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Don't Let Slip the Dogs of War: An Argument for Reclassifying Military Working Dogs as "Canine Members of the Armed Forces"

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STUDENT NOTE

Don't Let Slip the Dogs of War: An Argument for Reclassifying Military Working Dogs as "Canine Members of the Armed Forces"

Michael J. Kranzler *

Abstract

Dogs have been an integral part of military activities around the world dating back more than two thousand years. They have fended off invasions and helped bring down one of the world's most notorious terrorist leaders. Yet under current law, they are afforded nearly the same protections as a torn uniform or a jammed rifle, classified in the United States Code as "excess equipment." Historically, this led to hundreds of dogs being euthanized each year because the United States had no legal obligation to bring this excess equipment home at the end of their deployments. While recent legislation has commenced a shift toward equal treatment of Military Working Dogs and their human counterparts, that process has slowed. New legislation will be necessary in order to give these soldiers the treatment in the eyes of the law that they have earned.

This Note will delve into recent scientific studies exploring canine cognition, the burgeoning discussion on animals, specifically dogs, gaining "quasi-personhood," general laws pertaining to dogs, and the history of Military Working Dogs in both ancient and modern settings, before moving on to how Military Working Dogs have been classified under modern American law. Finally, it will discuss the pending

* University of Miami School of Law, Class of 2015. The author would like to thank his faculty advisor Professor George Mundstock for advice in developing this topic. This article was inspired by Dr. Gregory Berns' *How Dogs Love Us: A Neuroscientist and His Adopted Dog Decode the Canine Brain*. Additionally, the author would like to thank Locky Stewart, the Director of Research at Dognition and the author's best friend all the way back in middle school, who provided insight, advice, and stacks of scientific articles and studies for use in researching and writing about this topic. Finally, he would like to thank his own "Canine Member of the Author's Family," Rudy.

legislation that would change the law's basic approach to Military Working Dogs so as to reflect, as argued in this article, that, based on their contributions, accomplishments, and cognitive capabilities, Military Working Dogs are far more than mere equipment, and it would be in the best interests of the military for them to be considered on par with their human soldier counterparts. The author will ultimately suggest that Military Working Dogs (hereinafter "MWDs") should be reclassified under the United States Code as "Canine Members of the Armed Forces."

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I. INTRODUCTION

The capability they (Military Working Dogs) bring to the fight cannot be replicated by man or machine. By all measures of performance their yield outperforms any asset we have in our inventory. Our Army (and military) would be remiss if we failed to invest more in this incredibly valuable resource.

-General David H. Petraeus¹

The dog may be man's best friend, and over the millennia they have evolved to be the perfect companion to humans; yet military dogs can be much more than that. From saving lives in the field of battle to providing emotional support to retired veterans suffering from Post Traumatic Stress Disorder, military dogs have enjoyed a long, happy career fighting alongside military veterans in the United States. Further, after retirement, many military dogs suffer from the same physical and psychological conditions as their human soldier counterparts. However, they are still not considered to be on par with this country's human soldiers, instead being classified for legal purposes as mere equipment. Therefore, these military dogs have for years been considered little more than excess equipment upon retirement, often being euthanized in order to save money rather than the government providing for their continued welfare upon the conclusion of their military careers.

An assault rifle cannot make the decision to put itself in harm's way in order to rescue a soldier or apprehend an insurgent, and a historical artifact, such as a letter or work of art, cannot identify improvised explosive devices, drugs, or other unseen dangers before it is too late to notify a platoon of soldiers on patrol in the area. Yet these inanimate objects are afforded the very same protections under the law as the canine soldiers who have been a constant presence on the battlefield for thousands of years for nearly every ancient culture, and for the United States military since the early 1940s.

¹ *Quotes by Legendary Battlefield Commanders*, MILITARY WORKING DOG TEAMS NATIONAL MONUMENT (last visited Jan. 29, 2014), <http://www.jbmf.us/quotes.aspx>.

II. SCIENTIFIC RESEARCH

The ability to experience positive emotions, like love and attachment, would mean that dogs have a level of sentience comparable to that of a human child. And this ability suggests a rethinking of how we treat dogs.

-Gregory Berns, M.D., Ph.D., Canine Cognition Researcher and Author²

A. A New Approach to Canine Cognition

Recent studies in the scientific community have begun to support the proposition that dogs' brains are far more developed than previously thought and often mimic those of humans in ways unmatched by any other species in the animal kingdom. For example, researchers at Emory University sought to determine just how much dogs have learned to understand and communicate with humans. By training two dogs to participate in functional MRI trials while awake and unrestrained, these researchers demonstrated the first documented proof that dogs are able to associate abstract human hand signals with future rewards, something not known to be possible in any other animal species.³

B. What Makes Dogs Different?

In 2003, a Hungarian research team found "evidence that dogs have been selected for adaptations to human social life, and that these adaptations have led to marked changes in their communicative, social, cooperative, and attachment behaviors towards humans."⁴ This study provided some of the first modern research to suggest that dogs may now deserve classification along with humans for the purpose of further research:

We propose that through an evolutionary process, the dog as a species has moved from the niche of its ancestor (which is shared

² Gregory Berns, *Dogs Are People, Too*, N.Y. TIMES, Oct. 5, 2013, http://www.nytimes.com/2013/10/06/opinion/sunday/dogs-are-people-too.html?pagewanted=all&_r=0.

³ G.S. Berns, A.M. Brooks & M. Spivak, *Functional MRI in Awake Unrestrained Dogs*, 7 PLoS ONE 5 (2012).

⁴ Á. Miklósi, J. Topál & V. Csányi, *Comparative Social Cognition: What Can Dogs Teach Us?*, 67 ANIMAL BEHAVIOUR 6, 995 (2004).

by wolves) to the human niche, which represents the dog's present natural environment. In this new niche, being a social species, dogs have formed a close contact with humans (at both species and individual levels), which has led to the emergence of heterospecific social groups. It follows that dogs can and should be studied in their natural group, that is, where and when they are living with humans.⁵

Ultimately, this study suggests that dogs have evolved in ways that distinguish them significantly enough from their lupine ancestors that scientists may be better served instead researching them in conjunction with human subjects.

Research conducted at the Max Planck Institute for Evolutionary Anthropology in Germany has also found dogs to be unique compared to the rest of the animal kingdom in the "human-like social skills" that they have developed through millennia of evolution, potentially similar to that which currently distinguishes humans from its nearest primate relatives.⁶ This research suggested that "dogs have evolved special skills for reading human social and communicative behavior," and that these skills are "possibly more human-like . . . than those of other animals more closely related to humans phylogenetically, such as chimpanzees, bonobos, and other great apes."⁷

War is a social construct of mankind, and thus, it may be inferred that dogs have evolved the ability to participate in wars from millennia of close contact and interaction with humans. This research suggests the potential that humans and dogs may have experienced convergent evolution, which is "the process whereby organisms not closely related (not monophyletic), independently evolve similar traits as a result of having to adapt to similar environments or ecological niches."⁸

Ultimately, the general sentiment among researchers of canine cognition is that dogs have evolved over the millennia to be the

⁵ *Id.* at 997-998.

