MILITARY WORKING DOGS: CLASSIFICATION AND TREATMENT IN THE U.S. ARMED FORCES

By
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This Article explores and evaluates the use of canines by the United States (U.S.) Armed Forces as military working dogs, and examines the reasons why the current administrative classification of these dogs is inappropriate. The author examines the historical use of, and increasing reliance on, military working dogs by the U.S. Armed Forces from World War II to present day. This historical exploration traces the development of the federal statutes and military regulations that govern the Military Working Dog Program. Federal law currently categorizes military working dogs as 'equipment,' which grossly underestimates their role within the U.S. military and deprives these dogs of the opportunity to transition to a peaceful civilian life once they are deemed 'excess equipment' and retired from service. Categorization as equipment creates significant obstacles for service members, their families, and civilian parties who wish to adopt these dogs. This categorization also deprives military working dogs of ongoing medical care upon retirement, eligibility for recognition and commendation, and burial in national military cemeteries. Despite some of the recent improvements made in the military's treatment of these dogs, more work is needed. This Article urges Congress to recategorize military working dogs as canine members of the armed forces in order to properly honor their service to this country, and to protect the dignity of these dogs upon retirement.

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I. INTRODUCTION

The Department of Defense (DoD) recognizes military working dogs (MWDs) as a "vital part of our national defense."[1] An estimated 2,800 MWDs are currently serving in our nation's armed forces worldwide, which is more than any other country.[2] In a 2008 address, General David H. Petraeus, former commanding general of Multi-National Force-Iraq, conveyed the enormous impact of MWDs: "The capability that military working dogs bring to the fight cannot be replicated by man or machine. By all measures of performance, their yield out-

[1] U.S. DEP'T OF DEF., DEPARTMENT OF DEFENSE MILITARY WORKING DOG BREEDING PROGRAM 1 (available at http://www.37trw.af.mil/shared/media/document/AFD-120611-022.pdf [http://perma.cc/H7AQ-HJHA] (accessed Feb. 18, 2015)).

[2] Josh Eells, *Dogs of War*, TEXAS MONTHLY, http://www.texasmonthly.com/story/dogs-war?fullpage=1 [http://perma.cc/ZG5Q-GCAM] (Nov. 2011) (accessed Feb. 24, 2015).

performs any asset we have in our inventory."[3] General Colin L. Powell elaborated on the role of MWDs when he stated, "War dogs have, indeed, served the nation well and saved many lives. Dogs continue to serve to protect Americans both in combat zones and in homeland security roles."[4] For service members who work with or alongside MWDs, there is a powerful bond with the canines. An assistant kennel master for the 25th Military Police Company, 25th Infantry Division vividly described the link between MWDs and their handlers: "These dogs are our partners. We travel with them, sleep with them and live with them. They are our best friends. Every dog handler will agree that there is nothing we won't do to protect our dogs."[5]

Despite the critical role MWDs play in our nation's defense, MWDs are classified as equipment within the armed forces.[6] The federal laws covering the armed forces are located in Title 10 of the United States (U.S.) Code.[7] Classification of MWDs is evidenced by the reference to both equipment such as rifles, shotguns, and helicopters and military animals in the same Chapter of Title 10.[8] The reference to MWDs in the same chapter as other military equipment encapsulates the problem with the status of MWDs. While the military recognizes that MWDs are "living items," and thus, unique or at the very least not the same as a tank or rifle, MWDs are still classified as equipment.[9]

The current classification of military working dogs as equipment is problematic because it limits the military's obligations towards the canines in terms of treatment and recognition. The military's obligations to a military dog generally conclude at the end of an MWD's "useful life" due to injury, old age, or when a department no longer requires

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[3] Linda Crippen, *Military Working Dogs: Guardians of the Night*, U.S. ARMY, http://www.army.mil/article/56965/Military_Working_Dogs_Guardians_of_the_Night/ [http://perma.cc/5RAD-3X68] (May 23, 2011) (accessed Apr. 10, 2015). In deference to the range of historical periods discussed in this Article, retirement status of military officers is omitted from their rank designations.

[4] *Quotes by Legendary Battlefield Commanders*, JOHN BURNAM MONUMENT FOUND., http://www.jbmf.us/Quotes.aspx [http://perma.cc/5J7T-9EQG] (accessed Aug. 9, 2015).

[5] Cheryl Ransford, *Canine Units in Afghanistan Issued New Protective Vests*, U.S. DEP'T OF DEF., http://www.defense.gov/news/newsarticle.aspx?id=25801 [http://perma.cc/89QY-UUGE] (Feb. 25, 2005) (accessed Feb. 24, 2015).

[6] *See* U.S. DEP'T OF THE AIR FORCE, AIR FORCE INSTRUCTION NO. 31-202, MILITARY WORKING DOG PROGRAM § 2.2.1.3 (2011) (noting that kennel masters must order replacement MWDs by filing an "Equipment Action Request"); U.S. DEP'T OF THE NAVY, MILITARY WORKING DOG PROGRAM § 4 (Sept. 7, 2012) (noting that MWDs, "[l]ike other highly specialized pieces of equipment, . . . supplement and enhance the capabilities of military security forces").

[7] 10 U.S.C. §§ 101–18506 (2012).

[8] 10 U.S.C §§ 2576, 2583 (2012).

[9] U.S. DEP'T OF THE ARMY, MILITARY WORKING DOGS FIELD MANUAL NO. 3-19.17 1–2 (July 2005) (available at https://www.fas.org/irp/doddir/army/fm3-19-17.pdf [http://perma.cc/R4M5-E27M] (accessed Mar. 7, 2015)) [hereinafter FIELD MANUAL]; Jennifer Rizzo, *When a Dog Isn't a Dog*, CNN SECURITY CLEARANCE, http://security.blogs.cnn.com/2012/01/06/when-a-dog-isnt-a-dog/ [http://perma.cc/G2R5-XUAC] (Jan. 6, 2012) (accessed Mar. 7, 2015).

the use of a canine.[10] Once an MWD is no longer able to work or no longer needed by a department, the canine is discharged from the Military Working Dog Program and becomes excess equipment.[11]

Up until recently, the military had no obligations in terms of the 'disposal' of so-called excess military dogs.[12] Specifically, the military had no legal obligation to allow for the retirement of MWDs through adoption, to transfer MWDs retired overseas back to the U.S., or to provide veterinary services for retired MWDs.[13] In addition, as equipment, MWDs are not eligible for official decoration or recognition for the performance of courageous acts or when killed in action.[14]

This author recognizes there are tangential problems in the exploitation of canines as a source of labor for the military, and the general view of animals as property.[15] However, the military's use of

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[10] *See* 10 U.S.C. § 2583 (granting the authority to make military animals available for adoption if the animal is injured, has reached the "end of [its] useful life," or is "otherwise excess to the needs of such military department"). Section 2583 defines "military animal" as military working dogs and horses. *Id.* § 2583(g). For purposes of this Article, the author will be discussing section 2583 only as it applies to military working dogs.

[11] *See* Amaani Lyle, *Adoption Program Lets Working Dogs Become Pets*, U.S. DEP'T OF DEF., http://www.defense.gov/News/NewsArticle.aspx?ID=55678 [http://perma.cc/UG2M-E4TU] (Aug. 31, 2009) (accessed Mar. 7, 2015) ("Belgian [M]alinois, Dutch shepherds, German shepherds and Labrador retrievers ranging from 2 to 12 years old are declared 'excess' when they are no longer in the military program.").

[12] *See* 146 CONG. REC. S23442 (daily ed. Oct. 19, 2000) (statement of Sen. Robert Smith) ("Under current law there is no happy retirement for these loyal canines. After their body is no longer able to sustain the workload of their mission, the future becomes bleak for these dogs.").

[13] *See* 10 U.S.C. § 2583(a), (e)(2) (stating that the "Secretary of the military department . . . *may* make a military animal . . . available for adoption" and that the "United States shall not be liable for any veterinary expense associated with a military animal transferred under this section") (emphasis added); *see also* Melissa Quinn, *Four Legs and a Life of Service: The Fight to Allow Military Working Dogs to 'Retire' on U.S. Soil*, DAILY SIGNAL, http://dailysignal.com/2014/08/23/four-legs-life-service-fight-allow-military-working-dogs-retire-u-s-soil/ [http://perma.cc/QS5C-S693] (Aug. 23, 2014) (accessed Feb. 27, 2015) (noting that some MWDs are "left in shelters in the countries where they end their service").

[14] *See* MICHAEL G. LEMISH, WAR DOGS: A HISTORY OF LOYALTY AND HEROISM 76 (1999) (discussing the revocation of a Purple Heart and a Silver Star to Chips, the last dog to be officially decorated for his military service); *see also* Jeff Schogol, *Was a Working Dog Awarded the Medal of Honor?*, STARS AND STRIPES, http://www.stripes.com/blogs/the-rumor-doctor/the-rumor-doctor-1.104348/was-a-working-dog-awarded-the-medal-of-honor-1.121875 [http://perma.cc/X7C8-J7T6] (Oct. 15, 2010) (accessed Mar. 7, 2015) (quoting Defense Department spokesperson Eileen Lainez's statement that the use of military decorations is limited to human personnel).

[15] *See* Craig Scheiner, *"Cruelty to Police Dog" Laws Update*, 7 ANIMAL L. 133, 144 (2006) ("The road to adequate protection for law enforcement dogs is a long and hazardous one. Until society recognizes that all sentient beings, not just humans, should be free from exploitation, many police canines will continue to be 'sacrificed' . . . . [W]e should also consider, and question, the use of non-human animals as sources of labor, such as their use as 'tools' for law enforcement."); *see also* Gary L. Francione, *Animals, Property and Legal Welfarism: "Unnecessary" Suffering and the "Humane" Treatment of Animals*, 46 RUTGERS L. REV. 721, 723 (1994) ("[T]he legal system simply cannot protect beings that are, as a matter of law, regarded as the personal property of their owner.").

canines as a source of labor and the view of animals as property need not be discussed to address the problem of classifying MWDs as equipment within the armed forces. The status of MWDs in the armed forces is a narrow issue, which directly impacts the treatment of military dogs while in service and upon discharge. Changing the categorization of MWDs from equipment to canine members of the armed forces will improve the treatment of these military canines. The change will more accurately reflect the role military dogs play in our nation's defense and can be achieved without waiting to resolve the broader animal welfare issues that also impact MWDs.[16]

II. MILITARY WORKING DOGS: HISTORICAL OVERVIEW

Since the organized involvement of canines in the U.S. Armed Forces, the legal status and treatment of military dogs has changed significantly. By examining the use of military working dogs (MWDs) from World War II through Vietnam, one can see an evolution in both the status and treatment of MWDs from a high point in World War II to a low point in the Vietnam War. The following historical overview provides a reference for one to understand the current legal status of MWDs, incremental changes in the treatment of MWDs within the recent past, and the need for future change.

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[16] *See generally* Jonathan R. Lovvorn, *Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform*, 12 ANIMAL L. 133, 138–39 (2006) ("[T]here is undoubtedly a gap, and quite a large one, between the current cruelties visited upon animals and where society is ready to go in terms of reform. And standing in this gap are millions upon millions of animals whom society is ready to help—we just need to give people a good push. . . . [W]e can make a good start by jettisoning our own revolutionary rhetoric—such as granting animals 'personhood' or otherwise eliminating the property status of animals. It is an intellectual indulgence and a vice for animal lawyers to concern ourselves with the advancement of such impractical theories while billions of animal[s] languish in unimaginable suffering that we have the power to change. Moreover, these revolutionary legal theories sound disturbingly similar to, and provide academic fuel for, the rhetoric of some direct action proponents—i.e., that animals can never receive protection without radically revising the U.S. legal system. . . . But as we daydream about a heroic legal victory for animals that will most likely not occur in our lifetime, millions and millions of animals are suffering in conditions that we have the power, and the societal support, to change today."). In his article, Lovvorn references the public's support for federal laws protecting the welfare of farm animals and the public's opposition to practices such as using leghold traps and trapping wild dolphins and whales for display in aquariums, but also notes that a significant percentage of Americans still find it acceptable to wear fur. The goal of this Article is not to compare the treatment of military dogs in the armed forces to the aforementioned cruelties but to emphasize that it is possible to implement change in the status of MWDs without waiting to address the exploitation of animals for labor or the view of animals as property.

