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Contents

PROTECTING GOVERNMENTAL OR SERVICEMEMBER PRIVACY INTERESTS?	2
THE CASE FOR VA EXPANSION (Book Review: <i>Our Veterans: Winners, Losers, Friends and Enemies on the New Terrain of Veteran's Affairs</i>).....	14
OVERTURNING OF ROE V. WADE'S IMPACT ON WOMEN IN THE MILITARY AND MILITARY FAMILIES..	19
MLTF PLANS FOR THE UPCOMING YEAR	20
MORAL INJURY IN REAL TIME: WHAT DO WE MAKE OF SMEDLEY BUTLER? (Book Review: <i>Gangsters of Capitalism: Smedley Butler, the Marines, and the Making and Breaking of America's Empire</i>).....	21
ANNOUNCEMENTS	27
ABOUT THE CONTRIBUTORS.....	28

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Through Military Law

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See page 26 for details on MLTF's new training resources

PROTECTING GOVERNMENTAL OR SERVICEMEMBER PRIVACY INTERESTS?

Government's invocation of a FOIA (b)(6) Exemption to the government's benefit on behalf of deceased servicemembers without their family's knowledge, consent, or request

By Chris McGhee

INTRODUCTION

Military service is a stressful occupation shouldered by a fraction of the United States population. Military service comes with inherent risks that every recruit is aware of when signing away civil liberties for the sake of national security. In addition to the risks, recruits are aware of there are dangers specific to whatever career field that the military service selects for recruits. Those dangers can be direct, or indirect depending on a myriad of circumstances. To make matters worse, if the military is negligent in the management of personnel or mission resources and further burdens service members there aren't many avenues available for redress. Service members are barred from bringing suits under the Federal Tort Claims Act because of a judicial restraint known as the Feres Doctrine. Moreover, public advocacy is hampered by a lack of transparency by the government. For example, the Department of Defense receives a substantial benefit from withholding information and acts as an adjudicator in when applying Freedom of Information Act exemptions on behalf of service members that otherwise would prefer the information to be disclosed.

This article will explore the government's response to a FOIA request for suicide data by job code, and the associated bias and benefit the government receives when invoking a privacy exemption on behalf of families of fallen service members, some of whom died at the hands of government negligence.

BACKGROUND

Organizational Structure

Military organizations are distinctly different than any other organization in American society today. Military services wield a substantial amount of power, both in their projection of military force around the world and at home, and their power over the lives of the 1,350,000 service members.¹

Each military branch has different career fields. These career fields are centered on varying tasks as they relate to services, equipment, and other factors. Within the Air Force these career fields have Career Field Managers (CFMs) who oversee personnel levels, equipment, mission demands, and other factors to ensure there is an adequate amount of trained servicemembers to meet the operational demands of the Air Force. These CFMs rarely stay in the position longer than a couple of years, and many of the decisions they make for manning levels, allocations, and assignments don't impact the career field immediately. Often by the time the impacts are felt, the CFMs are at a new assignment or retired. This model leaves a gap between decision and outcome that rarely holds the individual actors accountable

¹ See "U.S. Military 'Staring into Abyss' Report Says"

<<https://www.nationaldefensemagazine.org/articles/2021/12/13/us-military-staring-into-abyss-report-says>>

for their decisions.

Legal Framework

Restrictions on servicemember speech

The ability for American citizens to speak in public, to report to others their experiences, has been a powerful tool for social change since the inception of the United States of America. To put pen to paper, to share information, to shine a light on injustices, and to solicit help from others is a cornerstone of American Democracy and a sacred right given to every citizen.

Servicemembers face substantial restrictions on their speech compared to other American citizens. Beyond the constitutionally recognized exceptions to free speech,² under the Uniform Code of Military Justice (UCMJ), military officers are not allowed to speak contemptuously of the president,³ and are barred from “conduct that is unbecoming of an officer and a gentleman”;⁴ additionally, all servicemembers are forbidden from engaging in conduct that is prejudicial to good order and discipline,⁵ which can include statements and expressive conduct.⁶

In 2017 the Air Force expanded restrictions on servicemember speech when it updated Air Force Instruction (AFI) 35-107. This short, but broad reaching regulation restricted constitutionally protected speech. This regulation prohibited servicemembers’ actions on social media, overtly threatening to prosecute under the authority of the UCMJ if servicemembers used “vulgar . . . profane . . . abusive . . . hateful . . . or otherwise offensive information or material.”⁷ This AFI was superseded in 2020 with much of the overbroad restrictions being scrapped as the associated regulations absorbed only parts of the verbiage from AFI 35-107. While these types of restrictions are specific and overt, there is a culture within the military that unambiguously implies that those currently serving should not contact their congressman, the media, or anyone else about how they are treated or what is going on in their unit.

Feres Doctrine

For much of American history citizens were barred from suing the Federal government under the theory of “sovereign immunity.” However, the Federal Tort Claims Act of 1946 (FTCA) created a pathway for people to file tort claims against the Federal government. These suits included suits for negligence, intentional torts, and other torts.⁸

In 1950 the Supreme Court carved out an exception in the FTCA for service members. In the case *Feres v. United States* three cases from lower courts in different Circuits were merged to answer one question: Can a military service member (or their estate) sue the Federal government for injuries associated with their military service? The Supreme Court reasoned that injuries that arise out of, or are in the course of

² Obscenity, fighting words, defamation, child pornography, perjury, blackmail, incitement to imminent lawless action, true threats, solicitations to commit crimes.

³ UCMJ Article 88

⁴ UCMJ Article 133

⁵ UCMJ Article 134

⁶ See <<https://www.mtsu.edu/first-amendment/article/1131/rights-of-military-personnel#:~:text=Indicative%20of%20the%20military's%20special,unbecoming%20an%20officer%20and%20a>>

⁷ See AFI 35-107 (2017) <<https://irp.fas.org/doddir/usaf/afi35-107.pdf>>

⁸ See “The Federal Tort Claims Act (FTCA): A Legal Overview.” <<https://sgp.fas.org/crs/misc/R45732.pdf>>

activity incident to military service are barred from claims under the FTCA.⁹

The Court analyzed three factors in determining whether the activity was incident to military service. The first is the “distinctively federal relationship between a serviceman and his superiors.”¹⁰ The next factor is a service member’s access to generous statutory disability and death benefits.¹¹ Third, that if service members could sue the government it would “involve the judiciary in sensitive military affairs at the expense of military discipline and effectiveness.”¹²

Feres v. United States has been cited in over 1,700 cases. Medical malpractice suits,¹³ wrongful death for servicemember suicide,¹⁴ sexual harassment by multiple supervisors,¹⁵ Marine drill-instructors who hazed a Muslim recruit to death,¹⁶ and the list goes on.

The overarching message is clear: If you are in the military and your activities are related to your military service and the government causes injuries through negligence, intentional infliction of emotional distress, battery, or any other tort, a servicemember cannot sue under the FTCA.

Working conditions within the military

Enlisting or commissioning in the United States military is different from most types of employment in the United States. It requires the projection of military force at the behest of civilian and military leaders to protect the United States, and its national interests around the world. This responsibility also creates a unique set of burdens for service members, unlike any other career.

Serving in the military, by its very nature, creates an assumption of risk. Each servicemember knows that during times of war and unrest they may be called upon to apply their skills in the Profession of Arms. Such an application may involve the killing of others, or the death and disfigurement of the servicemembers themselves. However, the actual nature of military service, and the conditions military members serve in, is often obscured from public view. Potential recruits are inundated with a steady stream of Hollywood action movies, recruiter promises of benefits and social status, all the while any negative information about military service is hidden from public view under the guise of protecting military retention and national security.

Servicemembers cannot avail themselves of the same employment protections most citizens access to ensure a healthy work environment. As discussed previously, the *Feres* Doctrine protects supervisors and commanders from legal action for even the most egregious negligence. There have been numerous reports of servicemembers exposed to dangerous and toxic conditions where the danger was known to their supervisors and yet protections were not provided and servicemembers lacked a legal recourse to avoid the exposure.¹⁷ Or the military’s seeming reluctance to investigate sexual assault and murders

⁹ See <[Feres v. United States, 340 U.S. 135, 71 S. Ct. 153, 95 L. Ed. 152 \(1950\)](#)>

¹⁰ See <[United States v. Johnson, 481 U.S. 681, 107 S. Ct. 2063, 95 L. Ed. 2d 648 \(1987\)](#)>

¹¹ *Id.* at 689.

¹² *Id.* at 690.

