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CONSCIENTIOUS OBJECTOR DISCHARGES AND POST-SERVICE VA ELIGIBILITY: WHAT PRACTITIONERS NEED TO KNOW

By Donald Christopher Burnette, Esq.

Conscientious objector (CO) discharges are often treated as the conclusion of a complex administrative process. In practice, they are frequently the starting point for a second, less understood phase involving veterans' benefits eligibility and long-term legal consequences. In recent years, practitioners have seen increasing confusion around the relationship between conscientious objector discharges and VA eligibility, particularly as service members transition out of active duty without clear guidance on benefits.

Attorneys advising service members on CO applications are typically focused, appropriately, on obtaining discharge and navigating command review. However, the downstream impact of that discharge, particularly with respect to Department of Veterans Affairs (VA) benefits, is often overlooked. This gap can have significant consequences for former service members and presents an opportunity for more integrated, forward-looking representation.

While this article focuses on conscientious objector discharges, the issues discussed are broadly applicable to service members facing administrative or end-of-service separations where future VA eligibility may be affected.

DISCHARGE CHARACTERIZATION AND ITS SIGNIFICANCE

CO discharges are most commonly characterized as honorable or general (under honorable conditions), depending on the circumstances and service branch policies. In some cases, applicants may face administrative separation proceedings that introduce additional complexity into characterization outcomes.

For VA purposes, discharge characterization is critical. A discharge "under conditions other than dishonorable" is the threshold requirement for most VA benefits. 38 U.S.C. § 101(2); 38 C.F.R. § 3.12(a).

An honorable or general (under honorable conditions) discharge will generally qualify as "under conditions other than dishonorable" for VA purposes and preserve eligibility for compensation and pension benefits. 38 C.F.R. § 3.12(a). Less favorable characterizations may require the VA to make a "character of discharge" determination, which can delay or complicate access to benefits. 38 C.F.R. § 3.12(d).

Importantly, conscientious objector status itself is not a statutory or regulatory bar to VA benefits.

This analysis assumes a lawful conscientious objector discharge resulting in a characterization of service under conditions other than dishonorable. Practitioners should also be aware of 38 U.S.C. § 5303(a), which provides statutory bars to benefits in cases involving refusal to perform military duty, wear the uniform, or comply with lawful orders. While traditionally applied in cases resulting in adverse discharge characterizations, there are instances in which the VA has examined underlying conduct, including alleged orders violations, independent of discharge status. The scope and frequency of such determinations remain unclear in reported decisions, but this potential issue underscores the importance of careful documentation and framing of conduct during the discharge process.

VA ELIGIBILITY FRAMEWORK

Eligibility for VA disability compensation is based on three core elements:

1. A current disability
2. In-service incurrence or aggravation of a disease or injury
3. A causal relationship (nexus) between the disability and service

38 U.S.C. §§ 1110, 1131; 38 C.F.R. § 3.303(a).

CO status does not negate any of these elements. The VA does not evaluate the ideological basis for discharge when determining entitlement to compensation. Instead, the inquiry focuses on whether the disability resulted from disease or injury incurred in or aggravated by active service. 38 U.S.C. §§ 1110, 1131.

As the Federal Circuit has explained, establishing service connection requires evidence sufficient to demonstrate a relationship between a present disability and service. Shedden v. Principi, 381 F.3d 1163, 1166–67 (Fed. Cir. 2004).

Thus, individuals discharged as conscientious objectors may still qualify for disability compensation on the same legal basis as any other veteran, provided the statutory criteria are met.

EMERGING TRENDS IN CONSCIENTIOUS OBJECTOR DISCHARGES AND VA CLAIMS

In recent years, practitioners have seen a growing disconnect between the conscientious objector discharge process and post-service benefits planning. Service members are increasingly navigating separation without a clear understanding of how discharge characterization and service history affect VA eligibility. At the same time, there has been a notable rise in claims involving mental health conditions and other service-connected issues that were not fully documented or addressed during the CO process. These developments, combined with persistent misconceptions about eligibility, suggest that many individuals are leaving service without the information necessary to preserve or effectively pursue benefits to which they may be entitled. For military practitioners, this trend underscores the importance of considering downstream VA implications earlier in the representation process.

COMMON MISCONCEPTIONS AND PITFALLS

Despite this framework, several recurring issues arise in practice:

Assumption of Ineligibility
Many service members believe that pursuing CO status will disqualify them from VA benefits. This misconception has no basis in statute or regulation but can discourage timely claims or appropriate documentation.

Failure to Document Conditions During Service
The CO process often emphasizes belief-based documentation while underemphasizing medical evidence. However, service treatment records and contemporaneous documentation remain highly probative in VA adjudications. 38 C.F.R. § 3.303(a).

Gaps Between Separation and Filing
Delays in filing can complicate evidentiary development and may affect the effective date of benefits. Generally, the effective date for an award of compensation is the later of the date of claim or the date entitlement arose. 38 U.S.C. § 5110(a); 38 C.F.R. § 3.400.

Narrative Framing Issues

Statements made during the CO process may emphasize moral or philosophical objections without addressing concurrent medical or psychological issues. While the VA must consider all lay and medical evidence, the framing of in-service experiences can affect how evidence is interpreted. See Buchanan v. Nicholson, 451 F.3d 1331, 1336–37 (Fed. Cir. 2006) (lay evidence is competent but must be weighed against the record as a whole).

PRACTICE CONSIDERATIONS FOR MILITARY ATTORNEYS

Attorneys advising service members during the CO process are uniquely positioned to mitigate downstream issues related to VA eligibility.

Practical considerations include:

Encouraging Comprehensive Documentation
Ensure that any relevant medical or mental health conditions are documented in service records where appropriate. VA adjudicators rely heavily on contemporaneous records when evaluating claims. 38 C.F.R. § 3.303(a).

Maintaining Awareness of Future Claims
Advising clients that VA eligibility may still exist can influence record preservation and decision-making during the discharge process.

Avoiding Unintended Omissions
Care should be taken to ensure that narratives do not unintentionally exclude or minimize relevant medical conditions that may later form the basis of a claim.

Preserving Records
Service members should retain copies of service treatment records, personnel files, and CO application materials, all of which may become critical evidence in later proceedings.

POST-SERVICE STRATEGY AND COORDINATION

After separation, early engagement with the VA claims process can be critical. Initial claims should be approached with attention to:

- documenting continuity of symptoms
- obtaining competent medical evidence
- establishing a clear nexus to service

See 38 C.F.R. § 3.303(b) (continuity of symptomatology, limited to chronic conditions listed in 38 C.F.R. § 3.309(a)); see also Walker v. Shinseki, 708 F.3d 1331 (Fed. Cir. 2013); Caluza v. Brown, 7 Vet. App. 498, 506 (1995), aff'd, 78 F.3d 604 (Fed. Cir. 1996).

This is also the stage at which coordination between military counsel and veterans law practitioners can provide meaningful benefit. Clients who have successfully navigated the CO process often face a distinct and complex administrative system within the VA, and continuity of informed legal guidance can improve both efficiency and outcomes.

CONCLUSION

Early coordination between military law counsel and veterans law practitioners can ensure that conscientious objector separations are handled with an eye toward preserving future VA eligibility, rather than treating benefits considerations as an afterthought.

Conscientious objector discharges do not end a service member's interaction with the legal system. Instead, they often mark a transition into a different framework governed by VA law and administrative processes.

For practitioners, recognizing this transition and advising accordingly can close a significant gap in representation. For service members, it can mean the difference between assuming ineligibility and securing benefits to which they may be entitled.

CO status may shape the terms of discharge, but it does not define the full scope of a veteran's rights after service.