A. World War II

1. War Dog Program

Before World War II, an official war dog program did not exist within the U.S. Armed Forces.[17] The War Dog Program began shortly after the attack on Pearl Harbor at the urging of a group of civilians including breeders, trainers, handlers and writers who owned and loved dogs and were excited about the use of dogs in the war effort.[18] In January 1942, this group established a civilian volunteer organization known as Dogs for Defense.[19] The first official recognition of war dogs in the military came on March 13, 1942, when Under Secretary of War Robert P. Patterson authorized Helen Mencken of the American Theatre Wing to procure 200 dogs for the program.[20] The American Theatre Wing then selected Dogs for Defense as the agency responsible for the recruitment, training, and handling of the dogs.[21]

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[17] *See* LEMISH, *supra* note 14, at 35 (discussing the general lack of professional dog trainers and professional working dogs in the U.S. pre-WWII, and the need to create an MWD program "from scratch" following Pearl Harbor). While the history of dogs accompanying American troops into combat predates WWII, they largely did so as mascots or individual companions. *See Stubby the Military Dog*, CONN. MILITARY DEP'T, http://www.ct.gov/mil/cwp/view.asp?a=1351&q=257892 [http://perma.cc/3EA6-9TMY] (March 13, 2015) (accessed Apr. 21, 2015) (noting that while dogs acted as companions of individual soldiers during the Civil War and mascots during the Spanish-American War, they were not formally used for military roles until WWII). As such, while those earlier dogs—such as the much-decorated Sergeant Stubby of the 102nd Infantry—are indeed deserving of recognition, their context is not directly analogous to those of MWDs during and after WWII. *See Stubby*, SMITHSONIAN NAT'L MUSEUM OF AM. HISTORY, http://amhistory.si.edu/militaryhistory/collection/object.asp?id=15&printable=1 [http://perma.cc/V3CP-J7CJ] (accessed Apr. 21, 2015) (discussing Stubby's service as mascot of the 102nd Infantry, 26th Yankee Division during WWI, including receiving "many medals for his heroism" and becoming "the first dog to be given rank in the United States Armed Forces" when he was promoted to Sergeant after capturing a German soldier infiltrating Allied trenches).

[18] LEMISH, *supra* note 14, at 36. Alene Erlanger, a nationally recognized dog breeder and exhibitor called her friend, Arthur Kilbon, a writer and columnist at the *New York Sun* and said, "I must see you. It's about what the war means to dogs and fanciers. I have an idea and need your help. The dog world must play a part in this *thing*. Other countries have used dogs for years and ours have not. They've got to do it!" *Id.* at 35–36. *See also* FAIRFAX DOWNEY, DOGS FOR DEFENSE: AMERICAN DOGS IN THE SECOND WORLD WAR 1941-1945 at 15 (1955) ("[MWDs] were mustered for the Armed Forces [by] a volunteer movement . . . in the best tradition of the American volunteer spirit. That task . . . was undertaken by . . . American dog fanciers, devotees of the dog game, as they themselves refer to it. They number breeders, trainers, professional and amateur; kennel club members, show and field trial judges, handlers, veterinarians, editors, writers; in short, people who have to do with dogs—who own dogs and love them.").

[19] DOWNEY, *supra* note 18, at 16; Arthur W. Bergeron, Jr., *War Dogs: The Birth of the K-9 Corps*, U.S. ARMY, http://www.army.mil/article/7463/ [http://perma.cc/2JBY-QPPS] (Feb. 14, 2008) (accessed Apr. 10, 2015).

[20] DOWNEY, *supra* note 18, at 19, 21.

[21] ANNA M. WALLER, DOGS AND NATIONAL DEFENSE 5 (1958) (available at http://www.qmmuseum.lee.army.mil/dogs_and_national_defense.htm [http://perma.cc/J4R4-9C3E] (accessed Mar. 9, 2015)).

By July 1942, the War Dog Program, unofficially referred to as the 'K-9 Corps,' formally emerged when the Army transferred responsibility for training and handling war dogs to the Quartermaster Corps, Remount Branch.[22] The Remount Branch continued to rely on Dogs for Defense to procure military dogs. Dogs for Defense used patriotic campaigns urging Americans to donate their canines to the war effort.[23] By 1945, the war program had trained an estimated 10,000 war dogs for the Army, Navy, Marine Corps, and Coast Guard in a variety of duties including sentry, mine detection, messenger, and scout/patrol.[24] In addition, fifteen war dog platoons served overseas in both Europe and the Pacific.[25]

2. Return

At the end of World War II, the Army and Marines spent a significant amount of labor and money in a large-scale effort to demilitarize and return military dogs to civilian life.[26] If possible, the dogs were returned to their original owners.[27] If circumstances did not allow the canines to be returned to the original owners, the War Department approved disbursement of military dogs by issue to Seeing Eye, Inc. as potential seeing-eye dogs, to military organizations as mascots, to the servicemen who handled the dogs during the war, or by sale through the Treasury Department.[28] Because the canines were military property, by law, all dogs not returned to their original owners had to be sold through the Treasury Department.[29] The War Department made it clear that "[i]n no event will dogs go to undesirable individuals or to laboratories or institutions."[30]

In 1945, two bills were introduced in Congress to address the placement of military dogs.[31] The first bill allowed for "the gift of war dogs to servicemen who trained them for their war tasks."[32] The second bill required the military to retrain military dogs.[33] Notably, the War Department did not object to the actual policy behind the proposed legislation, but rather to the logistics of the bills. The War Department objected to the first bill only to the extent of the time a dog could be held for a serviceman, and objected to the second bill only to

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22 *Id.* at 5–6.

23 Downey, *supra* note 18, at 24; *see also* LEMISH, *supra* note 14, at 45 (noting that donors received a certificate acknowledging their "patriotic action").

24 *War Dogs*, U.S. ARMY QUARTERMASTER FOUND., http://www.qmfound.com/War_Dogs.htm [http://perma.cc/Y6PT-DH6S] (Apr. 23, 2011) (accessed Mar. 9, 2015); WALLER, *supra* note 21, at 1, 6.

25 *War Dogs*, *supra* note 24.

26 LEMISH, *supra* note 14, at 142.

27 *Id.* at 143.

28 *Id.* at 142.

29 *Id.* at 143.

30 *Id.* at 142.

31 *Id.* at 143.

32 LEMISH, *supra* note 14, at 143 (internal quotation marks omitted).

33 *Id.*

the extent the legislation called for action already being taken by the War Department.[34]

3. Recognition

Some canines were awarded medals during World War II; however, the medals were later revoked pursuant to the War Department's policy that decorations were only for humans.[35] The Army rejected an idea to create a distinct medal to honor military dogs.[36] However, the Army did approve of an appropriate citation or commendation to be published in unit and general orders.[37] In addition, "the Quartermaster Corps issued two paper certificates" to honor military dogs.[38] The Certificate of Merit was issued to owners of canines killed in action, and a Discharge Certificate was given "for canines mustered out of service."[39]

B. Post World War II—Changing Attitude and Classification

In March 1945, Dogs for Defense relinquished its role as the procurement agency for the Quartermaster Corps' War Dog Program.[40] With the Quartermaster Corps taking on the responsibility to recruit war dogs, the military controlled all stages of the War Dog Program—including procurement, training, and handling.[41] In 1946, the Armed Forces terminated the World War II method of procuring dogs from patriotic citizens on a loan basis.[42] Dogs were now to be purchased from citizens and become the sole property of the federal government.[43]

This series of changes marked a shift in the U.S. military's attitude toward MWDs, which was later cemented by the passage of the Federal Property and Administrative Services Act of 1949 (FPASA).[44] The FPASA provided the statutory authority needed for the military to

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[34] *Id.* ("Secretary of War [Henry] Stimson objected [to H.R. 3687], stating that, . . . the War Department was 'fully conscious of its obligation to the donors of these dogs and is providing for their utmost care and treatment under all circumstances.'").

[35] *Id.* at 76–77. Chips, a mixed-breed German shepherd, husky and collie, was the only dog awarded a Silver Star and a Purple Heart for courageous service during World War II. The medals were later revoked. *Id.* at 77.

[36] *Id.* at 76.

[37] LEMISH, *supra* note 14, at 147.

[38] *Id.*

[39] *Id.*

[40] WALLER, *supra* note 21, at 10–11.

[41] *Id.* at 11.

[42] *Id.* at 50.

[43] *Id.*

[44] Federal Property and Administrative Services Act of 1949, Pub. L. No. 81-152, 63 Stat. 377 (codified as amended in scattered sections of 40 U.S.C., 41 U.S.C., and 50 U.S.C.).

internally recategorize MWDs from personnel to equipment.[45] One of the purposes of the Act was to provide an economical and efficient system for the disposal of government surplus property.[46] As then Representative Roscoe Bartlett (R-Md.) noted in 2000, "[A]ccording to the military mentality, any piece of equipment no longer operable becomes a hardship to the unit and must be disposed of."[47]

C. *Vietnam*

Vietnam stands as "the largest concentrated effort of the use of dogs and handlers in any Combat Era the United States has ever undertaken."[48] It is also viewed as the lowest point in the history of the military's treatment of MWDs.[49] Although the military did not maintain official records on how many dogs were in Vietnam between 1964 and 1973, an estimated 4,000 MWDs and 10,000 handlers were deployed to South Vietnam.[50] During that time, MWDs and their handlers were credited with saving over 10,000 lives.[51]

By 1973, the U.S. ceased ground combat operations in Vietnam, and the last of the ground combat troops withdrew from South Vietnam.[52] The military policy that unfolded was to leave the several thousand surviving MWDs behind.[53] Handlers maintain they were never apprised at any point during the war that MWDs would not be returned to the U.S.[54] According to Michael Lemish, official historian for the Vietnam Handler Association, some handlers even offered to pay the expense to return the canines back to the U.S. However, such action was prohibited by army regulations.[55]

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[45] *Id.*; *see* 146 CONG. REC. S23,442 (daily ed. Oct. 19, 2000) (statement of Sen. Smith) ("The 1949 Federal Property and Administrative Services Act, enacted after World War II, reclassified military working dogs as equipment.").

[46] 40 U.S.C. § 101(3) (2012).

[47] 106 CONG. REC. H9600 (daily ed. Oct. 10, 2000) (statement of Rep. Bartlett).

[48] *Vietnam*, U.S. WAR DOGS ASS'N, http://www.uswardogs.org/war-dog-history/vietnam/ [http://perma.cc/7G8U-QZRX] (accessed Feb. 5, 2015).

[49] *See Vietnam War*, JOHN BURNAM MONUMENT FOUND., http://www.jbmf.us/hst-vietnam.aspx [http://perma.cc/36DU-3UBY] (2012) (accessed Feb. 6, 2015) ("The decision to classify the war dogs as equipment and leave them all behind (several thousand) after the war remains the saddest chapter in America's military working dog history.").

[50] *Id.*; *Vietnam*, *supra* note 48.

[51] LEMISH, *supra* note 14, at 239; *Vietnam*, *supra* note 48.

[52] *Vietnam War*, *supra* note 49.

[53] *Id.*

[54] LEMISH, *supra* note 14, at 231–32.

[55] *Id.* at 230; *see also* JOHN E. O' DONNELL, NONE CAME HOME: THE WAR DOGS OF VIETNAM 161 (2001) ("The absurdity of the whole thing finally pours out in the anguished voices of helpless brave men. They all start to shake their heads and tears well up in their eyes, questioning just one more time if there was one other thing we could have done for our partners and seeking solace in each other that everything we could have done was done. But, that still will never [alleviate] the betrayal we all feel in failing them against this totally unexpected 'enemy.' It's very ironic but K-9 met and defeated every foe and obstacle it faced, except one we never expected, our own country."); *supra* Part II.A.2 (describing Army regulations governing the return of MWDs from WWII).

While reports vary, according to Ron Aiello, Vietnam veteran and former Marine dog handler, approximately 2,700 MWDs were kenneled and turned over to the South Vietnamese Army.[56] The South Vietnamese Army did not have the same level of sophistication as the U.S. Army in terms of medical care, treatment, and training, and were overwhelmed by the surplus dogs turned over by the U.S. Army.[57] Aiello estimates the U.S. Army euthanized another 1,600 MWDs in Vietnam.[58] It is estimated that only 204 dogs exited Vietnam following the end of the war.[59] Of those 200 or so MWDs, some were transferred to U.S. installations in other parts of the world and a small number were returned to U.S. bases.[60] However, in stark contrast to World War II, none of the estimated 200 MWDs that made it out of Vietnam were officially discharged and returned to civilian life.[61]

Addressing its policy in Vietnam, the military maintained concerns that MWDs would transfer disease if returned to the U.S. and that MWDs constituted a threat to society due to their military training.[62] With the conclusion of the Vietnam War, the federal government no longer needed MWDs; therefore, the canines constituted surplus equipment.[63] As surplus equipment, the military was legally authorized to dispose of MWDs without any obligation to provide for their future care or to account for the mandated policy.[64]

III. PUBLIC AWARENESS AND INCREMENTAL CHANGES

When analyzing the classification and treatment of military working dogs (MWDs), it is evident that the public has been largely unaware of this military policy.[65] Following the Vietnam War, there was a

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56 Rizzo, *supra* note 9.

57 LEMISH, *supra* note 14, at 234.

58 Rizzo, *supra* note 9.

59 *Vietnam*, *supra* note 48.

60 LEMISH, *supra* note 14, at 233–34; *see also Vietnam*, *supra* note 48 (stating that some MWDs remained in the Pacific and others returned to the U.S. at the close of the war).

61 *See* JOHN C. BURNAM, DOG TAGS OF COURAGE 256 (2000) (noting that although WWII and Korea service dogs were repatriated with their handlers, such was not the case for dogs that served in Vietnam); LEMISH, *supra* note 14, at 232, 236–37 (contrasting the repatriation of MWDs following WWII with the abandonment of MWDs abroad following the Vietnam Conflict, and discussing some of the factors that led to this change); *see also Vietnam*, *supra* note 48 (explaining that none of the 204 dogs that exited Vietnam returned to civilian life).

62 LEMISH, *supra* note 14, at 233, 237.

63 *Id.* at 237.

