

**MILITARY LAW TASK FORCE  
OF THE NATIONAL LAWYERS GUILD**

**CONSCIENTIOUS OBJECTION:  
SUPPLEMENTAL MATERIALS  
FOR COUNSELORS &  
ATTORNEYS**

318 Ortega Street

San Francisco, CA 94122

415-566-3732

[MIhiken@pacbell.net](mailto:MIhiken@pacbell.net)

[Kathleengilberd@aol.com](mailto:Kathleengilberd@aol.com)

These articles are designed as supplementary materials on conscientious objection in the military. Both were written by Kathleen Gilberd, co-chair of the MLTF. Broader and more fundamental information can be found in Helping Out, the Central Committee for Conscientious Objector's discharge counseling manual, and in Advice for Conscientious Objectors in the Armed Forces, also from CCCO. Familiarity with the Department of Defense Directive on Conscientious Objection, DoD Directive 1300.6, is important, but readers should note that there are important differences in some of the service regulations.

**COUNSELING CONSCIENTIOUS OBJECTORS  
DURING WARTIME**

During the Gulf crisis, many of us counseled military Conscientious Objectors (COs) under extremely difficult circumstances. We encountered command responses not seen since the Vietnam War, as well as newly-created obstacles to successful claims. Our experiences provide some valuable lessons for counseling during future military actions. Some of them are common sense counseling approaches which we would use in counseling COs under any circumstances, but which are even more important in the middle of military actions.

**Service members need to be aware of all of their options.**

During the Gulf crisis, there was a fair amount of discussion of Conscientious Objection and resistance in the press, and some peace groups developed publicity materials, which emphasized conscientious objection as

the alternative to service in the Gulf. Many soldiers and sailors who came to us stating that they wanted to file conscientious objection claims did so because they had heard or read about COs and did not know any other options were available.

While it is always important to make sure that GIs are aware of all the discharges for which they might qualify, crisis conditions make it even more important that potential COs are given full descriptions of all of their alternatives. In many cases, this will simply reinforce their belief that conscientious objection is the route they should take, but many will find that hardship, medical, homosexuality, or other discharges fit them as well or better.

For active duty personnel, of course, conscientious objection claims should normally not be accompanied by any other discharge claim. For these individuals, it is even more important that all bases for discharge be explored before a CO claim is initiated. This is not the case, however, with recruits seeking separation from the military's Delayed Enlistment Program, under which young people sign up for the military up to a year before going on active duty. Members of the Individual Ready Reserve (IRR) have had some success raising multiple discharge claims.

During the Gulf crisis, many of us found military commands more resistant to CO claims than they had been in the past. GIs filing CO claims during a period of heightened militarism should be forewarned about the biases they will encounter and about the possibility that their commands are likely to be more receptive to other discharge claims. This is particularly true for clients who also have disciplinary problems. Returning AWOLs or UAs should understand the possibility that filing a CO application will make commands more punitive in disciplinary proceedings.

GIs and counselors need to be prepared for shortened preparation time. The crisis situation of the Gulf War created incredible time problems for CO applicants. Most of us are used to spending a minimum of three to four weeks working with COs to ensure that their applications are well-prepared and that letters of support are sufficient. For applicants facing imminent activation or deployment during Operation Desert Shield, the reality was much different. However, it is essential that we urge GIs to spend as much time as possible writing and rewriting their applications before submission. The temptation to turn in a first or second draft of a CO application or to

turn in a final draft or letters that have not been reviewed by a counselor must be resisted as much as possible.

The temptation to let COs work from sample applications to speed up the process should be avoided, since it is difficult for anyone to keep from picking up phrases or a writing style that is not their own. This discrepancy is likely to show up in formal interviews when a GI speaks in a manner or using language that is very different from that used in his/her application. It is far safer to suggest that GIs work from outlines of the issues which should be discussed in response to each question on the CO application. Given the time constraints they faced, many GIs were uncomfortable writing and rewriting drafts of their applications. We found it important to spend more time than usual talking with them about the need for well-crafted applications and the fact that this work also pays off in the interviews, since well-prepared applicants have a better sense of how to express their beliefs verbally and are less likely to be caught off-guard by questions or issues they have not considered.