SUPREME COURT SAYS SOLDIER CAN SUE MILITARY CONTRACTOR FOR INJURIES RESULTING FROM NEGLIGENT FAILURE TO COMPLY WITH FEDERAL SECURITY REGULATIONS ON AFGHAN BASE

By Peter Goldberger

In 2016, Winston Hencely was a 20-year-old U.S. Army Specialist assigned to the Bagram Airfield in Afghanistan. He noticed an unescorted Afghan civilian, Ahmad Nayeb, walking toward an on-base Veterans' Day event, in violation of security protocols. When Hencely confronted him, Nayeb detonated a suicide vest, killing five (including three soldiers) and wounding 17 others. Hencey himself was left permanently disabled with brain and other injuries. Nayeb had been hired by a base military contractor, Fluor Corporation, to work at Bagram's "nontactical vehicle yard," after being screened and approved (notwithstanding some prior association with the Taliban) by the U.S. military. Fluor's contract required it to closely supervise all of its Afghan employees, including enforcement of a color-coded badge system and mandated escorts in all areas of the base other than at work. Instead, Fluor allowed Nayeb to sign himself out of work, resulting in his being able to steal tools used to assemble the bomb on base, and on that Veterans' Day to walk around for about an hour before Hencely confronted him.

Hencely could not sue the federal government for his injuries, because under the Federal Tort Claims Act, Congress has preserved sovereign immunity in cases of injury to active duty servicemembers "arising out of the combatant activities of the military" during wartime. 28 U.S.C. § 2680(j). Instead, he sued Fluor in federal court in South Carolina (a place where Fluor does business) for various forms of negligence under state law. The trial court in 2021 dismissed his case, granting summary judgment to Fluor. That ruling was upheld in 2024 on appeal to the Fourth Circuit. These lower courts held that suits against military contractors for injuries arising out of combatant activities are generally preempted by a judicially-inferred, non-statutory federal immunity, even when the contractor is alleged to have violated its obligations and instructions from the military.

But the U.S. Supreme Court, in a 6–3 decision issued April 22, 2026, reversed the dismissal and reinstated Hencely's suit, allowing him to proceed to trial against Fluor. *Hencely v. Fluor Corp*., 608 U.S. —, 146 S.Ct. 1086. In an opinion by Justice Thomas (joined by Kagan, Sotomayor, Barrett, Gorsuch and Jackson), the majority held that neither the U.S. Constitution's War Power nor any federal statute prevents servicemembers from suing military contractors for injuries resulting from negligent actions and omissions that were neither ordered nor authorized by the federal government, even those arising out of combatant activities in a war zone. Justice Alito, joined by Roberts and Kavanaugh, dissented, arguing that the majority decision gave state law an impermissible role in regulating the conduct of military activities, in violation of the Constitution's exclusive grant of the War Power to federal authorities (Art. I, § 8; Art. II, § 1).

The *Hencely* majority rejected the dissenters' constitutional argument, holding that "the Constitution's grant of war powers does not imply that courts must reject any tort claim connected to a war zone .... The assignment of those powers to Congress and the Executive has never been understood to bar all war-related tort suits. To the contrary, barring other statutory or constitutional considerations, plaintiffs have been able to enforce their legal rights even when they are violated during war." 146 S.Ct. at 1098. Absent a constitutional bar, "the mere fact that the conduct here occurred overseas in a war zone perhaps makes this a good case for Congress to intervene, but it does not give courts a license to bar all such suits on their own authority," *id*., the majority emphasized.

Although due to "preemption" and "sovereign immunity" Hencely could not have sued the federal government itself under state law, the majority held, "absent a statute to the contrary, States can regulate ... federal contractors on the same terms as any private company, even where the party asserts an indirect burden on federal activities." *Id.* "Instead, without a federal statute, contractors ordinarily have a constitutional defense only when the contractor is being sued precisely for accomplishing what the Federal Government requested." *Id.* 1099. But here, "the conduct complained of was neither ordered nor authorized by the Federal Government. No provision of the Constitution and no federal statute justifies that preemption of the State's ordinary authority over tort suits." *Id.*

Presumably because the plaintiff had not sought to sue the U.S. government, neither the majority opinion nor the dissent in *Hencely* cites or discusses the much-maligned but still binding authority of *Feres v. United States*, 340 U.S. 135 (1950). But the opinion in *Hencely* adds fuel to the long-smoldering effort to overrule the *Feres* doctrine. In *Feres*, a near-unanimous Court held that notwithstanding the Federal Tort Claims Act (FTCA)'s broad waiver of sovereign immunity, subject only to carefully crafted exceptions, the federal government could not be sued for injuries incident to military service. *Feres* held that "the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." 340 U.S. at 146. (There was no dissent in *Feres*, but Justice Douglas noted without explanation that he did not join Justice Robert Jackson's opinion.) In other words, the prohibition on servicemembers' tort suits against the federal government, as first articulated in *Feres*, is much broader than the FTCA's explicit, specific and narrow statutory exemption for injuries "arising out of the combatant activities of the military ... during time of war." 28 U.S.C. § 2680(j).

For this reason, both conservative and liberal justices, along with other commentators, have long suggested that *Feres* was wrongly decided and ought to be overruled. The original opinion, although essentially unanimous, is based unabashedly on policy considerations in opposition to any plausible reading of the governing statutory text. Regardless of political orientation, no member of the current Supreme Court endorses that approach to decisionmaking in cases governed by statute, as contrasted with cases dependent on constitutional law or other essentially judge-made rules. The universal acceptance today of a textual approach to statutory cases (notwithstanding plenty of internal disputes about how to go about it) can be credited to the influence of the late Justice Antonin Scalia, who consistently championed textualism in his statute-based decisionmaking. So, it is perhaps no surprise that the persistent challenges to *Feres* reflect ideas first expounded by Scalia in a four-justice dissent in 1987.

In *United States v. Johnson*, 481 U.S. 681 (1987), by 5–4 vote, the Court rejected an attempt to distinguish and limit the *Feres* doctrine as inapplicable to a case where the alleged negligence was by civilian employees of the government, not by the military itself. The majority ruled that *Feres* applies, by its terms, whenever the plaintiff's injury was "incident to service," regardless of the status of the defendant tortfeasor. The plaintiff in that case had not asked for *Feres* to be overruled, just that it be limited to circumstances arising on similar facts. But Scalia, joined by Justices Brennan, Marshall and Stevens, explicated in detail why the *Feres* doctrine – even if it seems to many like sensible policy – cannot be defended on statutory grounds and so, as a construction of the FTCA, should be overruled. (At least, they argued, it should not be "extended," as they characterized the majority's holding in *Johnson*.) *Id.* 692–703. The only justification for not overruling it, they argued, might be *stare decisis*, the doctrine of judicial respect for settled precedent. *Id.* 703. Even the argument that if a judicial interpretation of a statute is wrong, it is Congress that can and should fix it, not the Court itself in a later case, did not properly apply to the *Feres* situation, the dissenters claimed. *Id*. 702–03.

The torch of advocacy for overruling *Feres* has since been picked up by Justice Thomas. He first dissented from a denial of cert on this issue in *Lanus v. United States*, 570 U.S. 932 (2013), writing a short dissent that summarized the textual argument and endorsing Scalia's *Johnson* dissent. He has done the same in other cases in 2019, 2021, 2022 and 2025. Earlier this Term, in *Beck v. United States*, 607 U.S. —, 146 S.Ct. 405 (2025), Thomas dissented again, *id*. 406–10, this time picking up another vote to reconsider *Feres* from Justice Gorsuch. See *id*. 405. Writing in defense of the cert denial, Justice Sotomayor argued only that Congress, not the Court, should fix the problem, since it was statutory in nature. But even she acknowledged that the original *Feres* opinion, along with its subsequent judicial extensions, was "a difficult decision to justify," acknowledging that it was "atextual" and had "garnered near-universal criticism; has caused significant confusion; and has deprived servicemembers and their families of redress for serious harms they have suffered during service to this country." *Id.* 405.