¹³ See “Airman Loses Legs After Gall Bladder Surgery” <https://abcnews.go.com/US/story?id=8150409&page=1>

¹⁴ See [Purcell v. United States, 656 F.3d 463 \(7th Cir. 2011\)](#)

¹⁵ See [Mackey v. United States, 226 F.3d 773 \(6th Cir. 2000\)](#)

¹⁶ See [Siddiqui v. United States, 783 F. App'x 484 \(6th Cir. 2019\)](#)

¹⁷ See “Veterans exposed to battlefield burn pits press VA for care and compensation”

<<https://www.houstonchronicle.com/politics/texas/article/Veterans-exposed-to-battlefield-burn-pits-press->

without substantial intervention by the victim's family members and the associated media attention.¹⁸

Beyond these specific cases of abuse and neglect, servicemembers can have vastly different experiences from one duty station, career field, or command to another. However, conditions that would trigger suits for negligence or complaints to safety agencies go unreported and therefore unaddressed due to the particular space that servicemembers occupy within Federal tort law and the jurisdictional limitations on these types of oversight agencies.¹⁹

Beyond the exceptional restrictions detailed above, service members operate in a unique framework of labor laws, or a lack thereof. Service members under Federal orders cannot avail themselves of union protections,²⁰ have no legal protections for the number of hours worked and cannot quit their jobs without facing prosecution under the UCMJ or an adverse discharge with the potential for lifetime negative consequences.

In sum, military service members can't quit, can't sue if their supervisors are negligent or cause intentional harm, aren't protected by OSHA, can't speak ill of superior officers, generally can't engage in dissent on social media, and the public at large is mostly unaware of the challenges facing servicemembers.

Accountability

Generally, accountability requires two things: Public exposure of maltreatment of servicemembers, and a mechanism to create some sort of pressure to deter that maltreatment. When it comes to the treatment of servicemembers the military is highly insulated from accountability. As discussed above, servicemembers are often reluctant to disclose maltreatment due to explicit regulations preventing disclosure or a culture of secrecy reinforced by commanders and supervisors that wield significant and broad-sweeping power over servicemembers.

Exposure of maltreatment of servicemembers

Because of the speech restrictions detailed above, public understanding of the experiences of servicemembers is often severely lacking. Often details emerge years, or in some cases decades later.²¹

[13105569.php](#)>; See also, "'They didn't care about us.' Documents: Keesler AFB workers exposed to dangerous chemicals" <<https://www.clarionledger.com/story/news/local/2019/08/22/documents-keesler-air-force-workers-were-exposed-dangerous-chemicals-biloxi-cancer-roger-wicker/2076378001/>>; See also, "Veterans exposed to cancer-causing chemicals at K2 Air Base deserve justice" <<https://www.tennessean.com/story/opinion/2021/03/02/veterans-exposed-toxic-chemicals-k-2-air-base-deserve-justice/6891383002/>>

¹⁸ See Families of 3 Fort Hood soldiers seek answers in their deaths <<https://abc13.com/fort-hood-soldiers-army-deaths-at-pfc-brandon-rosecrans/6317386/>>

¹⁹ Executive Order 12196 – Occupational safety and health programs (1980) "This order applies to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations."

²⁰ National guard service members on under state authority are allowed to unionize. See "Feds: National Guard Members on State Duty Can Join Unions" <https://www.military.com/daily-news/2022/05/18/feds-national-guard-members-state-duty-can-join-unions.html>>

²¹ See "After 30 Years, Genetic Study Confirms Sarin Nerve Gas As Cause of Gulf War Illness" <

Also due to the Feres Doctrine, servicemembers cannot seek damages for their maltreatment, whether intentional or negligent, in federal courts. This leaves the only viable avenue for redress with Congress exercising their Article I, Section 8 taxing and spending authority and the associated oversight of that enumerated authority. The paradox is that Congress is slow to investigate claims without prior evidence of misconduct by the services, and in the past the military services themselves have manipulated evidence to deter Congressional oversight.²²

FOIA can be a powerful tool for concerned citizens; servicemembers, veterans, and civilians alike, to request documents and evidence necessary to understand the internal processes and procedures in the military services, to include the treatment of servicemembers. Releases under FOIA can be exempted if certain conditions are met. In theory, the burden is on the government to show why certain information is exempted from disclosure. However, in practice the government often cites FOIA exemptions and expects requestors to accept that their often-undisclosed analysis of the documents and their application to the exemption is unbiased and just.

FOIA requests can provide information to journalists writing stories about issues within the military that is otherwise obscured from public view. Information gathered from FOIA requests can be given to Congressional representatives to provide a foundation for inquiries and investigations. But what happens when the government, who frequently has a vested interest in non-disclosure, acts as an arbitrator with obvious bias?

CAREER FIELD CASE STUDY

2A3X3B – F-16 Tactical Aircraft Maintenance Personnel

To better understand the interplay between the organizational structure, the legal framework, and military branch accountability this article will use the lived experience of the author to present a case study for a single career field – 2A3X3B F-16 Tactical Aircraft Maintenance, colloquially referred to as an “F-16 crew chief.”²³

Removing Fighter Airframe Shreds

In the early 2000s aircraft maintenance personnel were “shredded” to specific airframes, that is to say they would stay with a particular airframe from unit to unit and duty station to duty station. The dedication to a particular airframe allowed maintenance personnel to hone their craft to the unique systems and sub-systems for each aircraft.²⁴

In the mid-2000s the Crew Chief CFM removed the airframe specific “shred” from the more experienced technicians, typically those with more than 10 years. The explanation given to the field at the time was

Iraq and Throughout the Middle East. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8816568/>>

²²See “Debunked: Fact-Checking the Pentagon’s Claims Regarding Military Justice.

https://www.protectourdefenders.com/downloads/debunked/POD_Debunked_Report.pdf

²³ See generally “Here’s why a Crew Chief is a pilot’s ‘best friend’” < <https://www.wearethemighty.com/mighty-culture/air-force-crew-chief-job/>>

²⁴ “Tactical Aircraft Maintenance personnel maintain tactical aircraft, support equipment, and forms and records. Personnel also perform and supervise flight chief, expeditor, crew chief, repair and reclamation, quality assurance, and maintenance support functions.” USAF Occupational Survey Report (2000)

<<https://apps.dtic.mil/sti/pdfs/ADA378915.pdf>>

that once technicians reached a certain amount of experience on one airframe, they could easily translate that experience and adapt it to a new airframe. This would allow them to continue working on fighter aircraft, however they wouldn't be restricted to only one type of fighter. In the late 2000s shreds were removed on more junior technicians, leaving only those with less than 4 years dedicated to a particular airframe. This new shred labeled fighter crew chiefs simply as 2A3X3 dropping the 6th alphanumeric position signifying their attachment to any particular airframe.

Force Retraining Fighter Crew Chiefs to Cargo Airframes

After the majority of the fighter aircraft maintainers were no longer shredded, CFMs and the associated assignment systems could no longer determine which personnel had which airframe experience. Short-tour assignments like one-year tours in Korea were inundated with personnel who had never worked on F-16s but also had never done a short-tour assignment, so the automated assignment system began flooding the bases with every kind of crew chief except the ones who were experts on the F-16s stationed at Holloman.

In mid-2011 personnel managers at Headquarters Air Force (HAF) decided to reclassify hundreds of fighter crew chiefs to heavy aircraft (cargo and bombers). These reclassifications were permanent, and the vast majority of the selected personnel were transferred to other bases and remained on heavy aircraft indefinitely.

Because the CFMs had removed the fighter shreds, the personnel managers were unable to differentiate airframe experience to those reclassified to heavy aircraft. This left a severe airframe experience vacuum in multiple units as some of the few remaining personnel with the assigned airframe experience were moved.

During this same period F-35 production was increasing and the first F-35 units were being prepared at multiple bases. The increase in F-35 inventory further pulled experienced legacy fighter crew chiefs to the new airframe.²⁵

Sequestration and Force Reduction Measures

Also, in 2011 Congress was struggling to come to a bipartisan agreement on budgetary restrictions. In 2011 The Budget Control Act (BCA) was passed which mandated equal decreases in defense and non-defense spending.²⁶ Each of the five Service Chiefs, the 4-star generals at the highest levels of each military branch, wrote a letter to the Chairman of the House Armed Services Committee pleading with them to avoid sequestration and warning of the inevitable dire consequences to military readiness. The Service Chiefs warned:

Budget conditions unfolding right now are causing this readiness crisis. . . . The compelling need to fully fund preparation for and execution of combat operations and care for our wounded warriors allocates this cut across a smaller portion of the force, exacerbating the readiness

²⁵ Legacy fighter aircraft includes F-16 C/D, F-15 C/D/E, and A-10.

