



THE ARMY LAWYER

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Lore of the Corps

“For Excellence” as a Junior Paralegal Specialist/Noncommissioned Officer: The History of the Sergeant Eric L. Coggins Award

“I only wish I could put on my uniform and soldier one more time.”¹

*Fred L. Borch
Regimental Historian*

Those fourteen words above, spoken by Sergeant (SGT) Coggins shortly before his untimely death, speak volumes about both his character and his love for our Corps and our Army. These words also explain why the Sergeant Eric L. Coggins Award for Excellence was created in 1998.²

Born in May 1973 in Shelby, North Carolina, Eric L. Coggins was the son of John D. Coggins and the late Kwang Chayi Coggins, who John Coggins met while in the Army in Korea. Eric attended East Rutherford High School in Forest City, North Carolina, where his extracurricular activities included weight lifting, speech and debate. He was also active in the church youth group at the Tanner’s Grove United Methodist Church.³

When his father had to leave the area in 1989, Eric went to live with Carlton “Lee” and Janice Waugh. They were the parents of John Waugh, a high school classmate of Eric’s who also was a good friend. The Waughs became Eric’s foster parents and Eric soon considered himself to be a part of the Waugh family.⁴

After graduating from high school in 1991, Eric enlisted in the Army. He completed basic and advanced individual training, and earned his wings as a parachutist at Fort Benning, Georgia. After serving as an airborne Soldier at Fort Bragg, North Carolina, Coggins volunteered for a twelve month tour in the Republic of Korea. One of this reasons for choosing Korea was to be reunited with his mother, who had returned to her native home several years earlier. Unfortunately, she died a few months before now Specialist Four (SP4) Coggins arrived in Seoul.⁵

Assigned to the 2d Infantry Division at Camp Casey, SP4 Coggins soon demonstrated such truly outstanding abilities as a legal specialist (as paralegals were then called) as well as such superb leadership skills, that he was chosen to be the noncommissioned officer-in-charge (NCOIC) of the 1st Brigade legal office.⁶

After his tour in South Korea, SGT Coggins volunteered for a deployment to Kuwait, and after arriving in March 1996, he became the NCOIC of the Camp Doha legal office. Despite the difficult conditions, he excelled in this assignment. When Iraq once again threatened Kuwait, SGT Coggins was among the first to volunteer for squad automatic weapons training and serve as a machine gunner on the Camp Doha perimeter. Later, Coggins also asked to be trained as a tank gunner. He became so proficient that he was selected as the gunner on the commander’s tank.⁷

Although his future as a Soldier was incredibly bright, SGT Coggins’ career was cut short in September 1996 when he was diagnosed with liver cancer. He was medically evacuated to Walter Reed Army Medical Center, where he learned that his cancer had metastasized and that his prognosis for recovery was grim.⁸

Major General (MG) Walter B. Huffman, then serving as The Judge Advocate General, visited SGT Coggins several times at Walter Reed. Major General Huffman was so impressed with Eric’s spirit and attitude that ten days before SGT Coggins was medically retired and left the hospital to return to Forest City, North Carolina, MG Huffman presented him with the Legion of Merit. This high level decoration, rarely if ever awarded to a junior noncommissioned officer, reflected the character of SGT Coggins’ service to our Corps and our Army. As might have been expected, Eric Coggins response to receiving the Legion of Merit was to tell MG Huffman: “I only wish I could put on my uniform again and Soldier one more time.”⁹

Eric Coggins spent his final days in the Waugh home, where his second family cared for him. He died in November 1996. Eric Coggins was just twenty-three-years-old.¹⁰

In 1998, convinced that SGT Coggins had been a model Soldier for all paralegals to emulate, MG Huffman established the Sergeant Eric L. Coggins Award for Excellence. The award was to be given annually to the junior “Legal

¹ TJAGSA Alumni Association, *SGT Eric Coggins: A Profile in JAG Corps Excellence*, REGIMENTAL REPORTER, Winter 1998, at 7 [hereinafter *SGT Eric Coggins*].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Specialist/NCO who best approaches the standards of legal and Soldier excellence” for which Eric Coggins was known.¹¹

Today, any active, reserve, and National Guard Soldier who possesses the 27D Primary Military Occupational Specialty (PMOS), and is the grade of Specialist (E-4) through Staff Sergeant (E-6), is eligible for the award. That Soldier must “embody Army and JAG Corps’ values . . . and must demonstrate exceptional Soldier and paralegal skills.”¹² In this regard, the Soldier’s last two Army Physical Fitness Test scores must be 250 points or higher (although this may be waived for individuals with a valid medical profile). Finally, “a specific, noteworthy military or civic achievement may be an additional factor” in the selection of a recipient, but “will not be the sole reason for selection.”¹³ Nominations from the field are considered by a selection board appointed by The Judge Advocate General (TJAG). That board, one member of which must be the Regimental Command Sergeant Major of the JAG Corps, evaluates the nominations and makes a recommendation to TJAG, who determines the honoree.¹⁴

On June 15, 1998, MG Huffman and Sergeant Major (SGM) Howard Metcalf, then serving as the Regimental Sergeant Major, presented the first Coggins award to Staff Sergeant (SSG) Michelle Winston. At the time, SSG Winston was serving in the Office of the Staff Judge Advocate, III Corps and Fort Hood. She was presented with a plaque during the 9th Senior Legal NCO Management Course at The Judge Advocate General’s School. Coggins’ foster mother, Janice Waugh, also participated in the ceremony, along with SGT Coggins’ father, John Coggins.¹⁵

Today, the Coggins Award is presented during the Advanced Law for Paralegal and Law for Paralegal Courses,

usually in May of each year. Whenever possible, TJAG makes the award personally. Mrs. Janice Waugh has been present, and participated in, every Coggins Award from its inception in 1998.¹⁶ Recipients receive a number of items, including an Army Commendation Medal awarded by TJAG, a challenge coin from the Sergeant Major of the Army, and a NCO sword from the Judge Advocate General Corps Retired NCO Association.

Sergeant Eric L. Coggins was the epitome of a Soldier and a paralegal, and his courage in the face of adversity has been an inspiration to all who hear his story. The Coggins Award ensures that he will not be forgotten and that paralegals who follow him have a model to emulate.

Since the inaugural award in 1998, the following paralegal specialists have been recipients of the SGT Coggins award:

1999	SGT David Panian ¹⁷
2000	SSG Michelle Browning ¹⁸
2001	SGT Ryan L. Wischkaemper
2002	SSG Melissa Burke ¹⁹
2003	SSG Osvaldo Martinez, Jr. ²⁰
2004	SSG Troy D. Robinson
2005	SSG Joshua L. Quinton ²¹
2006	no award
2007	SSG Francisco R. Ramirez ²²
2008	SSG Samuel R. Robles ²³
2009	SSG Jose A. Velez ²⁴
2010	SSG Juan C. Santiago ²⁵
2011	SSG Margarita G. Abbott ²⁶
2012	SSG Raymond E. Richardson, Jr. ²⁷
2013	SSG Ana I. Hairston ²⁸
2014	SSG Angelica Pierce ²⁹

¹¹ TJAGSA Alumni Association, *First Coggins Award Presented*, REGIMENTAL REPORTER, Winter 1998, at 6 [hereinafter *Coggins Award Presented*].

¹² Memorandum from Command Sergeant Major (CSM) Joseph P. Lister, subject: Memorandum of Instruction, 2016 SGT Eric L. Coggins Award of Excellence (21 Dec. 2015).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *SGT Eric Coggins, supra* note 1.

¹⁶ *Coggins Award Presented, supra* note 11.

¹⁷ Sergeant Panian successfully completed the “green-to-gold” program and is now an active duty major. He serves as the Executive Officer, 11th Armored Cavalry Regiment

¹⁸ Staff Sergeant Browning (now Austin) retired as a legal administrator and Chief Warrant Officer Four.

¹⁹ Master Sergeant Burke is currently attending the Sergeant Majors Academy. She previously served as the First Sergeant at the noncommissioned officer (NCO) Academy at The Judge Advocate General’s Legal Center and School, U.S. Army (TJAGLCS).

²⁰ Sergeant Major Martinez served as First Sergeant, Judge Advocate Officer Basic Course (JAIBC) Student Detachment.

²¹ Master Sergeant Quinton served as First Sergeant, Judge Advocate Officer Basic Course Student Detachment, and is now the Paralegal non-commissioned officer-in-charge at XVIII Airborne Corps and Fort Bragg.

²² Sergeant First Class Ramirez now serves as a paralegal at 7th Special Forces Group, Eglin Air Force Base.

²³ Master Sergeant Robles now serves as senior military justice operations NCO at 82d Airborne Division.

²⁴ Master Sergeant Velez is now a senior military justice operations NCO at U.S. Army Europe, Wiesbaden, Germany.

²⁵ Chief Warrant Officer 2 Santiago is now serving as a legal administrator in Kabul, Afghanistan.

²⁶ After serving as a court reporter at the 82d Airborne Division, Abbott successfully completed Officer Candidate School at Fort Benning, Georgia. Second Lieutenant Abbott is currently stationed at Joint Base Lewis-McCord, Washington.

²⁷ After his promotion to Sergeant First Class, Richardson applied for an appointment as a warrant officer and is now in helicopter pilot training at Fort Rucker, Alabama.

²⁸ Sergeant First Class Hairston is now a paralegal at I Corps, Joint Base Lewis-McChord.

²⁹ Sergeant First Class Pierce is now a paralegal at I Corps, Joint Base Lewis-McChord.

2015 SGT Maran E. Hancock³⁰
2016 SSG Cardia L. Summers³¹

More historical information can be found at

The Judge Advocate General's Corps
Regimental History Website
<https://www.jagcnet.army.mil/8525736A005BE1BE>

*Dedicated to the brave men and women who have
served our Corps with honor, dedication, and distinction.*

³⁰ Sergeant Major Hancock now serves as a paralegal at the 2d Stryker Brigade Combat Team, 2d Infantry Division, Joint Base Lewis-McChord.

³¹ Staff Sergeant Summers is now serving as the Senior Paralegal, 207th Military Intelligence Brigade, Vicenza, Italy.

Answering the Call: A Guide to Humanitarian Assistance and Disaster Relief for the Expeditionary Judge Advocate

Captain Bertrand A. Pourceau*

I. Introduction

Your duty phone rings, waking you from a dead sleep. It is 0302, and the Crisis Action Team has been activated. As the staff judge advocate (SJA), you need to be there. As you get out of bed and begin to dress, you process the sparse information received over the phone. A catastrophic natural disaster has occurred, and within seventy-two hours you and your unit must be en route to provide humanitarian assistance. While you have never worked a humanitarian assistance and disaster relief (HADR) mission before, you know from your experience and training that they can be incredibly complex and varied, and you will need to know as much as possible before departing with your command.

Fortunately, you also know this is not the first time the United States has provided humanitarian assistance to another nation in need.¹ Humanitarian assistance and disaster relief operations are an important tool in the U.S. Department of State's (DoS) toolkit, and are a critical competency of the U.S. military by doctrine.² Expeditionary units within each branch of the U.S. military have rendered aid on several occasions in recent years.³ When you were first assigned as SJA to the commander of an expeditionary unit, you knew that you should be prepared to advise your commander in a short-fuse HADR operation, and that an understanding of the most common legal issues was critical. You took the time to read about previous operations, and have a decent understanding of how commanders, SJAs, and their sections confronted and overcame the many legal and practical challenges they faced. A competent and knowledgeable SJA can mean the difference

between mission success and failure for a commander. Now, as you buckle your seatbelt, switch on your headlights, and begin the drive to base, you begin to recall what you have read in preparation for the mission ahead.

II. Background

As you drive, you begin to think about the process and the scope of the mission. "Humanitarian assistance" is a specific term of art, and is only one portion of foreign assistance, defined as "aid and action designed to save lives, alleviate suffering, and reduce the economic and social impact of disasters and humanitarian crises . . . [which] includes the provision of food, water, emergency shelter, and medical aid."⁴ Humanitarian assistance and disaster relief operations are generally executed by the Department of Defense (DoD) in support of another federal agency, often the United States Agency for International Development (USAID) under the direction of the DoS, although there are some circumstances under which a commander could provide some assistance under immediate response authority for a limited time with host nation and DoS concurrence.⁵ Often, HADR operations are complex, joint endeavors and involve the DoS, other federal agencies, non-governmental organizations (NGOs), and more than one branch of the U.S. military.⁶ Offhand, you can recall some of the details of the U.S. government responses to the 2010 earthquake in Haiti,⁷ the 2011 nuclear reactor meltdown in Japan,⁸ the 2013 typhoon in the Philippines,⁹ the 2014 Ebola outbreak in Liberia,¹⁰ and the 2015 earthquake in Nepal.¹¹ While each response involved

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¹ See generally III Marine Expeditionary Force & Joint Task Force-505, Office of the Staff Judge Advocate, Operation Tomodachi/Pacific Passage After Action Report (May 25, 2011) (on file with Center for Law and Military Operations The Judge Advocate General's Legal Center and School, United States Army, Charlottesville, Virginia (CLAMO)) [hereinafter JTF-505 AAR]; 3d Marine Expeditionary Brigade, Office of the Staff Judge Advocate, Operation Damayan: Philippine Typhoon Humanitarian Assistance After Action Report (Dec. 4, 2013) (on file with CLAMO) [hereinafter 3MEB AAR]; 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, Operation United Assistance After Action Report (May 2015) (on file with (CLAMO)) [hereinafter 101AD AAR]. Although the U.S. military sometimes provides domestic disaster relief in the form of defense support to civilian authorities (DSCA), this primer will focus on foreign humanitarian assistance (FHA).

² JOINT CHIEFS OF STAFF, JOINT PUB. 3-29, FOREIGN HUMANITARIAN ASSISTANCE (3 Jan. 2014) [hereinafter JP 3-29]. Although the Department

of Defense (DoD) may be involved in several types of humanitarian operations, HADR (also known as Foreign Disaster Relief (FDR)) should be distinguished from Humanitarian Civic Assistance (HCA), which is non-emergent in nature. *Id.* at I-9

³ See JTF-505 AAR, *supra* note 1; 22d Marine Expeditionary Unit, Office of the Staff Judge Advocate, Operation Unified Response (Haiti Earthquake Relief) After Action Report (May 13, 2010) (on file with (CLAMO)) [hereinafter 22MEU AAR]; 101AD AAR, *supra* note 1.

⁴ JP 3-29, *supra* note 2 at ch. I, para. 1(e)(3).

⁵ JP 3-29, *supra* note 2 at ch. I, para. 1(a)(1), 2(c); see also U.S. DEP'T OF DEF., DIR. 5100.46, FOREIGN DISASTER RELIEF para. 4 (6 Jul. 2012) [hereinafter DoDD 5100.46].

⁶ See generally JP 3-29, *supra* note 2.

⁷ 22MEU AAR, *supra* note 3.

⁸ JTF-505 AAR, *supra* note 1.

⁹ 3MEB AAR, *supra* note 1.

¹⁰ 101AD AAR, *supra* note 1.

¹¹ Amaani Lyle, USAID, PACOM Assist Earthquake Relief in Nepal, DOD NEWS, DEFENSE MEDIA ACTIVITY (May 12, 2015),

different political and tactical considerations, each also had characteristics in common.