The NLG's Military Law Task Force has long supported either a Congressional renunciation or a Supreme Court overruling of the *Feres* doctrine. As a matter of policy, it improperly and inhumanely denies financial redress to servicemembers and their families for injuries done to them by the government, not within the ordinary risks of military service but as a result of blameworthy negligence. And as a matter of jurisprudence, the *Feres* doctrine represents an indefensible judicial rewriting of a clear statute. Just as Scalia's 1987 *Johnson* dissent was joined by the Court's three most liberal justices, so today the continuing opposition to *Feres* – more than 75 years after its issuance – does not break down along ideological lines. It is reasonable to hope and expect that the campaign to overrule the *Feres* doctrine will prevail, more likely in court in an appropriate case than in our current dysfunctional Congress, and in the not too distant future.

BAKKEN V. UNITED STATES MILITARY ACADEMY: ACADEMIC FREEDOM AND THE FIRST AMENDMENT TRIUMPH (AT LEAST FOR NOW)

By Deborah H. Karpatkin

Can West Point lawfully require civilian faculty teaching civilian subjects to West Point cadets to conform their teaching and their scholarship to Trump's Executive Order 14185, prohibiting the military academies from "promoting, advancing or otherwise inculcating" certain "un-American, divisive, discriminatory, radical, extremist, and irrational theories," including that "America's founding documents are racist and sexist," and requiring them "to teach that America and its founding documents remain the most powerful force for good in American history?"

In a decision issued on May 26, 2026, Judge Cathy Seibel (a George W. Bush appointee) answered that question in the negative, and granted a preliminary injunction to plaintiff Tim Bakken, a civilian law professor at West Point since June 2000.[1]

The *Bakken* decision is useful to military justice practitioners for several reasons. It offers legal authority in support of plaintiff's First Amendment claims, notwithstanding West Point's arguments for military necessity. And it is another example of the power of the Judicial branch to push back on egregious Executive actions.

THE TWO CHALLENGED POLICIES

The case centers on two policies. The first, Dean's Policy and Operating Memorandum No. 03-24 (DPOM 03-24), took effect February 13, 2025, roughly two weeks after President Trump signed the *Restoring America's Fighting Force* Executive Order. DPOM 03-24, referred to as the "Academic Engagement Policy," required all faculty to obtain department head approval before any external engagement -- including journal articles, conference presentations, media interviews, op-eds, blog posts, and social media posts -- whenever conducted while on duty or using any USMA affiliation or branding. Crucially, West Point's guidance on implementation made explicit that requests would be denied if the proposed engagement "conflicted with applicable Presidential Executive Orders."

The Academic Engagement Policy required Prof. Bakken to get advance permission to identify himself with his West Point affiliation on the cover of his forthcoming book, which concerns "how to make correct decisions." And, because the book is at times critical of the government, USMA, and Department of Defense and Army policies, permission in all likelihood would be denied.

The second policy - the August 12, 2025 "Classroom Directive" – instructed all faculty not to "advocate for a particular position or ideology" in the classroom. Prof. Bakken understood this as a direct order prohibiting him from sharing his views on legal issues with students, including whether a judicial opinion was persuasive.

[1] *Bakken v. United States Military Academy et al*., 2026 U.S. Dist. LEXIS 116006 (May 26, 2026)

THE "RADICAL COMPLIANCE" EVIDENCE

A factual centerpiece of the opinion is testimony about West Point's intention to demonstrate "radical compliance" with the Executive Order. As explained in the opinion:

> After the meeting Col. Julia Coxen, a departmental head and Vice Chair of the Faculty Council who is not a party to this lawsuit, advised Plaintiff that DPOM 03-24 was an effort by senior military officers at the Academy to "show to the new administration 'radical compliance' as a way to protect their positions." Defendant Williams, the head of the Department of Law and Philosophy, of which Plaintiff is a member, echoed these comments months later, telling Plaintiff on July 18, 2025 that the purpose of the policy was to protect Defendant Gilland, West Point's Superintendent, and Defendant Reeves, by showing their obedience to the new administration. [2]

CHILLING EFFECTS AND CONCRETE HARM

Judge Seibel recognized that Prof. Bakken's self-censorship demonstrated concrete harm. He refrained from speaking and writing on academic freedom, prosecutorial ethics, and the legality of certain military drug interdiction operations; he appeared on a podcast without mentioning his West Point affiliation; and he has a book due to be released in August 2026 that he believes would require approval he fears would be denied. He has invested roughly $20,000-$24,000 in the book and a related podcast. Four of Prof. Bakken's colleagues have already faced discipline for external engagements without prior approval.

As to Prof. Bakken's practice of his expressing opinion in the classroom, Judge Seibel recognized the First Amendment interest and attendant harm: "Specifically, Plaintiff has indicated that he has been asked to share his views on issues such as the Supreme Court's death penalty jurisprudence and the interplay of mental illness and drug addiction with criminal law. Such views are undoubtedly speech on a matter of public concern, and Plaintiff's pedagogical interest in sharing them as a part of classroom instruction is great under the First Amendment."[3]

PROCEDURAL HOLDINGS – JURISDICTION

The Government moved to dismiss, arguing that the court lacked jurisdiction because Prof. Bakken was required to exhaust administrative remedies under the Civil Service Reform Act before seeking federal court review. Judge Seibel disagreed, finding that DPOM 03-24 and the Classroom Directive are not "personnel actions" within the meaning of the CSRA - they are fundamental alterations to academic scholarship and pedagogy, not day-to-day working conditions. She also found that channeling Prof. Bakken's claims through the CSRA would likely foreclose all meaningful judicial review.

Judge Seibel also recognized the current political reality, noting "the recent firings of the Special Counsel and MSBP members, and the administration's challenges to the removal protections that the CSRA affords those individuals protections." This "call[s] into question whether the CSRA continues to function as Congress intended …." [4]

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[2] I*d*. at *6-7.
[3] *Id*. at fn. 28.
[4] *Id* at *29.

FIRST AMENDMENT ANALYSIS[5]

Judge Seibel found Prof. Bakken had demonstrated a likelihood of success on the merits. She found that DPOM 03-24 operates as a prior restraint -"broad and standardless" - on civilian faculty speech, and that the government's proffered justifications (consistent messaging, leadership preparation, alerting officials to faculty appearances) appeared to be "reverse-engineered" rationalizations rather than genuine explanations.

Moreover, she found no plausible justification for DPOM 03-24. West Point "does not describe any harm that would result from a professor expressing a view, for example, decrying that America's founding documents allowed the enslavement of Black people or gave the vote only to men. It does not explain why the education of cadets would suffer if a professor were, for example, to opine, internally or externally, that Jesus Christ (or Mohammed or the Buddha) was the greatest force for good in human history or that transgender troops are no less capable of serving in the military than their cisgender counterparts." Rather, Judge Seibel concluded, West Point's arguments in support of the policy "appear to be a pretext for an effort to channel speech to conform to the President's liking and to prevent dissenting views from entering the marketplace of ideas."