64 *Id.*; *see also* 10 U.S.C. § 2575 (2012) (authorizing the military to dispose of surplus equipment).

65 *See* 146 CONG. REC. H11,302 (daily ed. Oct. 26, 2000) (statement of Ret. Rep. Abercrombie (D. Haw.)) (noting that most people do not know about the military policy of euthanizing military working dogs).

lull in the military use of MWDs.[66] The tragedy of 9/11 and the U.S. conflicts in Iraq and Afghanistan renewed the military's engagement of MWDs.[67] With the military's increased reliance on MWDs, the status and treatment of military dogs has moved to the forefront of public and legislative debate. As the public has learned more about MWDs, former and current handlers, as well as families and individuals interested in adopting a retired MWD, have voiced serious concerns,[68] which have resulted in some incremental changes in the treatment of MWDs.

A. Adoption Program for Retired Military Working Dogs

On November 6, 2000, Congress enacted legislation to "facilitate the adoption of retired military working dogs by law enforcement agencies, former handlers of these dogs, and other persons capable of caring for these dogs."[69] The law allows for MWDs to be available for adoption "at the end of the dog's useful working life" or when the canine is "otherwise excess to the needs of the Department."[70] This legislation, popularly referred to as "Robby's Law,"[71] marked a significant change in the Department of Defense (DoD) protocol, which previously prohibited the adoption of MWDs, even by their handlers.[72] Prior to the statute's enactment, the U.S. military had maintained the same policy since Vietnam, which was to euthanize MWDs once the canines were unable to serve in their assigned capacity regardless of their temperament, health status, or loyal service.[73]

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66 Sharon Weinberger, *Upgrading the Dogs of War*, BBC, http://www.bbc.com/future/story/20120829-upgrading-the-dogs-of-war [http://perma.cc/9EF4-NBSZ] (Aug. 31, 2012) (accessed Feb. 5, 2015).

67 *Id.*

68 *See* Rizzo, *supra* note 9 (noting that families of handlers are among some of the individuals that have lobbied for better treatment of MWDs after they are retired).

69 Promotion of Military Working Dogs Program, Pub. L. No. 106-446, 114 Stat. 1932 (2000) (current version at 10 U.S.C. § 2583 (2012)).

70 10 U.S.C. § 2583(a).

71 *See* Larisa Epatko, *Military Working Dogs: What Happens after They Serve?*, PBS NEWSHOUR, http://www.pbs.org/newshour/rundown/military-working-dogs/ [http://perma.cc/Y2S5-USAE] (May 28, 2012) (accessed Mar. 21, 2015) (referring to the law as "Robby's Law"); Daniela Muñoz, *They Served Their Country Bravely. Now These Military Dogs Are Getting the Retirement They Deserve*, IJR REVIEW, http://www.ijreview.com/2015/02/253351-served-country-bravely-now-military-dogs-getting-retirement-deserve/ [http://perma.cc/77W6-D7LH] (Feb. 2015) (accessed Apr. 20, 2015) (explaining the law is named after Robby, an aging Belgian Malinois MWD, whose handler's attempts to adopt him ultimately met failure when Robby was euthanized).

72 *See* 146 CONG. REC. H9599–600 (daily ed. Oct. 10, 2000) (statement of Rep. Bartlett) (noting that H.R. 5314 would lift the restriction that prohibited handlers from adopting MWDs).

73 *See* Alisa Manzelli, *The Life of a Military Dog as "Excess Equipment"*, GLOBAL ANIMAL, http://www.globalanimal.org/2012/12/06/the-life-of-a-military-dog-as-excess-equipment/ [http://perma.cc/ZW2K-EPV3] (Dec. 6, 2012) (accessed Apr. 16, 2015) (noting the policy changed by Robby's Law was that used during the Vietnam War); DAVID F. BURRELLI ET AL., CONG. RESEARCH SERV., R41874, FY2012 NATIONAL DEFENSE AUTHORIZATION ACT: SELECTED MILITARY PERSONNEL POLICY ISSUES 2 (2012) (discussing

Prior to the passage of Robby's Law, when MWDs were unable to perform at their expected levels, they were sent back to Lackland Air Force Base (AFB), the headquarters for the DoD Military Working Dog Program.[74] In some cases, MWDs were used for a period of time to train new handlers or for public demonstrations.[75] When the MWDs were no longer able to assist with training, the canines were kenneled for various amounts of time, sometimes as long as a year, before they were euthanized by the military.[76] If kennel space was unavailable, MWDs were euthanized upon arrival at Lackland AFB.[77]

Representative Roscoe Bartlett introduced the legislation after learning about the unfortunate circumstances of a Belgian Malinois named Robby.[78] At 11 years old, multiple health problems prohibited Robby from working even light duty.[79] When Robby's handler requested permission from the DoD to adopt the canine, the Department rejected the request.[80] According to Representative Bartlett:

> After learning about the bleak future of military working dogs, not only did I become concerned for their final treatment, but I was also troubled by the fact that they were robbed of a quiet retirement. Why? Simply because the DoD policy prohibits the adoption of retired military dogs even by their handlers.[81]

Representative Neil Abercrombie (D-Haw.) addressed one of the prevailing issues related to the treatment of MWDs when he commented, "[I]t seems to be . . . something that people do not even have any idea that the situation was occurring. I think people just assume quite naturally that, after a useful working life, that animals would be taken care of in a fashion other than having their lives ended."[82] According to Representative Abercrombie, "[O]nce folks in my district found out that I was working . . . on this, [they] let me know in no uncertain terms that they wanted this bill to pass."[83]

The U.S. military's purported reasons for its policy were the alleged danger and liability issues associated with releasing militarized canines back into civilian life.[84] In response to the proposed legislation, the DoD issued an official letter to Senator John Warner (R-Va.), then-chairman of the Senate Committee on Armed Services, strenu-

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statute as end of Department of Defense practice); *see also* Epatko, *supra* note 71 (noting that "[p]rior to 2000—and the enactment of 'Robby's law,' which started the adoption program at Lackland [Air Force Base]—the dogs were euthanized").

74 146 CONG. REC. H9599 (daily ed. Oct. 10, 2000) (statement of Rep. Bartlett).

75 *Id.*

76 *Id.*

77 *Id.*

78 *Id.* at H9600.

79 *Id.*

80 146 CONG. REC. H9600 (daily ed. Oct. 10, 2000) (statement of Rep. Bartlett).

81 *Id.*

82 146 CONG. REC. H11,303 (daily ed. Oct. 26, 2000) (statement of Rep. Abercrombie).

83 *Id.*

84 Mary Elizabeth Thurston, *From Homefront to Home Life*, DOG WORLD, June 2001, at 60, 61.

ously objecting to the bill.[85] In the letter, the DoD stated that "the dogs were dangerous, that the Department had concerns about liability and that implementing retirement would be costly and a hardship on personnel."[86] The letter went on to conclude, "The Department of Defense does not believe this legislation is ready for enactment."[87]

Yet, during congressional debate on the proposed legislation, a letter to Senator Warner was read into the record from William Putney, a retired veterinarian and former Marine captain.[88] In his letter, Putney explained that during World War II, he served in the Marine Corps as the chief veterinarian and platoon leader of the 2nd and 3rd Marine War Dog Platoons that served with the Marines in the Pacific. In his letter, Putney stated:

> After the cessation of hostilities, I was C.O. of the War Dog Training School at Camp Lejeune, NC where we detrained and returned to civilian life our dogs that we used in WWII on places like Guadalcanal, Bougainville, Kuajalien, Enewetok, Guam, Pelelieu, Saipan, Okinawa and Japan. Our dogs saved a lot of Marines' lives including mine.
>
> Of the 550 Marine war dogs that we had on duty at the end of the war, only four were destroyed due to our inability to detrain them sufficiently to be returned to civilian life. Never to my knowledge was there a recorded instance where any one of those dogs ever attacked or bit anyone. It is not true that once a dog has had attack training, it can never be released safely into the civilian population. All of our dogs were attack trained.[89]

As news spread of the proposed legislation, Representative Bartlett received hundreds of emails, including one from a sentry dog handler in Vietnam, who wrote, "[Y]es, Robby served our nation, that was his duty, but he is a living breathing soul, just like you and I. Let him know a real home, surely he deserves that much."[90]

B. Early Retirement for Active Military Working Dogs

While allowing the adoption of retired MWDs represented a major shift in the DoD policy on MWDs, active MWDs were not eligible for adoption under any circumstance.[91] Handlers injured while serving with their MWDs, as well as the families of handlers killed or mortally wounded in action, were barred from maintaining a special connection with an active military dog because of the restriction.[92]

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85 *Id.* (summarizing letter written by the Department of Defense).

86 *Id.*

87 *Id.*

88 146 CONG. REC. S10,788 (daily ed. Oct. 19, 2000) (statement of Sen. Smith).

89 146 CONG. REC. H9600 (daily ed. Oct. 10, 2000) (statement of Rep. Bartlett).

90 Thurston, *supra* note 84 (quoting email from sentry dog handler in Vietnam).

91 *Id.*

92 156 CONG. REC. H1085 (daily ed. Mar. 3, 2010) (statement of Rep. Jones).

1. *Unusual or Extraordinary Circumstances*

In 2006, Congress amended the MWD adoption statute to allow the adoption of a military dog "before the end of a dog's useful working life" under certain "unusual or extraordinary circumstances."[93] The 2006 amendment was prompted by the situation of a military dog handler, Air Force Technical Sergeant Jamie Dana, and her 5-year-old German shepherd named Rex.[94] Dana tried to adopt Rex out of active duty after Dana and Rex were both injured in Iraq, but her adoption request was denied "because Rex was not ready for retirement."[95]

2. *Extraordinary Circumstances Specified*

Despite the passage of the 2006 amendment, it was difficult to pin down exactly what 'extraordinary circumstances' would allow an MWD to be adopted while still in active duty, or who might be able to take advantage of the amendment. The difficulties experienced by the families of MWD handlers killed in action are illustrative. When Corporal Dustin Lee was injured in a mortar attack while on patrol in Iraq on March 21, 2007, his partner, a bomb-sniffing dog named Lex, who was also injured by shrapnel in the attack, "picked himself up to lie over Lee—an effort to protect him."[96] After Lee died from injuries sustained in the attack, his family tried to adopt Lex.[97] As Lee's mother explained, "[W]hen Dustin was killed, one of the first things I asked about was Lex, because of their camaraderie. They depended on each other."[98] Although the adoption law as enacted should have provided a means for the Lee family to adopt Lex, it took the family several months working with an online petition and congressional help for the Lee family to obtain approval for the adoption.[99]

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93 National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, 119 Stat. 3284 (codified as amended at 10 U.S.C. § 2583 (2012)).

94 Donna Miles, *Military Heroes, Families Respond to State of Union Message*, U.S. DEP'T OF DEF., http://www.defense.gov/News/NewsArticle.aspx?ID=14989 [http://perma.cc/MEL9-UP84] (Feb. 1, 2006) (accessed Mar. 21, 2015).

95 *Id.*

96 Rizzo, *supra* note 9; Randy Roughton, *Fallen Marine's Family Adopts His Best Friend*, U.S. DEP'T OF DEF., http://www.defense.gov/News/NewsArticle.aspx?ID=62703 [http://perma.cc/8CZS-ZQKY] (Feb. 4, 2011) (accessed Mar. 21, 2015).

97 Rizzo, *supra* note 9

98 *Id.*

99 *Id.* The Rusk family did not experience as many obstacles when they tried to adopt Eli, the MWD partnered with their son, Private Colton Rusk, but they did require the involvement of Texas Governor Rick Perry to help with the process, as well as the help of the trainer who worked with Eli and Rusk, to facilitate the adoption. Roughton, *supra* note 96. Eli was the second MWD the Marines discharged from active duty "to permit adoption by a fallen handler's family." *Id.* Rusk, a machine gunner and dog handler, was killed by sniper fire on December 5, 2010, while serving in Afghanistan. *Id.* Marine officials described how Eli, an infantry explosives detector dog, "crawled on top of [Rusk] to protect him after he was shot" and how "Eli loyally stayed by his handler's side, even biting at Marines trying to move their fallen comrade." *Id.* Colton's mother, Kathy Rusk, explained, "We're Colton's family, so it's just right that we're Eli's family

In 2011, Congress further amended Robby's Law to address the difficulties faced by the Lee family by specifically making MWDs available for adoption before the end of their working lives.[100] The 2011 amendment allows for the early retirement of active military dogs in "circumstances under which the handler of a military working dog is killed in action, dies of wounds received in action, or is medically retired as a result of injuries received in action."[101] When a handler is wounded in action, the MWD "may be made available for adoption only by the handler."[102] When the handler is killed in action or dies of wounds received in action, the MWD "shall be made available for adoption only by a parent, child, spouse, or sibling of the deceased handler."[103] The 2011 amendment is significant because it represents the U.S. Armed Forces recognizing a bond between a solider and working dog, and a bond that connects families to service members lost while serving their country—a bond important enough to retire an MWD who is still 'of use' to the military.