²⁶ See "Background on Sequestration" < [MLTF !\[\]\(7467c1dd0ef2428537a0061c375ff0d0_img.jpg\) On Watch](https://budget.house.gov/committee-report/frequently-asked-questions-about-sequestration-under-budget-control-act-2011#:~:text=The%20Budget%20Control%20Act%20of,reduce%20the%20deficit%20by%20%241.2></p></div><div data-bbox=)

decrease for forces that may need to respond to a contingency. . . . Should this looming readiness crisis be left unaddressed, we will have to ground aircraft, return ships to port, and stop driving combat vehicles in training. Training will be reduced by almost half . . . [and we] will be unable to reset and restore for force's full spectrum combat capability after over a decade of hard fighting in Iraq and Afghanistan. . . . Under current budgetary uncertainty, we are at grave risk of an imposed mismatch between the size of our Nation's military force and the funding required to maintain its readiness, which will inevitably lead to a hollow force.²⁷

In late 2013 Air Force leadership began signaling to CFMs and commanders that there would be severe cuts in manpower. This was referred to as the FY14 Force Management Programs,²⁸ however junior personnel referred to it as the Hunger Games of 2014. Personnel vulnerable due to their career field, time in service, negative indicators, or assignment codes received an email on Christmas Day 2013 informing them they were being considered for separation from the service and encouraging them to seek voluntary separation to afford them stability in their transition to the civilian sector.

By the summer of 2014 the Air Force had lost 14,298 servicemembers of all different ranks from the FY14 Force Management Programs.²⁹ A FOIA request was submitted to determine which Air Force Specialty Codes (AFSCs) or career fields were affected by the FY14 Force Management Programs. Astonishingly the Air Force Personnel Center (AFPC) stated in their FOIA response that they did not have specific numbers of which career fields were affected by the programs and that AFPC was "unable to provide a breakout by AFSC as that would require collating and compiling multiple rosters . . . to create new documents."³⁰

Air Force attempts to claw back aircraft maintainers

Perhaps realizing the reductions in personnel, and specifically the reductions in aircraft maintainers, was a catastrophic mistake, Air Force leaders jump started programs with the intention of bringing back maintenance personnel separated in 2014.³¹ Unfortunately many of the maintainers elected not to return, either content in their new lives as civilians, or they still had a bad taste in their mouth due to their involuntary separation.

Instead of clawing back experienced personnel, the Air Force increased ascensions for aircraft maintainers and fighter crew chiefs in an attempt to backfill the vacant positions and to shore up the units that were undermanned. However, this rapid ascension further burdened the seasoned crew chiefs because they were further saddled with increased supervisory responsibilities while balancing the commitments of maintaining the aircraft. Even with the increased ascensions bringing in new crew chiefs, the legacy fighter crew chief personnel end strength numbers had

²⁷ Letter from Five Service Chiefs to Representative Howard P. "Buck" McKeon. (Jan. 14, 2013).

²⁸ See "AF closes FY14 force management programs" <<https://www.af.mil/News/Article-Display/Article/554827/af-closes-fy14-force-management-programs/>>

²⁹ Letter from DOD DHA to Chris McGhee FOIA 2020-01837-F (Mar. 9 2020)

³⁰ *Id.*

³¹ See "1 year after cuts, Air Force needs to grow again"

<<https://www.montgomeryadvertiser.com/story/news/local/dispatch/2015/05/28/year-cuts-air-force-needs-grow/28121201/>>

deteriorated from 6,133 to 5,798 by FY16.³²

In a July 2021 podcast Chief Master Sergeant Brian McRory, a CFM for aircraft maintenance, stated:

There was a lack of experience in the field, made by some decisions over the last few years . . . and created a “slight” training burden . . . we have a lot of [new technicians] . . . we have less [experienced technicians] to train the [new technicians] and do all the work we need them to do. So, we did create that burden unexpectedly.³³

The Mental and Emotional Health of F-16 Crew Chiefs in 2016

In March of 2016 General Mark Welsh the Chief of Staff of the Air Force and the Service Chief during the FY14 Force Management Programs was asked by Senator Dan Sullivan (R-AK) how morale was generally in the Air Force. General Welsh responded that “morale was pretty darn good.”³⁴ This response was widely ridiculed both by Air Force culture pundits and among F-16 crew chiefs as many felt they were being overworked, both in quantity and quality, to the severe detriment to their health.

Two months later in May of 2016 the Air Force released a specific Computer Based Training (CBT) titled “Overwhelmed - Aircraft Maintainers” a suicide prevention program required to be completed by aircraft maintainers. Unironically, this training was automatically and immediately flagged as overdue, and many maintainers were required to complete the CBT after they were off-shift or were told if they failed to complete the training, they would be brought in on the weekend to do it.

Operational Tempo from 2010 to 2020

From 2013 until 2019 F-16 fighter aircraft flew between 108,000 sorties per year, and 146,000 sorties per year.³⁵ During that same period legacy fighter crew chief manpower reduced from 6,162 in 2013 to only 5,481 in 2019.³⁶ The Air Force sustained essentially the same F-16 fighter operational tempo from 2013 to 2019 but reduced legacy fighter crew chief manpower by almost 14%. Prior to the FY14 Force Management Programs maintenance metrics that tracked fleet health reported the F-16 fleet was languishing at a 73.5% mission capable rate. This metric measured the overall readiness of the fleet indicating that at any given time only 73.5% of possessed F-16s were ready to meet operational needs.³⁷

SECDEF Mattis 80% Fighter Readiness Mandate

In September of 2018, Secretary of Defense James Mattis sent a memo to each of the armed services directing them to increase fighter aircraft readiness within 1 year. Specifically, F-35s, F-22s, F-16s, and F-18s.³⁸

³² Letter from Air Force Manpower Analysis Agency to Chris McGhee FOIA 2020-02294-F (Jan. 10 2021)

³³ Aircraft Maintenance CFMs CMSgt McRory and CMSgt Samavarchian REFUEL TEAM FAIRCHILD PODCAST (Jul 2021) (downloaded using Spotify)

³⁴ See “CSAF Tells Lawmakers Air Force Morale is ‘Pretty Darn Good’” <<https://jqpublicblog.com/csaf-tells-lawmakers-air-force-morale-is-pretty-darn-good/>>

³⁵ Letter from Air Force A4L to Chris McGhee FOIA 2020-01815-F (Mar. 4 2020)

³⁶ *Supra* at 21

³⁷ *Supra* at 23

³⁸ See “Mattis orders fighter jet readiness to jump to 80 percent – in one year”

This mandate was levied upon maintenance personnel that were suffering from chronic under manning, a lack of experience, and sustained operation tempo. Flagging mental and emotional health had incited the Air Force to develop a suicide prevention CBT specifically directed at aircraft maintainers. The mandate required a fleet which had been in hovering near a 70% MC rate for a decade to increase their MC rate by 10% in only a year. This author predicted there would be a surge of aircraft maintainer suicides in October of 2018.

DOD SUICIDE REPORTING AND PREVENTION

Since 2010 the DOD has released the Department of Defense Suicide Event Report (DoDSER). This report gives some data on service member suicides. The categories are relatively broad focusing on rank ranges, age ranges, marital status, race, gender, suicide modality, related drug or alcohol abuse, medical or behavioral diagnoses, and education level.³⁹

Additionally, the services and their representatives have consistently targeted resiliency in addressing service member suicides and have pointed to national suicide trends to explain why military suicides have trended similarly.⁴⁰

In effect, the strategy of military leaders is to point to other demographic suicide data while focusing on increasing service member tolerance of adverse conditions and maltreatment. This tactic ignores a fundamental truth: service members are subjected to a different experience than the general U.S. population and have less avenues of redress to counter harmful conduct by the government.

FOIA REQUEST

By January of 2019 reports of aircraft maintainer suicides were coming from multiple units in multiple locations. In July of 2019 this author submitted a FOIA request to the AF/A1 (Director of Manpower) and the HAF/SG (Surgeon General) requesting “all available active duty, guard, and reserve suicide metadata for the last 10 years [by AFSC].”⁴¹ In August of 2019 Air Force leadership announced the Air Force was on pace to have more suicides in 2019 than in any other year since they began tracking suicides.⁴²

In January of 2020 the office of the Air Force Surgeon General and the Air Force Manpower and Personnel office conducted a search for responsive records to the July 2019 FOIA request. No records were found.⁴³ Days after the no records response was a received slides leaked to an unofficial Air Force social media page showed suicide data to include verbiage about specific career fields. The slide listed

<https://www.defensenews.com/air/2018/10/09/mattis-orders-fighter-jet-readiness-to-jump-to-80-percent-in-one-year/>

³⁹ See DoDSER CY19 <<https://health.mil/Reference-Center/Publications/2021/07/06/2019-DoDSER-Annual-Report>>

⁴⁰ See Air Force suicides surged last year to highest in 3 decades < <https://apnews.com/article/air-force-ap-top-news-co-state-wire-latin-america-politics-b6fa278e5078e3479adbe4745b765ed7>>; see also “541 military service members died by suicide in 2018, DOD report shows” < <https://www.wavy.com/washington-dc/541-military-service-members-died-by-suicide-in-2018-dod-report-shows/?fbclid=IwAR2g55jHxYiZ7iTWk2ipyYJB6HFZZ5QEflpjUMPgyzScCuetHgw3qdSDYs4>>

⁴¹ Letter from Chris McGhee to AF/A1 and HAF/SG FOIA 2019-04477-F (Jul. 28 2019)

⁴² See “USAF Orders Stand-Down to Combat Rising Suicide Rate” <<https://www.airforcemag.com/air-force-temporarily-stopping-operations-to-address-growing-suicide-rate/>>

⁴³ Letter from SAF/A11 to Chris McGhee FOIA 2019-04477-F (Jan. 24 2020)

AF/A1Z, as the “Metric Owner” for the data.⁴⁴

This author contacted Air Force Public Affairs to reconcile the leaked slides with the “no records” response to the FOIA request. The public affairs official stated off-the-record, and later confirmed on the record by the assistant to the Chief Master Sergeant of the Air Force, that the Air Force did indeed have the data on suicides by AFSC. Unfortunately, the Air Force was not the release authority; the DOD Defense Health Agency (DHA) was the release authority. A new FOIA request was created on behalf of this author with the same request for suicide metadata with the exception that this request was sent to DHA.