As to the Classroom Directive, she wrote that no real justification had been provided for it and that it was "nonsensical if the mission is to prepare the nation's future military officers." She added that West Point cadets are "smart, tough and patriotic" and "not snowflakes who will somehow be harmed by learning about controversial issues or competing viewpoints."[6]

THE LIMITS OF MILITARY DEFERENCE

In general, when the military claims it has a military reason for a policy or a rule or regulation, courts defer to the military's judgment. For example: *Parker v. Levy* (military personnel are public employees with First Amendment protections, but subject to "a different application" of those protections in light of the different character of military service compared to civilian society");[7] *Greer v. Spock* (upholding regulation on a military base prohibiting distribution of political campaign literature);[8] *Rostker v. Goldberg* (rejecting Equal Protection challenge to male-only draft registration); [9] *Goldman v. Weinberger* (upholding air force regulation barring doctor from wearing yarmulke).[10]

West Point made that same argument here, but Judge Seibel concluded that this case was different, because DPOM 03-24 "is an academic policy that applies to military and civilian professors alike and regardless of whether the affected speech concerns subjects such as military history or warfare tactics, or English or mathematics." Moreover, plaintiff sought relief only for himself and other civilian professors, not active-duty faculty. Judge Seibel recognized that the Court must afford "some deference

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[5] *Id*. at *91.
[6] Id at *107.
[7] *Parker v. Levy*, 417 U.S. 733 (1974);
[8] *Greer v. Spock*, 424 U.S. 828 (1976)
[9] *Rostker v. Goldberg*, 453 U.S. 57 (1981)
[10] *Goldman v. Weinberger*, 475 U.S. 503 (1986).

to the Government's interest, it does not weigh as heavily as it would if the issue had a more plausible connection to military operations." [11]

And as to the Classroom Directive, a "blanket ban on professors' sharing of their views on subjects of instruction," Judge Seibel described it as a "blunt force instrument that cannot be said to implicate the prima business of armies and navies to fight or be ready to fight wars should the occasion arise." [12]

THE PRELIMINARY INJUNCTION HEARING

Jurisdiction was a massive challenge. The government leaned heavily into its argument that the court lacked subject matter jurisdiction, and that plaintiff had not exhausted his administrative remedies under the Civil Service Reform Act. This was the primary focus of the parties' briefs, the oral argument, and the court's decision.

The preliminary injunction hearing had no live testimony – just affidavits, and two hours of oral argument. Judge Seibel had very specific questions about the statute and the as applied to these facts. Past precedent on the CSEA was minimal. According to plaintiff's co-counsel, Steven Bergstein, this may have been one of the rare cases where oral argument made a difference to the outcome.

WHAT'S NEXT?

For the litigation, defendants could appeal the Preliminary Injunction – as of this writing they have not. The case will proceed to discovery. Attorneys' fees are theoretically available under the Equal Access to Justice Act, but only if the Government's actions were not substantially justified – a difficult standard to meet especially in this case.

For Prof. Bakken, when classes resume after the summer, he can return to giving his opinions in class, and his book will have his West Point affiliation on the cover.

And for Prof. Bakken's pro bono lawyers? Prof. Bakken's co-counsel Steve Bergstein reminds us of the power of the courts in cases like this to fight back against this administration. Noting the many decisions striking down administration actions and policies, without people like Prof. Bakken who are willing to sue, and "without the federal courts, where are we?"

[11] *Bakken* at *86.
[12] Id. at *106.

MLTF AT 2026 NLG CONVENTION

By Jeff Lake

The National Lawyers Guild held its convention on April 8-12 in Detroit. The MLTF had a very visible presence.

The Task Force participated in a joint workshop with the International Committee entitled *From Cuba to Venezuela to Palestine: International Law, the Revival of the Monroe Doctrine and 21st Century Imperialism.* The workshop was very well attended -- standing room only. MLTF members Marjorie Cohn and James Branum made presentations. The workshop recording is available here.

At a CLE sponsored by the MLTF, James Branum discussed the issue of illegal orders and the current state of military law. Materials from the CLE are available on the MLTF website – www.nlgmltf.org.

The MLTF had its annual convention meeting, which was also well attended. The audience discussed current issues the MLTF is working on, including the resistance to illegal orders and the attempts to institute "automatic" military draft registration. You can watch the meeting on our YouTube channel.

The MLTF had a very visible and active information table at the convention. The table sparked a lot of great conversation and hopefully ongoing interest in our work.

Along with the International Committee, MLTF presented two resolutions opposing current US warfare at the convention, which have since been adopted by the Guild's membership. The resolutions can be found in this issue of On Watch, beginning on page 14.

The next convention is currently planned for the fall of 2027 in Chicago.

NLG RESOLUTIONS RE: U.S. INTERNATIONAL LAW VIOLATIONS

Editor's Note: The second Trump administration has exhibited a love of militarism and violence that is without precedent in modern times. From placing National Guard troops on the streets of several U.S. cities to the transformation of ICE into a paramilitary organization to be used to instill fear and intimidation in protestors, the use of violence to achieve political ends has now spread to foreign territories. The administration has been using the military to bomb sailors in the Caribbean and Eastern Pacific oceans with the pretext that these targets are military in nature. Next, the U.S. military invaded the country of Venezuela and captured its leader and his wife, who are now in jail in the U.S. Finally, in February 2026, the administration launched a war against Iran, bringing death and destruction to the entire Middle East region. Threats against Cuba and increasing militarization of the region suggest another war to come.

The MLTF has brought these issues to the National Lawyers Guild in the form of two resolutions opposing this U.S. aggression. The resolutions were presented at the NLG Convention held in Detroit in April, 2026. Following the convention, the resolutions were ratified by an overwhelming majority of the membership. The MLTF is responsible for implementation of these resolutions and will continue to educate the NLG and the public about the dangers of militarism and about efforts to oppose it at home and around the world.

RESOLUTION ON U.S. VIOLATIONS OF INTERNATIONAL LAW IN THE WESTERN HEMISPHERE

WHEREAS: The US National Security Strategy released by the Executive in 2025 is a statement of intention to promote lawlessness. It declares that the US must be "preeminent in the Western hemisphere as a condition of our security and prosperity."

WHEREAS: The kidnapping of Venezuelan President Nicolas Maduro and his wife, Cilia Flores, by U.S. military forces violates the United States War Powers Act; Article 2(2) of the United Nations Charter; the International Covenant on Civil and Political Rights; the Geneva Conventions, the United Nations Convention on the Law of the Sea, and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as well as customary international law.

WHEREAS: The US is in violation of its duties under the UN and OAS Charters, which are owed not only to Venezuela but *erga omnes*, to all others. The US breach of duties damages Venezuela specifically, interfering with its right to self-determination, its right to be treated as an equal state, its national sovereignty and its territorial integrity. US violations affect the entire international legal system, undermining respect for the US, causing fear and chaos, and spawning disinclination to rely on law. US violations invite other states to use threats and force, rather than to rely on international law, including recourse to international courts and other judicial bodies. US violations are contrary to building cooperation to advance human rights, as required by UN Charter Art. 56 (part of Ch. IX, International Economic and Social Co-operation).

WHEREAS: The US has attacked civilian and commercial vessels with weapons and drones, boarded vessels, destroyed boats, kidnapped crew members of ships and killed crew members of smaller boats on the High Seas. The US has interfered with the ability of nationals of Venezuela and its neighboring states, such as Colombia, to engage in fishing, their livelihood. The US has violated the UN Convention on the Law of the Sea (UNCLOS), Art. 88, which reserves the High Seas (international waters) for peaceful purposes and Art. 89, which prohibits any state from subjecting part of the High Seas to its sovereignty, which the US has accomplished through a massive occupation of ocean space by its naval and Coast Guard vessels. The US has stolen marine vessels flagged in several states, in violation of UNCLOS Art. 90, which permits each state to flag ships on the high seas. Marine vessels and their cargo (oil) which have approached or transited Venezuelan waters have been seized and the US President has stated those will be retained by the US, in violation of maritime law.

WHEREAS: The stationing of 10 naval vessels and deployment of 10,000 troops in the region is ominous. The stationing of half this force in Puerto Rico, including F-35 fighter jets, drones and surveillance planes, and the reopening of the Roosevelt Roads base is contrary to decolonization of Puerto Rico and the imperative to close US bases to demilitarize.

WHEREAS: The U.S. government continues to blockade Cuba, preventing all oil shipments to the island in an attempt to bring about economic collapse and political change.

BE IT THEREFORE RESOLVED: that the National Lawyers Guild calls upon the United States Congress to hold hearings to investigate these war crimes, to consider articles of impeachment against President Trump and Defense Secretary Hegseth, and to enact such additional legislation as may be needed to ensure that such actions will not be repeated.