IV. NEGATIVE IMPLICATIONS WITH THE CLASSIFICATION OF MILITARY WORKING DOGS REMAIN

Despite incremental changes in the U.S. Armed Forces' policy regarding military working dogs (MWDs), the classification of MWDs as equipment continues to be a problem. The Department of Defense (DoD) adoption program "[e]nables military working dogs to be transferred or adopted out to former handlers, law enforcement agencies or families who are willing and able to take on the responsibility of [a] former military working dog."[104] This responsibility of adopting a retired MWD means assuming all costs to transfer the dog back to the U.S. if retired overseas, and all medical costs related to treating health issues sustained by the MWD while serving in the military.[105]

MWDs retired overseas are returned to U.S. military kennels scattered throughout the world, and they remain in these kennels until they are adopted.[106] According to Air Force Major General Mary Kay Hertog, "[O]nce [the] dog is adopted, it becomes a pet, and therefore loses its status" as a military dog.[107] As excess equipment, the military

now." *Id.* Kathy described how "[i]t gets our mind off the sadness of losing Colton. Just knowing we're going to have a little piece of Colton in Eli. I just wished he could talk and tell us some stories. Just to know we're going to be able to share the love we have for our son with something that he loved dearly." *Id.*

100 156 CONG. REC. H1085 (daily ed. Mar. 3, 2010) (statement of Rep. Jones).

101 National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 351, 125 Stat. 1375–76 (codified as amended at 10 U.S.C. § 2583 (2012)).

102 10 U.S.C. § 2583(c).

103 *Id.*

104 Lyle, *supra* note 11.

105 Rizzo, *supra* note 9.

106 Lyle, *supra* note 11.

107 *Id.*

does not transport a retired MWD back to the U.S.[108] Transportation of an adopted MWD back to the U.S. is at the expense of the adopter, which can cost as much as $2,000.[109] While the DoD will provide services to adopting families to help facilitate the adoption, those services are viewed as "extra assistance" and are not required of the military.[110]

Taking on the responsibility of a former MWD also means taking on the costs of all medical care the canine may require due to injuries sustained while in the military. The DoD provides a one-month supply of medication for the adopted MWD, after which time the adopter is responsible for any veterinary care the retired MWD may require regardless of the origins of the injury or ailment.[111] The responsibility for medical care is made explicitly clear in the MWD adoption information materials, which provide:

> [T]he older dogs generally have developed hip, back and other medical problems which prevent them from working at the level expected of a Military Working Dog. The older dogs usually have medical issues that will most likely require medications for the rest of their life that are a cost to the adoptee.[112]

As noted by Gerry Proctor, a correspondent for Lackland Air Force Base, an adopter "go[es] into it with their eyes wide open."[113] Proctor analogized the adoption of a retired MWD to the sale of a truck in a government surplus sale and posed the question, "If you buy that truck, how far do you want the American taxpayer to be on the hook for the truck's oil changes and tune ups for its life?"[114]

V. THE PROBLEMATIC STATUS OF MILITARY WORKING DOGS MOVES TO THE FOREFRONT OF PUBLIC AND LEGISLATIVE DISCOURSE

As members of the public become more aware of the role of military working dogs (MWDs) in the U.S. Armed Forces, they are increasingly disturbed by the negative implications associated with the classification of MWDs as equipment, such as the Department of Defense (DoD) policy prohibiting international transportation for retired MWDs and the lack of medical care subsequent to the military canines' retirement. In February 2012, two identical bills titled the Canine

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108 Rizzo, *supra* note 9.

109 *Id.*; *see also* Lyle, *supra* note 11 (stating that adopters "[m]ust bear the brunt of transport for adopted dogs returning from overseas").

110 Lyle, *supra* note 11.

111 Rizzo, *supra* note 9.

112 U.S. AIR FORCE, ADOPTION INFORMATION (available at http://www.37trw.af.mil/shared/media/document/AFD-120718-079.pdf [http://perma.cc/LN53-HALW] (accessed Feb. 6, 2015)).

113 Rizzo, *supra* note 9.

114 *Id.*

Members of the Armed Forces Act were introduced in the House and Senate to address the current status and treatment of MWDs.[115]

A. *Canine Members of the Armed Forces Act*

The purpose of the Canine Members of the Armed Forces Act was to reclassify MWDs as canine members of the armed forces, not equipment.[116] The proposed legislation, which ultimately failed, included a series of congressional findings recognizing that, "each of the Armed Forces and other Government agencies . . . use military working dogs in service of the country"; "military working dogs, through their training, have prevented injuries and saved the lives of thousands of United States citizens"; and "military working dogs perform critical and varied roles that go far beyond their current designation as 'equipment.'"[117] In addition to classifying MWDs as canine members of the U.S. Armed Forces, the Act addressed three major issues: transportation of retired MWDs, veterinary care, and service recognition.[118]

Representative Walter Jones (R-N.C.), who sponsored the House version of the bill, noted that "it is time that we as a nation recognize the importance and contributions of military working dogs, and this can be done by elevating their status to Canine Members of the Armed Forces."[119] In discussing the role of MWDs, Representative Jones stated, "[T]hese dogs are a crucial asset to the U.S. Armed Forces and have saved countless American lives during the past decade of conflict."[120] Jones continued, "[T]hose that have been to war tell me that the dogs are invaluable. That they are just as much a part of a unit as a soldier or Marine. They are buddies."[121] Senator Richard Blumenthal (D-Conn.), who sponsored the Senate version of the bill, made similar remarks regarding the role of MWDs. According to Senator Blumenthal:

> Military working dogs have served honorably with all branches of the United States Armed Forces, as well as in the Central Intelligence Agency, Transportation Security Administration, and other government agencies. These brave and talented dogs have saved the lives of thousands of American citizens, including many of our service members, through their work in detecting intruders, drugs, and improvised explosive devices—some of the deadliest threats to our troops. . . . Retired military working dogs often continue to serve at home in offering companionship and care to our veter-

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115 Canine Members of the Armed Forces Act, S. 2134, 112th Cong. (2012); Canine Members of the Armed Forces Act, H.R. 4103, 112th Cong. (2012).

116 S. 2134; H.R. 4103.

117 S. 2134; H.R. 4103.

118 S. 2134; H.R. 4103.

119 Press Release, Office of U.S. Sen. Richard Blumenthal, Blumenthal, Jones Introduce Canine Members of the Armed Forces Act, http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-jones-introduce-canine-members-of-the-armed-forces-act- [http://perma.cc/W6ND-RQS9] (Feb. 28, 2012) (accessed Feb. 6, 2015).

120 *Id.*

121 Rizzo, *supra* note 9.

> ans. For their service abroad, these dogs deserve their loyalty and dedication to be returned when they are home.[122]

To standardize the practice of transferring retired MWDs, the Canine Members of the Armed Forces Act provided:

> If the Secretary of the military department concerned determines that a military working dog should be retired, and no suitable adoption is available at the military facility where the dog is located, the Secretary may transfer the dog—
>
> (1) to the 341st Training Squadron; or
>
> (2) to another location for adoption under this section.[123]

Transportation for retired MWDs was a critical provision because many individuals, including former handlers and veterans, were interested in adoption, but simply could not afford the significant costs of transferring the canines from overseas upon retirement.[124]

To address the ongoing toll military service takes on the health of a military dog, the bill provided that "the Secretary of Defense *shall* establish and maintain a system to provide for the veterinary care of retired military working dogs."[125] The bill further provided that "the veterinary care provided a military working dog . . . *shall* be provided during the life of the dog beginning on the date which the dog is adopted . . . ."[126] Under the bill, federal funding was not to be used to cover the cost of the veterinary system; rather, the Secretary of Defense was required to administer the veterinary system under a contract awarded by the Secretary to a private, non-profit entity.[127] While federal funding could not be used to provide the veterinary care or pay for the operation of the non-profit entity, the proposed legislation allowed for the use of federal funds to carry out the duties of the Secretary under the bill.[128]

Finally, the Canine Members of the Armed Forces Act required the official recognition of service provided by MWDs.[129] The proposed legislation provided that "[t]he Secretary of Defense shall create a decoration or other appropriate recognition to recognize military working dogs under the jurisdiction of the Secretary that are killed in action or perform an exceptionally meritorious or courageous act in service of the United States."[130]

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122 Press Release, Office of U.S. Sen. Richard Blumenthal, *supra* note 119.

123 S. 2134 § 3; H.R. 4103 § 3.

124 Letter from Members of Congress to Leon E. Panetta, Sec'y of Def. (Feb. 5, 2013) (on file with *Animal Law*).

125 S. 2134 § 4; H.R. 4103 § 4 (emphasis added).

126 S. 2134 § 4; H.R. 4103 § 4 (emphasis added).

127 S. 2134 § 4; H.R. 4103 § 4.

128 S. 2134 § 4; H.R. 4103 § 4.

129 S. 2134 § 4; H.R. 4103 § 5.

130 S. 2134 § 4; H.R. 4103 § 5.

B. *Partial Solution—National Defense Authorization Act for Fiscal Year 2013*

The Canine Members of the Armed Forces Act failed to pass in either chamber of Congress.[131] However, the provisions allowing for the transfer of retired MWDs and the creation of a system of veterinary care for retired MWDs were included as amendments to the National Defense Authorization Act for Fiscal Year 2013, which President Obama signed into law on January 2, 2013.[132] Notably, the provision reclassifying MWDs as canine members of the military failed to pass Congress, as did the provision requiring the creation of a system to officially recognize the service of MWDs.[133]

The MWD adoption law was revised to include the new provision on the transfer of retired military dogs.[134] However, unlike the Canine Members of the Armed Forces Act, the MWD adoption law indicates that the Secretary of Defense *may* transfer an MWD to the 341st Training Squadron or another location.[135] The provision in the Canine Members of the Armed Forces Act, which allowed the acceptance of frequent traveler miles to facilitate adoption, was not passed into law.[136] The provision allowing for the creation of a system of veterinary care for retired military dogs was added as a new section to Title

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131 *See* Library of Cong., *All Actions: S.2134 — 112th Congress (2011-2012)*, CONGRESS.GOV, https://www.congress.gov/bill/112th-congress/senate-bill/2134/all-actions [http://perma.cc/7AF5-RKMY] (accessed Apr. 16, 2015) (showing that the bill was read and referred to the Committee on Armed Services, but that no further action was taken); Library of Cong., *All Actions: H.R.4103 — 112th Congress (2011-2012)*, CONGRESS.GOV, https://www.congress.gov/bill/112th-congress/house-bill/4103/all-actions [http://perma.cc/4BVD-HFHS] (accessed Apr. 16, 2015) (showing that the bill was referred to the Subcommittee on Readiness, but that no further action was taken).

132 National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 371, 126 Stat. 1706 (codified as amended at 10 U.S.C. §§ 994, 2583 (2012)).

133 *Compare* § 371, 126 Stat. at 1706, *with* S. 2134 § 3, *and* H.R. 4103 § 3 (showing that the provision reclassifying MWDs as canine members of the armed forces was not included as part of the National Defense Authorization Act for Fiscal Year 2013). *See also Military Working Dogs Still Considered Equipment*, DOGTIME, http://dogtime.com/military-working-dogs-still-considered-equipment.html [http://perma.cc/ZV7X-5RZ4] (May 24, 2013) (accessed Apr. 10, 2015) (noting the Senate thought it necessary to remove the provision for the reclassification of MWDs to get the bill passed).

134 § 371, 126 Stat. at 1706 (codified as amended at 10 U.S.C. § 2583).

135 10 U.S.C. § 2583(f) (emphasis added).

136 *Compare* § 371, 126 Stat. at 1706, *with* S. 2134 § 3, *and* H.R. 4103 § 3 (showing that the provision relating to accepting frequent flyer miles to facilitate adoption of MWDs was not included as part of the National Defense Authorization Act for Fiscal Year 2013). *See also* Press Release, Office of U.S. Sen. Richard Blumenthal, Blumenthal Announces Senate Passage of Amendment to Improve Treatment of Military Working Dogs, Vows to Continue to Fight to Reclassify Dogs as Canine Members of the Armed Forces, http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-announces-senate-passage-of-amendment-to-improve-treatment-of-military-working-dogs-vows-to-continue-fight-to-reclassify-dogs-as-canine-members-of-the-armed-forces [http://perma.cc/3NF6-GR97] (Dec. 14, 2012) (accessed Apr. 10, 2015) (noting the provision allowing "individuals to donate frequent flyer miles to transport the dogs" was not included in the amendment).

10, Chapter 50 on "Miscellaneous Responsibilities," stating that "[t]he Secretary of Defense *may* establish and maintain a system to provide for the veterinary care of retired military working dogs."[137] However, the provisions requiring for post-adoption veterinary care spanning the life of an MWD and outlining administration of this veterinary care system were not passed into law.[138]

VI. RESOURCES UTILIZED BY THE U.S. ARMED FORCES

Service members, military working dogs (MWDs), and weapons are all resources drawn on by the U.S. Armed Forces in the defense of our nation. To fully understand why classification of MWDs as equipment is inappropriate, it is helpful to consider factors applicable or inapplicable to each of these resources. The following analysis will help to visualize where MWDs belong on the spectrum between service members and equipment.

A. An Evaluation of Service Members, Military Working Dogs, and Weapons

This Article does not argue that MWDs and service members should share the same classification, enjoy identical treatment, or be honored in the same exact fashion. However, an examination of the parallels in terms of cognition and awareness of physical pain; traits sought such as dedication, motivation and physicality; and basic necessities such as food, shelter and medical care separates MWDs from the equipment category and places the canines far closer along the spectrum towards 'members' of the armed forces.