In December of 2020 DHA responded to the FOIA request for suicide metadata by AFSC. The response stated that DHA could not release the full data that was requested citing a FOIA (b)(6) exemption. The release did give suicide data by the first digit of the AFSC only, essentially providing the broadest possible career categories, not the specific job codes.

FOIA (b)(6) Exemption

Under 5 U.S.C. §552(b)(6) the government may withhold documents that are “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Under Air Force and DOD regulations, the privacy interest being protected isn’t that of the service members who committed suicide. Air Force Instruction (AFI) 35-101 para 2.4.3. states:

Rights of living relatives and associates of deceased Air Force and Space Force personnel should be considered. 5 USC § 552a and the privacy exemptions of FOIA do not protect the personal privacy of deceased persons. Records about the deceased may be withheld under FOIA exemptions or Privacy Act to protect the privacy of living relatives and associates of the deceased. In such cases, determinations to withhold information are based on whether the records contain private or personal information that would adversely affect a recognized privacy right of living individuals[.]⁴⁵

AFI 35-101 also allows the release of the cause of death after a consultation with the investigative agency or the completion of the investigation.

DOD regulation 6025.18-R *DoD Health Information Privacy Regulation* reiterates that deceased individuals do not have a privacy interest, rather privacy protections are for the deceased’s family members.⁴⁶

⁴⁴ See “Air Force Deep Dive on Suicides Lands in the Shallow End” <<http://www.20yearsdone.com/2020/02/air-force-deep-dive-on-suicides-is.html>>

⁴⁵ See AFI 35-101 Public Affairs Operations (Nov. 20 2020) < https://static.e-publishing.af.mil/production/1/saf_pa/publication/afi35-101/afi35-101.pdf>

⁴⁶ “(1) A DoD covered entity may be required by law to disclose certain documents under FOIA. As such, there may be certain circumstances whereby the HIPAA Privacy Rule and this issuance may not prevent the disclosure of PHI of deceased individuals during the 50 year period following the death of an individual. However, FOIA is more limited in scope. It generally does not protect the records and privacy of deceased individuals, but it does offer an exemption (exemption 6) which may in some cases be used to protect the privacy of other individuals such as the

deceased persons surviving family members.”

Court interpretation of a (b)(6) Exemption

Courts have balanced the public interest in the disclosure of the requested information against the severity of the invasion of privacy. Moreover, the First Circuit held that FOIA exemptions “are to be construed narrowly, with any doubts resolved in favor of disclosure” and that the “government bears the burden of proving that withheld materials fall within one of the statutory exemptions.”⁴⁷ In *Union Leader Corp. v. US Dept of Homeland Security et al*, the First Circuit Court of Appeals balanced the privacy interests of arrested individuals against the public interest in the disclosure of their names.⁴⁸ However the Union Leader court also recognized that that case in particular was centered on a (b)(7)(C) exemption which provided higher privacy protections compared to a (b)(6) exemption stating “Exemption 6 is less protective of personal privacy than Exemption 7(C), however, applying only to disclosures that ‘would constitute a clearly unwarranted invasion of personal privacy’ rather than to disclosures that merely ‘could reasonably be expected to constitute an unwarranted invasion of personal privacy.’ Even with the lower burden to show an invasion of privacy the Union Leader court determined that even the full names of arrestees were not immune from disclosure if the public interest was sufficient. When considering the public interest in Union Leader the court stated that when “privacy concerns are implicated the requesting party must show [f]irst, ... that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake,” and “[s]econd, ... [that] the information is likely to advance that interest. Further the court stated that where “the public interest being asserted is to show that responsible officials acted negligently or otherwise improperly in the performance of their duties, the requester must establish more than a bare suspicion in order to obtain disclosure, and instead must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.

Public interest in service member suicides

Since the beginning of 2019 there have been hundreds of articles written about Air Force suicides. From national news outlets to local, thousands of pages, with likely millions of pageviews have accumulated as people in the United States and around the world read stories and statistics related to Air Force suicides.

On September 1st, 2021, the Chief Master Sergeant of the Air Force JoAnne Bass posted to her social media imploring the public to share their “ideas for how we can get after [suicides]” and to “[l]ook at the data, look at the existing programs and resources. Look at everything[.]”

When dozens of news outlets cover Air Force suicides, and senior Air Force leaders ask the public to look at the data and provide insights and solutions, clearly there is a high public interest in service member suicides.

Privacy interest of service member family members

However, public interest must be weighed against the invasion of privacy in order for the information requested to be disclosed.

The questions that must be asked are what data is being requested and how would that data constitute an invasion of privacy. There are thousands of members of each career field. It would be exceptionally

⁴⁷ *Carpenter v. U.S. Dep't of Just.*, 470 F.3d 434, 438 (1st Cir. 2006)

⁴⁸ *Union Leader Corp. v. US Dept of Homeland Security et al*, 749 F.3d 45

difficult to determine which deaths, at which times, at which place, in which career field was a suicide. Moreover, even then, the privacy interest lies with the family members of the deceased service member. Even if someone could determine which person, in which career field specifically committed suicide, determining the identity of their family members would be a step beyond the difficult task of even identifying the deceased solely from their AFSC.

Thus, the risk of an invasion of privacy against the family of deceased service members is exceeding low. This is even more so after prolonged periods of time after the decedent's passing.

Governmental bias when invoking a (b)(6) exemption on behalf of deceased service member families

As seen from the case study, under the backdrop of the legal topography of military service, it is a distinct possibility that at least some service member suicides are the result of abuse and maltreatment during their military service. That maltreatment is in a best-case scenario through negligence in managing career fields, or at its worst the behest of leaders in the military.

At the heart of the issue is that the government is invoking a privacy exemption without investigating which family members are at risk of exposure. Additionally, if they are not contacting the service members' families prior to invoking a (b)(6) exemption they are more likely protecting the reputation of the United States government under the banner of acting in the best interests of aggrieved family members.

CONCLUSION

Is it possible for the government to impartially invoke a (b)(6) exemption on behalf of service members that committed suicide after being subjected to decades of mismanagement? No. And because service members have less freedoms, civil liberties, and rights to address the harms of military service, the government should not be able to compound the injustice by obscuring their role in propagating those harms under the guise of protecting service member privacy.

THE CASE FOR VA EXPANSION

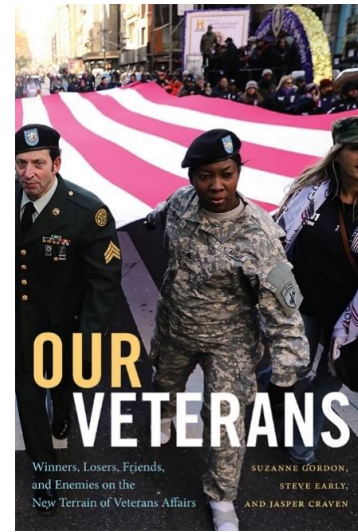
By Chris Ford

High-quality socialized healthcare system for veterans threatened by privatization

Prefatory comment: Given the openly fascist rhetoric and policy¹ emanating from many Washington lawmakers, who have worked to rig elections in their favor through gerrymandering and vote-suppression laws, and a Supreme Court packed with partisan hacks² who in just a few days in June 2022 took such radical, judicially activist steps as legalizing state forced pregnancy laws, compelling states to spend taxpayer dollars on religious education, and prohibiting states from regulating the carrying of firearms in public, one could be excused for wondering, why would anyone want to join a military to defend such a society?

