

## **Yale Talk: Conversations with Peter Salovey**

*Episode 32: Veterans Day: Providing Legal Services to Veterans*

*Guest: Meghan Brooks, Clinical Lecturer in Law, Associate Research Scholar in Law, and Robert M. Cover Clinical Teaching Fellow; Josh Lefkow, Yale Law School 2023 and U.S. Marine Corps veteran*

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### FULL TRANSCRIPT

**Peter Salovey:** Hello everyone. I'm Peter Salovey and welcome to this Veterans Day edition of Yale Talk. Yale's rich tradition of service in the United States Armed Forces is a source of extraordinary pride for our university. It dates to the Revolutionary War and includes the nearly 30,000 Yalies who served in the first and second World Wars, Korea and Vietnam. Of course, the tradition continues today through the many veterans among our faculty, staff, alumni, and student body, as well as through those who are currently enlisted in the Reserve Officers Training Corps on our campus. As we reflect with gratitude on the heroism our veterans exemplify while serving, we also recognize with urgency the need to address the hardships that they face upon their return. Today, I'm pleased to be joined by two members of the Yale community who are dedicated to this important work. Meghan Brooks is a clinical lecturer in law, associate research scholar in law, and the Robert M. Cover Clinical Teaching Fellow at Yale Law School, where she co-teaches the Veterans Legal Services Clinic. The clinic assists veterans in Connecticut and across the country with unique, often acute legal needs related to their military service or return to civilian life. I'm also delighted to welcome Josh Lefkow to today's program. Josh is a third-year student at the Law School where his research focuses on foreign policy and national security. Josh is also a veteran of the U.S. Marine Corps, and he serves with Meghan in the Veterans Legal Services Clinic as a law student intern. Meghan and Josh, thank you both so much for joining me today on Yale Talk.

**Meghan Brooks:** Thank you. It's a delight to be here.

**Josh Lefkow:** Thank you so much for having us.

**Peter Salovey:** So let's begin with your work at the Law School's Veterans Legal Services Clinic. The clinic was formed in 2010 as part of the Jerome Frank Legal Services Organization, which provides representation to individuals and organizations in need. So Meghan, tell us a little bit about how the Vets Clinic was formed.

**Meghan Brooks:** Absolutely. So the Vets Clinic was founded in around 2010 by Professor Mike Wishnie, who still runs it today, and he saw both a need and an opportunity. So the Veterans Benefits System is still, to this day, under-lawyered for its size and its scope. It's a majority pro se system where claimants are battling for years to get access to the benefits that they're entitled to. And a lawyer can make all the difference. And then there's also an opportunity there. Right here in New Haven, there's actually a tremendous history of veterans' advocacy organizing

activism. There's a group called the National Veterans Council for Legal Redress, which is a group that's been fighting on behalf of veterans with less than honorable discharges since the Vietnam era. They focus specifically on folks with those statuses, and also Black veterans' issues here in New Haven--a fabulous community group. Mike was able to plug into those networks, plug into some of the existing advocacy, and bring in lessons he had learned as a lawyer working in the workers and immigrants' rights spaces, both of which have some bearing on VA. And as a result, the clinic has been able to develop a docket that is simultaneously focused on New Haven and the needs of local individuals. Here, we do a high number of individual benefits cases and discharge upgrade cases, and also to think about how to solve some of these problems that our clients encounter again and again. And so to that end, we also represent organizations who are working to make the system work better, more equitably for everyone in a similar boat. It's a fabulous model and a real great way for us to make impacts both on the individual and national levels. And the other part of it is you have this massive administrative agency through which tens to hundreds of thousands of individual benefits adjudications are being passed through each year, largely pro se, meaning without lawyers, without representation. And these are benefits that are transformative. It's the difference between a person living on \$900 a month if they don't have service connection and don't have other income to \$3,500 a month if they receive full-service connection.

**Peter Salovey:** I remember from my days as a psychology intern at the Veterans Hospital here, the VA in West Haven, how different it was for veterans whose health issues were labeled as service-connected versus those who were not. Your benefits were just far more plentiful, both from the health side and the financial side.