Some members of the military bureaucracy and legislative community are comfortable with the categorization of MWDs as equipment, as long as the military provides proper care and treatment for the canines while on active duty.[139] However, there are some veterans and active military members who have worked with MWDs and view the canines as their partners and best friends. Sergeant 1st Class Regina Johnson, operations superintendent for the 341st Training Squadron explained, "[T]he more we're out there with the combat commanders, they see . . . that the dog just saved their Soldiers' lives. . . . These dogs aren't just U.S. government property. These dogs are our partners."[140]

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137 10 U.S.C. § 994(a) (2012) (emphasis added).

138 *Compare* § 371, 126 Stat. at 1706, *with* S. 2134 § 4, *and* H.R. 4103 § 4 (showing that the provisions relating to requiring veterinary care for the life of the MWD and administration of the veterinary care system were not included as part of the National Defense Authorization Act for Fiscal Year 2013).

139 *Cf. Military Working Dogs Still Considered Equipment*, *supra* note 133 (noting the provisions relating to guaranteed transportation and veterinary care for MWDs were included in the National Defense Authorization Act for Fiscal Year 2013, but the reclassification of MWDs as canine members of the military was removed to facilitate passage of the bill).

140 Crippen, *supra* note 3.

1. Recruitment Procedure and Standards

For humans to become members of the U.S. Armed Forces, they must be intelligent, and physically and mentally fit.[141] The U.S. military maintains specific eligibility requirements, including medical standards set by the Department of Defense (DoD) to ensure military personnel are able to meet the daily demands of service.[142] Prior to joining the military, recruits must undergo a physical exam, which includes urine and blood tests, a hearing and vision examination, and muscle group and joint maneuvers.[143] Recruits must also meet specific height and weight measurements.[144] Certain medical conditions are grounds for rejection from military service.[145] According to the Pentagon, "75% percent of people ages 17-24 are currently unable to enlist in the Unites States military" for multiple reasons, including physical fitness issues.[146] In addition, recruits must take and pass a multiple-aptitude test referred to as the Armed Service Vocational Aptitude Battery (ASVAB) to determine if an applicant is qualified to join the military, and certain scores are required to enlist in each branch of the military.[147]

The DoD Military Working Dog Program is overseen by the Air Force and operated by the 341st Training Squadron at Lackland Air Force Base (AFB) in San Antonio, Texas.[148] The 341st Training Squadron uses multiple methods to procure canines for the MWD Program, in addition to operating the largest military dog breeding program in the world.[149] The standard breeds used in the MWD Program

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141 *See* MISSION: READINESS: MILITARY LEADERS FOR KIDS, READY, WILLING, AND UNABLE TO SERVE 1–2 (2009) (available at http://d15h7vkr8e4okv.cloudfront.net/NATEE1109.pdf [http://perma.cc/PNT7-ZZAY] (accessed Feb. 8, 2015)) (finding that criminal records, physical fitness levels, and not attaining a high school diploma are the most common issues for new military recruits).

142 *See id.* at 2 ("Nearly a third . . . of all young people have health problems—other than weight—that will keep them from serving.").

143 *See* U.S. DEP'T OF THE ARMY, REG. 40-501, STANDARDS OF MEDICAL FITNESS 2–20 (2011) (available at http://www.apd.army.mil/pdffiles/r40_501.pdf [http://perma.cc/7BPN-P4FR] (accessed Mar. 21, 2015)) (detailing the physical standards for enlisting in the Armed Forces).

144 *See id.* at 19–20 tbls. 2.1, 2.2 (providing acceptable weight as related to age and height for males and females).

145 *Id.* at 1 ("Medical examiners will report as 'medically unacceptable' by reason of medical unfitness all individuals who possess any one or more of the medical conditions or physical defects listed in this regulation as a cause for rejection.").

146 MISSION: READINESS: MILITARY LEADERS FOR KIDS, *supra* note 141, at 1.

147 *ASVAB Test Explained*, MILITARY.COM, http://www.military.com/join-armed-forces/asvab/asvab-test-explained.html [http://perma.cc/P8JL-9XF9] (accessed Mar. 21, 2015).

148 *Fact Sheet: 341st Training Squadron*, U.S. DEP'T OF THE AIR FORCE, http://www.37trw.af.mil/library/factsheets/factsheet_print.asp?fsID=18584&page=1 [http://perma.cc/MW63-9677] (accessed Feb. 2, 2015).

149 Elaine Sanchez, *Breeding Program Turns Puppies into Troops*, U.S. DEP'T OF DEF., http://www.defense.gov/News/NewsArticle.aspx?ID=67089 [http://perma.cc/WFZ3-DCTE] (Feb. 7, 2012) (accessed Feb. 2, 2015); Crippen, *supra* note 3.

are the Belgian Malinois, German Shepherd, and Dutch Shepherd; other breeds, including the Labrador Retriever, are also used as explosive detector dogs and specialized search dogs.[150] The Belgian Malinois in particular is selected because of the breed's strength, courage, endurance, speed, sense of smell, intelligence, high energy level, and high motivation.[151]

Before entering the 341st Training Squadron's dog training school, extensive temperament and physical evaluations are conducted to determine a canine's suitability as an MWD.[152] The physical evaluation looks for dogs that are healthy, and includes a blood test for worms and radiographs to identify potential issues with hips, spine, and elbows.[153] Character is important—"[e]ach dog is its own particular, sometimes peculiar, universe."[154] The temperament evaluation focuses on a canine's trainability, gun shyness, aggressiveness, and search behavior.[155] A canine's motivation is also very important when determining suitability; a canine must be motivated to complete a handler's tasks.[156]

2. *Training*

All branches of the military have an arduous initial training program. In the Army, it is a ten-week program;[157] in the Air Force, it is a six-and-a-half-week basic military training; in the Marines, it is twelve weeks of boot camp followed by Infantry or combat training; and in the Navy it is eight weeks of basic training followed by intermediate training.[158] Some branches require additional training for certain special-

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150 *Military Working Dog History*, VETS ADOPT PETS, http://vetsadoptpets.org/somefacts.html [http://perma.cc/L8DB-HGH5] (accessed Feb. 3, 2015); *see also* Weinberger, *supra* note 66 (stating that Labradors are trained to find explosives).

151 *Military Working Dog History*, *supra* note 150; *see also* Mark Thompson, *Saluting Military Mutts*, TIME, http://nation.time.com/2012/11/30/saluting-military-mutts/ [http://perma.cc/QL4X-LXZV] (Nov. 30, 2012) (accessed Feb. 3, 2015) (stating that Belgian Malinois are considered the best breed because they are motivated to please their owners).

152 *Military Working Dog History*, *supra* note 150.

153 Nicole Leidholm, *Dogs Form Close Bond with Their Handlers*, TRAVIS AIR FORCE BASE, http://www.travis.af.mil/news/story.asp?id=123286139 [http://perma.cc/N9DU-RTHM] (Jan. 12, 2012) (accessed Feb. 5, 2015); Crippen, *supra* note 3.

154 Michael Paterniti, *The Dogs of War*, NAT'L GEOGRAPHIC (June 2014) (available at http://ngm.nationalgeographic.com/2014/06/war-dogs/paterniti-text [http://perma.cc/J6VV-YWW7] (accessed Apr. 10, 2015)).

155 *Military Working Dog History*, *supra* note 150.

156 Crippen, *supra* note 3.

157 *See Basic Training*, US ARMY BASIC, http://usarmybasic.com/basic-training [http://perma.cc/T46U-2VNC] (accessed Feb. 5, 2015) ("Army Basic Training . . . (also known as Army Bootcamp) is the program of physical and mental training required in order for an individual to become a soldier in the United States Army.").

158 *10 Steps to Joining the Military*, MILITARY.COM, http://www.military.com/Recruiting/Content/0,13898,rec_step09_compare_training,,00.html [http://perma.cc/5NDE-W86N] (accessed Feb. 5, 2015).

ties.[159] A percentage of recruits fail to pass the respective training programs mostly due to medical conditions, either physical or mental, and other issues relating to performance.[160]

The MWD Program provides initial training for all dogs and handlers in DoD, including all branches of the military and other government agencies.[161] The Dog Center at Lackland AFB houses approximately 800 dogs at any given time, and consists of 400 acres containing ninety training areas.[162] Training is the key to success for an MWD team.[163] The 341st Training Squadron is responsible for the dogs' initial training, which covers basic obedience, aggressiveness, attack, and building and open area searches.[164] Approximately 270 canines are trained every year for the dual purposes of patrol and explosives detection.[165] The canines are trained to "know progression of force just as service members are taught."[166] The dogs must pass a rigorous certification process, and only half the dogs who attend training school will make it as MWDs.[167] Additional training is required for canines selected for more particularized tasks.[168] Military dogs must maintain, at a minimum, a 95% accuracy rate to maintain certification, and their handlers must recertify them each year.[169]

Establishing and maintaining a bond between a handler and a working dog is crucial for an effective team, and is emphasized during handler training.[170] A handler must also be able to read the different

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159 *Id.*

160 Dep't of Defense, *United States Military Basic Training Attrition Rates*, ABOUT.COM, http://usmilitary.about.com/od/joiningthemilitary/l/blbasicattrit.htm [http://perma.cc/N8EE-87UG] (accessed Feb. 5, 2015).

161 *Military Working Dog History*, *supra* note 150.

162 *Id.*

163 Trisha Eldredge, *Military Working Dogs, Handlers Train for Mission Success*, PAC. AIR FORCE, http://www.pacaf.af.mil/News/ArticleDisplay/tabid/377/Article/593964/military-working-dogs-handlers-train-for-mission-success.aspx [http://perma.cc/Z3HK-RXKU] (Aug. 11, 2011) (accessed July 15, 2015).

164 *Military Working Dog History*, *supra* note 150; *see also* Sanchez, *supra* note 149 (stating the training teaches dogs how to patrol and detect drugs and bombs).

165 Crippen, *supra* note 3.

166 Christi Pickett, *Military Working Dogs Essential Tool in Iraq Mission*, MILITARY.COM, http://www.military.com/NewsContent/0,13319,usmc3_050305.00.html [http://perma.cc/4LFX-UDBF] (May 3, 2005) (accessed Jan. 31, 2015).

167 Crippen, *supra* note 3.

168 *See Fact Sheet: 341st Training Squadron*, *supra* note 148 (detailing additional training requirements for more specialized tasks).

169 Crippen, *supra* note 3; *see also* Patricia McMurphy, *Military Working Dog Teams Prepare for Certification for Real World Mission at Home and Abroad*, U.S. ARMY ALASKA, http://www.usarak.army.mil/main/Stories_Archives/Feb_18-21_2014/140218_FS2.asp [http://perma.cc/CW44-H6CF] (accessed Feb. 5, 2015) (explaining that dog teams must be recertified each year).

170 *See Military Working Dog History*, *supra* note 150 ("Military working dog training begins by establishing the handler-dog relationship through constant close association, feeding, grooming, exercise, and play. This simulates and develops the dog's natural instinct for companionship. Once this relationship has begun to develop, basic obedience training is introduced."); *see also Saying Goodbye to Military Working Dog Rex*, PUB. RADIO INT'L 0:45–1:04 (Jan. 9, 2013) (available at http://www.theworld.org/2013/01/say

nuances in an MWD's behavior to recognize signs of stress or fatigue, and to understand what a dog is communicating in a particular situation.[171] The personalities of both an MWD and a handler are considered when making a team to facilitate training and performing a mission.[172] As noted by one Marine handler, "If there is a personality clash, the dog won't perform."[173]

According to one Air Force handler, dogs have unique personalities, and each canine might have a different issue in training.[174] For example, one dog may struggle with searching in high places, while another dog may struggle in searching low places, or a dog may not be strong in recognizing a certain odor.[175] When a dog struggles in a certain area, it is not as simple as more training to fix the deficiency. A handler may need to try several different training techniques before finding a solution that clicks with the specific canine.[176] As one trainer noted, "'It's not a fixed science [and] there is never a single solution that works across the board for every dog or every handler. . . . It's not as simple as adjusting the windage on an M4 weapon and getting back on target."[177]

Inanimate objects that share the 'equipment' classification applied to MWDs are obviously not 'trained' so much as they are 'manufactured.' But a discussion of the M24 Sniper Rifle, as a proxy for 'equip-

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ing-goodbye-to-military-working-dog-rex [http://perma.cc/P5DQ-5PPH] (accessed Feb. 6, 2015)) (Rex's former handler Mike Dowling stated, "He's a very, very good dog and beautiful dog, but he's trained to attack. And he made you earn his respect, and that's exactly what I had to do. I had to go in and build a rapport for him to trust me, which he ended up doing. And then, from that point on, we started training and we were with each other, literally, every single day. Even on our off days, I was there at some point trying to do some kind of obedience or something with him just to build that bond every single day.").

171 *See* Brian Buckwalter, *Face of Defense: Dog, Handler Protect Marines*, U.S. DEP'T OF DEF., http://www.defense.gov/news/newsarticle.aspx?id=117647 [http://perma.cc/686C-EQEU] (Aug. 27, 2012) (accessed Feb. 6, 2015) ("'It's basically like having a 3-year-old in Afghanistan,' said Mader, who is responsible for every aspect of Maxx's care. He feeds him, cleans him and even monitors Maxx's behavior for signs of stress or fatigue.").