One answer: It's a job, and for some it offers better economic prospects than does the private sector. And, importantly, the government aggressively markets these jobs to the economically vulnerable. Unlike any other federal agency, the U.S. military actively recruits its "employees," spending billions of tax dollars annually via thousands of recruiting offices. As authors Sue Gordon, Steve Early and Jasper Craven point out in their recently released book, *Our Veterans: Winners, Losers, Friends and Enemies on the New Terrain of Veteran's Affairs*, recruiters

Book Review



Title: [Our Veterans: Winners, Losers, Friends and Enemies on the New Terrain of Veteran's Affairs](#)

Authors: Susan Gordon, Steve Early and Jasper Craven

Publication data: Duke University Press, 2022, 309 pages

¹ As a few examples, propping up a strongman personality as a leader; promulgating the Big Lie regarding the 2020 presidential election; refusing to certify the transfer of power to President Biden (as 147 Washington lawmakers did); stoking white nationalism to "restore" the nation's "greatness"; oppressing and promoting attacks on gays, trans people and others with what they consider to be "unnatural lifestyles"; using military personnel and equipment for violent assaults against protesters; attacking immigrants as interloping "others" to be hated; attacking critical thinking and higher education (i.e., going after intellectuals, as all autocrats do); dismantling women's freedoms and rights; feeding corporate profits and starving human needs; targeting contraception, marriage equality and mixed-race marriages; and generally eviscerating personal liberties.

² Evoking the famous line from Shakespeare's Hamlet, "The lady doth protest too much, methinks," during an appearance with Sen. Mitch McConnell at a 2021 event to celebrate the naming after McConnell of a Kentucky university facility, Supreme Court Justice Amy Coney Barrett insisted that the high court "is not comprised of a bunch of partisan hacks." <https://www.theguardian.com/commentisfree/2021/sep/15/amy-barrett-supreme-court-partisan-hacks>. Yet Barrett refused to recuse herself from a decision relating to Shell Oil Company, which employed her father for three decades. *Id.* Moreover, Barrett belonged to what has been described as a "Christofascist cult," <https://twitter.com/sandibachom/status/1308605296437272577> – the group that inspired Margaret Atwood's 1985 novel, "The Handmaid's Tale," in which women are called handmaids and men make all the decisions. https://www.washingtonpost.com/investigations/amy-coney-barrett-people-of-praise/2020/10/06/5f497d8c-0781-11eb-859b-f9c27abe638d_story.html.

certainly play to patriotic feelings, but more than a few who sign DOD contracts are drawn by the prospect of subsidized housing, food and medical care as an antidote to working-class economic woes.

But it also is a job that places its workers in harsher circumstances with diminishing support from outside groups. In the book's preface the authors of *Our Veterans* note "the parallel erosion of veteran organization infrastructure, nationally and locally, and labor union decline in the United States." Ironically, although some join the military to escape dire economic straights – and the military's various marketing campaigns in recent decades have highlighted the supposedly marketable skills service members will learn while in the military – the authors report that veterans experience above-average rates of homelessness, joblessness, mental illness, chronic pain and substance abuse; are far more reliant on payday loans than are civilians; and frequently must depend on food stamps and even food banks.

To read this book is to understand that the U.S. military entices men and women to serve, but then chews them up and spits them out frequently with serious physical and/or mental injuries – then, to add insult to injury, subjects them to bureaucratic resistance when they most need the services of the Veterans Administration (VA) and unfairly refuses to accord VA services to those with bad paper (i.e., other-than-honorable) discharges. On the other hand, those veterans who manage successfully to run the bureaucratic gantlet are rewarded with medical services provided by the Veterans Health Administration (VHA) that are tailored to their needs and frequently better and more efficiently delivered than in the private, for-profit insurance-based healthcare that most U.S. citizens are compelled to endure.

Overview of the book: *Our Veterans* is organized logically as might an academic article. It catalogs the high risk of mental or physical injury of military service, which should surprise no one given the nature of the work, but also the hazards to which the military wrongfully exposes its service members; the role of veterans service organizations (VSOs), their various successes and failures and the inclination of some of the newer such groups to focus less on member participation and more on publicity and the political aspirations of their leaders; the travails of the VA's healthcare system and recent efforts by politicians in both political parties to dismantle the VHA as a public healthcare system or at least privatize as much as possible to generate profits for healthcare administrators and providers, usually with poor results for veterans; and the influence, or lack thereof, of VSOs and other veterans groups on recent elections.

The book concludes with some ideas to save/improve VA services, particularly with respect to healthcare. The authors argue that VA should expand services, just as the U.S. Postal Service, which also has been under attack to create an excuse for privatization and which employs many thousands of veterans, would do well to expand services, e.g., by offering check-cashing, money transfer, ATM and bill-paying services. The authors noting that veterans are four times more likely to use "predatory payday lenders" than nonveterans.

An important theme of *Our Veterans* could be summed up with this quote, attributed to a book entitled *Best Care Anywhere: Why VA Health Care Would Work Better for Everyone*, by Phillip Longman: "The VA model of care continues to outperform the rest of the U.S. healthcare system based on key metrics, including patient safety, wait times, cost-effectiveness, avoidance of racial disparities, and adherence to evidence-based protocols of care." *Our Veterans* concludes that VA care should be expanded, for example, by including veterans with bad paper (e.g. other-than-honorable) discharges, which, according to New England Sens. Bernie Sanders and Richard Blumenthal as quoted in the book, would "uphold Congress's intent to exclude former service members only on the basis of severe misconduct."

The authors of *Our Veterans* also argue the VA services should be extended to veteran's families and VA employees, just as private health systems such as Kaiser Permanente cover their own staff. They note, however that some VSO leaders and other veterans advocates take political positions opposing expansion of VA benefits not only relating to healthcare but also fully subsidized college education, on the theory that expanding such benefits to the general public would undercut military recruiting efforts and military "readiness."

U.S. Healthcare's best-kept socialized-medicine secret: The American public favored publicly funded, single-payer health care as far back as the 1990s, but the "conventional wisdom" among the vast majority of politicians and certainly the corporate press is that a medical system that does not include administration, service-allocation decisions and profit-taking by insurance companies that do not themselves provide any medical services somehow is un-American and does not demonstrate appropriate fealty to that 19th century economic model known as capitalism.

However, the authors of *Our Veterans* reveal the fact that right under the noses of these politicians and their media scribes is a highly capable, socialized system of medicine that offers skilled services to 9 million veterans, many of them working class and persons of color, and tailors these services to their often-unique needs. As one example, according to the authors, the VA produces *How to Take a Military Health History*, a document that lists the hazardous exposures experienced by service members over the past 80 years so that the symptoms can be identified and treated. The authors further note, "Unlike in the VA, where adoption of new [mental health] treatments is evidence-based, there is less quality control in the world of private-sector mental health care."

The book discusses some of the many hazards faced by members of the military beyond the expected physical injuries and wartime maiming, including traumatic brain injury, hearing problems, PTSD, depression, other mental health problems, and stress derived from economic difficulties. Women face the added adversity of not only feeling that they must not display any "weakness," but also potentially having to survive sexual assault or abuse that goes unpunished, the unfortunate if predictable result in an environment that normalizes gender-based bullying, sexual innuendo and general disrespect and degrading treatment of women. For example, as one female veteran quoted by the authors related, a woman in the service might say that "the rape was bad, but everything that followed was worse." Sexual assault in the military increased after 2015, while conviction rates plummeted 60 percent. Meanwhile, death by suicide has become "a more serious threat than dying in combat," according to the book.

The privatization assault on the VHA: A pundit in the 1990s offered this insight: when a governmental agency seeks to privatize a function, simply substitute the term "privatize" for "loot," and you'll understand what really is happening. Often billed as a path to efficiency, privatization schemes often are hopelessly rigged to ensure the crony capitalist who gets the contract makes a profit. As an example from the civilian world, for-pay freeway express lanes in Southern California are operated by private "contractors," and in their contracts they have a non-compete clause which prohibits the public sector from creating or expanding a road along the same route. In other words, the public is barred from addressing through the democratic process traffic congestion along the "contractor's" route if doing so would cut into its profits.

In the VA world, politicians have attempted to sell their increased privatization of VA services as allowing “choice.”³ But they force the choice in a tried-and-true manner: they first starve the public agency of money and staffing, then complain that the agency is “failing,” and, in the case of the VA, offer veterans the “choice” to receive services from politically connected private health care providers who may have no idea how to treat veterans.

Our Veterans further reports, predictably, that privatization schemes lead to corruption. For example, one private health provider brought in to solve the problem of increased wait times at purposely understaffed the VHA centers was found to have falsified wait-time data, allowing administrators to collect performance bonuses. Another contractor sent veterans to a Florida doctor who was under federal investigation. A 2021 Stanford study reviewed 400,000 ambulance calls made by veterans and found that when a veteran was taken to a non-VA emergency room, the veteran’s risk of death over the following 28 days doubled, and the cost to the taxpayer increased 21 percent.