**Meghan Brooks:** Absolutely. That is so much of what we do. We get people into the Veterans Benefits System to begin with if they were excluded for various reasons. And then we try to secure service connection for folks once they are in. And that's because the opportunities there for people are so rich. It's, you know, monthly compensation, it's health care, it's education, it's housing. It's really the gamut of benefits that allow people to reintegrate into civilian society and live happy and secure lives. And so when we can secure those wins, not just for individuals in the greater New Haven area who are our primary focus, but also when we can make changes on a broader scale to sort of ensure that vets across the country are receiving easier and faster, better access to these benefits. It's transformative and it's a fantastic opportunity for our students to make a real positive, lasting impact as well.

**Peter Salovey:** Although the clinic was created just over a decade ago, it has really continued to perform this kind of transformative work. I know a piece of what the clinic does is work on veterans who have 'bad paper discharges,' as they're called, and these can be quite harmful to people. They can affect the veterans' prospects for employment and again, access to benefits and services. It would help if you could describe what a bad paper discharge is, and what's the work that you're doing.

**Meghan Brooks:** I'll actually let Josh take that. Josh has become quite an expert in it through his work in the clinic.

**Josh Lefkow:** I have, and not only through my work in the clinic, but also in my time as an enlisted Marine. I was sort of unfortunately able to witness some of the ways in which people receive bad paper discharges. And just to touch on the transformative element of benefits a little bit. I'm somebody who has received education benefits in housing stipends over the course of my time at community college through law school. I would not be here were it not for VA benefits, and that's because I received an honorable discharge. Most veterans receive honorable discharges, which essentially means that you finish year four- or eight- or twenty-year service without any sort of dismissal for a conduct issue. If you're dismissed for conduct issue, you receive what's known as a bad paper discharge. Those run the gamut from 'general under honorable conditions,' in which case you just don't receive education benefits to 'dishonorable' discharges, which are essentially what you get when you commit the equivalent of a felony while in the armed services. And bad paper discharges don't just affect sort of like the most malicious actors who are committing murder off-base, but they also affect Marines or sailors or soldiers who smoked marijuana one time and then lose all of their benefits. This includes individuals who have experienced serious trauma. One of the things that the clinic does is represent a lot of veterans who, as a result of their combat deployment experience, underwent serious trauma and then maybe resort to alcohol or drug abuse, you know, while back in the United States--without ever having been treated for mental health issues--lose their benefits, are kicked out, not only have the stain of having been dishonorably discharged or discharged with a bad paper discharge, but also lose access to all those transformative benefits. So the clinic, I think, really does a good job of centering people who, for the most part, we feel were treated unfairly by the criminal justice system within the military.

**Peter Salovey:** I'm wondering, without obviously compromising anyone's identity, if you could give us an example of a person that was helped by the Vets Clinic and was in a situation like this?

**Josh Lefkow:** Absolutely. I'd be happy to speak to that because I was fortunate enough to work on representation for an individual who, having had no meaningful preparation for these deployments whatsoever, was sent to Afghanistan, underwent two severely traumatic experiences working in a mass casualty emergency room, first for six months with a three month break, followed by another seven months, received no mental health follow up following his deployments, turned to marijuana use as a means to cope with some of the serious stress that this individual had gone through and then was summarily discharged for using marijuana one time. This is an individual who had done six years, even prior to deploying, of exemplary service, had never been cited for anything, an outstanding enlisted member in their field prior to deploying, and when they arrived back in the United States, their chain of command essentially told them to go eat it. I am not allowed to curse on the Yale Talk podcast.