172 *See* Crippen, *supra* note 3 ("Indeed, not just anyone can step in and perform the job. The hours are long and the missions require the kind of autonomy that not everyone is mature enough to handle. Then, there are the dogs, which have distinct personalities just like humans do. . . . [A]ll the dogs go through a training assessment to ensure they have the right kind of temperament and acumen to be a working dog."); *see also* Buckwalter, *supra* note 171 ("School instructors interviewed Mader about his demeanor and personality and asked questions such as, 'Are you laid-back or a hard-charger?' to get an idea of which dog to assign him.").

173 Buckwalter, *supra* note 171.

174 Alex Salinas, *Security Forces MWD Handler and Partner Provide Base Protection during Shut-Eye Hours*, JOINT BASE SAN ANTONIO, http://www.jbsa.af.mil/news/story.asp?id=123310362 [http://perma.cc/J3CG-7UZQ] (July 18, 2012) (accessed Feb. 6, 2015); *see also* Crippen, *supra* note 3 ("[I]f a handler gets matched up with a dog that's substandard or has issues, training Monday through Friday isn't going to be enough . . . .").

175 Crippen, *supra* note 3.

176 *Id.*

177 *Id.*

ment' as a category, provides a useful illustration of what properly belongs in that category. As of 2011, the Army had 3,600 M24 sniper rifles in its inventory.[178] The M24 Sniper Weapons System is "one of the most highly accurate sniping systems" currently used by the Army.[179] Every single M24 rifle is manufactured to the same precise specifications. Among the M24 rifle's features are "a strong, lightweight stock made of Kevlar, graphite and fiberglass, a two-foot long barrel and a detachable bipod for pinpoint accuracy."[180] In this way, equipment used by the Armed Forces is unlike either human or canine members of the Armed Forces, who—not being precision-manufactured to have identical characteristics meant to serve a particular end—must instead be selected and trained.

3. Administration

Once a human service member enlists, he or she receives a military identification card.[181] A file with all pertinent military records is maintained for each service member while on active duty, and as a veteran.[182] Similarly, a military record is created for each certified MWD, which is maintained throughout the canine's service.[183]

4. Medical

While on active duty, service men and women receive medical and dental care at little or no cost through Army, Navy, and Air Force mili-

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178 Press Release, Office of U.S. Sen. Charles Schumer, Schumer Announces Remington Arms Company Set to Receive $8.9 million Army Contract, http://www.schumer.senate.gov/newsroom/press-releases/schumer-announces-remington-arms-company-set-to-receive-89-million-army-contract [http://perma.cc/7QEW-WQ2D] (Jan. 10, 2011) (accessed Feb. 6, 2015).

179 *Gear & Weapons*, ARMYKO.COM, http://www.armyko.com/index.php/features/gear-weapons [http://perma.cc/98CM-68YJ] (accessed Feb. 6, 2015).

180 *Id.*

181 *See Legal Information*, MILITARYONESOURCE.COM, http://www.militaryonesource.mil/legal/individual-and-family-issues?content_id=268595 [http://perma.cc/X3X6-Y4XA] (accessed Feb. 6, 2015) ("The Department of Defense provides members of the uniformed services, dependents and other eligible individuals with distinct identification cards to identify their status as active-duty, reserve or retired members and as an authorization card for uniformed services' benefits.").

182 *See* U.S. DEP'T OF THE ARMY, REG. 600-8-104, ARMY MILITARY HUMAN RESOURCE RECORDS MANAGEMENT 2–3 (2012) (available at http://www.apd.army.mil/pdffiles/r600_8_104.pdf [http://perma.cc/EY5H-EUGP] (accessed Feb. 6, 2015)) ("The Chief, Army Personnel Records Division is designated as the Army's personnel record custodian with authority pertaining to all Active Component and USAR Soldiers, retired Soldiers, and Army veterans . . . . All Soldiers, regardless of component, are responsible for updating their individual AMHRR.").

183 *See* Kaylee LaRoque, *Military Working Dog Brix Retires*, FLA. TIMES-UNION, http://jacksonville.com/military/jax-air-news/2011-10-19/story/military-working-dog-brix-retires [http://perma.cc/JXB7-57NT] (Oct. 19, 2011) (accessed Feb. 6, 2015) ("They have their own official military records and are considered comrades-in-arms by the soldiers with whom they work.").

tary treatment facilities and TRICARE.[184] Health care benefits are also available to retired members of the military who meet minimum duty requirements through TRICARE and the Department of Veterans Affairs.[185] Walter Reed National Military Medical Center "is one of the nation's largest and most renowned military medical centers" and provides health care to active duty soldiers and veterans of all branches of the military.[186]

A similarly sophisticated system of veterinary medicine is provided to ensure the health of MWDs while at Lackland AFB and while in the field.[187] The DoD Military Working Dog Veterinary Service operates the Daniel F. Holland Hospital, a state-of-the-art, $15 million veterinary hospital at Lackland AFB that provides primary and specialty level care for all MWDs, as well as consultative and referral services.[188] The staff at Holland Hospital includes "14 Veterinarians with advanced training in surgery, radiology, internal medicine, critical care, epidemiology and animal behavior, 6 administrative support personnel, 1 Medical Laboratory Specialist, 24 Registered Veterinary Technicians and Animal Care Specialists."[189] Veterinarians from the Army Veterinary Corps are also stationed at referral hospitals at several installations around the world, and the staff at Holland Hospital conducts telemedicine consultations to assist treating MWDs in the field.[190]

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184 *Healthcare and Support Services*, DEPLOYMENT HEALTH CLINICAL CTR., http://www.pdhealth.mil/hss/healthcare_services.asp [http://perma.cc/M6KE-UM3H](accessed Feb. 6, 2015).

185 *See Understanding the Relations: TRICARE, the VA and CHAMPVA*, HEALTH NET FED. SERVICES, https://www.hnfs.com/content/hnfs/home/tn/prov/learning/va_and_tricare.html [http://perma.cc/M4KN-PB7A] (accessed Feb. 6, 2015) ("All Department of Veterans Affairs (VA) health care facilities in the North region participate as TRICARE network providers."); *see also Health Benefits*, U.S. DEP'T OF VETERANS AFFAIRS, http://www.va.gov/healthbenefits/apply/veterans.asp [http://perma.cc/8CFZ-XX8N] (accessed Feb. 6, 2015) ("Most Veterans who enlisted after September 7, 1980, or entered active duty after October 16, 1981, must have served 24 continuous months or the full period for which they were called to active duty in order to be eligible.").

186 *About Us*, WALTER REED NAT'L MIL. MED. CTR., http://www.wrnmmc.capmed.mil/About%20Us/SitePages/Home.aspx [http://perma.cc/K9GX-RE27] (accessed Feb. 6, 2015).

187 *See DoD Military Working Dog Veterinary Service*, U.S. ARMY MED. DEP'T, http://phc.amedd.army.mil/organization/phcrsouth/dodmwdvs/Pages/default.aspx [http://perma.cc/TV8A-45Q3] (accessed Feb. 6, 2015) ("The LTC Daniel E. Holland [MWD] Hospital is a one of a kind referral center providing primary and specialty level care as well as worldwide referral and consultative services for all dogs in DoD MWD programs . . . .").

188 *Base Dedicates MWD Hospital*, ARMED SERVICES BLOOD PROGRAM, http://www.militaryblood.dod.mil/lackland/view_story.aspx?id=0002 [http://perma.cc/F7LZ-PCQJ] (June 1, 2009) (accessed Feb. 6, 2015).

189 *DoD Military Working Dog Veterinary Service*, *supra* note 187.

190 *See* Donna Miles, *Military Working Dogs Protect Forces, Bases during Terror War*, U.S. DEP'T OF DEF., http://www.defense.gov/News/NewsArticle.aspx?ID=25393 [http://perma.cc/XEF7-N3VT] (Sept. 3, 2004) (accessed Feb. 6, 2015) ("Army veterinarians posted around the world help keep [MWDs] fit for duty and treat their ailments. Telemedicine . . . is being used to provide expert consultation for military working

In addition, as part of their training, handlers are taught how to administer emergency care to an MWD.[191] When necessary, helicopter service may be used to evacuate an MWD seriously injured in the field for more advanced medical treatment.[192] With the passage of the National Defense Budget for Fiscal Year 2013, the Secretary of Defense may also establish and maintain a system of veterinary care for retired MWDs.[193]

i. Post-Traumatic Stress Disorder

The Department of Veterans Affairs (VA) National Center for Post-Traumatic Stress Disorder characterizes post-traumatic stress disorder (PTSD) as a mental health problem that can result following a traumatic event such as combat exposure or physical assault.[194] A 2008 study indicated "a link between PTSD and extreme stress or trauma associated with war[.]"[195] According to a report conducted by the Office of Public Health Veterans Affairs Administration, between October 2001 and June 2012, 256,820 veterans from Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn were seen for potential PTSD at VA facilities following their return from Iraq or Afghanistan.[196] PTSD often manifests as having bad

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dogs."); *see also* U.S. DEP'T OF THE ARMY, ARMY VETERINARY CORPS 2 (June 2011) (available at http://www.goarmy.com/content/dam/goarmy/downloaded_assets/pdfs/amedd/RPI%20524%20FS%20Veterinary%20Corps%20Sep%2011%20LowRes.pdf [http://perma.cc/5XFW-6HB9] (accessed Feb. 6, 2015)) ("Veterinary Corps officers can be stationed on any federal installation: Army, Navy, Air Force, or Marine.").

191 *See* Janice Baker et al., *Overview of Combat Trauma in Military Working Dogs in Iraq and Afghanistan*, ARMY MED. DEP'T J. 33, 36 (Jan.–Mar. 2009) ("Dog handlers and human medical personnel who requested [veterinary medical] training from their area's military veterinarian received training based on the comfort level and experience of that individual veterinarian.").

192 *See* Matthew MacRoberts, *Soldiers, Working Dogs Train on Medical Evacuations*, U.S. ARMY ALASKA, http://www.usarak.army.mil/alaskapost/Archives2007/070727/Jul27Story13.asp [http://perma.cc/2HCC-VPMP] (July 27, 2007) (accessed Feb. 1, 2015) (describing MWDs being trained for helicopter evacuation); *see also* Chrissy Zdrakas, *NCO Rescues His Military Working Dog from Burning Building*, AIR FORCE PRINT NEWS TODAY, http://www.afmc.af.mil/news/story_print.asp?id=123017529 [http://perma.cc/RX8T-S7NF] (Mar. 16, 2006) (accessed Jan. 31, 2015) (providing an example of an MWD that was evacuated via helicopter).

193 § 371, 126 Stat. 1706 (codified as amended at 10 U.S.C. § 994(a) (2012)).

194 NAT'L CTR. FOR PTSD, U.S. DEP'T OF VETERANS AFFAIRS, UNDERSTANDING PTSD 2 (available at http://www.ptsd.va.gov/public/understanding_ptsd/booklet.pdf [http://perma.cc/5WKD-RPMX] (accessed Mar. 1, 2015)).

195 Michelle Castillo, *Study: Suicide Rates among Army Soldiers up 80 Percent*, CBS NEWS, http://www.cbsnews.com/8301-504763_162-57394452-10391704/study-suicide-rates-among-army-soldiers-up-80-percent/ [http://perma.cc/V9TN-BV83] (July 10, 2012) (accessed Feb. 1, 2015).

196 NAT'L CTR. FOR PTSD, U.S. DEP'T OF VETERANS AFFAIRS, REPORT ON VA FACILITY SPECIFIC OPERATION ENDURING FREEDOM (OEF), OPERATION IRAQI FREEDOM (OIF), AND OPERATION NEW DAWN (OND) VETERANS CODED WITH POTENTIAL PTSD – REVISED 4 (Dec. 2012) (available at http://www.publichealth.va.gov/docs/epidemiology/ptsd-report-fy2012-qtr3.pdf [http://perma.cc/8TTE-ZLQS] (accessed Feb. 3, 2015)).

dreams or memories, avoiding situations reminiscent of the traumatic event, and being jittery or alert.[197]

According to the National Center for PTSD, cognitive behavioral therapy is one of the most effective methods for treating PTSD.[198] One method of cognitive therapy, referred to as exposure therapy, involves repeatedly talking about the traumatic situation as a means of desensitizing a person to the very thoughts and memories that cause the stress.[199] Over fifty VA hospitals, military bases, and universities are implementing "Virtual Iraq/Afghanistan" programs as a way of virtually placing military personnel back in a Middle Eastern-themed city, complete with sounds and smells, but in a safe and controlled environment.[200] Anti-depressants and anti-anxiety medications are also used, often in connection with therapy, to treat PTSD.[201]

ii. Canine Post-Traumatic Stress Disorder

As noted by a dog handler at Lackland AFB, "[D]ogs experience combat just like humans [do.]"[202] It is estimated that more than 5% of MWDs deployed with combat forces overseas developed canine PTSD.[203] While the diagnosis has not been subject to the traditional veterinarian peer review process, trainers and other specialists at Lackland AFB, including Doctor Walter F. Burghardt Jr., chief of behavioral medicine and MWD studies at Holland Hospital, recognize the medical condition.[204] Suspected canine PTSD is generally seen in MWDs "exposed to explosions, gunfire and other combat-related vio-

197 *Symptoms of PTSD*, U.S. DEP'T OF VETERANS AFFAIRS, http://www.ptsd.va.gov/public/pages/symptoms_of_ptsd.asp [http://perma.cc/NNU3-HQEK] (updated Jan. 3, 2014) (accessed Feb. 3, 2015).