⁶ Brian Hare and Michael Tomasello, *Human-Like Social Skills in Dogs?*, 9 TRENDS IN COGNITIVE SCIENCES 9, 439 (2005).

⁷ *Id.*

⁸ *Reference Article: Convergent Evolution*, SCIENCE DAILY, http://www.sciencedaily.com/articles/c/convergent_evolution.htm (last visited Jan. 30, 2014).

perfect companion to humans. They can understand and communicate with humans better than any other species, even those from which the domesticated dog and human beings each evolved, respectively. This relationship should not be understated, as it provides support for the argument that MWDs are more than excess equipment, and even more than mere animals. They are a unique species, one perfectly suited to the rigors and demands of modern military service. This sort of research is still only in its infancy, but there is growing support among the scientific community as well for the reclassification of MWDs as “Canine Members of the Armed Forces.”

III. THE EVOLUTION OF ANIMAL PROTECTION LAWS

The relationship between a military working dog and a military dog handler is about as close as a man and a dog can become. You see this loyalty, the devotion, unlike any other . . .
-Robert Crais⁹

A. *Animals as Property*¹⁰

Dating back to prehistoric times, when man first began hunting other animals for food, the concept of property, an attitude of “this is mine,” has been a common thread throughout human history. Prehistoric times were also the first instance of man reducing wild animals to possession, domesticating them into property. In fact, ownership of animals as property was an early measure of wealth in many cultures. Cattle in particular quickly became a valuable commodity, one that functioned just as money would.¹¹ Even in the United States, cattle were an original source of wealth and status prior to the discovery of oil.

⁹ Andy Lewis, *THR's Book of the Week: 'Suspect' by Robert Crais*, THE HOLLYWOOD REPORTER (Feb. 14, 2013, 11:49 AM), <http://www.hollywoodreporter.com/heat-vision/robert-crais-suspect-thrs-book-421362>.

¹⁰ The author strongly recommends Harold W. Hannah's *Animals as Property Changing Concepts*, 25 S. ILL. U. L. J. 571 (2001), as a general primer on the topic of the evolution of animals in property law.

¹¹ Nerissa Russell, *Cattle as Wealth in Neolithic Europe: Where's the Beef?*, THE ARCHAEOLOGY OF VALUE: ESSAYS ON PRESTIGE AND THE PROCESSES OF VALUATION, 42, 44 (1998).

Over the years, however, a distinction has been made as it pertains to property law for companion animals. In *La Porte v. Associated Independents, Inc.*,¹² a 1964 decision in the Florida Supreme Court, the plaintiff received damages for emotional distress after a garbage collector struck the plaintiff's Dachshund with a garbage can in the plaintiff's yard, and the Dachshund passed away in her arms. In rendering its decision, the court compared the case specifically to that of *Kirksey v. Jernigan*,¹³ in which an undertaker refused to release the body of a five-year-old child, who was accidentally shot and killed, to her mother.¹⁴

This was one of the first instances of an American court giving deference to the emotional connection that a person can have with a pet that previously constituted little more, from a strictly legal perspective, than property. Just a decade later, the Supreme Court of Oregon followed suit by allowing more than mere compensatory damages for mental anguish where the property subject to conversion was the family dog.¹⁵

B. The Growing Legal Protection of Animals

Early common law largely considered animals such as dogs and cats to be non-useful (because they served no purpose beyond companionship¹⁶). Abusers of these animals pointed to this as a defense to their actions because there could be no liability where the owner suffered no pecuniary loss. At the end of the nineteenth century, dogs were considered "of an imperfect or qualified nature,"¹⁷

¹² *La Porte v. Associated Independents, Inc.*, 163 So. 2d 267 (Fla. 1964).

¹³ *Kirksey v. Jernigan*, 45 So. 2d 188 (Fla. 1950).

¹⁴ *La Porte* 163 So. 2d at 269 ("[W]e hasten to say that the anguish resulting from the mishandling of the body of a child cannot be equated to the grief from the loss of a dog but that does not imply that mental suffering from the loss of a pet dog, even one less an aristocrat than Heidi, is nothing at all. As for the matter of contact between the miscreant and the injured person, the attempted distinction is just too fine for us to accept.").

¹⁵ *Fredeen v. Stride*, 525 P.2d 166 (1974); *See also Knowles Animal Hosp. v. Wills*, 360 So. 2d 37 (Fla. Dist. Ct. App. 1978) (recognizing the special relationship that exists between a dog and its owner by awarding both compensatory and punitive damages for negligent burning of plaintiff's dog).

¹⁶ *Ward v. State*, 48 Ala. 161 (Ala. 1872).

¹⁷ *Sentell v. New Orleans & C. R. Co.*, 166 U.S. 698, 701 (1897).

and in terms of classification, were stuck “between animals feroe naturee in which until killed or subdued, there is no property, and domestic animals, in which the right of property is perfect and complete.”¹⁸

Today, there is plenty of enacted legislation protecting the rights of animals,¹⁹ yet those laws all place the burden on humans to treat animals humanely, rather than giving animals rights analogous to those of humans in order to protect their interests.²⁰ Additionally, there is still the issue of legal standing, as the plaintiff must have “a personal stake in the outcome of the controversy”²¹ in order to bring forth a case. Unfortunately for animals, such a standing requirement precludes them from receiving equal treatment in court.

To that end, animal rights activists have found some success in bringing claims on behalf of animals who lack standing by way of the National Environmental Policy Act (the “NEPA”), which is “concerned with the impact of major federal actions on the human environment”²² but has been invoked “for the sole purpose of protecting the quality of life of animals.”²³ By doing so, activists have on occasion been able to use the NEPA in order to protect animal interests within the sphere of the human environment. This was most notably brought to the public consciousness in *Progressive Animal Welfare Society v. Department of the Navy*,²⁴ in which activists challenged the Navy’s planned use of Atlantic bottlenose dolphins where the water temperature and holding pens would negatively affect the species, which would subsequently affect the surrounding human environment. The Navy moved to dismiss Progressive’s

¹⁸ *Id.*

¹⁹ See generally Henry Cohen, Cong. Research Serv., 94-731, Brief Summaries of Federal Animal Protection Statutes (2009).

²⁰ David R. Schmahmann & Lori J. Polacheck, *Article: The Case Against Rights for Animals*, 22 B.C. ENVTL. AFF. L. REV. 747, 761 (“Such legislation does not address animals as beings with rights, but rather as beings toward which humans have responsibilities. These responsibilities are derived, not from some conception that animals possess claims against humans, but rather from a recognition that human interests and aesthetic sensibilities are impacted by our treatment of animals.”).

²¹ *Baker v. Carr*, 369 U.S. 186 (1962).

²² Schmahmann & Polacheck, *supra* note 20, at 772.