Having said all this, I should add that I recognize that some applicants will be unable to take the time necessary to prepare polished claims. In such cases, counselors may want to suggest that the applicants state in the applications that they were written under time constraints and why. This may make it easier to explain omissions (but not mistakes!) in the initial claims and to justify additional written submissions.

In addition, though counselors normally like to have all letters of support submitted with the applications, it may be wise to hold a letter-writer or two in reserve, to submit just prior to the Investigating Officer (IO) interviews. Their letters could be used to shore up any weaknesses in the applications that have been discovered after the applications were submitted and any problems in the chaplain's interview. If, for instance, the chaplain found that the client had failed to explain adequately his opposition to noncombatant duty, Uncle Charles's letter might comment on the client's discussions with him about just that point.

There are some useful court cases holding that difficulty in articulating beliefs is not an appropriate reason for denial of a claim. Where clients have not had adequate time to write thorough and thoughtful applications, these cases may be helpful in rebuttal to investigating officer reports which mistake such inarticulateness for lack of depth of belief.

**We need to consider and confront the command biases which occur during military interventions.**

CO cases processed during and shortly after the Gulf War have demonstrated several common military biases:

- a belief that claims are being filed out of cowardice or expediency by applicants who just do not want to risk harm in time of war;
- a belief that conscientious objection is the easy way out;
- and, a belief that claims are likely to be motivated by policy or political considerations, based in part on officers' biased views of public resisters who have expressed CO beliefs.

We should be prepared to confront these biases in CO applications and letters and prepare clients to deal with them in their interviews.

The tendency to suspect all wartime COs of cowardice or of acting out of expediency based solely on a desire not to die in the war zone is the most significant of these biases. Applicants may be able to address it by showing that their beliefs were beginning to grow before military action began or before they had any inkling the war could affect them. Where possible, they should mention and document even earlier experiences or actions linked to those initial beliefs. While this is always important, wartime applications may need to make the point more strongly than other claims. It is particularly useful to include these early beliefs in support letters (Last February, Jane wrote to tell me that she was beginning to have questions about X, and that she was praying more often in hopes that she would find the answers to these questions.) COs taking this approach should certainly be prepared to show that there has been substantial development of their beliefs between these early experiences and the time the beliefs finally crystallized.

Some COs may be able to say that their beliefs crystallized before they were confronted by the prospect of participation in a military action, although they should be prepared to explain any delay in filing their applications. The rule of thumb among some counselors is that claims should usually be submitted between two and six months after the beliefs crystallized, although opinions may differ here.

At the same time, we must remember that it is entirely consistent with CO regulations and law for beliefs to develop during or in response to war. COs must make it clear that, even if their beliefs were triggered by their reflection about the war they were asked to fight, their beliefs have come to encompass all wars. It may be helpful for them to write specifically (and in more detail than we would normally suggest) about other foreseeable wars they would oppose, including defensive wars. If they can stomach it, some COs may wish to mention and document their support for the current war prior to development of their CO beliefs.

Given these suspicions of expediency, we must take extra care to review clients' personnel and medical records (and any other information available to the command) for evidence of ulterior motives (such as evidence of medical or family problems or indications that they had other reasons to dislike military life). This information needs to be explained or negated in the application.

The belief that CO is the "easy way out" is closely linked to this first bias. COs may wish to stress the difficulties of being a CO. Presumably they face opprobrium from other soldiers and the civilian community, difficulty in obtaining jobs during a period of great support for the war, and loss of security and military benefits. Some of these things may sound silly out in the real world, but many military officers believe them. COs may wish to give specific examples of these difficulties: angry responses from a parent or close friend, their realization that they would not be able to go to work for retired master chief Smith's construction firm, etc. COs should also make clear in their applications and support letters that the beliefs did not come easily – that they agonized over their developing beliefs and undertook much soul searching in the process.

The suspicion that COs are really political activists in disguise is less widespread but bears watching. Some COs may wish to distance themselves from politics or activism, although I would not encourage GIs in such an approach. It is more appropriate to ensure that political terms and arguments are minimized in the application. Where the command is aware that the applicant has engaged in political activities or in political discussions with other soldiers, these acts might be mentioned and re-explained in moral or religious terms.

The law certainly permits COs to have political views so long as the religious or moral beliefs are paramount. Where clients are comfortable defining their political activity in religious or moral terms, this may prove the safer approach during wartime, particularly for COs who would be unable to litigate a denial of their claims. Where clients feel strongly that their political beliefs need to be discussed, it may be important to remind commands of that case law.