198 *Treatment of PTSD*, U.S. DEP'T OF VETERANS AFFAIRS, http://www.ptsd.va.gov/public/pages/treatment-ptsd.asp [http://perma.cc/MLZ7-VM4B] (updated Feb. 27, 2014) (accessed Feb. 3, 2015).

199 *Id.*

200 USC INST. FOR CREATIVE TECHNOLOGIES, BRAVEMIND: VIRTUAL REALITY EXPOSURE THERAPY (June 2014) (available at http://ict.usc.edu/wp-content/uploads/overviews/Post%20Traumatic%20Stress%20Disorder_Overview.pdf [http://perma.cc/GL6G-TZFJ] (accessed Feb. 3, 2015)).

201 *See* Matt Jeffreys, *Clinician's Guide to Medications for PTSD*, U.S. DEP'T OF VETERANS AFFAIRS., http://www.ptsd.va.gov/professional/treatment/overview/cliniciansguide-to-medications-for-ptsd.asp [http://perma.cc/PNN5-YC3R] (updated July 28, 2014) (accessed Feb. 5, 2015) (outlining suggested medications to treat PTSD); *see also Post-Traumatic Stress Disorder (PTSD): Treatments and Drugs*, MAYO CLINIC, http://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/basics/treatment/con-20022540 [http://perma.cc/5FHH-T7BT] (Apr. 15, 2014) (accessed Feb. 5, 2015) (suggesting that psychotherapy is often accompanied by medication).

202 Jennifer Viegas, *Military Dogs Suffer from PTSD*, DISCOVERY NEWS, http://news.discovery.com/animals/pets/dogs-ptsd-121127.htm [http://perma.cc/5L7G-3XGQ] (Nov. 27, 2012) (accessed Feb. 5, 2015).

203 James Dao, *After Duty, Dogs Suffer Like Soldiers*, N.Y. TIMES, http://www.nytimes.com/2011/12/02/us/more-military-dogs-show-signs-of-combat-stress.html [http://perma.cc/XJT4-PU62] (Dec. 1, 2011) (accessed Feb. 5, 2015).

204 *Id.*

lence in Iraq and Afghanistan."[205] The symptoms manifest as sharp changes in temperament, including becoming timid, clingy or unusually aggressive with a handler, hyper-vigilance, or refusal to do the tasks they are trained to do.[206] Treatment may include retraining and reconditioning a canine, as well as administering anti-anxiety medication such as Xanax.[207] According to Doctor Burghardt, even with treatment, "recovery from canine PTSD is often only partial."[208]

5. *Housing / Meals*

The military provides service members with housing on-base in barracks, dorms, or apartments. If government quarters are not provided on-base, service members are given a "Basic Allowance for Housing."[209] The military also provides service members with food allowances that allow members to eat meals on base for free and shop at on-base grocery stores.[210]

Housing for MWDs at Lackland AFB includes 1,000 kennel runs.[211] Pursuant to Army regulation, permanent kennel facilities must be complete and available for use prior to arrival of an MWD at a unit, installation or activity.[212] The construction and operation of kennel facilities must follow specific standards and account for "security measures such as lighting, barriers, and structural integrity."[213] Wet and dry dog food is available for requisition and nutritional standards are set by regulation.[214] An attending veterinarian may also prescribe specific feeding requirements for an MWD.[215] The handler is responsi-

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205 *Id.*

206 *Id.*

207 Tony Perry, *Military's Dogs of War Also Suffer Post-Traumatic Stress Disorder*, L.A. TIMES, http://articles.latimes.com/2012/nov/26/nation/la-na-military-dogs-20121126 [http://perma.cc/V786-NXJD] (Nov. 26, 2012) (accessed Feb. 5, 2015).

208 Viegas, *supra* note 202.

209 DEF. TRAVEL MGMT. OFFICE, U.S. DEP'T OF DEF., BASIC ALLOWANCE FOR HOUSING (updated Oct. 2014) (available at http://www.defensetravel.dod.mil/Docs/Fact_Sheet_BAH.pdf [http://perma.cc/BLA4-49PG] (accessed Feb. 6, 2015)); *see also Military Housing*, U.S. DEP'T OF DEF., http://todaysmilitary.com/living/military-housing [http://perma.cc/Z3W3-AECL] (accessed Feb. 6, 2015) (stating that military housing is generally provided for all service members).

210 *Basic Allowance for Subsistence*, U.S. DEP'T OF DEF., http://militarypay.defense.gov/pay/ALLOWANCES/bas.aspx (accessed Feb. 6, 2015); *see also Food & Housing*, U.S. AIR FORCE, http://www.airforce.com/benefits/food-housing/ [http://perma.cc/P2WV-MHC3] (accessed Feb. 6, 2015) (explaining that the Air Force provides service members either a food allowance or a meal plan for free meals at on-base facilities).

211 *Military Working Dog History*, *supra* note 150.

212 U.S. DEP'T OF THE ARMY, REG. 190-12, MILITARY WORKING DOGS 6 (Mar. 11, 2013) (available at http://www.apd.army.mil/pdffiles/r190_12.pdf [http://perma.cc/VDS8-MTCE] (accessed Feb. 3, 2015)) [hereinafter ARMY MWD REGULATION].

213 *Id.* at 16–17.

214 *Id.* at 17.

215 *Id.*

ble for the daily care of an MWD, including grooming and feeding, and must also clean the dog kennel and run on a daily basis.[216]

6. Air Transportation

The U.S. Transportation Command is the sole manager of all DoD transportation, "except those that are Service-unique or theater-assigned."[217] Air Mobility Command is the Air Force component of U.S. Transportation Command and is responsible for air transportation of all active service members and members of the reserves on a range of military operations.[218] "Air mobility operations involve the air transport of units, personnel, supplies, and equipment and may be conducted by any combination of force organizations."[219] Air Mobility Command provides worldwide airlift for the deployment of U.S. Armed Forces members as well as all supplies needed during the operation.[220] Commercial transportation resources are also engaged as necessary for airlift purposes.[221] In addition, the Space Available (Space-A) Travel Program allows eligible passengers, including out-of-uniform service members who are on leave from active duty and retired service members, to occupy unused or surplus seats on DoD owned or controlled aircraft after all required passengers have been accommodated on the aircraft.[222] The DoD views Space-A travel as a 'privilege' made available to active duty service members "as an avenue of respite from the rigors of Uniformed Services duty" and to retired service members "in recognition of a career of such rigorous duty."[223]

Similarly, the Air Force also facilitates the transportation of active MWDs and sets specific guidelines for transferring all military dogs.[224] Upon retirement, the Secretary of the military department

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216 *Id.*

217 U.S. DEP'T OF DEF., REG. 4515.13-R, AIR TRANSPORTATION ELIGIBILITY 17 (Nov. 1994) (available at http://www.dtic.mil/whs/directives/corres/pdf/451513r.pdf [http://perma.cc/5WHE-NQS7] (accessed Feb. 3, 2015)) [hereinafter AIR TRANSPORTATION ELIGIBILITY].

218 *Id.* at 21; *see also Factsheets: Air Mobility Command*, U.S. AIR FORCE, http://www.amc.af.mil/library/factsheets/factsheet.asp?id=229 [http://perma.cc/RRH3-4NHY] (updated Oct. 10, 2014) (accessed Feb. 4, 2015) ("18th Air Force's mission is tasking and executing all air mobility missions. . . . Airlifters provide the capability to deploy American armed forces anywhere in the world and keep them supplied.").

219 U.S. DEP'T OF DEF., REG. 4500.9-R, DEFENSE TRANSPORTATION REGULATION, pt. III, ch. 303, 5 (Sept. 24, 2014) (available at http://www.transcom.mil/dtr/part-iii/dtr_part_iii_303.pdf [http://perma.cc/4ECL-CQCS] (accessed Feb 4, 2015)).

220 *Factsheets: Air Mobility Command*, *supra* note 218.

221 AIR TRANSPORTATION ELIGIBILITY, *supra* note 217, at 23, 32.

222 *Id.* at 27, 76; *see also Space Available Travel (Space-A Travel)*, U.S. ARMY, http://myarmybenefits.us.army.mil/Home/Benefit_Library/Federal_Benefits_Page/Space-Available_Travel_%28Space-A_Travel%29.html [http://perma.cc/738G-9GP2] (2012) (accessed Feb. 5, 2015) (referring to Space Available travel as Space-A travel).

223 AIR TRANSPORTATION ELIGIBILITY, *supra* note 217, at 76.

224 *See* ARMY MWD REGULATION, *supra* note 212, at 3 ("The U.S. Air Force serves as the single Service manager for the DOD MWD Program and is responsible for procurement, materiel management, and initial training of MWDs and handlers."). The regula-

concerned may also transfer an MWD to the 341st Training Squadron or to another location for adoption.[225] But expenses related to the post-retirement transportation of an MWD or expenses related to bringing the dog into the U.S. for adoption are not covered by the Armed Forces—there is no equivalent to Space-A travel for retired MWDs.[226] As discussed in Part III, the classification of MWDs as 'equipment' and the treatment of retired MWDs as 'excess equipment' is one of the most concerning results of current military policy.[227]

7. Gear

The gear provided to service men and women varies widely based on factors such as assignment, location, and rank. For example, the Army may provide soldiers with body armor, camouflage outfits, GPS systems, and night vision goggles.[228]

MWDs are also issued specialized gear according to the duties and environment assigned. For example, military dogs deployed in Afghanistan are equipped with vests that are bullet proof and stab proof.[229] In some cases, MWDs are also equipped with goggles to protect their eyes from sand and debris, and earmuffs to protect their hearing during helicopter flights.[230] MWDs wearing infrared cameras participate in raids alongside Navy SEAL teams—including the team responsible for killing Osama bin Laden.[231]

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tion further states, "All dogs will be transported in large, extra large, or giant airline approved shipping crates. The shipping crate and other equipment will be transferred with the dog, when the dog or the MWD team is reassigned. . . . The MWDs received from the 341st TRS normally will be shipped in Air Force shipping crates." *Id.* at 19.

225 *Id.* at 7.

226 *See* Lyle, *supra* note 11 (quoting Air Force Major General Mary Kay Hertog, "'Once that dog is adopted, it becomes a pet, and therefore loses its [military working dog] status,' . . . so it would be inappropriate for the Defense Department to transport that pet").

227 *Id.*; *see also* FIELD MANUAL, *supra* note 9, at 1–2 ("MWDs are a unique item; they are the only living item in the Army supply system. Like other highly specialized equipment, MWDs complement and enhance the capabilities of the military police. MWD teams enable the military police to perform its mission more effectively and with significant savings of manpower, time, and money.").

228 *Gear & Weapons*, U.S. ARMY, http://www.goarmy.com/about/army-vehicles-and-equipment/army-gear-and-weapons.html [http://perma.cc/VBM4-5YPM] (accessed Feb. 1, 2015); Debi Dawson, *Army to Field Improved Body Armor*, U.S. ARMY, http://www.army.mil/article/2497/army-to-field-improved-body-armor/ [http://perma.cc/R29N-Y65Z] (Apr. 2, 2007) (accessed Apr. 21, 2015).

229 Ransford, *supra* note 5.

230 *See* Jason Brace, *Doggles for Military Working Dogs*, U.S ARMY, http://www.army.mil/media/255778 [http://perma.cc/B3HU-ERG5] (July 12, 2012) (accessed Mar. 21, 2015) (illustrating that dogs involved with combat missions in Afghanistan are supplied with special protective equipment and care packages).

231 Arthur Geon, *German Shepherd? Belgian Malinois? Navy SEAL Hero Dog Is Top Secret*, GLOBAL ANIMAL, http://www.globalanimal.org/2011/05/05/german-shepherd-belgian-malinois-bin-laden-hero-dog-is-top-secret/38799/ [http://perma.cc/QNV6-8QMC] (May 5, 2011) (accessed Mar. 21, 2015). *See also* Lewis Page, *Navy SEALs to Deploy Armoured Dogs in A'stan*, THE REGISTER, http://www.theregister.co.uk/2010/08/05/

8. Recognition

According to former Defense Secretary, Leon E. Panetta, "[O]ne of the most important things we can all do for veterans is to honor the service of those who have gone above and beyond the call of duty."[232] Each branch of the U.S. military issues decorations and awards in recognition of distinguished service, including the Medal of Honor, which is the highest military decoration that can be awarded to a service member.[233] In addition, every November 11th the U.S. observes Veterans Day to honor and thank service members who served in the armed forces; similarly, Memorial Day, taking place on the last Monday each May, honors those who have died while serving in America's armed forces.[234]

MWDs are not eligible for official military awards, but many military units honor MWDs with unofficial medals of honor. For example, in recognition of his heroic service, Lex, the MWD who served with handler Corporal Dustin Lee, was given an honorary Purple Heart.[235] In 2009, an MWD named Remco was awarded an honorary Silver Star posthumously for heroic action while serving in Afghanistan.[236] On September 27, 2012, a Belgian Malinois named Layka was the first-ever MWD honored by the 341st Training Squadron with an unofficial medal of heroism for saving the life of her handler after being wounded during an ambush in Afghanistan.[237]

In 2008, the National Defense Authorization Act for fiscal year 2008 authorized the establishment of the Military Working Dog Teams National Monument to honor all military dogs and their handlers who

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navy_seal_armoured_dogs_of_war/ [http://perma.cc/CV6G-3BGV] (Aug. 5, 2010) (accessed Apr. 21, 2015) (discussing American military purchasing of "Canine Tactical Assault Vests," which protect against firearms, cutting weapons, and punctures, while offering "an infrared nightsight camera and through-walls communication system," allowing handlers to not only remotely view the MWD's surroundings, but issue audio commands to the MWD).