²³ *Id.*

²⁴ *Progressive Animal Welfare Soc. v. Dep’t of Navy*, 725 F. Supp. 475 (W.D. Wash. 1989).

preliminary injunction, but the court denied the motion because the Navy's decision to use dolphins was a major federal action that "requires an analysis of the effect of such use on the dolphins themselves."²⁵

C. *What About Military Working Dogs?*

As general animal rights laws and perceptions continue to evolve, it is crucial to be mindful of the concerns regarding MWDs raised above. The military has spent the last fourteen years marching into a new era in the treatment of MWDs, but there is still much more that can be accomplished in order to give MWDs the treatment and recognition they have more than earned for their service.

At the heart of the American military is the concept of "family." For a military unit to succeed, "[s]oldiers of all ranks must feel they belong to the 'family' . . . Building the 'family' requires treating one another with dignity and respect."²⁶ Over nearly two centuries of military service in the United States, MWDs have become more than just fellow soldiers; they have become family.

Embedded in the *Soldier's Creed*, the heart of the values of the United States Army, is the following promise: "I will never leave a fallen comrade."²⁷ This promise is extended to MWDs as well. When soldiers train for potential situations that could happen in the field, one of the drills includes how to react when an MWD is injured. From realistic combat injury scenarios to performing medical drills on a "Jerry leg," ("a realistic, large, furry, fake dog leg that handlers can use for practicing placing IV's, bandaging, splinting, and giving

²⁵ *Id.* at 479

²⁶ Personnel-General, Dept. of the Army Pamphlet 600-35, *Preface* to Relationships Between Soldiers of Different Rank, at i (2000).

²⁷ *Soldier's Creed*, Army Values (Mar. 30, 2014, 5:18 PM),

<http://www.army.mil/values/soldiers.html> ("I am an American Soldier. I am a warrior and a member of a team. I serve the people of the United States, and live the Army Values. I will always place the mission first. I will never accept defeat. I will never quit. I will never leave a fallen comrade. I am disciplined, physically and mentally tough, trained and proficient in my warrior tasks and drills. I always maintain my arms, my equipment and myself. I am an expert and I am a professional. I stand ready to deploy, engage, and destroy, the enemies of the United States of America in close combat. I am a guardian of freedom and the American way of life. I am an American Soldier.")

injections")²⁸, this country's military does everything in its power to prepare its soldiers to ensure the safety of every soldier, be it human or dog.

This bond between MWDs and their fellow soldiers goes beyond even that of normal human-dog relationships, and it is demonstrated in the constant advocacy of those soldiers who had the privilege of fighting along MWDs, such as former Marine Captain William Putney, who commanded an MWD platoon during World War II:

Our service dogs must be honored and treated as heroes because that is what they are. And they must be allowed to retire to loving homes, as any soldier is. They have served us with honor and distinction, and have saved countless American sons and daughters from injury and death. They have risked their own death and injury for no more than the love and affection of their handlers. They would never, ever have left us behind, and they would never give up on us because we were too old or infirm to do our jobs anymore. If they can offer us this sort of service and devotion, how can we do less for them? We owe them.²⁹

As strong as the bond is between man and dog, that between soldier and MWD is even deeper. And as history has shown, MWDs have proven themselves time and again in the field and are treated with the same respect and trust as is afforded to any of their human counterparts.

IV. DOGS AND "PERSONHOOD"

'These dogs are our partners. I remember trying to get into the K-9 program, and I had a human partner working in law enforcement at the time who commented to me that he couldn't believe I would choose to work with a dog over a human partner, a big strong guy as a partner.'

- Sgt. 1st Class Regina Johnson, Operations Superintendent at the Military Working Dog School³⁰

Why should dogs have the same legal protections as humans?

²⁸ MARIA GOODAVAGE, *SOLDIER DOGS: THE UNTOLD STORY OF AMERICA'S CANINE HEROES* 163 (2012).

²⁹ *Id.* at 263

³⁰ Linda Crippen, *Military Working Dogs: Guardians of the Night* (May 23, 2011), http://www.army.mil/article/56965/Military_Working_Dogs__Guardians_of_the_Night.

And why has it taken society so long to reach this point? These potential changes in the law, while considered by many to be long overdue, demonstrate a growing groundswell of support not just from animal rights activists, but also from scientists, families, and legislators around the country. However, some of dogs' strongest advocates, the traditional dog care-givers who would benefit the most from this enhanced focus on treating pets as family, are fighting such a shift in the legal treatment of dogs in fear of the legal and financial ramifications such changes could have for their own careers.

A. *Concerns from the Opposition*

As legislation creeps toward the potential personhood of dogs and other pets, a surprising class of outspoken opponents to such legal protections has emerged; veterinarians, pet groomers, dog walkers, and other individuals who make a living catering to the care of beloved family pets are staunchly against animals such as dogs gaining "quasi-personhood."

If dogs are afforded quasi-personhood, representatives from these industries argue, the increased risks of liability could put them out of business. Yet this was at least partially their own doing.³¹ Veterinarians and other animal service providers took advantage of an emotional shift in treating animals like family, catering their practices to reinforce such feelings for the benefit of their respective businesses. Unfortunately for them, they are now seeing the

³¹ David Grimm, *Should Pets Have the Same Legal Rights as People?*, WALL ST. J., April 10, 2014,

http://online.wsj.com/news/articles/SB10001424052702304058204579491630809550504?mod=WSJ_hp_EditorsPicks&mg=reno64-

[wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304058204579491630809550504.html%3Fmod%3DWSJ_hp_EditorsPicks](http://online.wsj.com/news/articles/SB10001424052702304058204579491630809550504.html?mod=WSJ_hp_EditorsPicks). ("Ironically, veterinarians themselves helped to create this bind. In the 19th century, they would have shared the law's view that pets were worthless animals. Their work focused almost exclusively on economically valuable creatures such as horses and cows. But as these animals began to disappear from U.S. cities in the early 20th century, veterinarians often found themselves out of work. They turned to cats and dogs for the survival of their profession. Veterinary medicine began to resemble human medicine. Dank stables gave way to comfy waiting rooms, white coats replaced grungy aprons, and vets began performing blood transfusions, ultrasounds and even open-heart surgery. Owners became more like parents, and vets became the pediatricians of 'fur babies.'")

downside of those efforts, as treating pets with a higher standard of care has brought the risk of they themselves being held to a higher standard of care in the services they provide.

B. An Argument for Animal "Personhood"

Dogs, cats, and other animals have long been seen as unofficial members of their owners' families, even when the law has not recognized them as such. From the enactment of felony anticruelty laws in all fifty states to legislation such as the Pets Evacuation and Transportation Standards Act,³² many smaller laws have been passed as stepping-stones toward the ultimate goal of quasi-personhood for dogs. In fact, "[j]udges have been increasingly willing to treat cats and dogs like people in the courtroom, allowing custody disputes over pets and granting large awards . . . including so-called noneconomic damages typically reserved for the death of a spouse or a child."³³ In fact, a 2012 decision saw a Colorado district court award one woman \$65,000, one of the country's largest emotional distress judgments ever for the loss of a pet.³⁴

While animals are not yet afforded "personhood" because they are not humans, the winds are beginning to shift in terms of providing constitutional protections to non-humans. For example, a corporation can now receive First Amendment protections as if it

³² H.R. 3858, 109th Cong. (2006) (amending the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the aftermath of Hurricane Katrina to require rescue agencies to save pets in addition to people during natural disasters).