The units involved in a HADR operation are often directly related to their geographic location and capabilities.¹² Generally, highly mobile units and units garrisoned at or near the affected area are assigned HADR missions because nearby units are able to respond most quickly to requests for assistance from host nations and the DoS, and because their geographic combatant commander will have the best cognizance over the situation from a DoD perspective.¹³

For example, during the Ebola epidemic response in 2014, Operation United Assistance, U.S. Africa Command (AFRICOM)—via U.S. Army Africa (USARAF)—provided forces including soldiers of the 101st Airborne Division and III Corps, which were requested specifically for their capabilities and mobility.¹⁴ This was a deliberate response due to the gradual nature of the epidemic, and because of the need to ensure that as much risk as possible was mitigated, and that all necessary capabilities could be brought with the unit when it landed in country.¹⁵ When an earthquake affected Haiti in mid-January 2010, USAID served as lead federal agency and U.S. Southern Command (SOUTHCOM) assembled a Joint Task Force (JTF) to assist under Operation Unified Response, including the 82d Airborne Division, XVIII Airborne Corps, the 22d Marine Expeditionary Unit (MEU) and 24th MEU, and other air and naval forces.¹⁶ The Haitian government immediately requested assistance and by the following day, U.S. forces began to arrive on scene to begin relief efforts, which continued for roughly five months.¹⁷ After Typhoon Haiyan struck the Philippines, the Philippine government immediately requested aid from the U.S. government, and the 3d Marine Expeditionary Brigade (MEB) and Joint Special Operations Task Force Philippines (JSOTF-P) began response within six hours under what would become Operation Damayan, coordinating with USAID personnel on scene.¹⁸ Six days later Joint Task Force-505 (JTF-505) was assembled by order of U.S. Pacific Command

(PACOM), and took lead over the tactical mission with its more substantial assets until it was disestablished two weeks later.¹⁹ PACOM executed a similar plan for relief in Nepal, again assembling JTF-505, and initially spearheading the efforts with 3d MEB, augmented by Air Force and 3d Marine Aircraft Wing assets and personnel to accommodate air bridging.²⁰

Operation Tomodachi, PACOM's response to the 2011 earthquake, tsunami, and Fukushima reactor meltdown in Japan, was somewhat larger and timelier for a number of reasons.²¹ The government of Japan immediately requested assistance and JTF-505 was formed on the same day as the disaster.²² It included Air Force, Navy, Army, and Marine Corps assets, likely because each of those branches has personnel and equipment stationed within mainland Japan, a relatively short distance from the site of the disaster.²³ Additional Navy and Marine Corps assets from Okinawa also participated in the humanitarian assistance, noncombatant evacuation operations (NEO), and radiological monitoring and containment as they arrived on scene.²⁴ It is likely that the response was larger because the assets were readily available; the disaster presented a potential threat to U.S. capabilities, operational capabilities and to an important strategic partner; and because it was a more complex disaster than most.

You have driven for a while and are nearing base, and you start to ask yourself how to organize and recall what you know when briefing your commander and staff. The planning considerations can be broken down into three functional areas: Pre-event considerations, coordination and contingency planning at the combat operations center (COC) level, and what you need to ensure that the troops on the ground know.

III. Pre-Event

<http://www.defense.gov/News/Article/Article/604621/usa-id-pacom-assist-earthquake-relief-in-nepal>.

¹² See 101AD AAR, *supra* note 1.

¹³ See JP 3-29, *supra* note 2.

¹⁴ Major Dale Greer, *101st Airborne Soldiers head to Liberia in support of USAID*, U.S. AFRICA COMMAND (Oct. 20, 2014), <http://www.africom.mil/newsroom/article/23757/101st-airborne-soldiers-head-to-liberia-in-support-of-usaid>; *TRANSCRIPT: Pentagon Briefing on DoD Response to Ebola with GEN Rodriguez*, U.S. AFRICA COMMAND (Oct. 8, 2014), <http://www.africom.mil/newsroom/article/23695/transcript-pentagon-briefing-on-dod-response-to-ebola-with-gen-rodriguez>.

¹⁵ Greer, *supra* note 14.

¹⁶ Lieutenant General P.K. Keen et al., *Foreign Disaster Response: Joint Task Force-Haiti Observations*, MIL. REV., Nov.–Dec. 2010, at 85–87.

¹⁷ *Id.*

¹⁸ Lieutenant Colonel Thomas Parker et al., *An Inside Look into USPACOM Response to Super Typhoon Haiyan*, CENTER FOR EXCELLENCE IN DISASTER MANAGEMENT & HUMANITARIAN ASSISTANCE 7 (Feb. 2015),

<http://reliefweb.int/sites/reliefweb.int/files/resources/OprDamayanReportFinal3%20%281%29.pdf>.

¹⁹ *Id.* at 8. Because Joint Task Force-505 (JTF-505) is the standing III MEF-led PACOM task force for HADR operations, the designation will appear in discussion of several different HADR operations. *Id.*; see also JTF-505 AAR, *supra* note 1.

²⁰ Lyle, *supra* note 11.

²¹ See generally ANDREW FIECKERT & EMMA CHANLETT-AVERY, CONG. RESEARCH SERV., R41690, JAPAN 2011 EARTHQUAKE: U.S. DEPARTMENT OF DEFENSE (DOD) RESPONSE (2011), <http://fpc.state.gov/documents/organization/159781.pdf>.

²² JTF-505 AAR, *supra* note 1.

²³ FIECKERT & CHANLETT-AVERY, *supra* note 21 at 1.

²⁴ *Id.* at 2, 4. Noncombatant evacuation operations (NEOs) often run concurrent to HADR, and any SJA involved with HADR should also study NEO. See JOINT CHIEFS OF STAFF, JOINT PUB. 3-68, NONCOMBATANT EVACUATION OPERATIONS (18 Nov. 2015).

Many things can be done prior to the mission to reduce friction and ensure success. Wherever the skids can be greased ahead of time, the mission will run more smoothly and the likelihood of success is increased.

A. What the Commander Needs to Know Before the Mission Begins

The commander of any force likely to engage in HADR operations should know first what HADR operations are; second, under what authority they can be conducted and funded; and finally, what their relationship is to other military forces and federal agencies in their area of responsibility. The general authority to conduct HADR is found in the Foreign Assistance Act (FAA) of 1961, codified at Title 22. Funding may be available through Overseas Humanitarian Disaster Assistance and Civic Aid (OHDACA) funds—use of which is governed within the DoD by internal policy—or from service operations and maintenance funds during the immediate response period, the Combatant Commander Initiative Fund, or funds from other agencies or other specific authorizations.²⁵ The DoS is generally the lead federal agency, with USAID and the DoD supporting. However commanders are also capable of some initial assistance with host nation government concurrence and with concurrence of the Chief of Mission (COM), who is generally the U.S. Ambassador to the host nation.²⁶ Commanders may also embark and transit their forces within the theater before receiving a formal request for forces (RFF), as was done at the beginning of the Haiti earthquake response, but they should be aware that they bear some fiscal risk of not being reimbursed if no additional funding is authorized.²⁷ Regardless, the commander and staff should know to make contact with their higher headquarters and the DoS to determine what assistance the host nation requested and where they are authorized to take their forces.

B. Hit the Ground Running

The Staff Judge Advocate should be thoroughly embedded with staff and planners well before a contingency operation is launched, and should have a strong understanding

²⁵ See 10 U.S.C. § 2561; Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 Stat. 2130 (2014); JP 3-29, *supra* note 2, app'x B; DoDD 5100.46, *supra* note 5, para. 4.

²⁶ JP 3-29, *supra* note 2; DoDD 5100.46, *supra* note 5.

²⁷ OFFICE OF THE STAFF JUDGE ADVOCATE, UNITED STATES FLEET FORCES, OPERATION UNIFIED RESPONSE, HAITI EARTHQUAKE RELIEF (PHASE I) (3 Mar. 2010) [hereinafter USFF Unified Response].

²⁸ *Id.*; see also JTF-505 AAR, *supra* note 1.

²⁹ U.S. Army Japan, I Corps Forward, 10th Area Support Group, & Joint Land Task Force-10, Office of the Staff Judge Advocate, Operation Tomodachi/Pacific Passage After Action Report (May 24, 2011) [hereinafter 10ASG AAR].

of the planning process and their unit's operational procedures.²⁸ The SJA may be called upon to perform other, non-legal functions as well, so it's important to maintain a battle staff mentality in order to serve the mission.²⁹ Ideally, the SJA has previously worked on exercises with the command or deployed with them, and has attended the Joint Humanitarian Operations Course (JHOC).³⁰ Identifying personnel with foreign language skills for the area of responsibility in which the unit will likely deploy is also a good idea, as was critical to the relief efforts following the Haiti earthquake in 2010.³¹

C. Solid and Redundant Communication

Communication is as important for the SJA section as it is for any portion of the command element. One solution is to set up ahead of time an organizational email box (OMB) via the J-6, G-6, or S-6 communications section to allow for easy communication with all members of the SJA shop.³² This should help when the unit is in a position to use email, but there will also be times when bandwidth is limited or the Internet is altogether unavailable.³³ Any judge advocate in that situation should have a plan to communicate with their commander, even if it means co-location.

D. Prepared Response Templates

There are likely to be some routine, repeated inquiries from outside organizations that require a more formal response than a simple email.³⁴ Over time, these requests can build up and drain manpower from the primary mission of command advice. If possible, it is best to have pre-prepared, standard response templates ready for routine inquiries such as Freedom of Information Act (FOIA) requests from outside entities and Congressional inquiries, or to create them as soon as it becomes apparent that they are routine.³⁵

E. Request Assistance, but Do More with Less

It is rare that any unit deploys on a short notice HADR mission with full strength and resources.³⁶ While the SJA section may never reach full strength for the mission

³⁰ 22MEU AAR, *supra* note 3. The Joint Humanitarian Operations Course (JHOC) is run by USAID, and is an excellent resource for Commanders, SJAs, and other staff of headquarters likely to conduct HADR operations. *Id.*

³¹ USFF UNIFIED RESPONSE, *supra* note 28.

³² 3MEB AAR, *supra* note 1. An organizational email box creates one point of contact for the organization, through which all members of the shop receive any message sent to the address. See *id.*

³³ JTF-505 AAR, *supra* note 1.

³⁴ *Id.*

³⁵ *Id.*

³⁶ JTF-505 AAR, *supra* note 1.

requirements, the SJA should be prepared to request supplementary manpower if he or she is short-staffed.³⁷ It is important that the requests be made, but any judge advocate on a HADR operation should also be prepared to do without, and to accomplish the mission with limited bandwidth, communication, and manpower.³⁸

IV. At the COC Level: Coordination and Administrative Issues

You know that once the operation begins, as the judge advocate you will likely spend much of your time in the COC with the command staff, assisting the commander in his command and control of the operation. As the staff assembles, there are many critical areas where you should insert yourself as the judge advocate to assist with the operation. Generally, they can be divided into (1) access and coordination and (2) planning for contingencies on the ground.

A. Access and Coordination

The first area where SJA assistance is needed is access to the host nation and coordination with their government and the COM (generally the U.S. Ambassador to the host nation) through the DoS. It is imperative that the SJA is involved in the earliest stages of planning to ensure that this is properly accomplished.³⁹

1. Understand the Operating Environment

Every HADR operating environment is different. The nature of the disaster, the security environment, and the capabilities of the host nations differ from operation to operation and the U.S. forces' operational plan should be tailored to those differences.⁴⁰ You, the commander, and the rest of the staff should consider the state of intergovernmental

relations, our history with the host nation, and the host nation's capabilities, needs, and requests. It is also critical to know whether you are operating in a permissive or impermissive environment. An overprotective posture, or over-assisting a host nation that has requested limited assistance, can produce bad feelings with our more capable partners and create the impression that they are unable to handle their own problems.⁴¹ One of the best sources for this critical information will be USAID and DoS personnel, with whom you should have a pre-existing relationship.

2. Initial Contact and Coordination with the DoS and USAID

As soon as the unit receives notification of a likely HADR mission within its area of responsibility, the staff should make contact with the DoS and USAID liaisons. The staff will know that a HADR mission is likely when the COM or assistant secretary of state for the area declares a disaster, provided the event meets three criteria: first, the disaster exceeds the host nation's ability to respond; second, the affected country's government either requests or is willing to receive U.S. assistance; and third, a response to the disaster is in the U.S. national interest.⁴² This declaration is transmitted through diplomatic chains, and the COM takes the lead on the HADR operation, utilizing DoS, USAID, and (as necessary) DoD assets.⁴³ Alternatively, commanders whose forces are at or near the disaster affected area have limited immediate response authority, which is a more limited and less preferred authority intended for use only when time is of the essence.⁴⁴ Regardless, initial coordination is critical since your unit will fill a supporting role, and will generally only be employed where a unique military capability is needed.⁴⁵

It is also critical to coordinate the intergovernmental agreements in a HADR action. For example, status of forces agreements (SOFAs), visiting forces agreements (VFAs), and diplomatic notes, if in place, delineate the authority for our

³⁷ *Id.* Ideally, as the SJA to the lead DoD agency for a full-scale HADR operation, the SJA should request priority-one status on the Joint Manning Document (JMD) for the SJA, deputy SJA, a day watch officer, and a night watch officer and should request priority-two status for an SJA forward, a fiscal judge advocate, two legal planners, and two paralegals. *Id.*

³⁸ JTF-505 AAR, *supra* note 1.

³⁹ JP 3-29, *supra* note 2, at I-5.

⁴⁰ For example, the Government of Japan was able to exercise far more control following the 2012 earthquake and Fukushima reactor meltdown than the Government of Haiti during Operation Unified Response or the Government of Liberia during Operation United Assistance. JTF-505 AAR, *supra* note 1; 10ASG AAR, *supra* note 30; 22MEU AAR, *supra* note 3; 101AD AAR, *supra* note 1.

⁴¹ JTF-505 AAR, *supra* note 1; 10ASG AAR, *supra* note 30.

⁴² JP 3-29, *supra* note 2, at II-17. See *infra* Appendix A for a sample generic authorization letter from the Deputy Secretary of Defense to the combatant commander (CCDR), pursuant to a request for forces.

⁴³ JP 3-29, *supra* note 2, at II-17.

⁴⁴ DoD policy discusses a commander's immediate response authority:

Nothing in this Directive shall be construed as preventing a military commander with assigned forces at or near the immediate scene of a foreign disaster from taking prompt action to save human lives. In cases in which this authority is invoked, the commander should obtain the concurrence of the host nation and U.S. Chief of Mission of the affected country before committing forces. Also, the Combatant Commander shall follow up as soon as possible, but no later than seventy-two hours after the start of relief operations, to secure Secretary of Defense or Deputy Secretary of Defense approval for continuing assistance. Combatant Commanders must also obtain Secretary or Deputy Secretary approval in order to obtain reimbursement with (OHDACA) [Overseas Humanitarian Disaster Assistance Civic Aid] funds. Such assistance during the first seventy-two hours does not include the authority to provide military assistance that does not contribute to urgent life-saving efforts.

DoDD 5100.46, *supra* note 5, para. 4.f.

⁴⁵ JP 3-29, *supra* note 2, at I-1.

forces to be present, and the laws to which they will be subject.⁴⁶ Judge advocates should also be aware of any agreements involving overflight of neighboring countries, and your commander and his staff should be able to articulate to DoS the requirement for any additional access.⁴⁷ The DoS will be able to coordinate these agreements, so it is critical that they know the military requirements, and that all agencies are aware of all agreements that are in place, of their parameters, and their effective dates. Due to the interagency and international character of most HADR actions, it is also a good idea to minimize classification, keeping everything unclassified if possible, to allow for maximum sharing of information.⁴⁸ The staff should consider using Liaison Officers (LNOs) to local military and governmental agencies for informational purposes if personnel are available, but should ensure that they do not drive the requirements without proper analysis.

Interoperability and communication are critical, but it is also important to avoid mission creep due to direct requests for assistance from other agencies. It may be possible to provide that support to the extent that fiscal authority exists and that applicable regulations allow for it, but the staff should not allow pop-up requirements to bump actual mission critical sorties.⁴⁹ On other occasions, units have received pressure from non-governmental organizations (NGOs) to take legal risks or violate policy.⁵⁰ The best way to avoid outside agency requests interfering with operations is to maintain solid communications with each DoS and DoD agency staff attorney on the relief effort, and to maintain solid daily communication with the COM and USAID, validating any requests for assistance through the Mission Tasking Matrix (MITAM) process.⁵¹ This level of contact ensures that the requested aid is within the scope of how the COM intends to use your unit, that the legal and fiscal risk to your commander is minimized, and that it does not bump other critical missions from the schedule.