Counselors and attorneys must be prepared to counter harassment of COs. During the Gulf crisis, we saw a significant increase in harassment of CO applicants. This has most often taken the form of verbal abuse from other soldiers and superiors, but has sometimes involved physical abuse or punitive assignment to unpleasant duties. It is essential that such harassment be challenged for the safety of current and future CO applicants. We should be sure GIs are aware of formal complaint procedures (for redress of grievance), their right to seek congressional assistance, and the pros and cons of public pressure. Counselors should also consider intervening with commands whose members are abusive to COs, or working directly with Congressional aids to ensure that their inquires are effective.

### **Special attention should be given to preparation for and conduct of interviews and hearings.**

Interviews and hearings, particularly the Investigating Officer (IO) interview, play a key role in any CO claim. Experience during the Gulf War has shown that biased and often overtly hostile hearing reports can badly damage even the strongest CO claim. In future wars, we must give careful consideration to preparation for the interviews and to the conduct of the hearings themselves.

In addition to general preparation for hearings it is important to discuss questions that may stem from wartime biases against COs. The command biases discussed above are likely to affect the psychiatrists, chaplains, and IOs who conduct these hearings and should be the subject of discussion and practice questions. Counselors may also want to consider attending interviews and hearings. While military regulations do not specifically permit representation, they do not prohibit it. One does not have to be an attorney to participate in this process.

**We need to develop counseling techniques for clients being sent to a war zone.**

Transfer and activation of CO applicants were important issues in the Gulf War. Simply put, the services are normally free to transfer CO applicants after they have filed CO claims (unless the transfer is done as punishment for the filing of the claim or the command has delayed and obstructed the claim for such a long time that a federal court takes offense). This differed from standard practice during the Vietnam War. Similarly, the services are apparently permitted to activate reservists who have filed CO claims prior to activation.

On occasion, COs and their representatives have been successful in delaying activation or deployment while CO claims are (at least initially) processed. In some cases, short-term medical problems have kept soldiers or sailors at their old duty stations for weeks or months. With clients' pending deployment, it is important to discuss any such medical conditions and ensure that the clients seek treatment. In raising this issue with the military, however, they should be sure not to appear to be manipulative. Similarly, they should be careful not to let the command think the medical problems are the real reason they want a discharge; CO regulations specifically suggest that commands look for ulterior motives or other reasons CO applicants may want to be discharged. Inactive reserves may have other legitimate problems which permit postponement of activation orders – such as family hardship – and these should also be explored.

Generally, however, GIs and counselors or attorneys should make plans early on for working together over a long distance. This may involve some contingency planning and having the clients sign authorizations for the counselor/attorney to receive information from the military or to act on the clients' behalf. It may mean having the GI contact Congressional representatives long before it proves necessary, to ask for assistance should it be needed and to authorize the counselor or attorney to request assistance on the clients' behalf. It also means covering in advance the issues that are difficult to discuss by long distance, such as Article 138 and other complaint procedures, procedures for non-judicial punishment and NJP appeals, etc.

Where CO applications must be completed in a war zone, or preparation for hearings must be done at that distance, special problems occur. Since mail is routinely screened, counselors, attorneys, and support persons must be sure

not to discuss the claim or hearing in a way that appears to suggest ideas or beliefs to clients. Commands are likely to use this against clients if they learn of it, and an allegation that someone else supplied the ideas for a CO can sabotage a claim. It is, of course, safer to tell a client what the procedures and rules are, or to remind them of the criteria for CO discharge in careful terms, but suggestions of words or ideas to use are dangerous

A CO's isolation in a war zone can have real psychological effects. It may be helpful to put the COs in touch with church groups, local peace centers, supportive veterans, or others who can provide moral support through the mail. These supporters should also be warned about the dangers of censored mail and the importance of avoiding suggestions about the substance of CO claims.