³³ See Grimm, *supra* note 31; See also

Campbell v. Animal Quarantine Station, Div. of Animal Indus., Dep't of Agric., State of Hawaii, Bd. of Agric., 632 P.2d 1066 (1981) (holding that awarding damages for mental distress suffered through the loss of a family dog, which was personal property, was proper).

³⁴ Lance Hernandez, *Robin Lohre Sues Posh Maids, Awarded \$65,000 After Dog Dies*, KSDK (April 19, 2012, 9:30 PM),

<http://archive.ksdk.com/news/world/article/316862/28/Owner-sues-maid-service-awarded-65K-after-dog-dies>. (Robin Lohre left her dog, Ruthie, home with a maid service that insisted Ruthie could stay while they worked in the house. Despite Lohre's directions on how to enter and exit the house to avoid letting Ruthie out, the maid opened the front door, resulting in Ruthie getting hit by a car. Rather than contacting Lohre or bringing Ruthie to a veterinarian for treatment, the maid carried Ruthie inside and placed her under the dining room table, where she died before Lohre and her daughter came home).

were an individual human making the political speech rather than a larger corporate entity.³⁵ Dogs are slowly gaining more support in their quest for quasi-personhood, yet some of their toughest opposition may also be their strongest advocates. It will be up to the courts to reconcile the interests of these two opposing sides who are otherwise each other's strongest allies.

V. MILITARY DOGS: A HISTORICAL BACKGROUND

I often used war dogs in Vietnam in perilous areas where they quite literally saved many lives. There is no doubt that war dogs deserve to be recognized and honored for their service to our country. . .

- General H. Norman Schwarzkopf³⁶

A. History of Dogs in Warfare

The use of military dogs in the field of battle dates back thousands of years, as they previously fought alongside the Egyptians, Persians, Greeks, Romans, and many other ancient cultures.³⁷ From Attila the Hun and Frederick the Great to Napoleon and Theodore Roosevelt's "Roughriders," the use of "war dogs" was a common trait among many of history's greatest military minds. The earliest recorded use of war dogs actually dates back to Alyattes, king of Lydia, in the year 600 B.C.³⁸ In fact, the Greek military author and historian Polyaeus once described how the use of dogs to guard a military camp was effective in preventing potential traitors from aiding the enemy forces.³⁹

³⁵ See *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

³⁶ *Quotes by Legendary Battlefield Commanders*, *supra* note 1.

³⁷ 156 Cong Rec E 319 (2010).

³⁸ E.S. Forster, *Dogs in Ancient Warfare*, 10 GREECE & ROME 30, 114 (May 1941) (citing Polyaeus, *Strategems*, 7.2), available at <http://www.jstor.org/stable/641375>.

³⁹ John Ensminger, *War Dogs in Ancient Military Strategy*, DOG LAW REPORTER: REFLECTIONS ON THE SOCIETY OF DOGS AND MEN (June 9, 2011, 6:11 AM) (quoting Polyaeus, *Stratagems*, 2.25) ("While Agesipolis was besieging Mantinea, the Lacedaemonians were joined by their allies, who were sympathetic towards the Mantineians, but were obliged to help the Lacedaemonians because they were at that time the leading power in Greece. Agesipolis was informed that the allies were secretly supplying the defenders with whatever they might need. To prevent this happening in future, he let loose a number of dogs around the camp, and particularly around the part which faced towards the city. This stopped the

Even when the dogs were not actively participating in warfare, the mere threat of their presence proved effective in discouraging such traitorous conduct. Additionally, in the early nineteenth century, Napoleon used dogs as sentries stationed at the gates of Alexandria in order to serve as an early warning of an impending attack.⁴⁰

B. Dogs in Modern American Military History

In the United States, the first recorded use of dogs in the military was during the Seminole War of 1835, in which the military used bloodhounds to track Indians and runaways through the swamps.⁴¹ However, the United States did not have an official military dog program during World War I (in fact, up until 1942, Germany was the most dominant user of military dogs, using them mainly as messengers and scouts⁴²), but one pit bull named Stubby started as the mascot of the 102nd Infantry after being picked up as a stray, and quickly distinguished himself in several battles. He was ultimately promoted to Sergeant, the only dog to receive such an honor through combat, due to his contributions in warning a sleeping sergeant about an impending gas attack in time to save the lives of his soldiers, as well as catching a German infiltrator long enough for him to be captured.⁴³

By World War II, an official Army K-9 Corps established its first Reception and Training Facility in order to prepare more military dogs for combat, and these dogs were part of teams with specialized handlers. While the first use of dogs on D-Day was unsuccessful (the dogs cowered in fear from the sounds of explosions all around them), they quickly proved themselves very capable at sentry duty, often proving to be more alert than their handlers.⁴⁴ By 1943, MWDs had

communications with the defenders; because no one ventured to cross between the camp and the city, for fear of being discovered by the barking of the dogs.”).

⁴⁰ SANDRA CHORON & HARRY CHORON, *PLANET DOG: A DOGOPEDIA*, 22 (2005).

⁴¹ *Id.*

⁴² Staff Sergeant Tracy L. English, *The Quiet Americans: A History of Military Working Dogs*, (Dec. 15, 2000), <http://www.37trw.af.mil/shared/media/document/AFD-061212-027.pdf> at 3-4; See also Choron & Choron, *supra* note 40, at 22 (“Who first thought of using dogs to guide blind people? At the end of World War I, the German government trained the first guide dogs to assist blind war veterans.”).

⁴³ MICHAEL G. LEMISH, *WAR DOGS: CANINES IN COMBAT* 25 (1996).

⁴⁴ English, *supra* note 42, at 5.

been trained for a number of various roles, including attack dogs, tactical dogs, silent scout dogs, messenger dogs, casualty dogs, sledge dogs, and pack dogs.⁴⁵

In the Korean War, war dog programs were minimized, although the 26th Scout Dog Platoon remained on active duty. Within this unit, canine members of the Platoon earned three Silver Stars, six Bronze Stars for Valor, and thirty-five Bronze Stars for meritorious service.⁴⁶

Military dogs saw a resurgence during the Vietnam War, as the Air Force realized their own need for sentry dogs and established its own training facility at Lackland Air Force Base in 1958. However, many of these dogs were still trained and deployed by the Army in Okinawa. Overall, military dogs were credited with saving an estimated 10,000 human lives over the course of the Vietnam War.⁴⁷ In fact, one dog, named Nemo, was shot in the face, losing an eye, but still managed to crawl across his handler's body to protect him during a major Viet Cong attack of the Tan Son Nhut Air Base.⁴⁸ By 1965, the Marines also recognized the advantages of military dog units and entered into an agreement with the Army to train scout dogs. Ultimately, MWDs in the Vietnam War "were directly responsible for more than 4,000 enemy killed and over 1,000 captured. By locating caches of supplies, the teams recovered more than 1,000,000 pounds of rice and corn, located over 3,000 mortars, and exposed at least 2,000 tunnels"⁴⁹ However, by the end of the Vietnam War, these military dogs had fulfilled their purpose, leading to many of them being discarded or euthanized, as it was the most cost-effective method of disposing of equipment that was no longer needed.⁵⁰

Today, military dogs continue to play a valuable role within our armed services, from drug and bomb detection to even being a part of

⁴⁵ *Id.* at 8.