232 *Military Awards for Valor-Top 3*, U.S. DEP'T OF DEF., http://valor.defense.gov [http://perma.cc/7VFS-DWFJ] (accessed Feb. 1, 2015).

233 *Id.* (explaining that each branch of the service has its own distinct version of the Medal of Honor).

234 *History of Veterans Day*, U.S. DEP'T OF VETERANS AFFAIRS, http://www.va.gov/opa/vetsday/vetdayhistory.asp [http://perma.cc/67SR-ZM93] (accessed Feb. 1, 2015); *Memorial Day History*, U.S. DEP'T OF VETERANS AFFAIRS, http://www.va.gov/opa/speceven/memday/history.asp [http://perma.cc/8X9D-TJVC] (accessed Apr. 21, 2015).

235 *Lex to Receive Purple Heart*, WTOK-TV, http://www.wtok.com/news/headlines/14802151.html [http://perma.cc/N58V-6DRD] (Feb. 1, 2008) (accessed Mar. 21, 2015).

236 Gardiner Harris, *A Bin Laden Hunter on Four Legs*, N.Y. TIMES, http://www.nytimes.com/2011/05/05/science/05dog.html?_r=2& [http://perma.cc/VN82-SN2Q] (May 4, 2011) (accessed Mar. 21, 2015).

237 Mike Joseph, *37th TRG Honors Belgian Malinois: MWD Gets Heroism Medal for Action under Fire*, JOINT BASE SAN ANTONIO, http://www.jbsa.af.mil/news/story.asp?id=123319933 [http://perma.cc/SV78-AFEK] (Sept. 27, 2012) (accessed Mar. 21, 2015).

have served in the U.S. Armed Forces since World War II.[238] There is also a national effort to make March 13th "K9 Veterans Day" in honor of military dogs and all other working dogs; several cities and eleven states currently recognize the date as K9 Veterans Day.[239] Retirement and adoption ceremonies have even been conferred upon MWDs who are retired from active service.[240] There are also eighteen War Dog Memorials throughout the U.S., including one erected in South Lyon, Michigan, which was dedicated on April 6, 1946 to honor the heroism of MWDs who served in World War II.[241]

9. Burial

Service members who die while on active duty and veterans who were discharged "under conditions other than dishonorable" are entitled to burial in one of the Department of Veterans Affairs' national cemeteries.[242] The burial service includes a government headstone or marker and a burial flag provided at no cost to the family.[243]

Military dogs are not permitted to be buried in national military cemeteries.[244] However, there are multiple private pet cemeteries with designated sections where the remains of MWDs are laid to rest. One such cemetery is Hartsdale Pet Cemetery and Crematory, which contains The War Dog Memorial dedicated after the end of World War I.[245] There is another cemetery at the site of the War Dog Memorial in

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238 National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 563 (codified at 16 U.S.C § 431 (2012)).

239 *See Military Working Dog History*, *supra* note 150 (listing the eleven states that have proclaimed March 13th to be K9 Veterans Day: California, Delaware, Florida, Georgia, Illinois, Michigan, New Jersey, Pennsylvania, South Carolina, Tennessee, and West Virginia).

240 *See id.* (demonstrating that upon retirement, MWDs are allowed to be adopted by their former handlers and can be removed from active duty for medical reasons).

241 *War Dog Memorial*, VIETNAM DOG HANDLER ASS'N, http://www.vdha.us/content20022.html [http://perma.cc/ZJ3H-PB6T] (accessed Feb. 1, 2015).

242 *Eligibility—National Cemetery Administration*, U.S. DEP'T OF VETERANS AFFAIRS, http://www.cem.va.gov/cem/burial_benefits/eligible.asp [http://perma.cc/789D-Z6SA] (accessed Jan. 31, 2015).

243 *Burial Benefits—National Cemetery Administration*, U.S. DEP'T OF VETERANS AFFAIRS, http://www.cem.va.gov/cem/burial_benefits/ [http://perma.cc/YP29-BHEZ] (accessed Mar. 2, 2015).

244 *See* 38 U.S.C. § 2402 (2012) (listing the categories of people eligible for burial in national cemeteries, none of which include canines); *see, e.g.*, *Civil War Era National Cemeteries: Honoring Those Who Served*, NAT'L PARK SERV., http://www.nps.gov/nr/travel/national_cemeteries/text_only.html [http://perma.cc/3GKK-FK82] (accessed Apr. 10, 2015) ("The Los Angeles National Cemetery also has two unusual burials; a dog that veterans of the Pacific Branch soldiers[']home adopted and a war dog wounded in the Pacific during World War II. Old Bonus and Blackout's burials are exceptions for national cemeteries as the burial of pets or animals is now prohibited.").

245 *See War Dog Memorial*, HARTSDALE PET CEMETERY AND CREMATORY, http://www.hartsdalepetcrematory.com/aboutus/category/war-dog-memorial/ [http://perma.cc/NL2Q-GW5C] (accessed Jan. 31, 2015) ("The War Dog Memorial was erected in 1923. The unveiling was attended by representatives of every nation that fought in the Great War."); *Grave of Joachim, War Dog Memorial*, ROADSIDEAMERICA.COM, http://

South Lyon, Michigan.[246] Some military service members also hold services for MWDs killed in action, for retired MWDs who die of old age, or for MWDs put to sleep due to injuries.[247]

B. *Other Considerations for the Classification of Military Working Dogs*

Military dogs are viewed as "force multipliers" within the armed forces, providing searching capabilities equivalent "to five or six soldiers."[248] The canines provide strengths in areas where "humans may be weak."[249] The number of smell receptors in a canine's nose range from 125 million to 250 million, whereas "the number of smell receptors in a human's nose ranges from 5 million to 15 million."[250] The olfactory portion of the brain responsible for sense of smell is also four times larger in a canine's brain.[251] According to researchers, "dogs can pick up a scent as little as 500 parts per trillion."[252] Military dogs' swiftness and their keen sense of smell have been critical, as the military increasingly relies on the canines to sniff out improvised explosive devices.[253]

MWDs are more than the sum of their functions; they are more than just swiftness and a keen sense of smell. Scientists now recognize animals' abilities to reason and problem solve.[254] Scientists also recognize that animals feel pain akin to humans.[255] During cognition tests

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www.roadsideamerica.com/story/3604 [http://perma.cc/BDD8-YQRV] (accessed Apr. 21, 2015) (noting "many hero war and police dogs" are buried at the Hartsdale Pet Cemetery).

246 *See also War Dog Memorial*, *supra* note 241 (explaining that Sergeant Sparks, a Marine MWD who fought at Guadalcanal in 1943, is buried there).

247 *See, e.g.*, Clifton French, *Veteran Dog Gets Full Military Funeral*, WSBT.COM, http://articles.wsbt.com/2011-08-13/military-funeral_29885563 [http://perma.cc/W8KN-ZA9N] (Aug. 13, 2011) (accessed Jan. 31, 2015) (covering military honors for a retired military working dog).

248 Chris McCann, *Military Working Dogs Keeping Troops Safe*, U.S. DEP'T OF DEF., http://www.defense.gov/news/newsarticle.aspx?id=32540 [http://perma.cc/6STD-NHUN] (Mar. 22, 2007) (accessed Jan. 31, 2015).

249 Pickett, *supra* note 166.

250 Maryann Mott, *Dogs of War: Inside the U.S. Military's Canine Corps*, NAT'L GEOGRAPHIC, http://news.nationalgeographic.com/news/2003/04/0409_030409_militarydogs.html [http://perma.cc/3VE6=3SH2] (Apr. 9, 2003) (accessed Jan. 31, 2015).

251 *Id.*

252 *Id.*

253 *See, e.g.*, Harris, *supra* note 236 (noting that "[d]ogs have proved far better than people or machines at quickly finding bombs").

254 Weinberger, *supra* note 66; *see also* PHILIP LOW, THE CAMBRIDGE DECLARATION ON CONSCIOUSNESS (Jaak Panksepp et al. eds., 2012) (available at http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf [http://perma.cc/K665-NUL9] (accessed Jan. 31, 2015)) (providing that non-human animals, including all mammals and birds, possess neurological substrates just as humans do).

255 *See* Joseph Castro, *Crabs Really Do Feel Pain: Study*, LIVESCIENCE, http://www.livescience.com/26338-crabs-feel-pain.html [http://perma.cc/LD3R-ZBXL] (Jan. 16, 2013) (accessed Jan. 31, 2015) (covering experiments showing that crabs feel pain); CHRISTOPHER ANDEREGG ET AL., A CRITICAL LOOK AT ANIMAL EXPERIMENTATION (2006)

conducted by Brian Hare, the head of Duke University's Canine Cognition Center, canines indicated signs of inferential reasoning.[256] One of the tests involved a sophisticated game of fetch in which certain objects were assigned names.[257] According to Hare, "[T]here's evidence that dogs, after only two pairings of hearing the word out loud—no food rewards, no training, no nothing—remember the words for as long as four months." Hare noted, "That's on the order of what human children do."[258]

North Carolina researchers are conducting a specialized program for the Navy, designed to select and train "the next generation of bomb dog"—focusing on canine cognition.[259] The program is working to develop tests to identify military dogs possessing factors such as intelligence and motivation.[260] Dogs' loyalty and desire to please mean they possess qualities a machine never will. As Army Colonel David Rolfe, director of DoD's MWD Program, explained, "A machine doesn't care if it finds something . . . . But a dog wants to please its handler. A dog will go looking for something on its own where a machine won't."[261]

VII. CONCLUSION

Despite incremental changes improving the treatment of military working dogs (MWDs), further action is necessary to accurately reflect the qualities inherent in these canines and the role they play in the U.S. Armed Forces. Military dogs are still classified as equipment. The classification of MWDs as equipment allows the Department of Defense (DoD) to draw a distinct line in the sand. Under the DoD's current policy, as MWDs, the canines obtain training, necessities such as food and shelter, sophisticated medical care, and transportation. Upon discharge from the MWD Program and adoption by a civilian or organization, the canines become pets. For purposes of the DoD, the retirement of an MWD severs any ties the MWD has to the military, and therefore, any responsibility the federal government has for the canine.

The legislation that resulted in incremental changes in the treatment of MWDs after discharge demonstrates this line. A system for the adoption of MWDs is now in place, but the military is not responsible for working with different organizations. Military personnel work with outside organizations to facilitate adoptions as 'extra help,' but not as part of a required duty. The 2013 amendment to the MWD adoption statute allows for the transportation of MWDs retired abroad and

(available at http://www.mrmcmed.org/Critical_Look.pdf [http://perma.cc/LFU8-WTZ4] (accessed Jan. 31, 2015)) (discussing animal reactions to painful stimuli in experimentation).

256 Weinberger, *supra* note 66.

257 *Id.*

258 *Id.*

259 *Id.*

260 *Id.*

261 Miles, *supra* note 190.

a system of veterinary care for retired MWDs, but the provision is permissive.[262] The DoD is not mandated to provide transportation or to establish the system of medical care, and it still remains to be seen what action the DoD will take to implement the 2013 amendment.[263] The provision covering adoption of MWDs clearly states that the U.S. shall not be liable for any veterinary expense related to a condition an MWD had prior to the transfer for adoption.[264] While a system of veterinary care may now be maintained for retired MWDs, funding will not come from the federal government.[265]

The creation of a new classification of 'canine members of the armed forces' is necessary to recognize how very different MWDs are from equipment, while still maintaining a respectful distance from the classification of service members. Merely acknowledging that MWDs are unique from other equipment because they are living is not enough. An acknowledgment that MWDs are living recognizes that MWDs require basic necessities such as food, water, and shelter to survive, unlike other equipment. A classification as canine members of the U.S. Armed Forces would recognize that MWDs are intelligent, conscious beings, motivated to perform the jobs they are trained to do and actively risk their lives to protect the service members they work alongside. The DoD breeds and trains MWDs to perform life-threatening tasks, oftentimes deploying the canines for multiple tours of duty. Therefore, it is only appropriate that some amount of federal funding be made available to provide medical care for retired military dogs to treat the physical and emotional injuries these canines sustain while serving in the military.

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262 *See* § 371, 126 Stat. at 1706 (indicating that the Secretary of Defense has discretion as to whether to transport and arrange veterinary care for MWDs).

263 *See* Letter from Members of Congress to Leon E. Panetta, *supra* note 124 (encouraging the Secretary "to reexamine the current classification of military working dogs as 'equipment'").

264 10 U.S.C. § 2583(e)(2).

265 *Id.* § 994(a).