

A new resource for servicemembers on military protests and dissent, complaint procedures, illegal orders and discharges, "US Military Know Your Rights (PDF)," is now available. The pamphlet has been authored by the Military Law Task Force, About Face/Veterans Against War, and the Center for Conscience and War.

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ABOUT THE MILITARY LAW TASK FORCE OF THE NATIONAL LAWYERS GUILD

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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.

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

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

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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.

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Thank you!