Commands are often more cavalier towards COs when they know that legal support is thousands of miles away. During the Gulf crisis, many commands took forever to process CO claims, engaged in illegal retaliation against COs (for example, giving them demeaning assignments purely on the basis of the CO application), and denied COs some of the rights guaranteed them in the CO regulations. Counselors and attorneys often need to communicate directly with the command by mail, pointing out some of the legal remedies available (Article 138 complaints, IG complaints, complaints under the Military Whistleblower Protection Act, congressional intervention, litigation, and the like) if the rules are not followed. Similar correspondence to military headquarters may also help to place pressure on the local command.

Where commands fail to respond to such warnings, it is helpful if clients and counselors or attorneys have decided in advance about the use of complaints or litigation; these are very difficult decisions to make by mail if proper groundwork hasn't been laid beforehand. Aggressive use of administrative complaints, Congressional intervention, and litigation can be helpful not only to the individual client, but to other CO applicants as well. If the military understands that failure to comply with the rules will result in lots of outside scrutiny, and force them to respond to numerous complaints, they may exercise more caution in handling CO claims.

At the same time, clients should never be encouraged to file complaints, ask for congressional assistance, or litigate a case unless they have been carefully warned about the possibility of command retaliation. This is a very

real problem, and clients need to weigh the likelihood of success against the likelihood that they will be harassed or abused for complaining. The Military Whistleblower Protection Act provides some very limited protection for soldiers who have been the victim of such retaliation, but only if their complaint (or preparation to make a complaint) was addressed to an inspector general (IG) or a Congressperson. Members of Congress, even if they are fairly conservative, may be quite offended if constituents are harassed for talking to them, and may take stronger action as a result.

Special care must be taken with COs who have disciplinary problems. The Gulf crisis gave all of us plenty of experience with the overlap of CO and disciplinary proceedings for COs who had gone AWOL, disobeyed orders, or missed movement as a result of their beliefs. COs with disciplinary problems are treated much more harshly than other soldiers with equivalent or more serious disciplinary problems during a military action. This disparity takes the form of uneven charging (desertion instead of AWOL, for example), a greater likelihood that small offenses will go to courts-martial rather than non-judicial punishment, less sympathy for mitigating information (particularly if it relates to the CO claim itself), and harsher sentences.

Given this, it may be helpful during wartime to warn potential COs that relying on another basis for discharge may lighten their treatment in disciplinary problems. Clients with legitimate family hardships may wish to pursue that claim instead, since commands are sometimes sympathetic to soldiers who go AWOL to care for an ailing parent, etc. Generally, using CO beliefs to argue against harsh sentencing in disciplinary proceeding proved counterproductive during the Gulf crisis. This is not meant to discourage those applicants who feel it is important to witness to their CO beliefs in this forum, including a court-martial, and who wish to raise their CO claim as a matter of principle. They simply need to know that they are taking a risk of harsh treatment in doing so.

When disciplinary problems coincide with CO claims, it is important to push for dual processing, so that the CO claim is not left in limbo until disciplinary action and punishment are over. The regulations can be read to permit or encourage such dual processing, but it often takes strong complaints to get commands to process the CO claim.

In most instances, of course, CO beliefs are not a defense to charges of AWOL, missing movement, disobedience of orders, or similar offenses. There are occasions, however, when the offense was the result of the CO's refusal to use or carry a weapon, engage in combat, etc., and the CO claim can be raised as a defense. (While "get on that plane" is a legitimate order, "get on that plain with your rifle and gear" may not be if the CO has already stated his or her intention to file a claim.) Similarly, CO applicants who were threatened or physically abused after expressing CO beliefs may have a duress defense if they were in fear of immediate harm and had not received protection from the command after complaining about the problem. In either case, documentation of the situation is critical to the defense.

The Gulf War also taught us that commands and prosecutors may use the content of CO claims in disciplinary proceedings. In at least one case at Camp Lejeune, North Carolina, prosecutors tried to use a CO's explanation of why he couldn't go to the Gulf to fight as evidence that he deserted to avoid hazardous duty. Under normal circumstances, it is useful to include an explanation of any disciplinary problems in CO applications, tying them to the development of CO beliefs where appropriate. During time of war or other military action, such explanations must be made very carefully. Counselors who are not familiar with the legal concepts of desertion and similar offenses may want an attorney to review the part of CO application discussing the offense.

While working to protect COs, we must also be sure to protect counselors and attorneys from military retaliation.