**Peter Salovey:** That was okay.

**Josh Lefkow:** So this is somebody who the clinic felt very strongly about representing. I was fortunate to work on this individual's appeal, seeking an honorable discharge which would allow this individual access to education benefits. And this is somebody who had been traumatized by their time while deployed, was not exactly the most social or friendly person, which, you know, as a former Marine myself, I can also relate to. But it was somebody who had a hard time opening up and at the outset of the case was extremely cynical about their prospects for success, was like, I appreciate you all doing this, but I know nothing is going to come of it, was sort of reluctant to return phone calls. It was really like pulling teeth to get this individual to work with us because, understandably, they had felt so screwed over by the military justice system and felt as though there was nothing we'd be able to do to help. But with the help of not only this individual who opened up to us about their experience, let us talk about what they went through to explain why they had engaged in some of the activities that they had after deployment. But also all the family members who spoke to us, compiling a record of what this individual was like before and after deployment. We were fortunately able to get this individual's discharge upgraded up to an honorable and again, this is somebody who had never expressed any real form of emotion to us over the course of the process. In fact, when we got the package in the mail informing us that we had gotten this individual's discharge upgraded to an honorable, we called them to let them know. We're just like buzzing on the phone. Great news for us. We tell them they've been upgraded to honorable and they respond with, "Oh, yeah, the papers came in for me yesterday." About a week later, this individual who had really never expressed any real form of emotion to us, sent us like an extremely heartfelt email talking about what this was going to mean for their life moving forward and their ability to stop working in a series of menial jobs and be able to use the education benefits that certainly we at the vets clinic believe that they had rightfully earned over the course of several years of honorable service.

**Peter Salovey:** That's a great, vivid example of the kind of work you do. Would you elaborate for a moment on some of the challenges that you see in these legal cases?

**Josh Lefkow:** Absolutely. I think one of the things that's most noteworthy about less than honorable discharges is the extent to which the military justice system is so often arbitrary and capricious. You have individual officers acting as administrators of legal proceedings over marines, sailors, airmen, etc., that can hold them accountable for any form of behavior. There's an article under the Uniform Code of Military Justice, I believe it's Article 42, which is essentially just gross misconduct. This extends to all service members. You can hold Marines accountable for failing to salute and strip them of their rank if they're on ship. You can have them confined to the brig with water and bread. You can't do that on land anymore. It's an archaic naval punishment. But the extent to which the military justice system grants individual officers so much autonomy to essentially ruin servicemembers lives really can't be overstated. And I think it also plays out in problematic ways across different services. When I was in the Marine Corps, if you had positive on a urinalysis for marijuana, your career was over. You were getting kicked out and you were losing all of your benefits. If that happened to you and other service branches, that might not be the case at all. There was no standard for punishment. And a

system that allows individual officers a great deal of leeway disproportionately impacts minority veterans because we're all carrying a series of unconscious biases with us. And I personally saw that manifested with regards to punitive measures. I deployed with someone who later came out as trans, was horrifically bullied by everyone in the chain of command, used drugs, and was gleefully kicked out of the military by an extremely unsympathetic group of officers and staff NCOs. I'm at Yale Law School getting hundreds of thousands of dollars in benefits, and this person who deployed alongside me, the last I saw was on Go Fund Me, raising money for dental surgery. And there's a host of factors that go into that. But I know that one of them was the incredibly arbitrary and punitive military justice system in a way that just has always stuck with me.

**Peter Salovey:** We really appreciate the work that you're doing, and I know even more so there are veterans all over the country who I know are thankful for that passion that you have. Now, I want to generalize and ask Meghan: so there are class action suits around this kind of denial of benefits due to bad paper discharges in cases like Kennedy versus McCarthy and Manker versus Del Toro and Johnson versus Kendall. Maybe you could elaborate on what's going on here? How do these class action cases work?

**Meghan Brooks:** Absolutely. So this is work that the clinic has been engaged in for five, six years now. Litigation takes a long time; I will say that. So when we think about the military justice and disciplinary systems, just like the civilian justice system, there are biases baked in. And so we see that people who tend to be discharged less than honorably tend to be minoritized and marginalized members of the military. Black servicemembers are discharged at two times the rate of white servicemembers. LGBT service members used to be discharged under Don't Ask, Don't Tell and its predecessor policies sometime less than honorably. And we frequently see, as Josh alluded to, folks with mental health disabilities incurred in service. So post-traumatic stress disorder, depression, anxiety, flare ups of conditions like schizoaffective disorder, rather than being treated in the military as a result of those symptoms, the behavioral effects of them lead to what the military classifies as misconduct, which leads to a less than honorable discharge, within cuts the person off from the very benefits that would...