AND BE IT FURTHER RESOLVED: that the National Lawyers Guild calls for refusal by military and civilian workers, and their unions, to service, fuel, load, or unload US warships and warplanes.

AND BE IT FURTHER RESOLVED that the National Lawyers Guild calls for legal and political support of U.S. servicemembers who refuse unlawful orders to carry out these imperial policies or otherwise protest them.

AND BE IT FURTHER RESOLVED: that the National Lawyers Guild, through its Military Law Task Force, will develop educational materials, including webinars, articles, legal memos, and other materials on these issues for use by the NLG membership and the public.

IMPLEMENTATION: Military Law Task Force

IMPACT: The National Lawyers Guild entity required to implement this resolution has been contacted. The Military Law Task Force has been contacted and consents to implementation.

SPONSOR: Military Law Task Force, Kathleen Gilberd, Executive Director

ENDORSER: NLG International Committee

EMERGENCY RESOLUTION CONDEMNING U.S. AND ISRAELI AGGRESSION AGAINST IRAN

WHEREAS: The Islamic Republic of Iran is a sovereign nation and a member of the United Nations as are the United States and Israel.

WHEREAS: The United Nations Charter is a treaty which is the "supreme law of the land" under Article VI of the U.S. Constitution.

WHEREAS: Article 2(4) of the UN Charter states, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations."

WHEREAS: The military attack on Iran launched on February 28, 2026, is a crime of aggression, in blatant violation of the UN Charter and the principles of sovereignty, territorial integrity of states, good neighborliness and the peaceful settlement of disputes.

WHEREAS: This attack further violates the U.S. Constitution. The U.S. President acted unilaterally and lawlessly – without congressional authorization and absent any imminent threat to the U.S.

WHEREAS: Neither the U.S. nor Israel has even attempted to hide the fact that this aggression is being carried out to facilitate a regime change that they would find amenable to their goal of total domination of the entire region of West Asia militarily, economically and politically, and to deprive the Palestinian people under occupation and facing an ongoing genocide of support for their capacity to resist and free themselves of this unlawful occupation.

WHEREAS: That purported negotiations that claimed to seek a peaceful resolution or to address nuclear development were used as a sham in an attempt to lower Iranian defenses, as was seen before in the context of the U.S. invasion of Iraq. Such aggression not only underlines the bad faith of the United States and Israel, but also discourages nations from participation in peace talks or negotiations.

WHEREAS: Benjamin Netanyahu, the Prime Minister of Israel, is still the subject of an arrest warrant issued by the International Criminal Court for war crimes and crimes against humanity, while pursuing constant war and aggression against the Palestinian people targeted for genocide, Lebanon, Syria and now, once again, Iran. The aggression is the continuation of the illegal aggression launched last year as well as a continuation of a sustained and deliberate campaign of hostile acts spanning more than 46 years – including sanctions designed to destroy the Iranian economy, coordinated cyber-warfare operations, targeted assassinations, and systemic acts of sabotage.

WHEREAS: The U.S. and Israel have attacked schools and residential areas in Iran. These attacks are in violation of the Geneva Conventions. In addition, the U.S. continues to destroy civilian infrastructure in Iran which constitutes war crimes.

BE IT THEREFORE RESOLVED: that the National Lawyers Guild condemns in the strongest possible terms the joint military attack by the United States and Israel on the Islamic Republic of Iran.

AND BE IT FURTHER RESOLVED: that the National Lawyers Guild calls upon the United States Congress to hold hearings to investigate violations of the U.N. Charter, violations of the War Powers Act, war crimes committed by the U.S. military and to consider articles of impeachment against President Trump and Defense Secretary Hegseth.

AND BE IT FURTHER RESOLVED: that the National Lawyers Guild calls for refusal by military and civilian workers, and their unions, to service, fuel, load or unload U.S. warships and warplanes.

AND BE IT FURTHER RESOLVED: that the National Lawyers Guld calls for legal and political support of U.S. servicemembers who refuse unlawful orders to carry out this illegal attack or otherwise protest it.

AND BE IT FURTHER RESOLVED: that the National Lawyers Guild urges all states to provide all necessary assistance, consistent with their obligations under international law, to the Islamic Republic of Iran, Lebanon, Palestine, and other nations subjected to unlawful aggression by the United States and Israel, and to condemn their serious violations of international law, including genocide. We urge all states to immediately implement an arms embargo on the U.S. and Israel, to withdraw their ambassadors, and pursue actions to hold their military and political officials accountable.

AND BE IT FURTHER RESOLVED: that the National Lawyers Guild urges all supporters of justice, sovereignty, peace and international law to participate in mass demonstrations and actions against aggression on Iran, and to mobilize popular pressure to bring the aggression to an end.

AND BE IT FURTHER RESOLVED: that the National Lawyers Guild, through its Military Law Task Force and International Committee will educate the Guild, the legal community and the public

about the illegality of the war; will participate in coalition efforts to protest the war; will provide legal support to litigation challenging the war when possible; will work with progressive veterans' organizations in outreach to servicemembers who oppose the war and will work to develop educational materials, including webinars, articles, legal memos, and other materials on these issues for use by the NLG membership and the public.

IMPLEMENTATION: International Committee and Military Law Task Force

IMPACT: The National Lawyers Guild entities required to implement this resolution have been contacted. The International Committee and Military Law Task have been contacted and consent to implementation.

SPONSOR: International Committee, Military Law Task Force, Kathleen Gilberd, Executive Director

SELECTIVE SERVICE SYSTEM MOVES SLOWLY TOWARD "AUTOMATIC" REGISTRATION

By Edward Hasbrouck

In December 2026, as part of NDAA for Fiscal Year 2027, Congress gave the Selective Service System (SSS) a second chance to try to register potential draftees "automatically", in response to growing recognition that the "self-registration" system in effect since 1980 has failed and is unenforceable in the face of quiet but pervasive noncompliance.

Congress gave the SSS a year to promulgate implementing regulations and get the new automated registration system operationally ready before the change in the law takes effect in December 2026.[1]

Almost halfway through that year, there are few signs of progress by the SSS.[2]

Draft regulations for "automatic" registration were submitted by the SSS to the Office of Information and Regulatory Affairs (OIRA), a component of the White House, on March 30, 2026. That action, while routine and predictable, prompted the first mainstream media notice of the plan for "automatic" registration and a wave of public anti-draft outrage. Much of the anger has been directed at President Trump, even though support for (and opposition to) draft registration has been consistently bipartisan.

OIRA has taken an unusually long time to review the proposed SSS regulations. One possible explanation is that the White House is delaying release of the proposed rules while it struggles to plan a p.r. strategy for what is likely to be another round of alarming reporting and public backlash once OIRA completes its review and the SSS publishes a Notice of Proposed Rulemaking (NPRM) for "automatic" registration. In the meantime, we have few details about how the scheme will operate.

The delay in promulgating regulations combined with the December implementation deadline could create pressure for the SSS to avoid notice-and-comment procedures, issue "interim final rules", or apply for emergency approvals for new procedures before reviewing and responding to public comments. Or it could lead to a last-minute provision in the FY 2027 NDAA, perhaps added during the final House-Senate conference, to postpone the effective date of "automatic" registration.

Markup of the FY 2027 NDAA by the House and Senate Armed Services Committees was completed on June 11, 2026. The only proposed change with respect to the SSS is an unexplained amendment to prohibit the SSS from registering dead people for the draft.3 The Selective Service Repeal Act (S. 4537) endorsed by the NLG and the MLTF remains pending, but is unlikely to be considered or enacted as a standalone bill. It could still be introduced as a floor amendment when the FY 2027 NDAA is considered by the full Senate.

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[1] See the list of required rulemaking and notice-and-comment procedures in Edward Hasbrouck, "Congress orders overhaul of Selective Service registration", *On Watch* 37.1, Winter 2026.