During the Gulf war, there were a few incidents around the country in which the military urged CO applicants to publicly repudiate the suggestions of counselors or advice of attorneys and to say that they had been urged to engage in actions which they would otherwise have avoided. While these incidents were limited, the danger remains that attempts will be made to discredit or bring action against civilian representatives of COs.

It is essential that we obey all the ground rules of good counseling in these cases, rules we may be tempted to bypass when frantic clients with only a few days left before deployment urge us to do so. We should encourage GIs to make their own decisions about any violation of military law (the Uniform Code of Military Justice), choosing one discharge or another, or going public about their beliefs. It is also essential that GIs be told what the

possible consequences of those actions are, including the possible maximum punishment for offenses with which they may be charged. For their own protection, counselors, and attorneys should keep careful notes of the things they tell clients.

We need to go on the offensive with the military and the public to establish a sympathetic view of conscientious objectors.

While the media gave us some positive portrayals of COs in the months before the Gulf War, the prevailing attitude among the public and in the military during the war was that COs were cowards or radicals. This represented a considerable shift in attitude. After the experience of the Vietnam War, many people in the United States had come to view COs as honorable people. During peacetime, many military commands had come to think of the discharge as routine, and of COs as naive but nice kids.

Counseling organizations did a good deal of work to explain conscientious objection and to build support for COs during the war. In any future conflict, we will need to do more of this work and to do it in a more concerted way. Ideally, this should be on our agenda well before the next war. Individual counselors and attorneys, regional and national counseling organizations, and peace and anti-militarism organizations can all play a role in this work. We cannot allow this work to slow when the current military crisis is resolved. Building a long-term strategy to legitimize and honor conscientious objection is an important task for the movement.

Such work must not focus on "traditional" conscientious objection alone. Support for political resisters, including resisters who will never meet CO criteria, must be made a part of that work as well. If we are consistent in promoting the idea that resistance to military aggression is honorable, we will make it more difficult for the military and the administration to isolate objectors to the next war.

## COMBATTING THE STEREOTYPES

By Kathleen Gilberd, co-chair of the MLTF and a legal worker in San Diego.

Stereotypes about conscientious objectors are common. Military personnel often judge their own qualification for CO discharge on the basis of stereotypes rather than the legal definition of objection. Military counselors and attorneys sometimes make assumptions about their clients based on stereotypes. Most problematic is the fact that officers who review CO claims frequently judge applicants' beliefs and sincerity on the basis of their own ideas about what CO's are like rather than the requirements of the regulations.

The stereotypes are not surprising. People tend to assume that CO's are bright, thoughtful, articulate and gentle people who look and sound sincere. CO's are expected to be better educated than their peers, to read a lot and to be eager to talk about their convictions with anyone who will listen. Of course they are expected to be white and middle class. They are usually presumed to be religious -- and Christian, at that -- or to have esoteric moral beliefs based on the teachings of great moral leaders. They are expected to be total pacifists who would no more raise their voice to a sergeant than they would hurt a fly. They should *sound* sincere and shyly eloquent.

These stereotypes are just fine if your client happens to be an articulate, white, middle-class clerk with a gentle voice and a traditional belief system. But many of our clients do not match these images, and their CO claims may suffer because chaplains, investigating officers (IO's) or others don't think they fit the part. In order to represent these clients well, counselors and attorneys should give special attention to the problems posed by the stereotypes.

This article offers a few practical suggestions for those representing clients --generally those from poor or working class backgrounds -- who don't fit the stereotypes about education, language and style.

## TALKING ABOUT CONSCIENTIOUS OBJECTION

Many young men and women join the military knowing little or nothing about conscientious objection. Many define objection only in terms of the

stereotypes mentioned here. Others have heard that CO's are cowards, opportunists, radicals or crazies. Some think that CO's must be life-long members of peace churches and total pacifists, with beliefs grounded in abstract philosophies or complex theological principles.

When counseling new clients seeking discharge, it is important to be sensitive to their and our own stereotypes about CO's. Counselors or attorneys sometimes face the temptation to focus on the discharge clients mention first, or the one that seems to fit them at first glance. Clients who start out by asking for help with a gay discharge, or who say they want out because "I feel like I'm about to lose it," may lead counselors or attorneys to emphasize discharges for homosexual conduct or personality disorder, respectively. The problem may be complicated by the fact that many clients will assert they are not CO's, or appear insulted when the term is mentioned.