On the other hand, the authors point out that a large portion of the U.S. public simply goes without treatment of diagnosable mental health disorders, while the waiting time for VHA mental health professionals in 2018 averaged four days. And after the COVID-19 pandemic took hold in 2020, the VA “quickly emerged as the only national healthcare system able to mount a coordinated response,” because its emergency response “was not hobbled by a fee-for-service model or the need to generate revenue sufficient to meet shareholder dividend demands.” Nonetheless, *Our Veterans* leaves no doubt that the ultimate intention of the various attempts to debilitate the VA then “solve” the problem by outsourcing to the private health system is to dismantle altogether the VA’s role as public healthcare provider to veterans. Out of one side of their mouths Washington politicians say they “support our troops, yet their acts show they seek to destroy the very agency that provides badly needed support to veterans, so as to create just another profit source for their cronies in the business world, no matter the deleterious effect on veterans.

The value of this book: As mentioned, *Our Veterans* is thoroughly researched and documented and organized somewhat like an academic paper. If it has a flaw, it also reads a bit like an academic paper, though to be fair it is a more compelling read than a typical entry in an academic journal. The authors, to their credit, strike a reasonable balance between sourced information and relation of the personal experiences of veterans, VSO figures or politicians involved in veterans’ issues. They also appropriately avoid writing in an overly breezy style in an attempt to capture and retain readers, which is a crutch upon which practicing journalists typically lean when writing books, and that tendency can get annoying quickly. *Our Veterans* can serve as a valuable resource for those interested in an updated look at circumstances facing veterans, and it offers meaningful and valuable suggestions for expanding services provided by the VA, even if in the current political climate it would be a serious uphill slog to achieve such beneficial policy objectives.

³ An Obama-era VA privatization effort actually was titled the “Choice Act.”

MLTF statement on SCOTUS abortion ruling

OVERTURNING OF ROE V. WADE’S IMPACT ON WOMEN IN THE MILITARY AND MILITARY FAMILIES

With its disastrous [decision to overturn Roe v. Wade](#), the Supreme Court has endangered millions of pregnant people and stripped them of their autonomy and reproductive rights. [Twenty-two states](#) have laws or state constitutional provisions already in place that will totally or effectively ban abortion in light of the Court’s decision in Dobbs v. Jackson Women’s Health Organization, which holds that the U.S. Constitution does not confer a right to abortion. Overturning Roe especially imperils the lives of the poor, people of color, and minors. It will also have an outsized effect on women in the military.

Some of the military’s largest installations are in states where abortion will immediately become banned in the wake of Roe’s repeal, including Fort Hood and Fort Bliss in Texas, Fort Campbell in Kentucky and Tennessee, and Fort Benning in Georgia and Alabama. All told, hundreds of thousands of troops and their dependent family members will be unable to access safe and legal abortions.

Overturning Roe adds yet another layer to the gender discrimination and inequality in the military. Women in the military already face pervasive discrimination and [harassment](#). Thousands of women service members are [sexually assaulted or raped](#) each year. Moreover, service members already have [greater difficulty in accessing reproductive health care](#) than their civilian counterparts. Federal law [prohibits service members from receiving most abortions](#) through their military health care, and military doctors are not allowed to perform abortions. Even if abortion is available in the local community and a service member can pay out of pocket for the procedure, they must have a commander approve to get leave obtain an abortion off base.

The military must not let the states dictate its service members’ abortion rights. The MLTF supports efforts to ensure that all servicemembers have safe and legal access to abortion, and that service members can request transfers out of states that will discriminate against—or take rights away from—them or their family members. The MLTF calls upon the service branches to ensure that their members have access to safe, legal abortion options, and for Congress to repeal the restrictions on military providers and health insurance providing abortion coverage.

The MLTF stands ready to assist those within the military who may be affected or at risk because of Roe v. Wade being overturned. We also work with other allied groups attempting to enact meaningful policy changes in this area.

MLTF PLANS FOR THE UPCOMING YEAR

By Jeff Lake

Following our committee meeting around the virtual NLG Convention last fall, the MLTF has been working in a number of areas. As I see it, the upcoming year will build on that work while we remain flexible to address unexpected developments and challenges.

Recent developments have implicated the work of the Military Gender Justice Committee (previously known as the Women's Project). On the day of the Supreme Court's decision in *Dobbs*, the committee released a statement reprinted in this issue of *On Watch*. The committee will be working with allies to address the issues of access to safe abortion care for women in the military going forward in the next year and beyond. In addition, the committee will be updating its brochure and self-help guide on sexual harassment and sexual assault and its legal memo on challenging retaliation for assault/harassment complaints.

The Anti-Racism Committee continues its work on this vital issue. The committee has produced a legal/political memo on military racism and Military Equal Opportunity complaints and is beginning work on a self-help guide to challenging racism and extremism. The committee has made FOIA requests to DoD and all branches of the service for statistics and information on the military's handling of white supremacy. The committee had released a statement of the MLTF's position on military racism, available on the MLTF website. [Statement On Military Racism - Military Law Task Force \(nlgmltf.org\)](https://nlgmltf.org)

The Selective Service Committee is following new legislative action on expanding draft registration to include women this year, as part of the National Defense Authorization Act. The committee is planning to focus some of its work on training MLTF members in draft counseling and providing advice and resource materials on threats of prosecution for non-registration. Although there have been no prosecutions for several decades, Selective Service continues to send out boiler-plate letters warning non-registrants that they face prosecution, so there remains a need for support for non-registrants. In addition, the committee has created a section on our website on draft and registration issues, at [MLTF's anti-draft program work - Military Law Task Force \(nlgmltf.org\)](https://nlgmltf.org)

The MLTF has launched a training/CLE series "Advocacy and Activism Through Military Law." This series or a related one could be extended into the coming year depending upon demand. For information on upcoming topics and registration, go to the [training hub](https://nlgmltf.org) on our website.

The context in which we do this work is that of a military that is increasingly threatening and belligerent and poses a real threat. The MLTF is monitoring the situation and stands ready to engage in anti-interventionist and anti-militarism work as the need arises.

Obviously there is a lot of work to do in the upcoming year. I invite all readers of *On Watch* to join us in this work. An announcement of our committee meeting will be included in the next issue and we look forward to seeing and meeting with all of you then to discuss our upcoming work.

MORAL INJURY IN REAL TIME: WHAT DO WE MAKE OF SMEDLEY BUTLER?

By Chris Lombardi

If you've heard of General Smedley Butler, you likely know two things: He was a highly decorated Marine, and he was a Quaker.

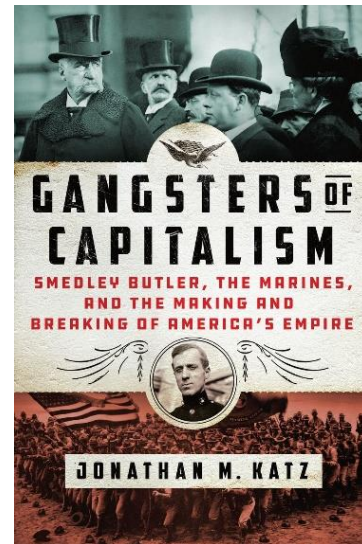
A 1982 biography of Butler is entitled *Maverick Marine*, a sideways reference to the famously anti-war religion that birthed him. The inherent paradox blows the mind: A famous Marine general who was *also* a Quaker? One from *Philadelphia*, the City of Brotherly Love *founded* on the Peace Testimony? Luckily, Jonathan M. Katz goes deep on Butler's journey, the paradox underlying his nearly 4 decades of service, in his new book *Gangsters of Capitalism: Smedley Butler, the Marines, and the Making and Breaking of America's Empire*. How does such a Marine's Marine--someone with two Medals of Honor, along with the rack of medals common to someone who makes it to the rank of general - end his life *also* a hero of the anti-war movement?

An answer might lurk in this observation from Katz, halfway through the book: "Having joined the Marines to fight against a *tyrannical* empire and live out his parents' *Quaker* ideals, he had *spent decades* invading other people's homes and *sacking* their lands." It's also where Katz elucidates the concept of "moral injury," a term first coined to describe Vietnam veterans, for the trauma induced by harming others.¹ That might explain why antiwar veterans love him: the Boston-area chapter of Veterans for Peace, founded in 1985, is called the "Smedley Butler Brigade." I met members of this chapter when I was just getting started on my own book about anti-war soldiers and veterans, and was asked how much of the book would focus on Butler. My answer was "not much," but that didn't mean I wasn't fascinated by the guy, who served for much of the century in which the U.S empire was unashamed. Now Katz, a journalist who's reported from some of Butler's imperial hot spots, has produced a smart, often novelistic telling of a sometimes-incredible life.

MLTF members might recognize Katz as a fellow traveler, in this weird subculture of ours: lefty civilians for whom soldiers and vets are lodestars. When I guest-edited an issue of the DSA magazine *Democratic Left* in 2019, my editor's note swiped the title of Butler's 1935 book, *War Is a Racket*, and the issue included a reflection on Butler by Spenser Rapone, then known as "[West Point's 'Commie Cadet'](#)" (who graduated in 2018 with a cap inscribed "Communism Will Win"). Between Butler's anti-war credentials and his support of the Socialist Party candidacy of Norman Thomas, it felt almost too easy to love Butler.