[2] Edward Hasbrouck, "Transition from 'self-registration' to 'automatic' registration", *Resisters.info*, <https://hasbrouck.org/draft/automatic/transition.html>.

[3] Log 6408, Amendment to H.R. 8800 by Mr. Van Orden of Wisconsin, added to the HASC mark by voice vote as part of an *en bloc* package of amendments, <https://hasbrouck.org/draft/deceased-registration.pdf>.

The SSS has not yet responded to a FOIA request made in January 2026 for its plans and timeline for implementation of "automatic" registration. The SSS has not made a public statement or responded to an email or voicemail message from any reporter since the "automatic" registration law was enacted.

Presumably, some senior SSS official or someone at the White House has decided that *anything* the SSS can say would call more attention to an issue the White House wants to avoid: the SSS is (as it is required to do) planning, preparing, and maintaining readiness to activate a military draft.

The White House is probably right. A draft is unpopular, and anything we do to call attention to impending switch to "automatic" registration or the existence of the SSS – with a statutory mandate for constant readiness to activate a draft[4] – is likely to prompt more opposition to draft registration.

A national poll in May by Overton Insights found that 66% of respondents would oppose a draft if it were implemented by President Trump, while only 25% would support it.[5] Opponents of the draft hold their view much more strongly than supporters. Almost all categories of respondents to the poll oppose a draft. Even Republicans were almost evenly divided, with slightly more Republicans supporting than opposing a Trump-ordered draft but with opposition to a draft generally strong and support soft.

[4] 50 U.S. Code § 3809 mandates readiness by the SSS to activate either or both a general draft of young men, or a draft of health care workers. Current contingency plans for the Health Care Personnel Delivery System (HCPDS), the more likely type of draft to be activated, include women and men up to age 44 in 57 occupational categories from doctors and nurses to physical therapists. See Edward Hasbrouck, "Health Care Workers and the Medical Draft", *Resisters.info*, <https://hasbrouck.org/draft/health/>.

[5] Overton Insights, "National Results Spring 2026", <https://overtoninsights.com/wp-content/uploads/2026/05/Party-and-Demographic-Crosstabs-May-2026-Overton-Insights-Poll.pdf>.

THE USE OF AI BY MILITARY LAW PRACTITIONERS: DANGERS AND OPPORTUNITIES

by James M. Branum

Despite some reservations, I decided a few months ago to try using AI to complete a task in my military law practice. I gave the AI system the task of writing the first draft of a memorandum arguing to a military convening authority that it should accept an officer's request for a discharge in lieu of court-martial.

The results came back in just a few seconds, and at first glance, they looked good. The arguments were sound, the tone was appropriate, and the formatting perfectly fit the customary style used by this branch of the military. It briefly crossed my mind that AI might soon make the work of a military defense lawyer redundant.

But then I checked the sources . . . and that is when the AI's weaknesses became apparent. For the regulations, it failed to provide proper pinpoint citations (pointing to the exact spot in the regulations that needed to be cited), and when I asked it to provide these citations, it made them up (as I quickly discovered when I checked the AI's work). I also found that it couldn't do case law research well, as it made up a case to argue a needed point - it was almost as if the AI knew I needed a case to make a certain argument, couldn't find a case that made the point, and so it just made one up.

I have since continued to experiment with AI systems and now believe these tools can have their place, but only if those using them exercise appropriate diligence, because the dangers of misuse are real. One example of these dangers can be found in the case of STATE OF OKLAHOMA ex rel. OBA v. REEVES (2026 OK 37[1]), a case in which a lawyer received a public reprimand after citing five non-existent cases in two motions before a federal court, because he failed to check the cases provided by the AI program he was using. But other dangers are also present, including the risk that client confidentiality could be breached if an attorney feeds sensitive client data into an AI program that uses it to train its model.

At the same time, generative AI systems are time savers, particularly for repetitive tasks such as properly formatting a motion to reflect the standards of practice in a given branch of the military or reviewing attorney-drafted documents to identify possible errors and weaknesses in arguments.

Considering these potential benefits and risks of the use of AI, here are some guidelines I recommend in the military law context:

> 1. Consider carefully what AI platform you plan to use: There are many options available for generative AI, some that are designed specifically for attorneys, others that can be adapted for legal use. I currently use Lumo (a program from Proton, a Swiss-based company) for its end-to-end encryption, its default setting that doesn't allow the AI to train on user-submitted data, and the fact that the service isn't based in the US. Technology is constantly changing. It is worth spending time finding the right program for you.

[1] *Online at:* https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=551746

2. Do not feed confidential client data to any AI platform: AI models often use client-submitted data to train their algorithms, which means that any data submitted to such a program could later make it into other things said by the AI (breaching client confidentiality). For this reason, I recommend anonymizing all data provided to an AI system (including even those like Lumo that claim not to train on user-submitted data), for example, by replacing the client's name with "John Doe" and their duty station with "Fort Nowhere."

3. Be very specific when giving AI instructions and be ready to ask follow-up questions: The better AI platforms will create documents with appropriate formatting for each military branch, so be sure to specify the military branch. Also, if you get results from AI that aren't quite right, don't hesitate to ask AI to rewrite it based on the feedback you give it. And don't hesitate to ask the AI to provide counterarguments for the arguments it makes, which can help to highlight weaknesses in an argument.[2]

4. Ask the AI to provide its sources and then double-check all sources: To quote the Oklahoma Supreme Court: "There is nothing inherently problematic with the use of generative artificial intelligence in preparing legal materials, so long as attorneys abide by their duty to protect client confidentiality and recall their sacred duty to verify the pleadings they sign. The careless use of generative artificial intelligence to "save time" by not independently confirming citations is instead a waste of judicial resources and opposing party's time and money. It also damages the integrity and credibility of the legal system. Human diligence and review are required to ensure content and accuracy of filed documents. Signing pleadings that contain citations from generative AI that have not been verified shows a reckless disregard for the truth and an indifference to accuracy."

I would argue that the best way to avoid this issue is to establish a regular practice of checking all citations before submitting documents to a court or government agency.

5. Know that your clients are likely already using AI: As generative AI tools are becoming more commonly used, many of our clients may be turning to AI technologies for answers, both before and during representation. This may result in well-educated clients, but also may result in clients who have incomplete, inaccurate or misaligned expectations about their legal situations.[3] Moreover, these clients may also be inadvertently revealing confidential information about their case to AI platforms which could result in a loss of legal privilege.

The best advice I can give is to suggest that lawyers should: (1) educate our clients about the potential dangers of using AI (particularly as it relates to privacy and any potential obligation they have to not share classified information), (2) remind our clients that AI bots are not bound by the legal rules of ethics for attorneys and hence shouldn't be blindly relied upon, and (3)

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[2] For more discussion on how to ask AI tough questions, *see* Bays, Julie "Cross-Examining Your AI: Sycophancy, Risks and Responsible Strategies for Legal Professionals" *Oklahoma Bar Journal* March 2026, *online at:* https://www.okbar.org/lpt_articles/cross-examining-your-ai-sycophancy-risks-and-responsible-strategies-for-legal-professionals/)

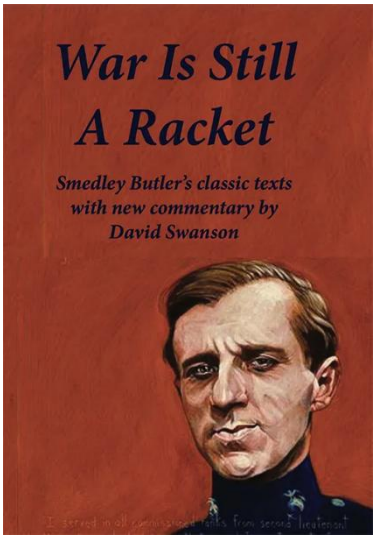
[3] Some of these concerns are not new, as clients often come to us with incomplete understandings of the law based upon what they have read online or have heard passed on by their peers.

consider creating a “AI Usage” Disclaimer or an addendum to the representation agreement that clients sign. Such an agreement should explicitly state that the lawyer uses AI tools with safeguards, and that the client should not input case details into third-party chatbots without counsel's approval, and outline the risks of privilege waiver.