⁴⁶ Bert Hubble, *The K-9 Corps: A Brief History Of War Dogs In The U. S. Military (A Historical Perspective)*, 47TH SCOUT DOG PLATOON, <http://www.47ipds.us/47k9hist.htm> (last visited Jan. 29, 2014).

⁴⁷ Jessica Ravitz, *War Dogs Remembered, Decades Later*, CNN, Feb. 12, 2010, <http://www.cnn.com/2010/LIVING/02/12/war.dogs/index.html?hpt=C1>.

⁴⁸ *AF Sentry Dog To Become Symbol of Professionalism* (Aug. 9, 1967), Air Force News, available at <http://www.tsna.org/7thafnews/aug091967.html>.

⁴⁹ Lemish, *supra* note 43, at 240.

⁵⁰ *Id.* at 232 ("Most American dogs were condemned to permanent exile and eventual death in a foreign land").

Seal Team 6, the team that tracked down and killed Osama Bin Laden.⁵¹ Dogs are also often used as a therapy device for retired veterans suffering from Post Traumatic Stress Disorder (PTSD).⁵² Notably, all MWDs are noncommissioned officers, a rank one level higher than their handlers, in order to prevent handlers from mistreating their canine partners, as well as to instill respect in the newer trainees who may not fully appreciate their MWDs' capabilities and accomplishments.⁵³ As explained by Sergeant First Class Regina Johnson, who is the Operations Superintendent at the Military Working Dog School at Lackland Air Force Base, "[t]he more we're out there with the combat commanders, they see. They see that the dog just saved their Soldiers' lives. That dog just saved that entire platoon."⁵⁴

VI. CURRENT LEGISLATION

Sometimes, a man and his dog truly do become one being. Kory and Cooper served together. They risked life and limb together. And because they did this, they saved many lives together. Many other soldiers have made it home because of them.

- Governor of Oregon Ted Kulongoski, at the funeral of Corporal Kory Wiens and his Military Working Dog Cooper⁵⁵

The use of MWDs is codified in Title 10 of the United States Code within Chapter 153, which covers the "Exchange of Material and Disposal of Obsolete, Surplus, or Unclaimed Property."⁵⁶ Under this larger heading, MWDs are considered legally on par with historical artifacts, surplus military equipment, recyclable materials, and war

⁵¹ Julie Watson & Sue Manning, *War Dog Adoption Requests Rise Following Bin Laden Mission*, May 24, 2011, HUFFINGTON POST, http://www.huffingtonpost.com/2011/05/24/war-dog-adoption-navy-seal-cairo_n_866392.html.

⁵² *Dogs and PTSD*, U.S. DEPARTMENT OF VETERANS AFFAIRS, http://www.ptsd.va.gov/public/treatment/cope/dogs_and_ptsd.asp (last visited Jan. 29, 2014).

⁵³ Crippen, *supra* note 30.

⁵⁴ *Id.*

⁵⁵ Kevin Hanrahan, *Kory & Military Working Dog Cooper*, SOLDIER WRITER: BALANCING THE SWORD AND THE PEN, <http://khanrahan.com/2012/03/05/kory-cooper/> (last visited Jan. 29, 2014).

⁵⁶ 10 U.S.C. § 2583 (2014).

booty.⁵⁷ Under 10 U.S.C. § 372, Congress authorizes the Secretary of Defense to “make available any equipment . . . for law enforcement purposes.”⁵⁸ This sweeping use of “surplus military equipment” also includes Military Working Dogs.⁵⁹

A. *Robby's Law*

In 2000, Congress passed “Robby’s Law,” requiring the Secretary of Defense to submit an annual report to Congress on the disposition of MWDs, including “the number of military working dogs adopted under this section during the preceding year, the number of these dogs currently awaiting adoption, and the number of these dogs euthanized during the preceding year.”⁶⁰ This bill also made retiring military animals, a designation that applies to both MWDs and Department of Defense-owned horses, available for adoption, provided that they have been determined to be suitable for adoption and are not otherwise necessary anymore to their respective military departments.⁶¹

Previously, when a dog was retired, the military would often decide that transporting it home was not worth the costs (since it is considered excess equipment), and would instead have it euthanized. In fact, prior to the year 2000, it was an alarmingly common practice for the military to euthanize MWDs once they were retired from active duty, regardless of a dog’s health.⁶² “Robby’s Law” signaled the end of this practice and limited MWD euthanization “to those

⁵⁷ 10 U.S.C. § 2572 (2014) (Documents, historical artifacts, and condemned or obsolete combat material: loan, gift or exchange); 10 U.S.C. § 2576 (2014) (Surplus military equipment, sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies); 10 U.S.C. § 2577 (2014) (Disposal of recyclable materials); 10 U.S.C. § 2579 (2014) (War booty: procedures for handling and retaining battlefield objects).

⁵⁸ 10 U.S.C. § 372 (2014).

⁵⁹ Catherine A. Theohary, Lawrence Kapp, David F. Burrelli & Don J. Jansen, Cong. Research Serv., R42651, FY2013 National Defense Authorization Act: Selected Military Personnel Policy Issues (2013).

⁶⁰ H.R. 5314(1)(a), 106th Cong., 2d Sess. (2000) (amending 10 U.S.C. 2582(f) to require annual reporting by the Secretary of Defense).

⁶¹ 10 U.S.C. § 2583 (2014).

⁶² Brief Summaries of Federal Animal Protection Statutes, *supra* note 19 (“[U]nder Department of Defense policy, such dogs were caged, sometimes for as long as a year, and then euthanized.”).

situations in which euthanization is medically necessary or necessary for public safety.”⁶³ Specifically, it required the Secretary of Defense to submit an annual report to Congress accounting for all MWDs adopted due to Robby’s Law, as well as a specific explanation for every individual dog that was euthanized rather than made available for adoption.⁶⁴ Thanks to this legislation, between the years 2001 and 2011, the number of MWDs euthanized dropped from 107 to 60, while the number of MWDs instead transferred or adopted leapt from 53 to 328.⁶⁵ In the aftermath of the Bin Laden raid, one in which a MWD named Cairo was an integral part of the team, war dog organizations claim that the number of people inquiring into adopting retired MWDs has risen dramatically.⁶⁶ Today, there is an average estimated waiting list of 300 to 400 potential adoptive families.⁶⁷

Unfortunately, one of the biggest barriers to adoption of MWDs remains; under their current legal designation as “excess equipment,” Major General Mary Kay Hertog argues that “once that dog is adopted, it becomes a pet, and therefore loses its MWD status, so it would be fraud, waste and abuse for the DOD to transport that pet.”⁶⁸ Under this suggested approach, anyone looking to adopt a

⁶³ H.R. 5314(1)(a)(2).