⁴⁶ See USFF UNIFIED RESPONSE, *supra* note 28; JTF-505 AAR, *supra* note 1. Intergovernmental agreements will govern force protection measures, customs, passport control, access to commissaries, and criminal jurisdiction, and will affect importation of supplies, equipment, arms, and force protection posture. USFF UNIFIED RESPONSE, *supra* note 28. If no agreements are in place, any service members who violate local law will be subject to local jurisdiction. Telephone Interview with Major Timothy Taylor, USMC, SJA, 3d Marine Expeditionary Brigade and Major Jordan Gwiazdon, USMC, SJA Forward, Joint Task Force-505 (Jan. 6, 2016) [hereinafter Taylor & Gwiazdon].

⁴⁷ This was an issue with overflight of Cuba during the Haiti relief efforts. See USFF UNIFIED RESPONSE, *supra* note 28.

⁴⁸ 3MEB AAR, *supra* note 1; Taylor & Gwiazdon, *supra* note 47.

⁴⁹ See *e.g.* Taylor & Gwiazdon, *supra* note 47. This occurred in Nepal in 2015, when the Nepalese Army often requested airlift for their personnel to move throughout the country, even though such lift was outside the scope of the execution order, was direct military to military support, and was not immediately lifesaving. See *infra* Appendix D, a Mil-Air Reference Sheet provided by Lieutenant Colonel Christopher M. Brannen, USMC, Deputy SJA for Operational Law, PACOM.

B. Planning for Contingencies on the Ground

You know from reading reports of others' experiences conducting HADR missions that coordination will take you a long way, but you and the rest of the staff will have to plan for specific contingencies that you expect to encounter on the ground based on what you know of the operating environment.⁵² You will need to consider from a legal perspective the foreign civilians you are assisting, force protection for your unit, and the likely administrative issues you will encounter.

1. Civilian Considerations

One of the first issues to resolve will be how properly to refer to the civilians who have been affected by the disaster. Certain words can have specific legal consequences. For example, referring to someone as a refugee or a migrant, or in any way implying or stating that they have been granted asylum, can confuse the situation and create a basis for a claim of additional legal or political rights.⁵³ The best practice is to refer to them using terms which do not impart legal status, such as internally displaced persons (IDPs) or affected persons, and ensure that your commander and any public affairs officers (PAOs) and LNOs use those terms as well.⁵⁴ On the other hand, particular legal language is sometimes necessary to trigger entitlements and fiscal authorities during events such as Operation Pacific Passage, a NEO executed concurrently with Operation Tomodachi.⁵⁵ The JTF-505 Operations Order failed to use the term *safe haven*, which is a term of art, and caused fiscal confusion when displaced U.S. citizens attempted to settle their claims.⁵⁶ The best way to avoid creating a perception of over- or under-entitlement is for you and the staff to understand and properly use the Joint Travel Regulations (JTR) terminology and terms of art. Even if you do not have them memorized, ensure that you have access to an up-to-date version for research before embarking on the mission, and that you have developed a working

⁵⁰ See USFF UNIFIED RESPONSE, *supra* note 28; see also JTF-505 AAR, *supra* note 1. During Operation Unified Response NGOs pressured the U.S. naval forces to facilitate transport of Haitian orphans into the United States, which would have violated both law and policy. See USFF UNIFIED RESPONSE, *supra* note 28.

⁵¹ Taylor & Gwiazdon, *supra* note 47. For example, JTF-505 judge advocates held daily teleconferences with all other judge advocates involved with Operation Tomodachi. See *e.g.* Taylor & Gwiazdon, *supra* note 47; see JTF-505 AAR, *supra* note 1. See *infra* Appendix C for a portion of a presentation compiled by Maj Leah Sprecher, USAF, PACAF, describing the MITAM process.

⁵² Taylor & Gwiazdon, *supra* note 47; USFF UNIFIED RESPONSE, *supra* note 28.

⁵³ USFF UNIFIED RESPONSE, *supra* note 28.

⁵⁴ *Id.*

⁵⁵ JTF-505 AAR, *supra* note 1.

⁵⁶ *Id.*

familiarity with them.

Once you and the staff are prepared to properly discuss the civilian considerations, you should plan for the full spectrum of contingencies you are likely to encounter, and plan for every type of affected person. Your unit will likely deliver relief supplies, but may also be called upon to relocate affected people, provide medical evacuation, or conduct other types of missions. It is important to remember that the civilian population is not homogenous. The people you assist will be both men and women and may be ill or injured, elderly, or pregnant; some may even be unaccompanied children.⁵⁷ Many will be foreign nationals and some may be U.S. citizens. You and the staff should plan for assisting all likely classes of affected people. One positive example was during Operations Tomodachi and Pacific Passage, when U.S. citizens who were too far along in their pregnancies to safely fly still needed to be evacuated to a safe haven.⁵⁸ As a contingency plan, they were flown to Okinawa, which was the shortest flight possible that would still get the women to a safe haven location.⁵⁹

Failure to plan for contingencies and communicate those plans to the lowest levels can further complicate the operation. During Operation Unified Response, five unaccompanied minors were medically evacuated aboard the USS Bataan.⁶⁰ This resulted in complications repatriating the children once their treatment was complete.⁶¹ While the unit had intended to repatriate the children via the United Nations Children's Fund (UNICEF) and Government of Haiti (GoH), it became apparent that those outside agencies were not proactively seeking the children's parents.⁶² The unit then developed a procedure to reunite the children with their parents.⁶³ The SJA first interviewed the children with the assistance of a translator in order to gather as much relevant information as possible about the children's families and homes.⁶⁴ The SJA took pictures of the children and with the help of ship's personnel, assembled an informational flyer for each of the children.⁶⁵ Finally, the SJA traveled to the Civil Military Operations Center (CMOC) near the children's hometowns and worked with the CMOC personnel to find the children's families.⁶⁶ While the unit took the proper and most responsible course of action once the children came aboard ship, more thorough planning would have allowed the

commander to establish and effectively communicate a policy at the beginning of the operation that no unaccompanied minors were to come aboard a U.S. ship, which would have avoided the need for the unit to take charge of the repatriation.⁶⁷

Whether medical evacuation is provided to only a few of the affected people or there is a mass migration as a result of the disaster, your commander should have a plan for returning any affected people to a safe environment. According to the Geneva Conventions, we must avoid refoulement, or returning people into a situation in which their lives are at risk.⁶⁸ To avoid refoulement, you should consult with the DoS, and if in a neighboring country the Department of Homeland Security (DHS), to learn what plans have already been established for returning affected people to safety and managing mass migrations.⁶⁹ This allows your commander and the staff to tailor plans compatible with existing higher and adjacent plans.

2. Force Protection

Although it's always critical to plan for civilian considerations during a civilian focused mission such as HADR, the commander and staff also need to plan for force protection, and you must assist with the legal aspects of that planning. From a legal standpoint, force protection mainly consists of the development of appropriate self-defense based rules of engagement (ROE). Any ROE should reflect all forces present in the affected area, covering sea, ground, and air. They should be built around any existing international agreements with the affected country, including SOFAs and diplomatic notes, and with close coordination with DoS and judge advocates from each component.⁷⁰

This coordination is critical for several reasons. First and foremost, these agreements govern the import of weapons and equipment into the country. ROE which govern use of deadly force are meaningless if no weapons can be brought ashore. Coordination with DoS is also important for policy reasons. An armed foreign force coming ashore, even to provide assistance during a disaster, can create the impression that the host nation has lost some measure of sovereignty and lost

⁵⁷ *Id.*; USFF UNIFIED RESPONSE, *supra* note 28.

⁵⁸ JTF-505 AAR, *supra* note 1.

⁵⁹ *Id.*

⁶⁰ 22MEU AAR, *supra* note 3.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 4., Aug. 12, 1949, 75 U.N.T.S. 973 [hereinafter GC IV]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 73, 75 & 85, 1125 U.N.T.S. 17512 [hereinafter AP I]. While GC IV and AP I relate to non-refoulement in armed conflicts, the U.S. applies that humanitarian principle in all military operations as a matter of policy. See JP 3-29, *supra* note 2 at A-4, A-6.

⁶⁹ See USFF UNIFIED RESPONSE, *supra* note 28.

⁷⁰ JTF-505 AAR, *supra* note 1.

control over their internal security.⁷¹ In every case the host nation is responsible for—although not always capable of—providing security and force protection for the operation; therefore U.S. forces will often operate with no armament.⁷² In the case of a functionally failed state, such as Haiti during Operation Unified Response, it may be necessary for U.S. forces to operate with limited defensive armaments.⁷³ Whichever type of ROE most appropriately fit the situation, judge advocates from each component should work together to provide their respective mission requirements to the combatant command (CCMD) SJA for development of comprehensive rules.⁷⁴

Overly broad or unnecessarily differing ROE can create confusion or unnecessarily burden subordinate commands.⁷⁵ During Operation Unified Response, the U.S. SOUTHCOM Commander directed all U.S. military personnel entering the Haiti disaster area to carry a weapon for personal defense.⁷⁶ This did not account for naval personnel aboard ship, many of whom were not qualified to use personal weapons and never went ashore.⁷⁷ A fragmentary order (FRAGO) was later issued relaxing the weapons carriage requirement to those service members entering the country of Haiti.⁷⁸ Also during Operation Unified Response, confusion was created by differing weapons posture policies.⁷⁹ While Marines operated with their weapons in condition four, other units operated with magazines inserted, potentially creating confusion and concern with the local populace.⁸⁰ For standardizing force protection posture and procedures, communication is key, as is developing and publishing an ROE card to U.S. forces who will be operating on the ground, and training those forces to the applicable ROE.⁸¹

Under certain circumstances, such as a radioactive disaster or disease outbreak, it may be necessary to establish additional force protection policies, such as quarantine and decontamination.⁸² These measures can result in the

destruction of contaminated personal property and clothing following an exposure.⁸³ If that personal property is contaminated, damaged, or destroyed in the line of duty, the servicemember should be compensated by the normal claims process.⁸⁴ If such measures must be taken, clear command policy should be set limiting the amount of personal property to be taken into the affected area in order to minimize claims for lost personal property.

3. Administrative Issues

In addition to personal property claims by servicemembers, there are many other administrative issues which may arise during a HADR mission. Fiscal law analysis will be involved in almost every action your unit takes, investigations may be required, and claims processing may be necessary.

It cannot be overemphasized that any judge advocate deployed on a HADR mission must have a strong command of fiscal law issues.⁸⁵ They should understand authorities for spending and funding sources and be prepared to act as a fiscal law subject matter expert in close coordination with the military comptroller.⁸⁶ They should be able to explain to the unit commander under what authority they can move to the affected area prior to authorization of OHDACA funds, and that any early movement will generally be funded with Operations and Maintenance (O&M) funds, with the possibility of reimbursement from OHDACA funds if they are later authorized.⁸⁷ They should also be able to interpret and explain to their commander the authorization letter from the Deputy Secretary of Defense to the CCMD, which delineates the amount of funding and constraints on its use, and should know the process for disposing of acquired equipment after an extended mission, such as United Assistance.⁸⁸ In addition to a personal understanding of the

⁷¹ Taylor & Gwiazdon, *supra* note 47. For example, U.S. forces in Operation Tomodachi operated under a very restrictive set of ROE, which more closely resembled domestic rules for use of force, because that set of rules most closely fit the SOFA and the operating environment. 10ASG AAR, *supra* note 30.

⁷² Taylor & Gwiazdon, *supra* note 47.

⁷³ 22D MEU UNIFIED RESPONSE, *supra* note 3.

⁷⁴ See USFF UNIFIED RESPONSE, *supra* note 28.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ 22MEU AAR, *supra* note 3. Weapons condition four consists of weapon on safe, magazine removed, bolt forward on an empty chamber, and ejection port cover closed. U.S. MARINE CORPS, REFERENCE PUB. 3-01A, RIFLE MARKSMANSHIP para. 4-2 (11 Oct. 2012).

⁸¹ *Id.*

⁸² 10ASG AAR, *supra* note 30.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See e.g., JTF-505 AAR, *supra* note 1; Taylor & Gwiazdon, *supra* note 47; 101AD AAR, *supra* note 1.

⁸⁶ See 101AD AAR, *supra* note 1; 10ASG AAR, *supra* note 30.

⁸⁷ JP 3-29, *supra* note 2, at B-1–B-3; see also 10 USCS § 2561; Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 STAT. 2130 (2014). While this can be classified as an administrative issue, it could just as easily be included as an operational planning issue, because analysis will need to be completed before any significant expenditure of resources, including the initial movement of forces to the affected area. See JP 3-29, *supra* note 2, at I-5. This is generally seen in the context of force posturing within a CCMD, e.g., movement of ships and personnel already afloat to an area near the disaster to allow for quick response once a RFF is made. See *id.* at III-11–III-12.

⁸⁸ Telephone Interview with Major Leah Sprecher, USAF, Deputy SJA for Operation Law, Pacific Air Forces, (Jan. 20, 2016) [hereinafter Sprecher]. 22MEU AAR, *supra* note 3; 101AD AAR, *supra* note 1.

authorities, SJAs should deploy with digital copies of funding authorities, handbooks, publications, and regulations for reference.⁸⁹ Finally, any expenditures of resources once the HADR mission is underway must be validated as in support of the DoD/USAID mission through the MITAM process.⁹⁰

If mishaps or misconduct occur, an investigation may be necessary. While the relief efforts in Nepal were generally a success, they were marred by the loss of a Marine Corps UH-1Y helicopter.⁹¹ That incident resulted in the deaths of six Marines, two Nepalese soldiers, and five Nepalese villagers.⁹² The incident required both a JAGMAN investigation and aviation safety investigation, to which senior and experienced Marine aviators and experts were assigned.⁹³ There was considerable controversy surrounding transport of the unrecognizable remains from Nepal to CONUS for DNA identification; but between commanders, judge advocates, and DoS, an agreement was reached to send all remains CONUS for identification under escort of a Nepalese medical officer and to repatriate the Nepalese remains once they were identified.⁹⁴ A fiscal determination was made that the repatriation mission could be paid for using OHDACA funds, given that it was in support of and arising from the HADR mission.⁹⁵

Nearly any mission involving U.S. armed forces and foreign nationals will result in claims, but not every unit will need to process claims.⁹⁶ If your service is not the designated claims adjudication authority, you should not handle the claims. If your service is designated, you should be familiar with your service specific publication governing the administration of claims, and be cognizant of the types of claims that can be paid at your level, the process for paying them (including the appointment of foreign claims commissions), the importance of documentation, and sources of funding for claims.⁹⁷ Failure to route claims properly can result in confusion and complication. For example, during the relief efforts in Haiti, a dog was killed and a claim was erroneously routed up through commanders to U.S. Fleet

Forces, who then rerouted the claim to the U.S. Army Claims Service, to whom the claim should have been routed in the first place.⁹⁸ Claims processing may also be affected by diplomatic agreement.⁹⁹ General awareness of the claims process and solid communication between judge advocates working the operation can help avoid unnecessary friction and complication.

V. What Troops on the Ground Need to Know

Despite this high level of planning, what the troops on the ground need to know can be boiled down to just a few key areas.

A. Self Defense Rules of Engagement

Elite expeditionary units such as the Marine Corps' MEUs and the Army's Airborne and Air Assault units are often the units assigned to HADR missions because of their mobility and high level of operational readiness.¹⁰⁰ These units are also renowned for their warfighting ability. For this reason, it's imperative that these troops are put in the proper, non-adversarial mindset and drilled on their self-defense ROE, procedures for escalation of force, and circumstances under which they are authorized to use force.¹⁰¹ Troops and leadership should thoroughly understand their capabilities and limitations, the operating environment, and the humanitarian mission ahead of them.¹⁰²

B. How to Deal with Special Classes of Affected People

Servicemembers should know not only how to provide assistance to run-of-the-mill affected persons but also how to assist special classes of affected people. Your commander must set a clear policy on what to do and not to do when servicemembers encounter individuals who may require special treatment such as children, the elderly, pregnant

⁸⁹ See *infra* Appendix B (Essential Reference List). You can obtain the most up-to-date references and field AARs from the Center for Law and Military Operations (CLAMO) at <https://www.jagcnet.army.mil/CLAMO> or by calling (434) 971-3145.