**Peter Salovey:** Actually help them improve their lives.

**Meghan Brooks:** And there's been so much advocacy about these issues in the last decade and more. The military is really improving on many metrics along these lines. The class actions are targeted specifically at the discharge upgrade review boards. So each of the branches has one. They're targeted at their failure to implement a policy that's supposed to ensure that veterans who were discharged with a less than honorable discharge and have one of these mental health conditions to ensure that they receive what's called liberal consideration in their discharge upgrade applications, which is essentially an understanding that, yes, the individual engaged in misconduct, sometimes quite serious misconduct, but that an untreated mental health condition had some impact on that. And as a result, the board should really be looking at the totality of the circumstances, should be looking at the effects of that condition on the person, should be looking

at their life post-discharge to really think about whether that upgrade to an honorable is merited. And so the class actions, they do that on a large scale. One of the things that I really love so much about working with the veteran and servicemember population is it's such a cultural thing to say, I'm serving not just for myself, not just for my country, but for the person standing next to me. There's the concept of battle buddies, there's the concept of serving with and for the people who are in your unit. And so often when we get clients, they say, I'm so glad that you can help me out, but what about the guy standing next to me? What about other people in my shoes? And so class actions had been used in the Vietnam era when there was a lot of veteran organizing related to less than honorable discharges in the draft era. They kind of died down a little bit, and it took a while after the post-9-11 era for some of these ideas to start to percolate again. And class actions allow veterans to pull others up with them to ensure that they're receiving the representation of the issues that are arising in their cases, the common issues of law and fact, as we say in the class action world, to ensure that those questions are resolved, not just for the named plaintiffs who represent directly, but for the rest of the class.

**Peter Salovey:** I can see how a class action would appeal to a veteran and that kind of team spirit that is encouraged by the armed services. And in fact, the clinic has been involved in some historic class actions, right? The ones that went to the U.S. Court of Appeals for veterans' claims. And I'm thinking of Monk and Skaar. And maybe you could tell us a little bit about some of those cases.

**Meghan Brooks:** Sure. One of the clinics projects has been to reintroduce revitalize the class action mechanism for veterans' benefits cases. The Veterans Benefits System, for the most part, ends up being these individualized, siloed, mostly pro se adjudications, where people are on their own, they're pursuing their individual claim, and it can take years and years and years to reach a resolution. There have been some changes in the recent past that have sped things up a little bit, but when Monk was filed--so Monk was the first case that the clinic tried to bring as a class action in the veterans court--it was taking, on average, six years for a claim to reach--from filing, if you had to appeal, up through the board--to reach a resolution. And so with the Monk case, the question was, why is that? Can't we fix that? And isn't this happening to everyone? Shouldn't there be a systemic solution? Why should we be doing these one by one by one when there should be a way to address these issues on a broader scale? And moreover, it doesn't necessarily have to go through Congress, doesn't necessarily have to go through some sort of agency policy work. The Court of Appeals for Veterans Claims, the CAVC, has the power to fix this, to ensure that adjudications are proceeding efficiently, to ensure that eventually they'll come within the court's jurisdiction. And when the clinic first filed Monk as a class action, there was some hesitancy. The court hadn't seen it yet. The Veterans Court is a newer court. It was started in 1988 by an act of Congress. Prior to that, most veterans' benefits claims could not be heard in court at all. But you did have some sort of ancillary benefits issues that were being brought as class actions under the Administrative Procedure Act and under various statutes prior to the Veterans Court emerging. And so the clinic, in bringing Monk, really had to make the argument as to why the class action mechanism would be efficient, would be fair, would be just, would allow for the sort of systemic resolution of problems, not just for the individuals who we directly

represent, but for everyone in their shoes. And so Monk convinced the Veterans Court and the Federal Circuit, which is the appeals court above it, that, yes, the CAVC does have the power to hear class actions. And then Skaar, which I have worked on for about five years at this point, and is still a live matter, Skaar was the first case that was certified from a direct appeal. Monk had been a special type of appeal called a writ context.