⁶⁴ 10 U.S.C. § 2583(f) (2000) (“The Secretary of Defense shall submit to Congress an annual report specifying the number of military animals adopted under this section during the preceding year, the number of these animals currently awaiting adoption, and the number of these animals euthanized during the preceding year. With respect to each euthanized military animal, the report shall contain an explanation of the reasons why the animal was euthanized rather than retained for adoption under this section.”).

⁶⁵ *We Have All 11 “Robby’s Law” Reports!*, THE OTHER FORGOTTEN SOLDIER: MILITARY & LAW ENFORCEMENT WORKING DOG RESCUE & SUPPORT, <http://www.save-a-vet.org/d7/robbyreportall> (citing available Military Working Dog disposition reports) (last visited January 29, 2014) (hereinafter “‘Robby’s Law’ Reports”).

⁶⁶ *War Dog Adoption Requests Rise Following Bin Laden Mission*, *supra* note 51. (“While about 300 retired U.S. military dogs are put up for adoption each year, military officials say they’ve received more than 400 adoption applications in the three weeks since the May 2 raid.”).

⁶⁷ Laura Sesana, *Military Working Dogs Today Have Long History of Heroism*, WASH. TIMES COMMUNITIES: SOCIAL JOURNALISM FROM INDEPENDENT VOICES, <http://communities.washingtontimes.com/neighborhood/world-our-backyard/2013/jan/11/military-working-dogs-today/> (last visited Jan. 29, 2014).

⁶⁸ Technical Sergeant Amaani Lyle, *Officials Outline Adoption Process for Military Working Dogs*, U.S. AIR FORCE, <http://www.af.mil/News/ArticleDisplay/tabid/223/Article/119321/officials-outline->

retired MWD must not only complete a rigorous application process but must often pay expenses in excess of \$2,000 to bring just one such dog home.⁶⁹ However, Major General Hertog, as the Department of Defense's MWD Executive Agent, agreed herself in that same statement that MWDs are "not just a piece of equipment."⁷⁰

This internal logical struggle continues to be at the forefront, as MWDs are afforded more and more treatment equal to that of their human counterparts while continuing to skirt the issue of an equal legal designation. This approach, essentially taking a "separate but equal" tack to MWD rights, demonstrates the United States' wishes to appease the masses by meeting most demands while still minimizing costs that would otherwise be incurred as part of the adoption process.

Under current legislation, adoption priority goes to the MWD's former handler, or to the family of such a handler if he is deceased or injured to the point that he would not be able to provide adequate care for the dog. In fact, this provision was inserted as part of the Corporal Dustin Lee Memorial Act, in honor of a Marine K9 handler who was killed in Fallujah in 2007 during an attack that his MWD, Lex, survived.⁷¹ If the dog does not go to its handler or handler's family, law enforcement agencies are also given the opportunity to adopt it for their own uses.⁷² At that point, should a retiring MWD still be available for adoption, a prospective family must follow a series of prescribed procedures, from an initial application to a follow up interview, in order to determine the best fit between a retiring MWD and an adoptive family.

Another concern for retiring MWDs, as well as for human military veterans, is the availability of health care once they retire from active duty. In fact, recent data as of 2011 suggests that as many of five percent of military dogs on active duty demonstrated

adoption-process-for-military-working-dogs.aspx (last visited Jan. 29, 2014).

⁶⁹ *Department of Defense Military Working Dog Adoption Program: Frequently Asked Questions*, <http://www.37trw.af.mil/shared/media/document/AFD-120611-035.pdf> (last visited Jan. 29, 2014).

⁷⁰ "Robby's Law" Reports, *supra* note 47.

⁷¹ *Corporal Dustin Lee Memorial Act*, H.R. 4639, 111th Cong, 2d. Sess. (2010).

⁷² 10 U.S.C. § 2583(f) (2014) ("Military animals may be adopted under this section by law enforcement agencies, former handlers of these animals, and other persons capable of humanely caring for these animals.").

symptoms of developing canine post-traumatic stress disorder (hereinafter "PTSD").⁷³ Just as with humans, dogs who suffer from PTSD can struggle with day-to-day activities once they are retired, often suffering from hypervigilance (the condition of maintaining an abnormal awareness of environmental stimuli⁷⁴), avoidance of buildings or work environments in which they had previously been comfortable, or sharp changes in temperament. For MWDs who have not yet retired and are therefore expected to continue with patrols or other day-to-day military activities, PTSD can lead to them being unable to continue to perform their jobs, putting them at a greater risk of euthanization as an efficient, inexpensive method of discarding excess equipment that is no longer of use to the military. While a human soldier runs the risk of a court martial for dereliction of duty, the repercussions for such behavior in an MWD are obviously much more dire.⁷⁵

B. The Canine Members of the Armed Forces Act

The Canine Members of the Armed Forces Act,⁷⁶ (hereinafter "The Act") led to the enactment of a new statute "to establish and maintain a system to provide for the veterinary care of retired military working dogs."⁷⁷ This placed MWDs on similar ground, in many ways, as retired military veterans, who are "entitled to medical and dental care in any facility of any uniformed service."⁷⁸ Congress passed the majority of the act under H.R. 4310, yet the final bill omitted one of the most critical components of The Act. The language that would have reclassified MWDs as "Canine Members of the Armed Forces"

⁷³ James Dao, *After Duty, Dogs Suffer Like Soldiers*, N.Y. TIMES, Dec. 1, 2011, <http://www.nytimes.com/2011/12/02/us/more-military-dogs-show-signs-of-combat-stress.html>.

⁷⁴ "hypervigilance." Merriam-Webster Online Dictionary. 2014. <http://www.merriam-webster.com/medical/hypervigilance> (last visited Jan. 29, 2014).

⁷⁵ 10 U.S.C. § 892(3) (2014) ("Any person subject to this chapter who . . . is derelict in the performance of his duties . . . shall be punished as a court-martial may direct.

⁷⁶ *Canine Members of the Armed Forces Act*, H.R. 4103, 112th Cong. (2012).

⁷⁷ *Canine Members of the Armed Forces Act*, Sec. 4(a)(1)(a) (amending 10 U.S.C. § 994).

⁷⁸ 10 U.S.C. § 1074 (2014).

rather than “excess equipment” was nowhere to be found in the text of the final bill, having been excised during deliberations.