¹ Logan Mehl-Laituri (Isaac's former name)., "What Terrible Wisdom, What Awful Power to Unmake: Surveying Moments of Moral Identity During War," MDiv thesis, July 2013.

Book Review



Title: [Gangsters of Capitalism: Smedley Butler, the Marines, and the Making and Breaking of America's Empire](#)

Author: Jonathan M. Katz

Publication data: St. Martin's Press, 2022, 432 pages

Both of Butler's parents, Katz notes, were prominent Quakers. He even mentions the "Peace Testimony" for which the Quakers who settled Pennsylvania were known, adding that "Conceived on ideals of peace, justice, and brotherhood, [the country] would be built on *conquest* and *exploitation*." What makes Katz' book sometimes painful to read is his honest account of the latter, recounting the years in which Butler shed blood not his own for the U.S.' empire.

Both of Butler's grandfathers fought for the Union Army in the Civil War; Katz calls the war against slavery a "special case," given that Quakers had opposed and fought against slavery since at least 1664. But the years when those grandfathers served, starting with the pre-Civil War period that included the death of John Brown, also re-framed Quaker perceptions of violence and even what constituted conscientious objection (e.g., Jesse Macy, Civil War medic and "drafted Quaker"). So, by the 1890s, Quaker communities were particularly vulnerable to pro-war propaganda reports from Cuba. As the Spanish-American War began, even *The Friends Intelligencer and Journal* carried reports from Clara Barton about her volunteers battling "filth and death" in occupied Cuba.

So did Civil War veteran Ambrose Bierce, who covered the war long-distance for William Randolph Hearst. "Horrid War!-- [between the] United States and Spain has already broken out like a red rash in the newspapers," Bierce had written in the *San Francisco Examiner* years earlier.² Amid Spain's decades-long occupation of Cuba and the Philippines, Cuba's successive wars for independence had begun, the horrified *New-York Times* pointed out, with freed slaves.³

To many Americans after the Civil War, every war was a possible race war. As more acceptable (white) revolutionaries joined the fight against Spain, the newspapers' interest morphed into cheers for the liberty of the Cuban people. One "Wealthy Cuban Now in This City" told the *Times* in 1895, "I know of scores of educated men—doctors, dentists, and lawyers—who have joined the insurgent ranks They all want to free their native island from the tyranny of the Spanish Government or die in the attempt."⁴ Bierce's employer, William Randolph Hearst, sent dozens of correspondents to Cuba, whose stories bore lurid headlines: "SPANIARDS AUCTION OFF CUBAN GIRLS."⁵

Then, on February 15, 1898, an explosion in Havana Harbor destroyed the U.S. battleship *Maine*. It's still unclear why, but Hearst and the charismatic young Assistant Secretary of the Navy, Theodore Roosevelt, blamed Spain. Soon 30,000 troops were headed for deployment, including 13,000 hastily recruited volunteers.

That's when young Butler, a student at a Quaker high school near Philadelphia, enlisted in the Marines just before his 18th birthday. His mother told the local Quaker meeting they had to accept it or risk losing the support of her wealthy family. Katz, whose book starts out in Guantanamo Bay, Cuba, goes into detail about the Spanish-Cuban political morass Smedley Butler was enlisting for.

² 16. Ambrose Bierce, "Prattle," *The San Francisco Examiner*, 26 March 1893, 6.

³ "FROM CUBA: Troublesome Negroes—Some Difficulties for the Future—News from the Seat of War." *New-York Times*, March 23, 1872.

⁴ "SPANIARDS WITH REBELS: The Cuban War is Being Waged with Desperation," *New-York Times*, October 19, 1895.

⁵ Morris, p.230.

But though Butler enlisted to “save” the Cubans from Spain, by the time his ship landed the Spanish-American War had ended, with a treaty that allowed the United States free access to Cuba and U.S. corporations control of its industries. The U.S. got to keep Guantanamo Bay as a military base, which became a second home for Butler in the upcoming assaults on Nicaragua and Haiti. Meanwhile, Butler was drafted into the more morally ambiguous war in the Philippines. Katz spends more time on the ups and downs of that war than Butler did, chased home by typhoid fever; he barely mentions the veteran-led Anti-Imperialist League, or all the soldiers who testified before the Senate about U.S. torture (including waterboarding) against Filipino civilians. None of that is part of Butler’s story, even while the Marines he’d left behind destroyed Filipino villages.

Katz does note, as I did, that the “insurgents” the U.S. was fighting were led by a former ally who’d hoped that Americans would support him because of principles of freedom and equality, but instead found “no consensus that those principles ought to be extended to everyone.” Still true and what’s rivening us now.

Next comes, in somewhat-anguishing detail, what the Marines were actually doing in the years before World War One. On Twitter we call them “receipts” – the actual concrete details behind Butler’s assertion in *War Is a Racket*: “I helped make Mexico, 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 benefits of Wall Street. The record of racketeering is long. I helped purify Nicaragua for the international banking house of Brown Brothers in 1909-1912. I brought light to the Dominican Republic for American sugar interests in 1916. In China I helped to see to it that Standard Oil went its way unmolested.”

Having written a whole book about America’s wars, I learned from Katz what *else* was going on in its name. I knew about the arrest of eight sailors in Tampico in 1914, the “Tampico incident” that led Woodrow Wilson to order troops into Mexico, but not about the troops’ injunction to protect Standard Oil’s “Golden Lane” from Tampico to Veracruz (perhaps the US’ first war for oil). Wilson, Katz notes, is known as an idealist, but his actions were in pursuit of “the ideal social order, [which] looked a lot like the racially stratified South in which he was born.” Thus, the need to protect not just Standard Oil but other then-burgeoning financial giants. Names like J.P. Morgan and Thomas Cromwell, a founder of the National City Bank of New York, pop up with unerring frequency in Katz’ book, from continent to continent: from Philadelphia to the Philippines to Haiti to China, where Butler’s Marines help Standard Oil evacuate its compound in Nanjing and again in Shanghai decades later.

Veracruz is where Butler learned how to conduct house-to-house counterinsurgency. “We poured a volley through the floor and then ripped up the boards.... There they were, two dead Mexicans dangling between the cross beams.” Butler won his first Medal of Honor for Veracruz, to his own horror: “I did my duty as best I could in Veracruz,” he wrote, “but there was absolutely *nothing heroic in it.*”

Butler was by then in Haiti, where he’d faced off with insurgents at an old French fort. Katz writes: “Butler watched with both horror and relief as they climbed and leaped off the parapets, only to be mowed down as they fell by Campbell’s machine gunners, who had been lying in wait. Two days later, a small group of Marines climbed back up the mountain and dynamited the interior of the fort, Haitian bodies and all.” Butler’s *second* Medal of Honor was for that Haitian battle, after which Cromwell’s bank became “National City Bank of New York and Haiti”; Butler’s Marines had dissolved Haiti’s parliament and seized its treasury.

Then the mayor of my city recruited Butler to run its police department, but Philadelphia's corruption chased him out of Philly instead. If only Butler's Quaker parents had taught him about Lincoln Steffens, who wrote in 1902 "Philadelphia is corrupt and contented." But that job for Butler is more significant for its role in the militarization of police, a topic of only triangular relation to the military story. After Philly, Katz follows Butler to China in 1925, and the last days of the "Shanghai Concession." We learn that Sun Yat Sen's revolution was nurtured by the finance boys, including a Klansman named Julian Carr; they stayed involved through the transition to Chiang- Kai-Shek and his battle against Chinese Communists. including a massacre in which Shanghai investors paid for Tommy guns, until, as Katz narrates, "Bao Shan was a river of blood." An Army occupation would be too explicitly imperialist; Standard Oil and the boys wanted deniability, so they requested the Marines as they evacuated "Socom," the company's luxury neighborhood of Nanjing, for the marginally safer Shanghai Concession.

By then, the country had elected as President Calvin Coolidge - a Quaker like Butler, whose top diplomat, Frank Kellogg, was "an icon of the anti-imperialism wave the Republicans had ridden back to power." Katz writes with disbelief about the 1928 Kellogg-Briand Pact, "in which sixty-four countries [including the U.S. and Germany] renounced war as an instrument of national policy." The signatories then commenced to violate the Pact, including the re-arming of Germany and Italy and, of course, sending Butler's Marines back to China to complete the evacuation of Chase and Standard Oil.

The Marines didn't try to stop Chiang Kai-Shek's violent purge of "Communist elements," just protect the capitalist ones. "All day there has been wholesale murdering near us," Butler wrote in a letter home, adding that the 40,000 foreigners in Shanghai feel protected by the Marines. Still a willing "gangster of capitalism," Butler wrote in a secret military memo that the United States should get closer to who he called "Shek," in a "golden opportunity for us to get in on the commercial ground floor of this movement." But by 1929, when Butler went home to the Marine Corps headquarters at Quantico, he clearly had little any patience for the powerful, getting himself court-martialed for insulting Mussolini and heading out the door, getting closer to the "War is a Racket" Butler.