**Peter Salovey:** This is a case called Skaar versus McDonough.

**Meghan Brooks:** Yes, exactly.

**Peter Salovey:** Now, in addition to legal representation of individuals and legal representation of classes, the clinic also does research. And my understanding is that in recent years, for example, the clinic has done research on herbicide exposure in Guam. Maybe you could tell us about research that either of you have been involved in?

**Meghan Brooks:** Absolutely. So we always do all of our work on behalf of clients. And so the Guam work was done specifically on behalf of National Veterans Legal Services Program (NVLSP), which is a storied organization out of D.C. that has represented veterans for decades and did a lot of the original Agent Orange litigation that enabled folks who had that exposure to access VA benefits. And this reflects the clinic's approach to client work overall. When we are approached by a client, they come to us with a problem and they don't necessarily say, I want you to bring a class action lawsuit to solve this problem, or I want you to file this kind of bill. They say, "I have a problem." And so we as lawyers think to ourselves, all right, what are the tools available to us to solve this problem? And so we often end up working on a multi-tool basis simultaneously. And so, yes, we may file suit, but we may simultaneously engage in legislative advocacy. We may engage in the kind of research that turns out these white papers or policy documents that are going to guide future advocacy. The Guam packet that was developed essentially showed through laborious, painstaking research that there had been Agent Orange on Guam and that servicemembers have been exposed because Congress hadn't recognized Agent Orange exposure on Guam. The idea was that individual veterans would be able to take this huge, thick packet of research that the clinic had compiled on behalf of NVLSP and submit that as evidence in their own claims. So we think creatively about different ways that we can approach problem is for clients. And one of the major ways we can do that is by digging in and providing the legal and factual grounding that's going to enable them to advance their policy goals. Another example, the clinics represented Protect Our Defenders, which is an advocacy organization out of D.C. That focuses on service members who experienced sexual assault or other sexual trauma in service. And Protect Our Defenders as an incredible organization led by the former chief prosecutor of the Air Force. And what we often do for them is Freedom of Information Act requests, and we litigate those requests when we don't get the immediate answer that we need and that Protect Our Defenders is entitled to under the law. And when we finally do get that, Protect Our Defenders then works them into white papers, is able to say, you know, why didn't the government want to hand these things over right away? So a key example: we had litigated an issue where the military was aware of racial disparities in their justice system and

Protect Our Defenders had asked for data that showed how they were supposed to be ameliorating the problem based on a congressional act a couple of years before. And they fought tooth and nail not to turn those things over. And when they finally turn the documents over, it turns out the reason they had done so was because they hadn't done a lot in response to this congressional directive. And so Protect Our Defenders is able to use that to really push for legislative change in the next couple of Congresses and, in fact, was able to secure a major reform in the military justice system unlike anything that had been seen in the past several decades.

**Peter Salovey:** That's quite wonderful. Josh, before I ask you about how you got to this place, let me just quickly ask Meghan. You were a Yale Law student.

**Meghan Brooks:** Yes.

**Peter Salovey:** And then you went to work for New York Legal Assistance, and now you're back at Yale in the Vets Clinic. Maybe you could elaborate a little bit more on the route you took and your thinking about getting into this kind of work?

**Meghan Brooks:** Sure. So if you had asked me as a first-year law student whether I would be doing veteran's work, I would have said 'veteran's what?' But I grew up in a military family. My dad was in the Army, and veterans benefits actually paid for a lot of my family's life when I was a teen and paid for me to go to college in large part. And so I came to law school wanting to do worker-side employment law, wage-and-hour and employment discrimination, and that sort of work. And they had this packet of all the incredible clinical opportunities the school has. And I saw the Veterans Legal Services Clinic, and something just deep inside I was, 'oh man, I got to' and so I applied. I fell in love with the work. It is just so rich. There's so much opportunity to impact people's lives and really positive ways and also ways to lawyer creatively. You can do all kinds of work on behalf of the military and veteran populations, and the clinic runs the gamut. The clinic does it all. And so having gotten really invested in veterans' advocacy in law school, I knew that it was work I wanted to keep doing. And so I was at New York Legal Assistance Group as a fellow, with one foot in the special litigation unit and one foot in the veterans' benefits unit, thinking about ways to see appealable issues or individual cases to potentially make broader-scale precedential changes for veterans. And then the opportunity came up to come back, and I was absolutely delighted to. There's just so much energy in the clinic. There are so many incredible ideas. Students like Josh are so dedicated and work so hard. And when you have this group of 30-something students who are giving their all to solving these problems for our clients, it really allows you to do some incredible things. It's been just a total joy to be back and be getting to work for a population that I love on issues I love with people who are just fabulous and smart and creative and dedicated. It's great.