Yet the United States is not the only country seeking to provide for the best interests of their canine partners upon retirement. In November 2013, a United Kingdom police force became the first in its country to create a pension plan for its retired police dogs, paying £1,500 for three years of service to each dog for the purpose of paying for medical bills after they retire. When asked for his reaction to complaints that such spending was not fair to his constituent taxpayers, Paddy Tipping, the Police and Crime Commissioner for the Nottinghamshire Police, argued that, while some people may believe in different priorities, these dogs deserve nothing less.⁷⁹

This appears to be a more and more prevalent attitude among law enforcement officials in the United States as well. Currently, at least eight different states have statutes providing for severe penalties at the felony level for harming a police dog.⁸⁰ Just as assaulting a police officer is a more serious offense than assaulting a civilian, so

⁷⁹ Chris Pleasance, *Police Dogs to Get a Pension Plan: Animals to be Given £1,500 Each to Help Pay Medical Bills After They Retire From Service*, DAILY MAIL, Nov. 5, 2013, <http://www.dailymail.co.uk/news/article-2487540/Police-dogs-pension-plan-Animals-given-1-500-help-pay-medical-bills-retire-service.html>. (“We look after the people who work for us who have been police officers and staff – they get a decent retirement and I think it’s important the same is done for the dogs. These animals work hard for the police and they are officers in their own right. Many of the force’s dogs are fit and healthy when they retire but some need medical treatment for injury or illness resulting from being worked hard while tackling crime. These dogs give willing and sterling service over the years in protecting the public so I am delighted to approve a scheme that will ensure continuing medical help once their work is done.”).

⁸⁰ Cal. Pen. Code § 600 (2014); Ind. Code § 35-43-1-2(B)(vi) (2014) (Criminal mischief under this code is a Class D felony if “the damage is to a law enforcement animal,” defined in Ind. Code § 35-46-3-4.5 as “an animal that is owned or used by a law enforcement agency for the principal purposes of aiding in the detection of criminal activity, the enforcement of laws, and the apprehension of offenders,” as well as “ensuring the public welfare”); M.G.L.A. 272 § 77A (2014) (“Willfully injuring police dogs and horses”); Ohio Rev. Code § 2921.32.1 (2006) (“Assaulting or harassing police dog or horse or assistance dog”); N.J.S.A. 2C:29-3.1 (“Interference/harm to a law enforcement animal”); O.R.S. § 167.337 (2009) (“Interfering with law enforcement animal”); Utah Code Ann. § 76-9-306. Police service animals -- Causing injury or interfering with handler -- Penalties”).

too is the punishment for assaulting a police canine harsher than the punishments prescribed for other instances of animal cruelty.

Ultimately, Robby's Law, The Canine Members of the Armed Forces Act, and other associated pieces of legislation enacted over the last fifteen years, while incremental, have materially improved the lives and rights of MWDs once their service careers have come to an end. They are now afforded veterinary care in line with the medical care provided for human military veterans, and are often recognized for their accomplishments in the line of duty just as would their human counterparts. Unfortunately, this approach could best be described as asymptotic; legislation continues to inch closer and closer to the original purpose of these proposals, that is, to put MWDs on the same level as human military members, but never succeeds in reaching the ultimate goal. At this point, the largest remaining hurdle is for the United States to decide that MWDs truly are a part of this country's military and that to treat them as such would be in the best interests of the military moving forward.

In determining how best to handle the debate on MWDs, could the United States look to a key turning point in its own shameful past? Comparing slavery with the slow march toward quasi-personhood by animals is a veritable minefield of potential controversy stemming from one of the darkest, most embarrassing periods in American history. Dogs may not biologically be humans, but many early twentieth century Americans viewed black people as little more than savage beasts themselves.⁸¹ Animal rights activists would be wise to look to leaders of the Civil Rights Movement for a road map as they continue their efforts toward equal treatment for dogs under the law. Since 1883, the Supreme Court has interpreted the Thirteenth Amendment to afford Congress the "power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States."⁸² Ultimately, an important question is raised:

⁸¹ See, e.g. George T. Winston, *The Relation of the Whites to the Negroes*, ANNALS AM. ACAD. POL. & SOC. SCI. 18, 108-09 (July 1901) ("When a knock is heard at the door [a White woman] shudders with nameless horror. The black brute is lurking in the dark, a monstrous beast, crazed with lust. His ferocity is almost demoniacal. A mad bull or tiger could scarcely be more brutal. A whole community is frenzied with horror, with the blind and furious rage for vengeance.").

⁸² "The Civil Rights Cases," 109 U.S. 3, 20 (1883).

What, however, qualifies as a badge or incident of slavery? Does this concept refer only to a public law that discriminates against African Americans or, more generally, on the basis of race? Alternatively, does it encompass any public or private practice that "perpetuates [racial] inferiority?" Or is its scope even broader, extending to "any act motivated by arbitrary class prejudice?" Surprisingly, there is no generally accepted understanding as to the meaning of this often-invoked but under-theorized concept.⁸³

Additionally, the Supreme Court held in 1968 that the Civil Rights Act of 1866 was intended "to prohibit all racial discrimination, whether or not under color of law, with respect to the rights enumerated therein."⁸⁴

Under a broad reading of the Supreme Court's interpretation of the Thirteenth Amendment, it can be argued that the misclassification of MWDs is itself in line with the badges and incidents of slavery, as current legislation appears to label MWDs as "separate but equal" in what seems to be little more than a cost-cutting measure. MWDs are afforded nearly every other benefit given to human soldiers upon retirement, far in excess of any consideration given to excess equipment at the end of its useful life. But the reclassification of MWDs continues to be a line that Congress refuses to cross toward true equality between MWDs and human soldiers. Further lobbying and legislation will be necessary in order to rid this country's MWDs of this gross misclassification and afford them the same rights bestowed upon their fellow soldiers.

⁸³ Jennifer Mason McAward, *Defining the Badges and Incidents of Slavery*, 14 U. Pa. J. Const. L. 561, 564 (2012) (citing Douglas L. Colbert, *Challenging the Challenge: Thirteenth Amendment as a Prohibition Against the Racial Use of Peremptory Challenges*, 76 CORNELL L. REV. 1, 116 (1990) and G. Sidney Buchanan, *The Thirteenth Amendment and the Badge of Slavery Concept: A Projection of Congressional Power*, in *THE QUEST FOR FREEDOM, A LEGAL HISTORY OF THE THIRTEENTH AMENDMENT* 175, 177 (1976).

⁸⁴ *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

VII. PROPOSED LEGISLATION

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.

- General Colin L. Powell⁸⁵

A. *One Step Forward, Two Steps Back*

The United States' progress toward appropriate treatment of MWDs continues to be a long, slow process, with legislators making a number of smaller concessions while avoiding the biggest issue of them all, that of reclassifying MWDs. As one of the most important aspects of The Act, dogs would be reclassified under 10 U.S.C. 2583 as "Canine Members of the Armed Forces," rather than merely being considered "excess equipment."⁸⁶ However, this language was removed from the version of H.R. 4310 that was ultimately passed by Congress; anonymous sources claim that it was removed at the insistence of Senator John McCain, a veteran himself.⁸⁷

Additionally, the Act also unsuccessfully sought to create a program for the recognition of military dogs "that are killed in action or perform an exceptionally meritorious or courageous act in service to the United States."⁸⁸ This would treat MWDs' actions in combat similarly to those of their human counterparts in the line of duty. Considering the growing support for using MWDs in direct combat

⁸⁵ *Quotes by Legendary Battlefield Commanders, supra* note 1.

⁸⁶ *Canine Members of the Armed Forces Act*, Sec. 3(a)(2)(f) ("Classification of Military Working Dogs.-- The Secretary of Defense shall classify military working dogs as canine members of the armed forces. Such dogs shall not be classified as equipment.").