⁹⁰ Sprecher, *supra* note 89.

⁹¹ Kimberly Hutcherson, Michael Martinez, Sugam Pokharel & Sumnima Udas, *Eight bodies found at U.S. helicopter crash site; pilot identified*, CNN (May 16, 2015), <http://www.cnn.com/2015/05/15/asia/us-helicopter-found-nepal/>.

⁹² *Bad weather caused helicopter crash in Nepal: US Marines*, YAHOO! NEWS (Nov. 7, 2015), <https://www.yahoo.com/news/bad-weather-caused-helicopter-crash-nepal-us-marines-073523012.html?ref=gs>.

⁹³ Telephone Interview with Lieutenant Colonel Christopher Pehrson, USMC, SJA, 3d Marine Aircraft Wing (Jan. 20, 2016). A JAGMAN investigation is the naval service equivalent of the Army's 15-6 investigation. For more information, see the Marine Corps Center for Lessons Learned (MCCLL) AAR and published investigation. *Id.*

⁹⁴ Taylor & Gwiazdon, *supra* note 47.

⁹⁵ Sprecher, *supra* note 89.

⁹⁶ See USFF UNIFIED RESPONSE, *supra* note 28. In any given country, a single service department will be designated as responsible for adjudication of claims in said country in accordance with DoD Instruction 5515.08. See USFF UNIFIED RESPONSE, *supra* note 28; U.S. DEP'T OF DEF., INSTR. 5515.08, ASSIGNMENT OF CLAIMS RESPONSIBILITY sec. 3 (30 Aug. 2016).

⁹⁷ 22MEU AAR, *supra* note 3.

⁹⁸ USFF UNIFIED RESPONSE, *supra* note 28.

⁹⁹ See 10ASG AAR, *supra* note 30. For example, the Government of Japan paid for claims arising from U.S. relief efforts during Operation Tomodachi. See, e.g. *id.*

¹⁰⁰ 101AD AAR, *supra* note 1; 22MEU AAR, *supra* note 3.

¹⁰¹ 22MEU AAR, *supra* note 3.

¹⁰² *Id.*

women, and the sick or infirm.¹⁰³ Once that policy is set, commanders should clearly articulate it and pass it down the chain of command.

C. Maintaining Operational Security

Although all servicemembers are trained to maintain operational security and not discuss military operations on social media or with family, some always will.¹⁰⁴ Although most HADR environments are relatively permissive, you can easily imagine how persons intent on harming U.S. servicemembers could take advantage of the chaos. The commander should set clear and redundant policy limiting use of social media in order to prevent spillage of official information. That said, during Operation Tomodachi, U.S. forces used official Facebook pages to disseminate information to partners engaging in the relief efforts, and in general it is best to keep information as unclassified as possible.¹⁰⁵ Servicemembers need to know that while a low-friction flow of information through official channels is important for the mission, they should not write personal posts to social media or communicate about the mission to people without a need to know.

D. Maintaining Mission Focus

Maintaining mission focus is a particular challenge when deploying to a location where many servicemembers have family, as in Haiti during Operation Unified Response.¹⁰⁶ Servicemembers should know that the U.S. government is assisting their affected family members to the maximum extent possible, but the unit's ability to do so depends upon everyone doing their job at their level. The command can facilitate mission focus by bringing additional legal assistance assets to assist service members with helping their disaster affected family members.¹⁰⁷

E. Collection of Souvenirs/Gifts, and Loss of Personal Property

Servicemembers should know to take as little personal property as possible into the affected area, and to take out only what they brought in. Commanders must set a prohibition both on looting and acceptance of gifts, to avoid ethics violations as well as to avoid the appearance that U.S. servicemembers are taking advantage of or taking compensation from disaster affected people.¹⁰⁸ Commanders

should also set policy minimizing the amount of personal property that servicemembers bring into an affected area, particularly when there is risk of nuclear, biological, or chemical exposure.¹⁰⁹ This will minimize the potential loss of personal property by servicemembers and resulting claims processing burden.

F. Military Justice

Finally, service members should clearly understand that they will be held accountable for any misconduct, and under what authority they will be tried for any misconduct. As discussed previously, criminal jurisdiction will depend upon the current SOFAs, VFAs, diplomatic notes, or lack thereof.¹¹⁰ Depending upon these agreements, they may be subject to court-martial or non-judicial punishment (also known as Article 15, or NJP), or may be subject to prosecution by the authorities of the host nation. NJP was used to great effect during Operation Unified Response for minor offenses such as drinking.¹¹¹ Mere knowledge of the potential consequences for misconduct may act as a deterrent.

VI. Conclusion

As you arrive at the headquarters building, you cannot help but feel a little bit impressed with all you have been able to recall in a short amount of time. Humanitarian assistance and disaster relief operations require judge advocates to exercise all their core competencies and more. Often, they require judge advocates to step outside the legal lane and act as regular staff officers, assisting the commander in whatever way is necessary to accomplish the mission. To do this requires not only a thorough knowledge of the law, but also of the HADR process, interaction between DoD, DoS, and host nation authorities, and of the issues which have arisen in previous operations. Your competence and knowledge can make all the difference between a successful operation and a fiscal violation or international incident resulting in a relieved commander, or worse, the loss of human life.

When you do not know what you do not know, it is easy to miss important issues. Between what you have recalled and the references in your deployment bag, you are confident that you can work through the legal issues, explain them to the commander and staff, and ensure that the troops on the ground know what they need to know.

¹⁰³ JTF-505 AAR, *supra* note 1; 10ASG AAR, *supra* note 30; 22MEU AAR, *supra* note 3.

¹⁰⁴ *See e.g.* USFF UNIFIED RESPONSE, *supra* note 28. During Operation Unified Response, some servicemembers openly blogged about their disaster relief mission. *Id.*

¹⁰⁵ 10ASG AAR, *supra* note 30; 3MEB AAR, *supra* note 1; Taylor & Gwiazdon, *supra* note 47.

¹⁰⁶ 22MEU AAR, *supra* note 3.

¹⁰⁷ *Id.*

¹⁰⁸ 10ASG AAR, *supra* note 30.

¹⁰⁹ *Id.*

¹¹⁰ Taylor & Gwiazdon, *supra* note 47.

¹¹¹ 22MEU AAR, *supra* note 3.

[LETTERHEAD, DEPUTY SECRETARY OF DEFENSE]

[DATE]

MEMORANDUM FOR COMMANDER [COMBATANT COMMAND]

SUBJECT: Humanitarian Assistance to the Government of [HOST NATION]

Pursuant to section 2561 of title 10, United States Code, you are authorized to support U.S. Government humanitarian operations in [HOST NATION] to alleviate the human suffering caused by the recent [DISASTER] consistent with the following delegated authority.

I hereby delegate to Commander [COMBATANT COMMAND], or his designees, the authority to expend up to \$10 million of Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) funds to provide assistance in the form of airlift; airfield assessment, management, and operations; and logistical support for the ongoing humanitarian assistance (HA) efforts in [HOST NATION]. This activity is to be carried out in response to requests from the Government of [HOST NATION], validated by the U.S. Agency for International Development/Office for Foreign Disaster Assistance, and in coordination with the U.S. Embassy in [HOST NATION CAPITAL] and the Defense Security Cooperation Agency.

Also delegate the Commander, [COMBATANT COMMAND], or his designees, the authority to approve the transportation on DoD aircraft of non-DoD donated relief supplies and personnel on a non-reimbursable basis.

Transportation of DoD and non-DD relief supplies and personnel supporting the HA effort may be on a non-reimbursable basis if the DoD transportation is: 1) resourced with OHDACA appropriations; 2) resourced pursuant to drawdown authority; or 3) already scheduled and the transportation is on a space-available, noninterference basis at no increased cost to the Department.

DoD OHDACA funding is available for these purposes and is directed for use in supporting this request, but shall not exceed \$10 million. For audit purposes, [COMBATANT COMMAND] is required to keep records of all expenditures provided pursuant to this authority.

[SIGNATURE]

Instructions:

- Federal Acquisition Regulation (FAR)
- Joint Ethics Regulation (JER)
- DODI 1100.21, Voluntary Services in the DoD
- MILAIR, DoDD 4500.56
- DODI 4500.43, Operational Support Airlift (OSA), w/CH 1 dtd 26 June 2013.
- DOD 4515.13-R (Air transport eligibility) -All gift states and instructions
- DOD 4500.9-R, Joint Federal Travel Regulations, Chapter 6;
- DoDD 4515.12 (Transportation for members of Congress)
- DODD 5100.46, Foreign Disaster Relief (FDR)
- DoD Excess Property Program, 10 USC 2557 (Disposing of excess property upon redeployment)
- CJCS Guide 7210, ORF
- DoDI 7250.13, ORF

- Applicable instructions on Asylum and Refuge (e.g. SECNAVINST 5710.22B, Asylum and Refuge)

Joint Publications:

- JOINT PUB. 1-04, Legal Support To Military Operations
- JOINT PUB. 3-29, Foreign Humanitarian Assistance
- JOINT PUB. 3-32, C2 For Joint Maritime Operations
- JOINT PUB. 3-68, Noncombatant Evacuation Operations

Doctrinal Publications:

- Operational Law Handbook (TJAGLCS publication)
- Fiscal Law Deskbook (TJAGLCS publication)
- Ethics Counselor's Deskbook (TJAGLCS publication)

- MAGTF Judge Advocate's Handbook (CLAMO Publication)

Additional:

- CLAMO Deploying Judge Advocate Reference DVD
- Any existing applicable International Agreements with the host nation and any MOA/MOUs with NGOs
- As many previous CLAMO HADR AARs as possible, see specifically Hurricane Mitch AAR.



Mission Tasking Matrix: MITAM

A	B	C	D	E	F	G	H	I	J
1	USAID/OFDA DoD Mission Tasking Matrix (MITAM)								
2	RESPONSE: Super Typhoon Yolanda								
3	New Missions identified as of	12-Nov-13							
4	at	2300							
5	Version:	A	Changes from last update Not confirmed / missing info						
6	Mission ID	1Y-8	1Y-9						
7	Priority	Urgent	Priority						
8	WHO WHO is Requesting US Military Assistance?								
9	Name, Pos	Lola Ruiz	WHO WHO is Requesting US Military Assistance?						
10	Organization	USSWI	Name, Pos Lola Ruiz 115SWI						
11	e-mail	lruiz@e-dswd.net	Organization 115SWI						
12	phone	0916-225-5849	e-mail lruiz@e-dswd.net						
13	WHAT								
14	Description as soon as possible what you want the military to do	Transposition of Department of Social Welfare and Development (DSWD) - Philippines civilian agency	phone 0916-225-5849						
15	WHEN								
16	Date(s) & Time(s)	12Nov13 10:30	Description as soon as possible what you want the military to do Movement of DSWD 575 food sacks (90,000 lbs)						
17	WHERE								
18	Date(s) & Time(s)	12Nov13 10:30	Date(s) & Time(s) 12Nov13 10:30						
19	WHERE								
20	Date(s) & Time(s)	12Nov13 10:30	If the request is for a static position:						
21	WHERE								
22	Date(s) & Time(s)	12Nov13 10:30	If the request is for a static position:						
23	WHERE								
24	Date(s) & Time(s)	12Nov13 10:30	START Location Grid POC on site & contact info						
25	WHERE								
26	Date(s) & Time(s)	12Nov13 10:30	If there is Movement involved, info on the START Point:						
27	WHERE								
28	Date(s) & Time(s)	12Nov13 10:30	If there is Movement involved, info on the START Point:						

Standard, field-tested process for validating, prioritizing, and submitting requests for DoD support during disaster response.

The MITAM Process

Organizations Requesting Assistance with Humanitarian Efforts:

USG Organization
or Implementing Partner
(UN, NGO, etc.)

Other Donors, UN Agency,
or NGO not directly funded
by the USG

Host Nation
Civilian
Organizations

Host Nation
Military

Submit Request for
Assistance (RFA) to
OFDA

OFDA Civ-Mil Coordinator:

Validate Vet Prioritize

Submits Mission
Tasking Matrix
(MITAM)
to DOD

DOD Responding Unit:

Plan Execute Report

Non-
humanitarian
requests

There are numerous regulations governing the use of military aircraft (e.g. DoDD 4500.56; DoDD 4515.13-R; DOD 4500.9-R, Joint Federal Travel Regulations, Chapter 6; DoDD 4515.12 dealing with transportation of members of Congress; DoDI 4500.43; Circular No. A-126; and USPACOMINST 0614.6). Misuse, or the perception of misuse, of transportation resources could result in serious consequences for our commanders. The following items address some of the common MilAir issues that come up in USPACOM. This is not intended to be the sole source for MilAir answers, does not address service specific regulations, and does not negate the requirements to reference the source documents and obtain a proper legal review.

The DoD Executive Secretariat website for MilAir is:

<http://execsec.defense.gov/Programs/MILAIRRequestProcess.aspx>

The Transportation Policy, USD (AT&L) website is:

http://www.acq.osd.mil/log/tp/tp_policies.htm

DOD Issuances website:

<http://www.dtic.mil/whs/directives/corres/ins1.html>

1. [DoD Directive 4500.56, DoD Policy on the Use of Government Aircraft and Air Travel, w/CH 3 dated 24 June 2014](#) - “Government aircraft transportation is a premium mode of travel involving high costs and limited resources. All DoD employees at any level including commanders and airlift authorizing officials shall restrict travel based on considerations such as purpose of the trip, method of transportation required, and priority of travel. Every effort shall be made to minimize travel cost.” **Government aircraft shall not be approved for other official travel if commercial airline or aircraft (including charter) service is reasonably available; i.e., commercial airline or airlift service is available to effectively fulfill the mission requirement and is able to meet the traveler’s departure and arrival requirements in a 24-hour period, unless highly unusual circumstances present a clear and present danger, an emergency exists, use of government aircraft is more cost-effective than commercial air, or other compelling operational considerations make commercial transportation unacceptable.** Using the DoD definition of reasonably available as a 24 hour window before and after the mission will sometimes require a traveler to leave a day earlier, stay a day later, or both.

- Paragraph 4.c. - Travel status, distinguished visitor (DV) code or status, grade, or rank alone is not sufficient to justify the use of government aircraft or to dictate a particular aircraft type. Approved senior official travel may require aircraft capable of satisfying performance, configuration and communications requirements to meet the specific mission needs for the indicated travel. For example, CDRUSPACOM Memorandum dated 31 December 2013 directs component commanders to be within three hours access to secure communications at all time.
- Paragraph 4.j - Besides scheduled government and commercial airlift services, the Department of Defense controls a large number of utility and transport aircraft for support of military operations. Travel is not permitted on those cargo or utility aircraft unless all the following conditions are met:
 - (1) The aircraft is already scheduled for an official purpose.
 - (2) Travel is on a noninterference basis.
 - (3) The noninterference travel use does not require a larger aircraft than needed for the official purpose.
 - (4) Already scheduled official travelers or cargo are not displaced.

(5) The travel results in negligible additional cost to the Government. Such travel is funded by the aircraft operator's organization or the Transportation Working Capital Fund (TWCF).