However, many of these men and women are conscientious objectors, and CO discharges may be their best option. Clients who don't say they are CO's may not know that they are, may not realize people can still be discharged for this reason, or may ask about another discharge because a friend got out that way. Clients who express hostility or contempt towards CO beliefs may nonetheless oppose killing and war for reasons of conscience. And clients who say they could never get out as COs may wrongly believe that only total pacifists, or life-long pacifists, or peace church pacifists will qualify. Initial discussion with clients should include a detailed explanation of conscientious objection, as is the case with most discharge categories. Clients should be encouraged to describe their beliefs about war, to ensure that neither we nor our clients fall prey to the stereotypes.

## WRITING AN APPLICATION

Not every CO can write a clear and articulate claim. Given the quality of our educational system, many military personnel write at a junior high school level, at best. For some, writing is a painful task, spelling is guesswork, and finding the right word or phrase to express a feeling is agony.

The ability to get words down on paper normally has no relation to the sincerity or validity of beliefs, but it may have a profound effect on the success of CO claims. It is essential that clients who lack strong writing skills have help in preparing applications. At the same time, it is extremely

important that the applications are their own, using their language and ideas to get across their beliefs in a way that reviewing officers can understand and appreciate.

For some clients, talking is easier than writing. It may help to have them talk about their beliefs at some length before they begin writing. In addition, they may want to use a tape recorder or dictaphone to talk out their answers to the questions in the application, and to write from their own dictation or hire a typist to prepare written drafts. Particularly if the command has other samples of their writing, clients may want to explain in the application that they have recorded and then written out their answers, or that they dictated answers for transcription. Nervousness when using a tape recorder may be a problem, but most people can overcome it with practice; this also provides good experience for those who will want to tape record CO interviews.

Many young men and women leave school with a limited ability to write and think abstractly. These clients commonly have the great difficulty with the first substantive question in the CO application, which asks for a description of the nature of their beliefs. Since the remaining questions are somewhat more experiential and practical, it may help clients to start with the second question and work their way to the end, then return to the first question. Along the way, applicants will make a number of practical statements about their beliefs which can be developed when they return to the first question.

These clients may also write too concretely about their experiences, without describing the development of beliefs or ideas associated with the experiences. "I went to church when I was a boy" is no substitute for "I went to church when I was a boy, and I didn't question what I learned there, but I didn't think about what it meant for my life." With a little questioning, counselors and attorneys can encourage clients to express the religious or moral lesson or growth that accompanied church attendance, the death of a friend, a day on the firing range or other significant experiences.

Clients who have little experience in essay writing often prepare disjointed drafts in which ideas and experiences are not well organized or connected. They may benefit from an outline breaking each question into smaller components. Without telling clients what to write, counselors and attorneys can use an outline to explain the topic areas that may be covered in each

question and a logical order for the topics. This breaks questions down into manageable chunks and provides a logical structure for answers.

Some reviewing officers are quite impressed with CO's who can describe theological reading, dialog or correspondence preceding or following the crystallization of their beliefs. While such intellectual efforts are certainly not necessary in CO claims, it is essential to document the reflection which accompanies development of CO beliefs. CO's who lack an intellectual background are no less likely to reflect on their beliefs than others, but they are less likely to describe the process. Counselors and attorneys can help by asking for descriptions of the emotional or spiritual process by which beliefs changed, and making sure those descriptions end up in the application, particularly in the second and third questions.

Clients often ask to see other CO applications, and it is tempting to agree when they are having difficulty with their own applications. Yet these clients may be the most susceptible to the temptation to borrow words or phrases from other writers -- words or phrases that won't match their own language during interviews.

Clients may also unintentionally borrow words or phrases from their counselors or attorneys. It is important to warn them that reviewing officers may notice any disparity between different parts of an application, or between the application and interviews. We should watch for borrowed language when reviewing applications, since clients are often unaware that they have used others' words.

Many clients have real trouble with spelling, punctuation and grammar. Since their commands may have samples of this in other writings, it is often best to ignore spelling or punctuation mistakes in the application unless they change meaning. If clients prefer to have someone proofread for spelling and punctuation, this should be mentioned in the application. While problems of grammar sometimes make applications hard to read, they often parallel speaking patterns and, at least in this writer's view, should be changed only if necessary for an understanding of the text.