**Peter Salovey:** Wonderful professional story. And Josh, I'm very proud of what Yale has done to increase significantly the enrollment of veterans at Yale. For example, we have doubled the number of entering student veterans in the last five years. Just last month, the U.S. News and



World Report recognized Yale as the best college in the nation for veterans. And, well, I've always felt that veterans enrich our university community and they share their experiences, which are often quite unique, with all the other students. So it's great having veterans here at Yale, but I'd be interested in your story. How did you choose to study at Yale, and how has it worked out for you being a veteran on our campus?

**Josh Lefkow:** I think I had kind of a circuitous path here, both as a veteran and as a law student. I think I actually bought my Harvard Law School hat before finding out I got into Yale. So that's hiding in a closet somewhere.

**Peter Salovey:** We'll forgive you for that.

**Josh Lefkow:** Of course. You know, I was a community college graduate. I transferred to undergrad at Columbia University. I kind of knew I wanted to go to law school but didn't exactly know where. I think what really sold me when I was applying to law schools and getting into law schools and feeling like I had a lot of different options was the extent to which, after getting into Yale, people just reached out to me of all kinds. I had professors calling me, I had alumni calling me. I had current students calling me, all of whom were willing to give me a really candid assessment about what the experience was like at Yale Law School as opposed to other law schools. Why I should say yes, and even why I shouldn't say yes. And I think the candor and the engagement that I experienced from everybody at all stages of the admissions process really convinced me to come to Yale for law school.

**Peter Salovey:** What happens next?

**Josh Lefkow:** So what happens next? I'll be spending two years clerking. First in the District of New Mexico for a federal judge in Las Cruces, about 40 minutes outside of El Paso. One of the reasons I selected that was because it's one of the busiest criminal courthouses in the country. And I thought the opportunity to get exposure to the gamut of criminal issues that were coming before that court would be really interesting. And then following that, I'll be spending a year clerking for a ninth circuit judge in Honolulu, Hawaii, which I picked because it's Hawaii. So I'm pretty excited about those two opportunities. And I think that after that, it's a little bit of a blank slate. More and more, I'm thinking I might be interested in federal public defense. You know, in no small part, I think because some of the issues that you see in the military justice system obviously are replicated in the regular criminal justice system, whether that be the overcriminalization of minorities or the disparate punitive measures that are leveled against people for different kinds of behavior and drug abuse. All of those things, I think both bothered me when I was in, convince me to do work with the Veterans Legal Services Center and I think will probably animate whatever I end up doing professionally following my clerkships.

**Peter Salovey:** Wonderful. And I wish you the best of luck in finishing up law school and then in pursuing these plans. Meghan and Josh, thank you so much for joining me today as well as for your extraordinary commitment to veterans. And Josh, I want to also extend my most heartfelt

gratitude to you, and to all the current and former military service members who are listening, for your contributions to our country. Yale strives to honor and support you. So in addition to the Veterans Legal Services Clinic, we do this through the Yale Veterans Network, a campus group for students, faculty and staff, and through the Yale Veterans Association, a group for alumni. And if you're a veteran and not already a part of these groups, I hope you'll consider participating. I also want to encourage those listening to keep up to date on the Vets Clinic's ongoing casework and explore its resources for veterans. And you can do that by visiting [law.yale.edu/clinics/VLSC](http://law.yale.edu/clinics/VLSC). That's [law.yale.edu/clinics/VLSC](http://law.yale.edu/clinics/VLSC).

To our friends and members of the Yale community, thank you for joining me for Yale talk. Until our next conversation, best wishes and take care.

The theme music, *Butterflies and Bees* is composed by Yale professor of music and director of university bands Thomas C. Duffy and is performed by the Yale Concert Band.