- Paragraph 4.k. - Rotary-wing aircraft will be used only when the use of ground transportation would have a significant adverse impact on the ability of a senior official to effectively accomplish the purpose of the official travel. This policy applies to all officers and employees of the Department of Defense.
- Paragraph 3 of Enclosure 2 to DODD 4500.56 - The Executive Secretary of the Department of Defense (DoD Exec Sec) shall approve transportation requests, not otherwise delegated, for all non-DoD officials and all senior officials within OSD and the Defense agencies, prioritize travel when requests exceed available airlift capability, and staff requests for temporary or permanent required use travelers to the Secretary of Defense.
 - Example of requests that must go through the Exec Sec process:
 - Requests from anyone who is not an employee of the DoD (e.g. US Peace Corps, USAID)
- Paragraph 11.c. of Enclosure 2 to DODD 4500.56, **GCCs shall "[r]eview and approve government air requests from DoD senior officials within their respective commands including Service components, sub-unified commands, and subordinate joint activities in accordance with this Directive. This authority may be further delegated, in writing, but may not be delegated below the two-star or equivalent level."**

2. DODI 4500.43, Operational Support Airlift (OSA), w/CH 1 dtd 26 June 2013.

<http://www.dtic.mil/whs/directives/corres/pdf/450043p.pdf>. OSA missions are defined as the movement of high-priority passengers and cargo with time, place, or mission-sensitive requirements. OSA missions are a special classification of airlift mission support to provide for the timely movement of limited numbers of priority personnel or cargo. See Enclosure 3 for procedures for OSA requests, priority and urgency codes, and cost management. See also MilAir Primer at <http://execsec.defense.gov/Portals/34/Documents/milair-primer.pdf>.

- **Commanders at all levels and airlift authorizing officials shall NOT schedule training missions when the principal purpose is to accommodate the travel of DoD officials.**
- **OSA Priorities:**
 - **Priority 1:** Direct support of combat, contingency, peacekeeping or humanitarian operations.
 - **Priority 2:** "Operationally necessary". Compelling operational reasons exist that make commercial transportation unacceptable.
 - **Priority 3:** MilAir more cost effective than commercial

3. **Foreign Disaster Relief (FDR)** – Regulations, directives, and orders related to military airlift continue to apply during FDR operations. Military air operations must be approved in accordance with those regulations. Exceptions to the applicability of these regulations in FDR Operations are generally limited to missions supporting the lead federal agency (usually USAID/OFDA) or using MILAIR on a space-available basis. Exceptions will normally be enumerated in the Secretary of Defense Action Memo authorizing FDR operations.

- **Per DODD 5100.46, Foreign Disaster Relief (FDR), ASD(SO/LIC), under authority, direction and control of USD(P), obtains Secretary of Defense authorization and guidance for Combatant Commands to conduct FDR operations. Additionally, ASD(SO/LIC) advises the Secretary of Defense and USD(P) on providing transportation for FDR, including emergency transportation of non-DoD personnel (e.g., relief personnel from other USG agencies or NGOs, IOs, and foreign governments), and of non-USG relief**

supplies, commodities, items, and equipment on DoD-owned or DoD-controlled aircraft when the requests are related to approved DoD FDR efforts. This advice should include a recommendation on whether the transportation should be provided on a reimbursable or non-reimbursable basis.

- MILAIR requests should contain sufficient justification to demonstrate that they are, in fact, in furtherance of the disaster relief operations authorized by the SECDEF or on a space-available basis and reviewed by legal counsel.
- DOD 4515.13-R, Chapter 2, para. C2.2.5.3- Employees of other U.S. Government Agencies when traveling on official business exclusively for the Department of Defense. Transportation is chargeable to the sponsoring DoD Component or Agency at the DoD, U.S. Government tariff (See AFR 76-11, "U.S. Government Rate Tariffs," September, 1974).
 - For example, Component Commanders could approve military air transportation for OGAs (e.g. USEMB; USAID/OFDA) when **participating as members of a DOD mission (e.g. USPACOM DART)** on a space-available, non-interference (see also, DODD 4500.56 paragraph 4.j). This is very limited authority and all other request must be submitted in accordance with applicable directives and regulations.
 - **Transportation of DoD and non-DoD relief supplies and personnel must be approved by SecDef per [DoD4515.13-R C10.4.7 and C10.4.8](#).** This is normally part of a SecDef authorization to conduct humanitarian assistance and normally permitted on a non-reimbursable basis if it is 1) resourced with OHDACA appropriations (This means it must be a validated requirement of USAID/OFDA); 2) resourced pursuant to drawdown authority; or 3) already scheduled and the transportation is on a space-available, noninterference basis at no increased cost to DoD.
- **Immediate Response Authority (IRA) under FDR** - Pursuant to [DoDD 5100.46](#), Foreign Disaster Relief (FDR), 6 July 2012, a military commander with assigned forces **at or near the immediate scene of a foreign disaster** may take prompt action to save human lives. In cases in which this authority is invoked, the commander should obtain the concurrence of the host nation and U.S. Chief of Mission of the affected country before committing forces. Also, the Combatant Commander shall follow up as soon as possible, but no later than 72 hours after the start of relief operations, to secure Secretary of Defense or Deputy Secretary of Defense approval for continuing assistance. Combatant Commanders must also obtain Secretary or Deputy Secretary approval in order to obtain reimbursement with OHDACA funds. Such assistance during the first 72 hours does not include the authority to provide military assistance that does not contribute to urgent life-saving efforts.
- US military normally conducts FDR in support of the United States Agency for International Development (USAID) Office of Foreign Disaster Assistance (OFDA) or the Department of State (DOS) as directed by the Secretary of Defense. FDR is designed to supplement or complement the efforts of the host nation (HN) that has the primary responsibility for providing that assistance. **FDR provided by US forces is limited in scope and duration and is conducted to alleviate the immediate suffering of foreign disaster victims.**

4. CODEL, STAFFDEL, or GOVDEL travel – These requests should follow the procedures in DODD 4515.12, January 15, 2010, DoD Support for Travel of Members and Employees of Congress to gain OASD(LA) approval. The Assistant Secretary of Defense for Legislative Affairs (ASD(LA)) shall provide oversight of and approve support by the DoD Components of travel by members and employees of Congress to assure compliance with the policies and guidelines prescribed in this Directive. OASD(LA) will serve as the DoD primary point of contact on all matters regarding CODEL, STAFFDEL, or GOVDEL travel. OASD(LA) is responsible for communicating and/or coordinating all issues between DoD Components, the Speaker of the House of Representatives, Senate leadership, and

other members regarding travel, including aircraft assignments, available dates for travel, and purpose of the trip.

5. Component Commanders may approve transportation of foreign nationals, in the rank of O-6 and below and civilian equivalent, during participation in exercises on ASO aircraft. IAW DOD 4515.13-R, paragraph C2.2.8.6. (page 43), "Foreign nationals [are eligible passengers on MilAir] during participation in exercises sponsored or directed by the Chairman of the Joint Chiefs of Staff, Combatant Commanders, and Service component commanders of the Combatant Commands, which include combined operations of U.S. and foreign forces. This authorization does not include transportation to and from the exercise area or supporting flights utilized for logistical purposes."

- IAW [DOD 4515.13-R](#), paragraph C10.8 (page 106), general officers reporting directly to service component commanders of combatant commands may authorize transportation of foreign nationals (O-6 and below and civilian equivalents) to be transported on DoD-owned or controlled aircraft when in the commander's overseas area of accreditation or responsibility, and when the commander has determined that such travel is in the primary interest of the DOD and in the limitation imposed by joint regulations. Finally, Enclosure 1 of USPACOMINST 0614.6 states that Service Components may approve transportation of foreign nationals on military air.

6. USPACOM Instruction 0514.6, Military Airlift Requests, should be referenced as it is applicable to all HQ USPACOM directorates and special staff, service components, subunified commands and direct reporting units. This instruction is currently under revision.

7. Defense Support of Civil Authorities (DSCA) - Immediate response authority (IRA)

Pursuant to [DoDD 3025.18, DSCA, 29 December 2010 w/Ch 1 dated 21 September 2012](#), Federal military commanders, Heads of DoD Components, and/or responsible DoD civilian officials (collectively referred to as "DoD officials") have immediate response authority (IRA). IRA is a response to "a request for assistance from a civil authority, under imminently serious conditions and if time does not permit approval from higher authority," DOD officials may temporarily employ the resources under their control...to save lives, prevent human suffering, or mitigate great property damage."

- Civil authorities: Those elected and appointed officers and employees who constitute the government of the United States, the governments of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, United States territories, and political subdivisions thereof. Per Joint Publication 3-28, DSCA, 31 July 13 (http://www.dtic.mil/doctrine/new_pubs/jp3_28.pdf)
- **DoD assets are not a substitute for prudent planning and self-protection. DoD assets should be prudently managed especially in disaster scenarios. Notification procedures should be adhered to in accordance with DoDD 3025.18. IRA is an exception to the general rule that DOD and its assets are not primarily for disaster relief.**

8. Search and Rescue – [DoDI 3003.01, DoD Support to Civil Search and Rescue \(SAR\),](#)

[September 26, 2011](#) - BLUF: DoD will be asked to provide support by the appropriate SAR authority. It is DoD policy to support Rescue Coordination Center (RCC) requests for civil SAR (DoD forces will FUND THEIR OWN ACTIVITIES without allowing cost reimbursement to delay response to any person in danger or distress). However, GCCs shall not accept the role of SAR coordinator or director of an RCC for civil SAR operations in Search and Rescue Regions (SRRs) for which other nations are responsible. GCCs may support civil SAR operations in such areas in any of these situations: (1) A recognized civil SAR authority requests assistance. (2) U.S. citizens are involved outside of the U.S. and its territories. (3) A DoD command or organization becomes aware of a distress situation to which no

other suitable RCCs are responding, or in which other available civil SAR services appear to be inadequate.

Veterans Endeavor for Treatment and Support: The Role the Army Judge Advocate General's Corps Should Play in Establishing Federal Veterans Treatment Courts in and around Major Army Installations

*Captain J. Patrick Robinson & Major General (Ret.) Clyde "Butch" Tate**

Treatment through the Veteran's Court is a path to recovery and victory for both the Soldier and the Court.¹

I. Introduction

What should happen to a Soldier who drives drunk in a Light Medium Tactical Vehicle (LMTV) carrying a load of range explosives? The Command will want to hold the Soldier accountable for endangering the lives of her fellow Soldiers. She is likely to be removed from her unit and separated from the Army. But at the same time, the Command wants this Soldier to get the treatment she needs to address her substance use disorder, and she would certainly benefit from supervision and mentorship as she transitions out of the Army.

Unfortunately, the Command loses its ability to treat, supervise, and mentor Soldiers at separation. Until now, this situation forced the Command to make a choice: Retain the Soldier indefinitely to enroll her in long-term treatment or quickly separate the Soldier to improve the unit's overall readiness and reinforce unit discipline. Left to her own devices, this soon-to-be Veteran may end up as another statistic in the tragedies that are Veteran homelessness and Veteran suicide. Thankfully, the establishment of a Veterans Treatment Court at Fort Hood ensured this Veteran was held accountable and had the treatment, supervision, and mentorship she needed to get back on her feet.

D.T. joined the Army when she was eighteen years old. She was assigned as an Military Occupation Specialty 88M, Motor Transport Operator, with the First Cavalry Division. It was 2010, and she knew full well she would deploy to Iraq or Afghanistan or both.

She deployed twice. Her first tour was challenging; she was far from home and had only limited ability to communicate with her family back in Florida. When she returned, her relationship with her husband was strained at

best. They unsuccessfully tried to start a family. Her second tour was worse than the first, but exposure to improvised explosive devices (IEDs) and mortar fire concealed other less apparent threats to her psyche. While deployed, her husband left her. The distance and difficult communication was too much for their fragile relationship.

At this point, D.T. felt like four years in the Army had left her with just four overseas service bars, a wrecked family, and overwhelming anxiety. She lacked any semblance of stability. She lacked direction. She did not report her anxiety, depression, or painful memories. She did not seek help.

Instead, she found the bottle—after duty hours at first, then on duty. Her addiction compounded her depression. She smuggled booze to the field when her unit went out for training. She spent a week in the field flirting only briefly with sobriety. At the exercise's conclusion, D.T. was ordered to drive an LMTV carrying range explosives back to the assembly area. Even her well-developed, high-functioning alcoholic abilities fell short on the task of driving the "deuce-and-a-half." After a short distance into the drive, the truck commander relieved D.T. The junior enlisted in her platoon sheepishly passed "rumors" of D.T.'s intoxication to the command. Noncommissioned officers escorted D.T. to the Military Police Station. Three hours after driving and without having another drink, she blew a .111.

The chain of command took appropriate action based on the information they had at the time. From their perspective, this Soldier had a debilitating substance use disorder that jeopardized the lives of her fellow Soldiers. Within a week, D.T. was inpatient at a twenty-eight-day rehabilitation program. The Commanding General directed the General Officer Memorandum of Reprimand filed in D.T.'s

* Captain J. Patrick Robinson, Judge Advocate, currently assigned as the Chief of Federal Litigation for III Corps and Fort Hood and a Special Assistant United States Attorney in the Western District of Texas. I would like to recognize the contributions of many individuals without whom the Veterans Endeavor for Treatment and Support Court at Fort Hood would not exist: Honorable Judge Jeffrey C. Manske, United States Federal Magistrate Judge; Honorable Richard L. Durbin Jr., United States Attorney for the Western District of Texas; Charlie Mason, Chief United States Pretrial Services Officer for the Western District of Texas; Mark Frazier, Assistant United States Attorney; Carmen Herrera, Supervising United States Pretrial Services Officer; Raul Villa, United States Pretrial Services Officer; Kit Myers, United States Pretrial Services Officer; Diane Thomas, United States Probation Officer; Ron Carney, Department of Veterans Affairs Veterans Justice Outreach Specialist; C.J. Sepulveda, Federal Litigation Paralegal; Emily McElreath, Fort Hood Courtroom Deputy; Command Sergeant Major (Ret.) Frank Minsky; Sergeant First Class (Ret.) Acquanea Pullins; Lisa Kubala; and Jodie Schultz. I would also like to thank Scott Swaim, the Director of Justice for Vets, Colonel (Ret.) Mark "Max" Maxwell, Colonel Travis Rogers, Lieutenant Colonel Scott Linger, Major Danny Murphy, and Connie Trumbo for their support in the

drafting of this article. Any errors or misstatements are the sole responsibility of the authors. I send my love, appreciation, and gratitude to my beautiful wife Ashley and my son Conrad for all their support and encouragement. Thank you, as well, to Major General (Ret.) Tate—your leadership, selflessness, and commitment continue to inspire.

Major General (Ret.) Clyde "Butch" Tate served as the 19th Deputy Judge Advocate General of the United States Army from 2009 to 2013. He currently serves as the Chief Counsel for the National Association of Drug Court Professionals, and he previously served as Senior Fellow for Veteran and Legal Affairs for Justice for Vets and as the Chairman of the American Bar Association Standing Committee on Legal Assistance for Military Personnel. MG Tate holds his undergraduate and law degrees from the University of Kansas. He is the recipient of the prestigious Hispanic National Bar Association's Presidential Award for Leadership, Advocacy and Service.

¹ Honorable Judge Jeffrey C. Manske, United States Federal Magistrate Judge, Western District of Texas, Waco Division.

permanent records after D.T. failed to submit a timely response. A mere forty-five days from the incident, D.T. was out of the Army; she received a General Discharge under Honorable Conditions. Her depression, anxiety, and post-traumatic stress disorder (PTSD) did not factor into her separation because she never reported any of her troubles to Military Mental Health Specialists or her command.

The command referred the Driving While Intoxicated (DWI) prosecution to the Special Assistant U.S. Attorney (SAUSA) who charged D.T. with DWI, Deadly Conduct, and Reckless Driving. As 2015 came to a close, D.T. faced upwards of two years in jail, nearly \$10,000 in fines, and the collateral consequences of federal DWI and Deadly Conduct convictions.

Luckily for D.T., her prosecution coincided with the initiation of the Fort Hood Veterans Endeavour for Treatment and Support (VETS) Court.