⁸⁷ Kevin Hanrahan, *Did Senator John McCain Cut the Military Working Dog Legislation?*, SOLDIER WRITER: BALANCING THE SWORD AND THE PEN, <http://khanrahan.com/2013/01/14/did-senator-john-mccain-cut-the-military-working-dog-legislation/> ("According to Lisa Phillips, CEO of the Retired Military Working Dog Assistance Organization, 'Senator McCain, ranking member of the Senate Armed Services Committee, did not want *any* part of the bill/amendment to go forward at all.'") (last visited Jan. 29, 2014).

⁸⁸ *Canine Members of the Armed Forces Act*, Sec. 5(2)(b) ("Recognition of Service of Military Working Dogs.-- The 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 to the United States.").

action situations, rather than just in support roles, it seems appropriate that MWDs be further recognized for their heroic work on the battlefield.⁸⁹

Even more unfortunately, a provision inserted into the 2012 National Defense Authorization Act repealed the reporting requirement brought forth under Robby's Law, and will require further lobbying in hopes of once again compelling transparency in the disposition of retiring MWDs on an annual basis.⁹⁰ The current pattern of "one step forward, two steps back" does not bode well for the ultimate reclassification of MWDs as "Canine Members of the Armed Forces."

B. *The True Costs of MWD Adoption*

For families who want to adopt retired MWDs, the costs of transportation are passed on to them, and it can cost thousands of dollars to bring one dog home. There is pending legislation to allow for the use of frequent flier miles to bring MWDs home just as is currently permitted for human members of the military, but it is unknown if or when it will be enacted.⁹¹ This appears to be the main sticking point preventing the reclassification of MWDs as "Canine Members of the Armed Forces," as Congress does not seem to be willing to foot the bill in order to bring retiring MWDs home.

According to the 2011 Military Working Dog Adoption Report, which is the final report available under Robby's Law prior to the

⁸⁹ 40 Army Law 1, citing R. Norman Moody, *Florida-Based Military Dogs Do Heroic Work In War Zone*, FLA. TODAY, May 9, 2005, available at <http://www.floridatoday.com/apps/pbcs.dll/article?AID=/20050426/NEWS01/504260331/1006>

(last visited Jan. 30, 2014) (describing how a MWD apprehended two men in southern Iraq who were attempting to avoid capture) and *Unit Oket'z Attack Palga*, THE ISRAELI SPECIAL FORCES DATABASE, at <http://www.isayeret.com/units/land/special/7142/attack.htm> (last visited Jan. 30, 2014) (explaining how the Israeli Defense Force has employed MWDs against enemy combatants during counter-terrorism missions in the Occupied Territories and Lebanon).

⁹⁰ 112 P.L. 81 (2011).

⁹¹ *Canine Members of the Armed Forces Act*, Sec. 3(b) (amending 10 U.S.C. 2613 -- Acceptance of frequent traveler miles, credits, points, and tickets: use to facilitate rest and recuperation travel of deployed members and their families -- to apply to MWDs as well).

reporting requirement being repealed, 276 MWDs were adopted by private families in 2011, with another 52 MWDs being “transferred from the Department of Defense to other government or law enforcement agencies for continued public service.”⁹² While there is no cost to adopt the dog itself, “any Law Enforcement Agency or person approved to adopt [a MWD] is completely responsible for all costs associated with transportation of the MWD from the military installation to any final destination.”⁹³ Factoring in the costs of international travel, especially for those MWDs retiring from military installations in relatively inaccessible locations such as Afghanistan, a prospective adoptive family may have to pay as much as \$2,000 in transportation costs alone to bring the MWD home.

Multiplying roughly \$2,000 per MWD times the 328 MWDs adopted in 2011 brings an estimated total cost of adoptions in 2011 to \$656,000. That is less than five-millionths of one percent of the estimated annual cost to the United States government of the wars in Iraq and Afghanistan.⁹⁴ Considering the enormous budget of the United States military (for 2014 alone, the DoD has requested \$79.4 billion in funding for overseas contingency operations, mainly for Operation Enduring Freedom in Afghanistan⁹⁵) and the myriad lives that are saved every year by MWDs (it is estimated that the average war dog saves 150 soldier lives during its service⁹⁶), it does not seem unreasonable for the government to commit the relatively miniscule amount of additional resources toward ensuring equal treatment and

⁹² U.S. Air Force Report to Cong. Comm., 2011 Military Working Dog Adoption Report 1, 3 (December 2011), available at <http://www.save-a-vet.org/d7/sites/default/files/docs/MWD%20Disposition%20Report%202011.pdf>.

⁹³ Watson & Manning, *supra* note 51.

⁹⁴ Roger C. Altman and Richard N. Haass, *American Profligacy and American Power: The Consequences of Fiscal Irresponsibility*, EUROCAPITAL, <http://www.eurocapital.gr/permalink/21515.txt> (“Together, the wars in Iraq and Afghanistan cost more than \$150 billion a year.”) (last visited Jan. 30, 2014).

⁹⁵ Office of the Under Secretary of Defense (Comptroller) / Chief Financial Officer, *Overview: United States Department of Defense Fiscal Year 2014 Budget Request, Addendum A: Overseas Contingency Operations 1,5* (May 2013), available at http://comptroller.defense.gov/defbudget/fy2014/FY2014_Budget_Request_Overview_Book_Amended.pdf.

⁹⁶ Jennifer Rizzo, *When a Dog Isn't a Dog*, CNN, Jan. 6, 2012, <http://security.blogs.cnn.com/2012/01/06/when-a-dog-isnt-a-dog/>.

a happy retirement for this valuable and heroic, yet vastly underappreciated by those not in uniform, part of the armed forces.

VIII. CONCLUSIONS AND RECOMMENDATIONS

'That dog is not just a piece of equipment -- it's what enables us to save lives so we exhaust all avenues to ensure the dogs remain as healthy as possible.'

-Major General Mary Kay Hertog⁹⁷

MWDs have played a crucial role in the long history of warfare, dating back to ancient times. They have been bred, trained, and carefully selected over millennia of martial contributions to be the perfect partner in this nation's military efforts around the world. Yet political handwringing and budgetary concerns have ultimately forced an asymptotic "separate but equal" approach to legislation regarding the treatment of MWDs. They have earned nearly all of the rights afforded to their human soldier counterparts, yet are legally classified on the same level as uniforms, guns, and the various spoils of war. Over the decades, this has led to retired MWDs being cast aside just as would a defective assault rifle or a torn uniform.

Scientific research into canine cognition, along with myriad anecdotal evidence regarding the battlefield exploits of MWDs, suggests that MWDs are much more than military equipment, and should be recognized as such. By reclassifying MWDs as "Canine Members of the Armed Forces," the United States government would be taking an important step in finally recognizing the tens of thousands of lives saved and the untold thousands more that will be saved in future military efforts by an underappreciated segment of its military that only aims to serve its country and protect its fellow soldiers.



⁹⁷ Lyle, *supra* note 68.