6. Do not overuse AI: Given the high environmental costs of AI systems, it is important to always ask, “Is this use of AI worth the cost” and whether it is more efficient to do the task without AI.

Note: The author wrote the first draft of this article without the use of generative AI, but did use the Lumo AI system to provide feedback, which was incorporated into the final draft.

BOOK REVIEW: *WAR IS STILL A RACKET*, BY DAVID SWANSON WITH SMEDLEY BUTLER



By Chris Lombardi

Editor’s Note: Chris Lombardi previously reviewed Jonathan Katz’s book on Smedley Butler in the Summer 2022 issue of On Watch.

When I first learned that this book existed, I asked: “Why?”

Not that I didn’t see the value of thinking about Smedley Butler’s *War is a Racket;* like many of us, I’ve always been drawn to the” Maverick Marine” whose name adorns many a Veterans for Peace chapter. I even used his most famous title for my introduction to an anti-imperialist issue of the DSA magazine *Democratic Left*. That issue included a piece by David Swanson, who was already director of World Without War when he wrote “Closing Military Bases, Opening a New World.” Two years later, Jonathan Katz published the magisterial, authoritative biography *Gangsters of Capitalism: Smedley Butler, The Marines, and the Making and Breaking of America’s Empire*. Swanson even cites Katz’ book in his new *War Is Still A Racket: Smedley Butler's classic texts with new commentary by David Swanson*, which is scheduled to be discussed in book clubs this fall. And after reading Swanson’s book, I think I know the answer to my question.

This new book, Swanson tells us in the introduction, was requested by peace activists in the Czech Republic, who famously got the country’s citizens to vote against U.S. bases only to be overruled by their own Parliament. He decided to produce a U.S. version, in part, to puncture some myths: “As few in the United States know much about the centuries of U.S-.backed coups and malign influence in Latin America, even fewer know of Butler’s role in killing and destroying to prevent freedom or sovereignty in places like Nicaragua, Panama, Honduras, Haiti, the Dominican Republic, and Mexico. Within the U.S. Marine Corps, Butler is remembered as a courageous hero. In Haiti, he is remembered as the leader of an occupation that lasted 20 years and as a man who brought slavery back to that nation. He was also an early militarizer of police forces in the United States and Latin America. But for millions of people in the United States he, and some of the events and trends he was a part of, are not remembered at all.”

In *WISAR,* Swanson thus puts Butler into the context of today's antimilitarist struggles. He republishes not just Butler's 1935 book *War is a Racket* but some essays, published in 1936, that clarify his positions. Swanson was drawn to Butler for reasons we all are—not least this famous confession:

> I spent 33 years and 4 months in active service as a member of our country's most agile military force—the Marine Corps. I served in all commissioned ranks from a second lieutenant to Major-General. And during that period I spent most of my time being a high-class muscle man for Big Business, for Wall Street and for the bankers. In short, I was a racketeer for capitalism… Thus I helped make Mexico and especially Tampico safe for American oil interests in 1914. I helped make Haiti and Cuba a decent place for the National City Bank boys to collect revenues in. I helped in the raping of half a dozen Central American republics for the benefit of Wall Street. The record of racketeering is long. I helped purify Nicaragua for the international banking house of Brown Brothers in 1909-12. I brought light to the Dominican Republic for American sugar interests in 1916. I helped make Honduras "right" for American fruit companies in 1903. In China in 1927 I helped see to it that Standard Oil went its way unmolested.
>
> During those years, I had, as the boys in the back room would say, a swell racket. I was rewarded with honors, medals, promotion. Looking back on it, I feel I might have given Al Capone a few hints. The best he could do was to operate his racket in three city districts. We Marines operated on three continents.

Swanson's also drawn to Butler's unflinching mention of coups in Nicaragua[1] and China, and his mentions of the Monroe Doctrine (the subject of one of Swanson's books.) He also notes, as does Katz, that Butler's racism and shortsightedness limited his perspective. Swanson's introduction usefully outlines those, while noting times Butler is eerily prescient.

Then it's on to WIAR and those 1936 essays. Swanson groups the latter as "On America's Armed Forces," the title of the series in the magazine *Common Sense;* but the division among forces is useful, especially since the first, entitled "Military Boondoggling," takes apart media complicity in selling wars—and of particular interest for *On Watch* readers, his distinct treatment of the National Guard and the inclusion of local police forces. Butler warns of the dangers of a federalized National Guard and posits that both the Guard and police can be independent of the imperial powers, noting that Minnesota's NG forces refused in 1934 to participate in labor suppression. He calls the latter resistance "The Minnesota Exception" to a troubling trend:

> Our army and navy have only recently completed their largest and most ambitious peace-time maneuvers. Our National Guardsmen have done even better. In the past two years large National Guard forces have seen active service in 20 strikes in as many different states, from the Pacific Coast to New England, from Minnesota to Georgia. They have used gas, bullets, and tanks — the most lethal weapons of modern war—against striking workers. Casualty lists have been

[1] In 1910, hardly six months after the first Nicaraguan revolution which resulted in the ousting of President Zelaya who was hostile to American interests, his successor, Dr. Madris grew cold toward the Nicaraguan investments of Brown Bros. and Seligman & Co. Another revolution immediately "occurred" and our State Department sent a representative to see that the revolution was successful.

> impressive. In one instance they erected barbed wire concentration camps in Georgia to "co-ordinate" striking workers with all the efficiency of the fascist repressive technique.

It's in the Navy essay that Butler explains what happened in Haiti in 1919.

> Via its Marine Corps, the Navy occupied Haiti for 18 months and successfully kept the Haitians from holding elections or their Congress from meeting. The Navy occupied Santo Domingo for 10 years with two admirals and a major General of Marines acting as successive governors of the country. Until 1922 the Navy occupied a province of Cuba and would be there yet if they could find an excuse for it. In all these occupations and "civilizing" expeditions and forays of capitalistic expediency the Navy, of course, was acting at the behest of our State Department, which is to say, Wall Street.

Neither Butler or Swanson gives the particulars Katz does; the day Marines came for the gold bars in Haiti's bank, or the day the latter's parliament was dissolved. That's the difference between narrative nonfiction like Katz' and political rhetoric of the kind Swanson is building with Butler.

Not that he avoids narrative: In the book's final section, with the same title as the book, Swanson narrates the events surrounding Butler's words, including his support of the 1932 Bonus March and the 1933 Business Plot against FDR, in which a handful of wealthy veterans approached him about leading a coup against the "communist" president. They chose badly; Butler ended up testifying about the plot to the House Un-American Activities Committee (the pre-McCarthy version, led by Rep. Morris Dickstein). And in a masterstroke of narrative journalism, Swanson uses a letter Butler wrote to his mother in 1927 to frame his upbringing: "As an 18-year-old officer attacking the capital of China, he'd written to his mother, 'If I am killed, I gave my life for women and children just as dear to some poor devil as thee and Horrid are to me.' Horrid was his brother. Thee was the speech of a Quaker, which is what Butler had been raised to be."

But perhaps the most singular contribution of Swanson's book is his extending to Butler's truth telling the concept of "fog facts," a concept invented during the Bush Administration to describe truths buried below our consciousness by the ways war is normalized. Butler's work states plainly that "War transfers money to a small number of wealthy people and those people make wars happen," while his "Military Boondoggle" chapter contains another: "War profiteering was once scandalous, not a public service measured as a percentage of a nation's economy benevolently invested in war."