D.T. applied to the Fort Hood VETS Court and was accepted. She entered a guilty plea to each of the counts pending against her. If she successfully completes the program, the prosecutor will move to dismiss those charges. On the very day she entered her plea, D.T.'s assigned Veteran mentor welcomed her. With the assistance of the court's Veterans Justice Outreach Specialist (VJO) who is a Department of Veterans Affairs (VA) Social Worker, D.T. enrolled in treatment with the local VA Hospital and Vet Center. The VJO even helped D.T. apply for and receive VA disability for her PTSD and anxiety. The VA determined D.T.'s disability rating as 50%.

The foregoing events are not hypothetical.² These facts are a real world testament to the value of a Veterans Treatment Court. At the time of this publication, D.T. is nearly finished with the twelve-month VETS Court program of intensive supervision, accountability, and treatment. She maintains her sobriety, regularly attends Alcoholics Anonymous meetings and other treatment, submits to random mandatory breath tests, and meets weekly with her supervision officer, VJO social worker, and local community Veteran mentor. Every first and third Friday she checks in with the full VETS Court Team led by the federal magistrate judge. Here, she openly discusses her progress and challenges, including her enrollment in college. For the first time since she left her parent's home, she has her feet under

her. She has stability. She has direction. Her life is out of the bottle and back in her hands.

Many Veterans struggle with substance use disorder and other mental health challenges, and like D.T., many Veterans do not report their mental health symptoms until it is too late.³ Veterans may not seek treatment for these issues for a variety of reasons. Regardless of the explanation, without treatment, they gradually cede control of their lives to these issues. Too often this loss of control degenerates into criminal offenses: DWIs, illicit drug use, aggressive behavior. To address this, Veterans Treatment Courts (VTCs) have developed across the nation to redirect Veterans who commit criminal offenses into the treatment they need. When enrolled in a VTC, Veterans receive help in addressing their underlying substance use disorder and other mental health challenges, and they obtain the treatment and skills necessary to resume being a productive and law-abiding member of society.

The Army Judge Advocate General's (JAG) Corps should lead efforts in developing federal VTCs at its major installations. The creation of additional federal VTCs would align areas of exclusive federal jurisdiction with efforts in state courts⁴ to care for Veterans with substance use disorder and other mental health challenges. Such action would reduce the number of recidivistic Veterans, reconcile Veterans with their communities, and contribute to efforts at reducing Veteran suicide and Veteran homelessness.

The Army JAG Corps prides itself on the responsiveness and candid advice it provides commanders, as well as the care and legal services it provides to Soldiers, retirees, and their families. The Army JAG Corps could further its role as a leader in these areas through supporting the development of VTCs at major Army installations. Commanders with installation security responsibilities will find tremendous value in VTCs through reduced on-installation recidivism and increased effectiveness of installation law enforcement. The courts' participants and their families will also directly benefit from the rehabilitative focus of VTCs and the enduring treatment connections VTCs establish.

This article aims to educate leaders in the Army JAG Corps on why federal VTCs should be a priority and how the Army JAG Corps can develop effective federal VTCs on and near major Army installations.⁵ This article will first summarize the origins of VTCs and lay out the benefits of these programs. Next, it will address the specific need for VTCs on and around major military installations. The Article

² "D.T." are not necessarily the real initials of this U.S. Army veteran. This choice was made to provide some modest protection to her real identity. Additionally, the facts from this narrative will not be cited with specificity.

³ See, e.g., William H. McMichael, *The Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets*, A.B.A. J. (Nov. 1, 2011), http://www.abajournal.com/magazine/article/the_battle_on_the_home_front_special_courts_turn_to_vets_to_help_other_vets/.

⁴ See discussion *infra* Part II (Origins of Veterans Treatment Courts).

⁵ Ample social science research supports the effectiveness of the treatment court model, and fidelity to those principles must be observed. See, e.g., Sarah P. Fritsche, *Assessing and Responding to Risk: Theory and Practice for Criminal Justice and Treatment Professionals*, CTR. FOR CT. INNOVATION (Dec. 12, 2012), <http://www.drugcourta.org/RNR.pdf>. The current article, however, is not intended to comprehensively address the state of social science research on this topic. In developing Veterans Treatment Courts (VTCs), court and justice professionals must work closely with treatment providers and behavioral health specialists to ensure appropriate application of validated social science tools.

will conclude with a description of operations of the federal VTC at Fort Hood, a summary of alternative models, and a playbook on how to get VTCs up and running at other military installations.

II. Origins of Veterans Treatment Courts

The federal VTC located on Fort Hood is a novel application of a rapidly proliferating concept.⁶ A VTC is a form of “Problem Solving Court,”⁷ a concept which traces its roots in the United States to the Drug Treatment Court launched in Dade County, Florida, in 1989.⁸ Seeing addiction and incarceration as a vicious cycle, a group of justice professionals in that jurisdiction reworked the traditional justice model to mandate intensive substance use disorder treatment for drug offenders in lieu of incarceration.⁹ Since their inception, Drug Treatment Courts have received broad support because of their ability to balance the need to hold offenders accountable while simultaneously providing persons suffering from substance use disorders with the tools and treatment necessary to overcome their addiction and maintain their recovery.¹⁰

At its most fundamental, a Drug Treatment Court uses the power and authority of the judge to keep drug offenders in treatment and under the supervision of court officers.¹¹ The judge rewards success and sanctions failure using her authority to modify conditions of bond supervision or probation.¹² This type of mandatory court-ordered drug treatment has proven effective,¹³ premised on the classification of drug addiction as a disease (“substance use disorder”) best addressed through supervision, treatment, and counseling.¹⁴ Relying on evidence-based treatment grounded

on the principles of behavior modification¹⁵ and risk-need-responsivity principles,¹⁶ Drug Treatment Courts succeed by moving those suffering from substance use disorders out of the traditional justice system and treating the underlying mental health disease.¹⁷

The success and proliferation of Drug Treatment Courts led to the development of other Problem Solving Courts. Mental Health Courts, for example, began using the power and authority of the courts to connect defendants suffering from non-substance related mental health challenges with treatment providers in the community.¹⁸ Recognizing the value of collaboration among criminal justice and mental health treatment professionals, these courts found further success in breaking down institutional barriers.¹⁹ Mental Health Courts further expanded the group of criminal justice stakeholders beyond officers of the court and moved past some of the limitations of the adversarial criminal justice system.²⁰

Judge Robert Russell, a forward-thinking judge in upstate New York, pushed the concept one step further.²¹ Judge Russell recognized that many of the defendants in the Buffalo Drug Treatment Court and Mental Health Court were Veterans.²² He also discovered that many of the Veterans in those programs responded well to the other Veteran participants and the Veterans who volunteered to support the courts.²³ Based on these observations, Judge Russell created the first VTC in 2008.²⁴ By exploiting the Veterans’ success in highly structured environments and formally incorporating a vet-to-vet mentoring program²⁵ to enhance support to the

⁶ Sean Clark et al., *Development of Veterans Treatment Courts: Local and Legislative Initiatives*, VII DRUG COURT REVIEW 171, 175 (2010).

⁷ “Problem Solving Court” refers to “a problem solving court involves a single judge that works with a community team to develop a case plan and closely monitor a defendant’s compliance, imposing proper sanctions when necessary.” *Problem-Solving Courts Resource Guide*, NAT’L CTR. FOR ST. CTS., <http://www.ncsc.org/Topics/Problem-Solving-Courts/Problem-Solving-Courts/Resource-Guide.aspx> (last visited 20 Sept. 2016).

⁸ David B. Wilson et al., *A Systematic Review of Drug Court Effects on Recidivism*, 2 J. OF EXPERIMENTAL CRIMINOLOGY 459, 460 (2006).

⁹ *Drug Court History*, NAT’L ASS’N OF DRUG CT. PROFS., <http://www.nadcp.org/learn/what-are-drug-courts/drug-court-history> (last visited Sept. 20, 2016).

¹⁰ Wilson, *supra* note 8, at 460.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 461.

¹⁴ *Id.*

¹⁵ These principles include leverage, intensity, predictability, and rehabilitative emphasis. *Id.*

¹⁶ MICHAEL REMPEL, EVIDENCE-BASED STRATEGIES FOR WORKING WITH OFFENDERS (April 2014),

[http://www.courtinnovation.org/sites/default/files/documents/EvidenceBas edStrategiesForWorkingWithOffenders.pdf](http://www.courtinnovation.org/sites/default/files/documents/EvidenceBasedStrategiesForWorkingWithOffenders.pdf).

¹⁷ *Id.*

¹⁸ MICHAEL THOMPSON ET AL., IMPROVING RESPONSES TO PEOPLE WITH MENTAL ILLNESSES: THE ESSENTIAL ELEMENTS OF A MENTAL HEALTH COURT (2007), https://www.bja.gov/Publications/mhc_essential_elements.pdf.

¹⁹ *Id.* at vii.

²⁰ *Id.*

²¹ ROBERT T. RUSSELL, ATTORNEY’S GUIDE TO DEFENDING VETERANS IN CRIMINAL COURT 517 (2014).

²² *Id.* at 516.

²³ *Id.* at 520.

²⁴ *Id.* But see Jack W. Smith, *The Anchorage, Alaska Veterans Court and Recidivism: July 6, 2004—December 31 2010*, 94 ALASKA L. REV. 29 (2012).

²⁵ Veteran Peer Mentor programs are a particularly powerful component of the VTC model, not typically available in other types of treatment courts. See JIM MCGUIRE ET AL., AN INVENTORY OF VA INVOLVEMENT IN VETERANS COURTS, DOCKETS, AND TRACKS (Feb. 7, 2013), http://www.justiceforvets.org/sites/default/files/gallery/An%20Inventory%20of%20VA%20involvement%20in%20Veterans%20Courts_1.pdf.

Veteran-participants, Judge Russell created a program which exceeded all expectations.²⁶

Following in the footsteps of the Mental Health and Drug Treatment Courts, VTCs burgeoned across the United States. In less than a decade, justice professionals, with the support of organizations like “Justice for Vets,”²⁷ have established more than 350 of these courts nationwide, though only a handful operate in federal jurisdictions.²⁸

In recognition of the success of similar programs and the manifest need to care for Veterans, the Federal Magistrate Court on Fort Hood, led by Federal Magistrate Judge Jeffrey Manske, joined the VTC movement with a goal of connecting Veterans who live in the Fort Hood area to enduring treatment solutions and community mentors in lieu of conviction and incarceration.²⁹ The Fort Hood VETS Court, established in January 2016, is just the fifth pretrial diversion VTC in the federal system and the first ever on a U.S. military installation.³⁰

III. Benefits of Veterans Treatment Courts

Veterans Treatment Courts build upon the emergent nationwide effort to reduce mass incarceration and better address the root causes of criminal behavior through treatment and supervision.³¹ Such goals recognize the financial burden and inefficacy of incarcerating individuals with substance use disorders and other mental health challenges. While Drug Treatment Courts and Mental Health

Courts provide a tremendous benefit for high risk members of the general population, Veterans with substance use disorders and other mental health challenges form a significant cohort who share several common characteristics that enhance the conditions for a successful problem solving court intervention. Veterans Treatment Courts provide an evidence-based results-oriented and cost-effective means of ensuring just outcomes that take into account the mitigation and extenuation associated with a Veteran’s offense when substance use disorder or other mental health challenges played a contributing role.

A. Evidence-based Results

Among the most salient measures of effectiveness in the criminal justice system is the reduced recidivism of participants.³² This metric is especially important when working with individuals with PTSD and substance use disorders, which both pose significant risks for recidivism.³³ If left untreated, chronic substance use disorders and other mental health issues perpetuate unhealthy and dangerous behavior due in large part to underdeveloped coping skills and an inability to exert self-control.³⁴

Veterans Treatment Courts have demonstrated extraordinary success in reducing recidivism. Judge Russell’s court in Buffalo, New York, discussed earlier boasts a minuscule 3% recidivism rate³⁵ compared with the 70% recidivism rate of drug offenders in the traditional criminal justice system.³⁶ Other problem solving courts also

²⁶ RUSSELL, *supra* note 21.

²⁷ “Justice For Vets is a professional services division of the National Association of Drug Court professionals, a 501(c)3 non-profit organization based in Alexandria, VA. Justice for Vets believes that no veteran or military service member should suffer from gaps in service, or the judicial system when they return to their communities.” *About Us*, JUST. FOR VETS, <http://www.justiceforvets.org/about> (last visited Sept. 20, 2016).

²⁸ DEP’T OF VETERANS AFFS., VETERANS COURT INVENTORY 2014 UPDATE: CHARACTERISTICS OF AND VA INVOLVEMENT IN VETERANS TREATMENT COURTS, DOCKETS, AND TRACKS FROM THE VETERANS JUSTICE OUTREACH SPECIALIST PERSPECTIVE (Feb. 2016), <http://www.va.gov/HOMELESS/docs/VTC-Inventory-FactSheet-0216.pdf>. As of the date of this publication, there are Federal Veterans Treatment Courts operational or under development in the Western District of Kentucky, Eastern District of Missouri, District of Montana, Southern District of Ohio, Western District of Pennsylvania, District of Utah, Western District of Virginia, Eastern District of Louisiana, and District of Maryland, though some of these are reentry courts, not pretrial diversion courts. E-mail from Daniel P. Bubar, Assistant U.S. Att’y, Western District of Virginia, “Veterans Treatment Court Table,” (May 5, 2016, 13:04 CST) (on file with author).

²⁹ Marcus Floyd, *Veterans Court Pilot Program to Start on Fort Hood*, ARMY.MIL (Dec. 22, 2015), http://www.army.mil/article/160339/Veterans_Court_pilot_program_to_start_on_Fort_Hood/; Jeremy Schwartz, *Fort Hood Creates First-of-Its-Kind Veterans Court* AUSTIN AMERICAN-STATESMAN (Dec. 11, 2015), <http://www.mystatesman.com/news/news/local-military/fort-hood-creates-first-of-its-kind-veterans-court/nphby/>; Carlos Morales, *Fort Hood Begins First-of-Its-Kind Veterans Treatment Court on Base*, TEXAS STANDARD (Feb. 1, 2016), <http://www.texasstandard.org/stories/fort-hood-begins-first-of-its-kind-veterans-treatment-court-on-base/>.

³⁰ MCGUIRE, *supra* note 25.

³¹ DEP’T OF JUST., SMART ON CRIME: REFORMING THE CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY (Aug. 2013), <https://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>.

³² “Rates of crime and recidivism have long served as critical measures for the performance of the Nation’s criminal justice system.” John J. DiIulio, Jr., *Rethinking the Criminal Justice System: Toward a New Paradigm*, in PERFORMANCE MEASURES FOR THE CRIMINAL JUSTICE SYSTEM 1 (Oct. 1993), <http://www.bjs.gov/content/pub/pdf/pmcjs.pdf>.

³³ Hanna Pickard & Seena Fazel, *Substance Abuse As a Risk Factor for Violence in Mental Illness: Some Implications for Forensic Psychiatric Practice and Clinical Ethics*, CURR OPIN PSYCHIATRY 349 (July 2013); “Substance abuse is associated with a several-fold increase in the likelihood of continuing criminal offending.” Douglas B. Marlowe, *Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs*, 1 CHAP. J. OF CRIM. JUST. 167 (2009). See generally FRED OSHER ET AL., ADULTS WITH BEHAVIORAL HEALTH NEEDS UNDER CORRECTIONAL SUPERVISION: A SHARED FRAMEWORK FOR REDUCING RECIDIVISM AND PROMOTING RECOVERY (2012), https://www.bja.gov/Publications/CSG_Behavioral_Framework.pdf.

³⁴ *Id.*

³⁵ Interview with Robert T. Russell, Judge, at the Nat’l Ass’n of Drug Ct. Profs. Ann. Training in Anaheim, Cal. (June 2, 2016).