Clients who have difficulty writing usually need to do a good deal of re-writing, and this can be a frustrating experience. Criticism of their drafts should be tempered with that understanding and should be combined with praise for positive aspects of the applications. Counselors and attorneys

need to avoid the temptation to limit criticism and discussion of drafts in these cases, since the process of editing and rewriting is essential for strong applications and excellent preparation for interviews.

## PREPARING FOR INTERVIEWS

Advance preparation for interviews is always important, but has special significance for clients who have problems expressing ideas verbally and clients who are simply nervous in front of officers. It helps to talk at length with these clients about ways to handle interviews, and to practice interviews beforehand.

Talking with clients about the style of interviews and ways to respond to difficult questions or questioning techniques can be quite helpful. By way of example, counselors and attorneys can offer suggestions about responding to rapid, aggressive questioning ("feel free to ask the IO to slow down or repeat a question; tell her you'd like to say something more about that last question; stop and take a few breaths if she's rushing you; keep an eye on your temper because she's trying to get a rise out of you," etc.) and about responding to questions they don't understand ("ask her to rephrase it, talk in generalities while you think about the question, don't say you've never thought about it if it's a basic kind of issue").

Counselors and attorneys can also help clients prepare mental checklists of the ideas they want to get across in the interviews. This allows applicants to organize the information they want to volunteer if chaplains or IO's don't ask the right questions. Additionally, we can help clients notice and deal with nervous mannerisms which might be distracting during interviews or might be misinterpreted as evidence of insincerity.

There is no substitute for practice interviews. The questions listed at the end of CCCO's Advice for Conscientious Objectors in the Armed Forces are excellent and can be supplemented with questions about recent and current military actions and conditions. If clients are too comfortable with their counselors, it may help to bring in someone else to play the role of chaplain or IO. Tape recording the practice sessions will make clients more comfortable with recorders and allow them to review the sessions.

In the course of practice interviews, it is useful to practice responses to difficult questioning styles as well as the questions themselves. Clients who

have never developed debating skills may have trouble maintaining a measure of control over the interview. Practice sessions allow them to develop ways to assert their views in the face of hostile or confusing questions. These sessions can also help less articulate clients learn to elaborate on their ideas, avoiding the monosyllabic style in which many enlisted people deal with officers.

Finally, practice sessions can be used to test questions that stem from stereotypes about intellectual background, theological study, or speaking or writing style. Clients who have thought about these questions are less likely to be defensive or apologetic. When clients learn not to treat these things as weaknesses, it becomes a little more difficult for IO's and chaplains to do so. For example, clients may want to comment on their lack of writing or speaking skills before the issue is raised by the IO; they may practice ways to remind interviewers that it is not written texts and denominational teachings that are important to them, but God's communication with them through soul or conscience, if that fits their beliefs.

## INTERVIEWS

Clients who have difficulty expressing themselves in interviews may benefit even more than others from the presence of a counselor or attorney at their IO interview. And while counselors and attorneys generally do not attend chaplain interviews, this may be useful with inarticulate clients. Representatives can intervene if chaplains or IOs engage in hostile, rapid-fire or confusing questioning, or rephrase questions where clients have trouble understanding them. In some cases, representatives may take the offensive and talk about clients' difficulty in speaking publicly or expressing ideas, pointing out that such things have no relation to the criteria for conscientious objection and are inappropriate considerations. It may be valuable to discuss the case law on this issue, some of which is discussed below. (This is particularly true in Navy cases, where commands are encouraged to use JAGs as IOs.)

Some clients are more comfortable if a friend, family member or church member attends the hearing to offer moral support, while others may feel awkward or nervous talking in front of people they know. With inexpressive clients, it may be particularly useful to present witnesses to bolster the clients' testimony.

Unless there are reliable guarantees that a transcript will be made, IO interviews and perhaps chaplain interviews should be taped in most of these cases. Interviewers sometimes misunderstand or distort clients' comments, and the problem is magnified when clients are not articulate. Accurate records are essential where bad recommendations or decisions result from bias against or misunderstanding of clients.

## REBUTTALS

If rebuttals to adverse recommendations are necessary in these cases, they normally should be done by the counselor or attorney. Where clients have stumbled or misspoken during interviews, the rebuttal may also include their statements, perhaps under oath, to clarify issues. Additional witness statements can be added at this point to rebut erroneous IO findings or buttress weak points.