Swanson also ups Butler's economic arguments with contemporary data. While Butler moaned that the 1934 Special Committee on Investigation of the Munitions Industry had "barely scratched the surface" of America turning "blood into gold," in 2025 the Merchants of Death Tribunal was convened by the organizations that had pressed for the Special Committee's creation. "Almost one hundred years later, their horrors have only grown," remarked the director of one such organization. Swanson quotes liberally from the Tribunal's final report, and from Brown University's Cost of War Project.

Appropriate for a writer whose tagline is "Let's Try Democracy" Swanson ends with a Butler speech from 1937, appealing to all of us to take action: "If wars are to be avoided by our country it can be done only by determined and simple political action on the part of the great majority of our people—the trusting majority—which majority does not get up the wars, but which does fight them and which does pay all the bills in blood and money." He also gives us all a reading list, in case you need *more* ammunition for organizing and/or to be prepared if you go to one of those book clubs.

HONORING A LIFETIME OF SERVICE: CELEBRATING BILL GALVIN ON HIS RETIREMENT

Editor's Note: This article was originally published by the Center on Conscience and War on June 3, 2026. Bill is a longtime friend of the MLTF and has published numerous articles in On Watch. We share the sentiments expressed in this article and we thank him for all of his service over the years and wish him all the best in the future.

After decades of dedicated service to conscientious objectors, peace activists, and people navigating profound crises of conscience, Bill Galvin is retiring from his role as Counseling Director at the Center on Conscience & War.

For many people who contacted CCW during one of the most difficult moments of their lives, Bill was their first conversation. Whether they were active-duty service members questioning their participation in war, young people confronting draft registration, or military family members worried about their loved ones, Bill met them with patience, wisdom, and compassion.

In the words of one of those service members, Karl, who was just discharged as a conscientious objector:

> Bill, I called you at some of my darkest hours seeking hope. You're sincerely a friend; you're sincerely a mentor; you're even sincerely an adoptive father of so many who craved the reassurance that they actually are normal in a society enamored with its own warped sense of the truth. You are a calm, steadying presence during what is often the most soul-shaking time in your mentees' lives. You have no doubt felt the experiences of those who have shared with you through the essays you helped bring out of them. In that sense you are a guide, not because you know exactly what you will uncover, but because you know whatever it is, it is there, deep inside. You walked beside so many as their souls were able to see the light; maybe not that those souls bask in the light happily ever after, but that the light is now known to them, a place they can go to restore their humanity, even for a moment.

Thousands have had the same experience over the years.

Bill's commitment to the rights of conscience stretches back more than fifty years. A Vietnam-era conscientious objector himself, he began supporting COs in the early 1970s and dedicated his life to helping others navigate the difficult path of acting according to deeply held moral and ethical convictions.

Throughout his career, Bill served with organizations that defended the rights of conscientious objectors, including the Emergency Ministry on Conscience and War, the Presbyterian Peace Fellowship, and the GI Rights Hotline as a counselor and member of the Board.

Bill came to CCW in 2000, where he became one of the nation's foremost experts on military conscientious objection. He counseled countless service members, advised attorneys, trained advocates, spoke at conferences, presented at National WWI Museum and Memorial, and helped ensure that people facing crises of conscience knew they were not alone. His steady presence helped sustain the GI Rights movement and strengthen networks of support for those seeking alternatives to participation in war.

Bill's influence reached far beyond the Center on Conscience & War. Throughout his decades of service, he worked with numerous peace and faith-based organizations, helping to connect the conscientious

objection movement with broader traditions of nonviolence and peacemaking. His leadership and witness were recognized by the Presbyterian Peace Fellowship, which honored him with its Peaceseeker Award. Whether counseling a service member wrestling with conscience, speaking in a church basement, or mentoring a new generation of peace advocates, Bill helped build the networks of support that have sustained conscientious objectors for generations.

But statistics and accomplishments tell only part of the story.

Bill's greatest legacy is found in the people he helped. Every conscientious objector who found the courage to follow their conscience, every service member who successfully navigated a difficult discharge process, every young person who learned they had options beyond military service, and every advocate who benefited from Bill's mentorship carries forward a piece of that legacy. He has guided literally hundreds of service members through the journey of writing the first draft of their CO application, to discharge from the military.

For decades, Bill served as a living link between generations of conscientious objectors. He carried forward lessons from the Vietnam era while helping new generations confront the moral questions raised by the wars and conflicts of their own time. At a moment when many of the leaders of the historic peace movement have passed from the scene, Bill remained a trusted counselor, teacher, and keeper of institutional memory. His work helped preserve not only the rights of conscientious objectors, but the movement itself.

Whether speaking about draft registration, military conscientious objection, or the broader struggle to uphold freedom of conscience, Bill consistently reminded us that peace is not merely an ideal - it is a practice grounded in courage, conviction, and respect for human dignity.

He has been featured in publications such as The Guardian, National Public Radio, and a new book from Simon & Schuster God Forgives, Brothers Don't: The Long March of Military Education and the Making of American Manhood.

As Bill retires, the need for the work he championed remains as important as ever. In his final months as Counseling Director, Bill was critical to steering the ship through the biggest surge in CO inquiries we have ever experienced–all while training his replacement.

The Center on Conscience and War will continue to defend and extend the rights of conscientious objectors, building on the foundation that Bill helped strengthen through decades of tireless service.

Bill will remain a resource for CCW as our Senior Counseling Advisor. He passes the torch to Kelly Dougherty, a veteran organizer, founder of Iraq Veterans Against the War, counselor, and advocate whose decades of work with service members and veterans reflect the same commitment to conscience, justice, and peace that has defined Bill's career.

On behalf of the staff, board, volunteers, counselors, and countless conscientious objectors whose lives he touched, we offer our deepest gratitude.

Thank you, Bill, for your wisdom, your dedication, and your unwavering faith in the power of conscience.

Your impact will continue to be felt for generations to come.

ANNOUNCEMENTS

We're Recruiting
The MLTF is recruiting -- we are looking for volunteer legal interns to update some of our legal memos for attorneys and military counselors, as well as self-help guides for servicemembers. If you're interested in updating a review of changing military policy on hazing and bullying, a know-your-rights guide for GIs, or memos on other military law topics, please contact Kathy Gilberd at kathleengilberd@aol.com.

Veterans for Peace Convention
Veterans for Peace will hold its annual convention from August 6 to 9 in Kansas City, MO, with a theme of *Peace through Non-Violent Action: From Chaos to Community*. Most of the convention will be available virtually for those who can't attend in person. MLTF's James Branum will lead a workshop on outreach to servicemembers and support for GI resistance. For more info, or to register, visit veteransforpeace.org.

ABOUT THE AUTHORS

James M. Branum has practiced military law as a civilian solo attorney since 2006. He is a member of the steering committee of the Military Law Task Force of the National Lawyers Guild. He is based out of Oklahoma City and his website can be found at www.girightslawyer.com

Donald Christopher (Chris) Burnette is a Missouri attorney, VA-accredited representative, and U.S. Air Force veteran. He focuses his practice on veterans law, military administrative matters, and federal employment issues, with a particular interest in the intersection of military administrative processes and veterans benefits law.

Peter Goldberger is an attorney in private practice in Ardmore, Pennsylvania. He is a long-time member of the MLTF.

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

Deborah Karpatkin is a civil rights and employment rights lawyer in NYC. She has represented conscientious objectors since 1991, and has litigated a number of CO cases, including Martin v. Army 463 F. Supp. 2d 287 (N.D.N.Y. 2006) and, as amicus curiae, Watson v. Geren and Kanai v. McHugh. She also represents veterans seeking discharge upgrades.

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

Chris Lombardi is a former staff member with the Central Committee for Conscientious Objectors. She has been writing about war and peace for more than twenty 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), she lives in Philadelphia.

ABOUT 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 ($40), 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 nlgmltf.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**

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 **nlgmltf.org/support** to make a one-time or a recurring donation.

Thank you!