³⁶ PATRICK A. LANGAN & DAVID J. LEVIN, RECIDIVISM OF PRISONERS RELEASED IN 1994 (June 2002), <http://www.bjs.gov/content/pub/pdf/rpr94.pdf>; Cassia Spohn & David Holleran, *The Effect of Imprisonment on Recidivism Rates of Felony*

show considerable success, though the specific metrics vary. Meta-analyses of drug courts, for example, show an average of ten to fifteen percent reduction in recidivism.³⁷ Three-quarters of such courts “significantly reduced crime” in their jurisdiction.³⁸ In fact, some jurisdictions boasted overall reductions in crime as high as forty percent which officials from the jurisdictions attributed to the implementation of Problem Solving Courts in those locations.³⁹ A longitudinal study of the Clark County Mental Health Court in Nevada showed individuals who enroll in that problem solving court were four times less likely to be arrested one year after enrollment compared with the year before enrollment.⁴⁰ Specific to VTCs, statistics from the National Association of Drug Court Professionals and Justice for Vets show that seventy percent of Veterans complete a VTC program once enrolled, and seventy-five percent are not rearrested for at least two years after their completion.⁴¹ While the relatively new nature of VTCs limits some data collection and long-term longitudinal studies,⁴² the available statistics for VTCs and other Problem Solving Courts demonstrate that VTCs achieve results.

Veterans, due to the nature of combat, deployments, and separation from family, have higher prevalence rates of certain types of mental health issues than the general population.⁴³ These mental health issues include post-traumatic stress disorder (PTSD),⁴⁴ anxiety, depression, traumatic brain injury (TBI), and substance use disorders

(specifically related to alcohol and prescription pain medication).⁴⁵

Veterans Treatment Courts successfully reduce recidivism because they address the types of mental health issues most prevalent in Veterans, such issues being both significant contributors to criminal activity⁴⁶ and very treatable.⁴⁷ For example, PTSD, depression, and substance use disorders are significantly more treatable than other mental health issues.⁴⁸

While the prevalence of mental health challenges in the American Veteran population is alarming, it is important to note that treatments for PTSD and substance use disorders are quite effective.⁴⁹ Evidence-based treatments for these issues are now available and well-studied, and research continues to improve upon established methods and further improve results.⁵⁰ The bigger challenges remain the tasks of identifying those suffering with these substance use disorders and other mental health issues, and once they are identified, connecting them with treatment.⁵¹

Full identification of Veterans with symptoms of PTSD or related mental health issues has proven extraordinarily challenging.⁵² Due to a variety of factors, mental health issues are significantly underreported by current and former

Offenders: A Focus on Drug Offenders, 40 CRIMINOLOGY 329 (May 2002).

³⁷ Douglas B. Marlowe, *Research Update on Adult Drug Courts*, NAT’L ASS’N OF DRUG CT. PROFS. (Dec. 2010), http://www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP_1.pdf.

³⁸ *Id.* at 2.

³⁹ *Id.*

⁴⁰ Russell, *supra* note 21, at 519-20 (citing RISDON N. SLATE & W. WESLEY JOHNSON, CRIMINALIZATION OF MENTAL ILLNESS: CRISIS AND OPPORTUNITY FOR THE JUSTICE SYSTEM 156 (2008) (also citing Virginia A. Hiday & Bradley Ray, *Arrests Two Years After Exiting a Well-Established Mental Health Court*, 61 PSYCHIATRIC SERVICES 463, 467 (2010)).

⁴¹ McMichael, *supra* note 3.

⁴² NAT’L DRUG CT. INST., LOCAL DRUG COURT RESEARCH: NAVIGATING PERFORMANCE MEASURES AND PROCESS EVALUATIONS (2006), https://www.bja.gov/Publications/Local_Drug_Court_Research.pdf.

⁴³ Fran H. Norris & Laurie B. Slone, *Understanding Research on Epidemiology of Trauma and PTSD*, 24 PTSD RES. Q. 4 (2013).

⁴⁴ The diagnosis of “Post Traumatic Stress Disorder” was first recognized in the third edition of the *Diagnostic Statistical Manual*. While an understanding of the impact of combat on the psyche of a Soldier (“war neuroses”) has been part of the study of psychology since World War I, the specific definition of post-traumatic stress disorder, including “combat stress,” and “military sexual trauma” continue to be revised. See S. Freud, *Psychoanalysis and War Neuroses*, 5 INT’L PSYCHOL. LIBR. (1919).

⁴⁵ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013); *Substance Abuse in the*

Military, NAT’L INST. ON DRUG ABUSE, <https://www.drugabuse.gov/publications/drugfacts/substance-abuse-in-military> (last visited Sept. 20, 2016).

⁴⁶ Similarly, veterans historically have been incarcerated at higher rates than the general population. JENNIFER BRONSON, & MARCUS BERZOFOSKY, U.S. DEP’T OF JUST., VETERANS IN PRISON AND JAIL, 2011-12 (Dec. 2015). It is difficult to avoid linking the two. RAND CORP., INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY 134 (2008).

⁴⁷ AMERICAN PSYCHIATRIC ASSOCIATION, *supra* note 45, *compare id.* at 102 (“development and course” for schizophrenia), *with id.* at 277 (PTSD); see OSHER, *supra* note 34.

⁴⁸ *Id.*

⁴⁹ Tori DeAngelis, *PTSD Treatments Grow in Evidence, Effectiveness*, 39 MONITOR ON PSYCHOL. 1 (Jan. 2008); U.S. DEP’T OF VETERANS AFF., NAT’L CTR. FOR PTSD, EVIDENCE-BASED TREATMENTS FOR PTSD: WHAT THE RESEARCH TELLS US ABOUT PATIENT IMPROVEMENT (Feb. 2011), http://www.ptsd.va.gov/Public/understanding_TX/CourseList/Course_NCPTSD_Treatment_1435/assets/00015006.PDF; Ramin Mojtabei & Joshua G. Zivin, *Effectiveness and Cost-Effectiveness of Four Treatment Modalities for Substance Disorders: A Propensity Score Analysis*, 38 HEALTH SERVS. RES. 233 (Feb. 2003).

⁵⁰ Judith Cukor et al., *Evidence-Based Treatments for PTSD, New Directions, and Special Challenges*, 1208 ANN. N.Y. ACAD. SCI. 82 (2010).

⁵¹ RAND CORP., *supra* note 46, at 55.

⁵² As recently as 2008, most existing studies define PTSD and depression using criteria that are likely to exclude significant number of service members who have these conditions. *Id.*

members of the military.⁵³ Delayed onset of symptoms,⁵⁴ desire to “Soldier on,” fear of losing a security clearance or other career consequences,⁵⁵ and stigma associated with mental health issues⁵⁶ all contribute to this problem. Also, the lack of treatment for sub-threshold symptomology⁵⁷ can exacerbate relatively minor symptoms, creating more challenging mental health issues down the road.⁵⁸

Veterans Treatment Courts greatly assist Veterans who have a delayed onset or delayed diagnosis of PTSD, TBI, and other mental health issues. Unfortunately, many Veterans were not in a position to receive treatment until after their military service concluded. In such cases, the Veteran did not receive a medical retirement or effective care while on active duty. D.T.’s case, discussed in the introduction of this article, provides a striking example.

Highlighting the case of D.T. is not intended to disparage D.T.’s unit. In fact, D.T.’s commander took appropriate action to intervene and address the substance use disorder once he was aware of it. Rather, D.T.’s story is intended to provide a specific, real-life example of when, despite the best intentions of the commander, he separated a Soldier without addressing her service-connected post-traumatic stress and anxiety disorders because the Soldier did not report her symptoms to anyone before she was separated.

Substance use disorders and other mental health problems have a tendency to get worse when not addressed.⁵⁹

⁵³ About half of Global War on Terrorism Veterans who need treatment for major depression or post traumatic stress seek it, while half of those who seek treatment receive “minimally adequate care.” RAND Corp., *supra* note 46. Twenty to fifty percent of active duty service members and reservists report psychosocial problems, relationship problems, depression, and symptoms of stress reactions, but fewer than forty percent of those who meet strict diagnostic criteria receive mental health services. Dep’t of Def. (DoD), AN ACHIEVABLE VISION: REPORT OF THE DEPARTMENT OF DEFENSE TASK FORCE ON MENTAL HEALTH 5 (June 2007) <http://www.justiceforvets.org/sites/default/files/files/Dept%20of%20Defense,%20mental%20health%20report.pdf>.

⁵⁴ For example, the strain in family function observed around twelve months after a deployment. *Id.*

⁵⁵ Evidence of stigma for psychological health issues is “overwhelming.” *Id.* But, it is important to note that, “the military’s medical institutions have incorporated cutting-edge clinical treatments and developed methods to reduce the stigma of help-seeking behavior.” Evan R. Seamone, Evan R., *Attorneys as First-Responders: Recognizing The Destructive Nature of Posttraumatic Stress Disorder On The Combat Veteran’s Legal Decision-Making Process*, 202 MIL. L. REV. 144 (Winter 2009). “Changes in security clearance protocols now recognize that it is perfectly normal for a Soldier to seek mental health counseling in relation to combat experiences.” *Id.* at n. 58, citing, Editorial, *Army is Tracking Stress Disorders in the Field*, Miami Herald, July 27, 2008.

⁵⁶ DoD, *supra* note 53. See generally Thomas W. Britt, *The Stigma of Mental Health Problems in the Military*, 172 MIL. MED. 157 (Feb. 2007).

⁵⁷ Sub-threshold symptomology refers to symptoms of anxiety or other mental health disorders which are apparent, reportable, and consistent with diagnosis, but do not include all of the symptoms sufficient for a specific diagnosis. See, e.g., Mar Rivas Rodriguez et al., *Definitions and Factors Associated with Subthreshold Depressive Conditions: A Systematic Review*, 12 BIOMED CENT. PSYCHIATRY 181 (2012).

When they worsen, they frequently lead to criminal behavior, either due to self-medication⁶⁰ or as a direct result of impairment due to mental illness.⁶¹ Moreover, the comorbidity of substance use disorders with other mental health issues⁶² increases the likelihood that a Veteran’s PTSD or other mental health issues will lead to criminal behavior involving substance use (e.g., DWI or illegal use of controlled substances).⁶³

Though underreporting and underutilization of treatment will remain a problem, the time of arrest for a criminal offense (while certainly not ideal) is an effective time for intervention due to the focused attention and power of the criminal justice system. While an individual could balk at the prospect of participating in an intensive treatment regimen, in the author’s experience, a period of enforced sobriety⁶⁴ creates conditions necessary for many individuals facing the prospect of a criminal conviction and incarceration to recognize the need to make a change.⁶⁵

In addition to sharing a high prevalence of unreported and untreated PTSD, TBI, anxiety, depression, and substance use disorder, anecdotal evidence suggests Veterans share several positive characteristics that make them ideal candidates for Problem Solving Court interventions. Specifically, Veterans’ military experiences make them better at coping with adversity, especially when facing the challenges with the backing of their fellow Veterans.⁶⁶ Moreover, the shared experience of prior military service,

⁵⁸ RAND CORP., *supra* note 46, at 48. Untreated PTSD and TBI cause indirect societal costs such as domestic violence, strain on families, suicide. *Id.* at 8.

⁵⁹ See generally Osher, *supra* note 33.

⁶⁰ RAND CORP., *supra* note 46, at 134.

⁶¹ “The cumulative effect of [PTSD symptoms including cognitive changes and heightened psychophysiological arousal] can prompt individuals with PTSD to act aggressively or impulsively out of self-preservation, without full appreciation of the harmful consequences to oneself and others.” Allison E. Jones, *Veterans Treatment Courts: Do Status-Based Problem-Solving Courts Create an Improper Class of Criminal* 43 WASH. U. J. L. & POL’Y 307, 316 (2014).

⁶² Jim McGuire & Sean Clark, *PTSD and the Law: An Update*, 22 PTSD RES. Q. 1 (2011); RAND Corp., *supra*, note 46, at 134 (noting that 75% of Vietnam Veterans with PTSD met criteria for substance use disorders and 79% and 37% of Veterans with TBI met criteria for alcohol and drug use disorders).

⁶³ See generally Osher, *supra* note 33.

⁶⁴ Sobriety can be enforced by order of the court monitored by transdermal alcohol detector and drug screening. Violations of this order would result in mandatory inpatient treatment or a period of incarceration as a last resort. See 18 U.S.C. 3142 (2016). For information regarding transdermal alcohol detection see National Highway Traffic Safety Administration, *Transdermal Alcohol Monitoring: Case Studies* (Aug. 2012), www.nhtsa.gov/staticfiles/nti/pdf/811603.pdf.

⁶⁵ Captain Robinson has served as a Special Assistant U.S. Attorney (SAUSA) from April 2015 through the date of this publication.

⁶⁶ Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENGLAND J. ON CRIM. & CIV. CONFIN. 360, 364 (Summer 2009).

deployments, combat, and Veteran *esprit de corps* and camaraderie forge strong, uplifting bonds among Veterans participating in the programs and those who mentor the participants during the treatment program.⁶⁷ Finally, many Veterans find the structured curriculum and mandated treatment protocols familiar and comforting.⁶⁸

Common characteristics of Veterans create the conditions for life-changing impacts for those Veterans who are struggling when they enroll in a VTC. Prior to enrollment, these Veterans are overwhelmed by a substance use disorder or other mental health challenge which is not being effectively addressed. When a Veteran enrolls in a VTC, the court stakeholders and the Veteran and local communities embrace the Veteran. She establishes connections with enduring treatment solutions. She finds the help she needs. A Veteran enrolled in the program knows she has a team supporting him, just as she must support the other Veterans in the program. She feels valued and knows she is contributing once again to something bigger than herself.

B. Cost Effectiveness

Veterans Treatment Courts not only make life-changing impacts on a deserving population, but they also make economic sense. A VTC generally requires no new appropriations, physical infrastructure, or personnel; many VTCs utilize existing supervision resources and programs of treatment which are already otherwise available. The VTCs are designed to connect Veterans with federally-funded healthcare or community-based treatment to address the substance use disorder or other mental health issue.⁶⁹ The VA Healthcare System makes use of scale economies in existing programs to find an overall cost savings to taxpayers.⁷⁰ Moreover, the VA has become a leader in PTSD research and treatment because of its focus on caring for Veterans.⁷¹ Additional cost savings to the court are found by sharing supervision responsibilities among the court

supervision officers, social workers from the VA (e.g., the VJO's), and the Veteran mentors.

Community supervision is less expensive than incarceration.⁷² While many low-level offenders who find their way into VTCs may otherwise have received community supervision as a part of their sentence, a VTC can reduce overall costs of incarceration through reduced recidivism rates.⁷³ Continued drug use while on ordinary supervision typically leads to a relatively lengthy period of incarceration when that opportunity for community supervision is revoked.⁷⁴ The impact of VTCs is therefore magnified when considering the likelihood of continued illicit drug use by someone who truly has an addiction.

Available studies quantify some of this impact. Problem solving courts generally save jurisdictions between \$4,000 and \$12,000 per participant.⁷⁵ Some VTCs have published cost savings as high as \$600,000 annually due to reduced incarceration.⁷⁶ When accounting for broader assessment of economic impact, studies have found economic benefits of up to \$27 for every \$1 invested.⁷⁷ A federal VTC should expect a similar impact; in the federal system, incarceration costs eight times as much as supervision.⁷⁸

This information only tells part of the tale. Available figures do not assess the economic benefit of reduced future victimization or lost productivity due to untreated PTSD and depression.⁷⁹ Though many societal costs of criminal activity do not lend themselves to quantification, available measures demonstrate society is better off with Veterans connected with the treatment they need instead of in jail.⁸⁰

The creation of a VTC does, however, include opportunity costs in the program's initiation and operation, though many of these costs may be mitigated through appropriate docket management and exploiting available efficiencies. Whoever champions the development of the VTC⁸¹ will devote time and effort to the program's

⁶⁷ *Id.*

⁶⁸ Russell, *supra* note 21, at 520.