Butler's most visible moment came exactly 90 years ago, when he joined the veterans who marched on Washington in the spring/summer of 1932, fighting for adequate veterans compensation. That movement was founded by Walter Waters, who in 1916, when Butler was in Veracruz, was serving in the Oregon National Guard, 146th Artillery. Long before the U.S. entered the European war, Waters' unit had taken part in a domestic military operation: they guarded border camps at Nogales, Arizona, just as Butler's Marines and 14,000 regular Army troops drove into Mexico in pursuit of Pancho Villa. Waters' Guard unit then deployed to Europe in 1918, suffering steep losses at Saint-Mihiel and Château-Thierry, but when he demobilized in 1919, it was hard to get a job back home. When each job hunt failed, he writes in his memoir, "My inability to take root in fertile soil may have been due to the unsettling effects of the War on me."

Smedley Butler spent that year helping demobilizing troops recover their health, having arrived in Europe as the war ended. Katz does masterful work tracing the "Great War" to its colonial sources, quoting (if not by title) W.E.B. Du Bois' iconic "The African Roots of War" and flagging the Bankers' interests in the conflict.

Like Civil War veterans a half-century earlier, in 1919 both Butler and Waters picked at their bad memories, trying to find a way forward. The war's veterans, nearly three million strong, would soon be a stumbling, angry presence across class and race lines. Katz tracks Butler's failed run for Senate in 1930, in which he "called for major public works spending and a *federal jobs guarantee*" and publicly opposed

“sending American boys to be killed abroad in defense of the investments of international bankers.” So, Quaker a campaign was bound to lose in Pennsylvania, with its wealthy Quakers and “corrupt and contented” major cities.

Gangsters includes a photo of Butler with Waters, who’d lost his job at a cannery shortly after the stock market crashed in 1929. Waters had turned his malaise into activism, helping organize a “Bonus Expeditionary Force” that in 1932 converged on Washington, D.C., 43,000 strong, demanding they receive payments from the “bonus” Congress had promised.

They marched in groups of ten, of thirty, of several hundred. They marched from San Francisco, New Orleans, Poughkeepsie. Black and white veterans sometimes marched together. It was a march against invisibility, an escalating demand for recognition, as much as for a guaranteed pension. By the eve of the May 29th vote on a comprehensive package of veterans’ assistance, there were 4,000 veterans camped out in front of the White House, with an additional 3,000 on the way. Welcomed by Anacostia Police Captain S.J. Marks,⁶ the group published their newspaper, *The BEF News*, out of their fort “Camp Marks.”

Roy Wilkins wrote in the NAACP magazine, *The Crisis*, that Camp Marks was non-segregated: “There I found black toes and white toes sticking out side by side from a ramshackle town of pup tents, packing crates and tar-paper shacks.... For years, the U.S. Army had argued that General Jim Crow was its proper commander, but the Bonus marchers gave lie to the notion that Black and white soldiers—ex-soldiers in their case—couldn’t live together.” Camp Marks got the House to pass a bonus bill, though many in Washington dismissed the encampment as a Communist plot and Hoover ultimately ordered Colonel Douglas MacArthur to move against the encampments, claiming they endangered public safety.

Butler arrived at Camp Marks before then, on July 19, 1932, Katz describes the moment he stood beside Waters, “his *polka dot tie between* two shirt buttons so it wouldn’t flop around.” Butler told the assembled veterans: “Who in the *hell* has done all the *bleeding* for this country, and for this law, and this Constitution anyhow, but you fellas?” Footage of that moment [on YouTube](#), brings me back to the Smedley Butler that would write *War Is a Racket*, and to the revolutionary potential of someone who has sat with his combat trauma.

It was just as he was contending with that trauma that Butler received an invitation from a Navy veteran newly returned from Europe, who told Butler “It’s time to bring all the soldiers together.” Funded by some of the same bankers his Marines had long been protecting, including weapons moguls the Du Pont brothers, they could march on the White House, just like Mussolini’s strongmen had done or the newly formed Fiery Cross in France. Butler and his half-million soldiers could persuade President Franklin Roosevelt to step aside for a “secretary of state” who’d run the government, ending Roosevelt’s “socialistic” New Deal. Butler, Katz writes, knew a coup when he saw it: he’d “made a life in the *overlapping* seams of capital and empire,” and had helped install strongmen all over the world for the same bankers calling on him now.

Asked if he was interested in leading this campaign, Butler replied: “If you get these five hundred thousand soldiers advocating anything *smelling of fascism*, I am going to get five hundred thousand more and lick the hell out of you.” This conversation is actually the prologue to Katz’ book, the signal Smedley Butler moment: the day an appeal to militarism didn’t mask its fascism.

6 Lt. Col. Bryan Greenwald, “The Bonus March: A Forgotten Stain.” *Military Review* 80 (March-April 2000), p.92.

Katz does terrific work limning those “*overlapping* seams of capital and empire,” including contemporary echoes when he visits those places in the 21st century. Recent journalism about Haiti and its “debt” to France can be no surprise to those who have “watched” Butler dismiss the Haitian Parliament on Katz’ page 242.

He’s less comprehensive covering the years that followed, the “inter-war period” that often feels more like pre-war. In 1935, as Hitler’s Nazi Party was militarizing his country while stripping citizenship from all who didn’t fit their “Aryan” ideal, Butler’s anti-war essays contended with national talk of “preparedness” by both military and civilian forces across the American political spectrum. Dissenting publications, whether *New Masses* or the NAACP’s *The Crisis*, were “prematurely anti-Fascist,” but not cheerleaders for war; the American League Against War and Fascism joined with the Communist Party and pacifist organizations, all equally determined to prevent another war.

A student peace movement was sparked by the “Oxford Pledge,” which read “We pledge not to support the government of the United States in any war it may conduct,”⁷ in which 175,000 students walked out on class in an April 11 “Student Strike Against War.” Millions made a best-seller of *War Is a Racket*, and devoured *WAR: No Profit, No Need* by Norman Thomas, the Socialist Party candidate for President who Butler had visibly supported. Advocates for conscientious objectors prepared for what would happen if war came, thinking about how young men opposed to military service –many of them Butler’s fellow Quakers--could still do “work of national importance” and thus earn a draft exemption from the Roosevelt administration.

Katz waits until his book’s final pages to mention other dissenting soldiers and veterans, from Vietnam-era general David Shoup to Chelsea Manning and Reality Winner. And he gives the book’s final words to an active-duty master sergeant he meets at Butler’s grave, who’d already told him that Butler’s memory was guiding him as he headed to Iraq. “The military is a sharp instrument in the hands of a blunt man,” the young man told Katz, the words of what I used to call a “fighting dove.” *Gangsters of Capitalism* is equally blunt and incredibly smart, worthy of its complex and unique subject.

7 Youth Committee for the Oxford Pledge, "Bulletin from the Youth Committee for the Oxford Pledge" (1938). CUNY Academic Works.

ANNOUNCEMENTS

MLTF TRAINING RESOURCES EXPANDED AND UPDATED

The MLTF has launched a series of monthly trainings to serve as an introduction to military law. Entitled “Advocacy and Activism Through Military Law,” instruction will be conducted live via Zoom, but also available as recorded presentations for at-will viewing.

Topics include “An Anti-Imperialist Approach to Military Law” and “An Introduction to Ethics in Military Law.” The series comprises two tracks, CLE based, with a fee of \$50 per session for credit, and activist, free of charge (but donations appreciated).

This program is made possible through the funding of the NLG Foundation and our co-sponsors, including Courage to Resist, Center on Conscience and War, and the Oklahoma Objector Community.

For more information, and to register, visit nlgmltf.org/training

GI RIGHTS NETWORK CONFERENCE

The [GI Rights Network](#) will hold its 2022 annual conference virtually from July 22 to 24. It will include workshops on Article 138 and other complaint procedures, assistance to victims of discrimination, moral injury, the Civilian Medical Resources Network’s work, and life after discharge for conscientious objectors.

MLTF is a member group of the Network, and so our members are invited to attend. To register, you can contact Steve Woolford at co2000now@gmail.com.

ABOUT THE CONTRIBUTORS

Contributors

Chris Ford, a former newspaper reporter and editor, is an attorney licensed in California and Arizona whose practice focuses on civil appellate and trial-level litigation.

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

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

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

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THE MILITARY LAW TASK FORCE OF THE NATIONAL LAWYERS GUILD

ON WATCH is published quarterly by the Military Law Task Force of the National Lawyers Guild. Subscriptions are free with MLTF dues (\$25), or \$20 annually for non-members.

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

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

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

Editors: Kathleen Gilberd, Rena Guay and Jeff Lake.

CONTACT

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

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

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

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

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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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