Where clients are assisted in CO proceedings by counselors rather than attorneys, and where clients feel they may want to litigate denial of their claims, it is helpful to consult an attorney experienced in military law at this point, since the rebuttal can be used to ensure that an appropriate record is made for litigation.

## CASE LAW

During the Vietnam era, a number of military and draft CO cases considered the problem of claimants whose views were not clearly or artfully expressed. Federal appellate courts frequently held that being inarticulate was not a proper basis for denial of a CO claim.

Courts found support for this view in *United States v. Seeger*, 380 US 163 (1965). Immediately after its well-known explanation of the breadth of beliefs which may qualify as religious, the Supreme Court stated:

"[I]t must be remembered that in resolving these exemption problems one deals with the beliefs of different individuals who will articulate them in a multitude of ways."

This language was expanded a little in *United States v. James*, 417 F.2d 826 (4th Cir. 1969), a draft case involving a claimant whose "religious views [were] not set forth at length or articulately." Footnoting the *Seeger*

quotation above, the court stated that "we believe, nevertheless, that not only the articulate may qualify as conscientious objectors."

In *Gruca v. Secretary of the Army*, 436 F.2d 239 (D.C. Cir. 1970) *cert.den.* 401 US 978, the appellate court denied an objector's petition for habeas corpus, but wrote at length about the problem facing uneducated or inarticulate applicants:

"It will be recalled that the Board noted that Gruca 'was very quiet and information was difficult to obtain [and] he either could not or would not express himself in any way.' [citation omitted] When we consider this observation in tandem with the clumsiness of Gruca's written views, we are led to suspect that Gruca was badly handicapped through lack of education in his attempt to establish his claim....If the Board denied Gruca the desired status because it mistook his inability to express himself for an unwillingness to do so, or if Gruca was simply unable to make a convincing presentation because of his lack of education, then we cannot pretend that justice has been done.

"This is only a single instance of a recurring problem. There is a real risk that the conscientious objector classification has become a shelter reserved exclusively for the glib or well educated registrant who has learned how to speak the language of sincerity. Since it is obvious that the sincerity of a registrant's belief is not, in theory, a function of his education or his ability to express himself, this exclusivity is intolerable."

Other helpful cases include *Helwick v. Laird*, 438 F.2d 959 (5th Cir. 1971) ("One does not have to be a St. Augustine or a Thomas Aquinas to qualify as a conscientious objector...." "Conscientious objection has no necessary relation to intellectual sophistication."); *United States v. Stetter*, 445 F.2d 472 (5th Cir. 1971); *United States v. Joyce*, 437 F.2d 740 (7th Cir. 1971); *United States v. Zaragoza*, 449 F.2d 1278 (9th Cir. 1971) (Where the claimant was a high school drop-out and not fluent in English, "we do not hold him to the standards of eloquence and sophistication one might expect from a graduate student in philosophy."); *Rastin v. Laird*, 445 F.2d 645 (9th Cir. 1971) ("A person may be both naive and immature and still be very sincere and hold deep convictions.") and *United States v. Peterson*, 456 F.2d 1099 (8th Cir. 1972).

At least one Vietnam-era case went against this trend. In *Bishop v. United States*, 412 F.2d 1064 (9th Cir. 1969), the court considered CO beliefs which grew out of a claimant's Bible study with the Jehovah's Witnesses. The court held that:

"Therefore, since Bishop claims to have derived his beliefs through exercise of his intellect, his inherent ability to formulate such thoughts are [sic] relevant to the honesty and sincerity of the asserted beliefs. In these circumstances, Bishop's 'intellectual capacity' is one of the 'objective facts' from which inferences as to his sincerity or insincerity can be drawn."

The case serves as a reminder that clients who discuss their reading of religious texts are expected to be knowledgeable about them--often unreasonably so--and that clients who emphasize conscience or spiritual communication with their God may have less difficulty. It also reminds us that courts are not always sympathetic to those who have not "learned how to speak the language of sincerity." As counselors and attorneys, we must help our clients to speak this language in their own words, while reminding the military that "not only the articulate" should be granted CO status.

(The author would like to thank attorney Jim Feldman for his review of the case law discussed in this article.)

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