⁶⁹ RAND CORP., *supra* note 46, at 8.

⁷⁰ "The full range of services that VHA provided in 1999 would have cost about 21 percent more if those services had been delivered through the private sector at Medicare's payment rates." Cong. Budget Off., *Comparing the Costs of the Veterans' Health Care System with Private-Sector Costs* (Dec. 2014), https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/49763-VA_Healthcare_Costs.pdf.

⁷¹ RAND CORP., *supra*, note 46, at 4.

⁷² *Did You Know? Imprisonment Costs 8 times More than Supervision*, U.S. COURTS (June 18, 2015), <http://www.uscourts.gov/news/2015/06/18/did-you-know-imprisonment-costs-8-times-more-supervision>.

⁷³ See discussion *supra* Part III (The Benefits of Veterans Treatment Courts: Effectiveness).

⁷⁴ See 18 U.S.C. § 3565 (2015).

⁷⁵ Jones, *supra* note 61, at 317.

⁷⁶ Gavriel Jacobs, Katharine McFarland & Gabe Ledeen, *Serving Those Who Served: Veterans Treatment Courts in Theory and Practice 4* (unpublished paper), http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/266901/doc/slpublic/Jacobs_McFarland_Ledeem.pdf (citing COOK COUNTY STATE ATTORNEY'S OFFICE, REPORT ON THE COOK COUNTY VETERANS TREATMENT COURT SYSTEM (Sept. 2011)).

⁷⁷ Marlowe, *supra* note 33.

⁷⁸ U.S. COURTS, *supra* note 72.

⁷⁹ Randall T. Shepard, *The Great Recession as a Catalyst for More Effective Sentencing*, 23 FED. SENT. REP. 146 (Dec. 2010); RAND CORP., *supra* note 46, at 176.

⁸⁰ See Osher, *supra* note 33.

⁸¹ In the context of a U.S. Army contribution to a VTC, this is likely someone designated as a SAUSA. This assertion is based on the author's recent professional experience in establishing the VTC at Fort Hood, Texas, in January 2016 [hereinafter Professional Experiences].

establishment. The staff work and coordination involved in launching the program will vary depending on the nature of the specific program and relationships among the court's key stakeholders.⁸² Once the VTC reaches its initial operating capability, the VTC team members⁸³ can incorporate the VTC into existing court programs to minimize the administrative and logistical burden of the VTC.⁸⁴ Ultimately, an operational VTC will require approximately four to eight hours per month from each of the VTC stakeholders to include the federal magistrate judge and SAUSA.⁸⁵ While not insignificant, the benefits of developing a VTC outlined above compare quite favorably to this burden.

IV. The Need for Federal Veterans Treatment Courts in and around Military Installations

Simply put, VTCs need to be where Veterans are. Veterans congregate on and near military installations.⁸⁶ Whether they are retirees, Veterans married to active duty service members, Veterans now working as contractors or government civilians, or Veterans who remained in the area after separation for other reasons, large military installations have a disproportionate number of Veterans relative to other similar locations.⁸⁷ Military installations, therefore, likely have significant numbers of defendants who would qualify for participation in a VTC. Additionally, military installations also tend to have significant numbers of Veterans' community and civic organizations which are ripe for recruiting Veteran mentors.

Finally, locations in and around military installations have prosecutors, judges, defense counsel, and other stakeholders who are more familiar with military culture. In particular, most major military installations have active duty service members who serve as SAUSAs and prosecute federal crimes that occur on the installation. The military SAUSA bridges the divide between military and civilian federal authorities and facilitates communication and coordination among military leaders, the U.S. Attorney's Office (USAO), and federal courts.

On enclaves of exclusive federal jurisdiction, federal courts are the only forum for criminal offenses including petty offenses, misdemeanors, and felonies.⁸⁸ This means federal enclaves require the federal court to address the same type of cases as a state court would off the installation. Under these circumstances, federal courts should look to state jurisdictions for best practices, especially when those best practices advance federal priorities.

Importantly, VTCs align impeccably with the aim of current Department of Justice (DoJ) policies. In particular, VTCs embody the vision of the Service Members and Veterans Initiative which seeks to serve justice-involved Veterans with a more direct application of available DoJ resources.⁸⁹ While the DoJ has not yet focused a deliberate line of effort on federal VTCs, the DoJ is supporting VTCs through training provided by the DoJ's Bureau of Justice Assistance.⁹⁰ Additionally, as a sign of the rapid spread of VTCs, some U.S. Attorney's Offices are already supporting VTCs in and around U.S. Army installations.⁹¹

Additionally, the establishment of federal VTCs would further several aims of the Attorney General's Smart on Crime initiative:⁹² Specifically, VTCs endeavor for more efficient application of limited criminal justice resources, fairer enforcement of the law, just punishment for low-level nonviolent offenders, stronger protections for vulnerable populations, and reductions in recidivism.⁹³ In line with the Attorney General's aims, VTCs break Veterans out of the vicious cycle of poverty, criminality, and incarceration by addressing the triggering issue and giving control back to the Veterans.⁹⁴ Moreover, the application of supervision and treatment that promote evidence-based approaches instead of incarceration fulfills the Attorney General's stated intention of rethinking the DoJ responses to crime with movement away from mass imprisonment.⁹⁵

Establishing VTCs on and around Military Installations advances Department of Defense (DoD) objectives as well. Installation commanders are responsible for protecting personnel and property in their areas of responsibility against criminal activity.⁹⁶ As discussed above, the establishment of a VTC provides a cost-effective means of reducing

⁸² See discussion *infra* Part IV.

⁸³ *Id.*

⁸⁴ Professional Experiences, *supra* note 81.

⁸⁵ *Id.*

⁸⁶ Chris Adams, *Large Numbers of Vets with PTSD Live Near Military Bases*, McCLATCHYDC (April 10, 2014), <http://www.mcclatchydc.com/news/nation-world/national/national-security/article24766264.html>.

⁸⁷ *Id.*

⁸⁸ 18 U.S.C. § 7 (2001).

⁸⁹ Stuart F. Delery, *Acting Associate Attorney General Stuart F. Delery Announces The Service Members and Veterans Initiative*, DEP'T OF JUST. (March 19, 2015), [https://www.justice.gov/opa/blog/acting-associate-](https://www.justice.gov/opa/blog/acting-associate-attorney-general-stuart-f-delery-announces-servicemembers-and-veterans)

[attorney-general-stuart-f-delery-announces-servicemembers-and-veterans](https://www.justice.gov/opa/blog/acting-associate-attorney-general-stuart-f-delery-announces-servicemembers-and-veterans) (last visited Sept. 28, 2016).

⁹⁰ *Servicemembers and Veterans Initiative: About the Initiative*, DEP'T OF JUST., <https://www.justice.gov/crt-military/about-initiative-0> (last visited Sept. 28, 2016).

⁹¹ DEP'T VET. AFFS., *supra* note 28.

⁹² DEP'T OF JUST., *supra* note 31.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ U.S. DEP'T OF ARMY, REG. 190-16, PHYSICAL SECURITY para. 1-4c(1) (31 May 1991).

recidivism and crime.⁹⁷ By supporting the development of a VTC, the commander with installation security responsibility demonstrates a commitment to implementing an effective means of reducing future crime and promoting public safety.

Federal VTCs on and around military installations also have the potential to augment military justice processing in ways that promote good order and discipline and provide better care for service members transitioning due to misconduct. Many service members charged with federal crimes become former service members soon after the offense is discovered by military authorities.⁹⁸ Federal VTCs with jurisdiction over military installations can help bridge the divide between the active duty “problem Soldier” and drug or mental health treatment provided by the VA. This ultimately meets the needs of the commander and the Soldier by quickly removing the Soldier from the formation while caring for that Soldier during his transition out of the military. Such a possibility is particularly helpful in the current environment of significant force reductions.⁹⁹

As an example of how this works, consider the case of a Soldier who would ordinarily be discharged under other than honorable conditions for positive urinalyses or DWIs. If the Soldier agrees to plead guilty to a federal offense and enroll in the VTC, and the separation authority finds participation in the VTC to be significant enough mitigation to discharge him “under honorable conditions”¹⁰⁰ instead of unfavorably, the result is a win-win.¹⁰¹ The Army is able to quickly

remove a Soldier who is undermining unit discipline, and the Soldier receives transition assistance in the form of supervision, therapy, and mentorship to address his substance use disorder and the challenges of transitioning to civilian life. Should the Soldier subsequently fail to complete the VTC program, the Soldier’s guilty plea would be finalized to conviction and he would be sentenced in accordance with the federal sentencing guidelines.¹⁰² While this course of action may be appropriate in only a limited set of cases, it will make a tremendous impact in the cases where it is used.

A VTC would also be a valuable tool for commanders of Warrior Transition Units (WTUs). Warrior Transition Units often have large numbers of Soldiers who have pending medical retirements. These Soldiers are not immune from misconduct, but frequently there are also significant mitigating or extenuating circumstances readily apparent in their cases. Soldiers are assigned to WTUs because they are working to overcome a physical or mental disability that prevents them from performing as required in their military occupational specialty.¹⁰³ Often, Soldiers assigned to the WTU are evaluated for the possibility of receiving a medical retirement, a process that can take several months. During the pendency of the evaluation process, a Soldier with substance use disorder or some other mental health-related misconduct could enroll in a VTC program in support of a commander’s decision to approve the Soldier’s medical retirement.

⁹⁷ See discussion *supra* Part III (Benefits of Veterans Treatment Courts).

⁹⁸ Matthew Wolfe, *From PTSD to Prison: Why Veterans Become Criminals*, THE DAILY BEAST (July 28, 2013), <http://www.thedailybeast.com/articles/2013/07/28/from-ptsd-to-prison-why-veterans-become-criminals.html>.

⁹⁹ C. Todd Lopez, *Army to Realign Brigades, Cut 40,000 Soldiers, 17,000 Civilians*, ARMY NEWS SERV. (July 9, 2015), https://www.army.mil/article/151992/Army_to_realign_brigades__cut_40_000_soldiers__17_000_civilians/.

¹⁰⁰ If the VTC intends to use the VA Hospital as a care provider, the veteran must receive a characterization of service of General (under honorable conditions) or Honorable. See 38 C.F.R. § 3.12 (2016). Possible modifications to existing law could create a contingent favorable discharge status which becomes permanent upon completion of a VTC program but would remain unfavorable if the Veteran fails out of the VTC. Alternatively, a judge or prosecutor could draft a memorandum for the Army Board for Correction of Military Records or Army Discharge Review Board in support of an upgraded characterization of service based on the Veterans substance use disorder or other mental health diagnosis and subsequent completion of a VTC program.

There are several procedural requirements and practical considerations: First, the VTC must have jurisdiction over the offense. If it is a federal VTC, that means the offense is typically limited to possession of controlled substances (there is no general federal prohibition of use of controlled substances) or the offense must have occurred within the special maritime and territorial jurisdiction of the United States and therefore be subject to specific federal criminal legislation or the Assimilative Crimes Act.

Second, this process will likely only work effectively if it moves the Soldier quickly from Active Duty to the VTC. That requires minimizing all possible delays, to include delays incumbent with appointment of civilian defense counsel. Trial Defense Attorneys (with a modification to

Army Regulation 27-40) or Legal Assistance Attorneys could be admitted *pro hac vice* to the federal court for the arraignment and admission into the VTC, and then withdraw from the attorney-client relationship after the service member is enrolled in the VTC and separated from the Army.

Third, a VTC is only a viable option if the Veteran remains near the site of the court, his supervision, and treatment providers, unless there is a viable court available to transfer supervision. At Fort Hood, the VTC generally requires Veterans live within 100 miles of the installation to be eligible.

Practically speaking, the Soldier’s separation could be approved with execution deferred for the period necessary to present the application to the VTC Team and for the Veteran to be arraigned finalizing the acceptance into the VETS Court. At Fort Hood, that process takes 2.5 to 4.5 weeks.

¹⁰² 18 U.S.C. § 3551 (1990).

¹⁰³ *WCTP Entry Criteria*, U.S. ARMY WARRIOR TRANSITION COMMAND <http://www.wtc.army.mil/modules/s1-entryCriteria.html>, (last visited Sept. 29, 2016).

“In order to be considered eligible for entry into the Warrior Care and Transition Program, Soldiers must meet the below entry criteria for their component. [Active Component:]

- (1) Soldier has received or is anticipated to receive a profile of more than six months duration, with duty limitations that preclude the Soldier from training or contributing to unit mission accomplishment, and the complexity of the Soldier’s condition requires clinical case management.
- (2) Soldier’s psychological condition is evaluated by a qualified medical or behavioral health provider as posing a substantial danger to self or others if the Soldier remains in the unit.

Id.

As VTCs continue to expand their reach, the Army JAG Corps could promote the implementation of these courts in and around Army installations to support command security imperatives. By leading the development of federal VTCs, the Army JAG Corps could better influence their implementation in ways which advance U.S. Army and commanders' interests while demonstrating the Army JAG Corps' commitment to promoting the welfare of Veterans, transitioning service members, and military and local communities.

IV. The VETS Court at Fort Hood

Recognition of the benefits of VTCs outlined above drove the establishment of a VTC on Fort Hood. In less than six months from the initial proposal of a federal VTC to the Federal Magistrate Judge and U.S. Attorney, the VTC on Fort Hood was accepting its first Veterans. The Fort Hood "Veterans Endeavor for Treatment and Support" or "VETS Court" diverts Veterans with service-connected¹⁰⁴ substance use disorders or other mental health challenges out of the court system and into enduring treatment solutions with the VA. The current pilot program permits up to twelve Veterans to enroll in the program.

The VETS Court came together through an interagency agreement among local leaders of the U.S. District Court, the U.S. Attorney's Office, the U.S. Pretrial Services Office, and the Department of Veterans Affairs.¹⁰⁵ Shortly after establishment, the U.S. Probation Office also became involved. The VETS Court operations required no additional

funding,¹⁰⁶ though the U.S. District Court has supplemented the program with an annual budget of \$3,000 in non-appropriated funds that are used to provide nominal rewards¹⁰⁷ for participants' advancement and completion of the program.

The Fort Hood VETS Court requires a guilty plea to a federal crime or a true plea¹⁰⁸ to a probation violation as a condition of entry. Studies have found such models foster better long-term results than pre-plea diversion programs.¹⁰⁹ Prior to the plea, the VETS Court Team considers the Veteran's application to the VETS Court. This group consists of the federal magistrate judge, the SAUSA, a representative of the local Defense bar, U.S. Pretrial Services and U.S. Probation Officers, the VJO social worker from the VA, and the Veteran Peer Mentor Coordinator. At Fort Hood, acceptance into the VETS Court requires majority approval of the VETS Team with the SAUSA serving as the gatekeeper for applications.¹¹⁰

During the staffing of cases, applications are discussed and, if necessary, additional information may be requested from the Veteran's defense counsel. If the VETS Court team has concerns regarding the application that need further clarification, the VETS Court team may invite the applicant-Veteran to personally attend and answer questions. The retained or appointed defense counsel may attend and advocate for admission to the VETS Court, but she does not attend the staff deliberations. Federal Rule of Evidence 410 privilege applies to the application and all statements made

¹⁰⁴ No formal categorization of "service-connected" is required for the Fort Hood VETS Court. Instead, whether a mental health disorder is found to be "service-connected" sufficient for participation in the program relies upon an evaluation of all available facts and circumstances to include the timing of the onset of symptoms, formal diagnoses, preexisting conditions, and the relationship between the disorder and stresses of military life. Interagency Agreement: Veterans Endeavor for Treatment and Support (VETS) Alternative to Prosecution Program, executed August 12, 2016, on file with the author [hereinafter Interagency Agreement].

¹⁰⁵ The Interagency Agreement establishing the Fort Hood VETS Court explicitly adopted the recommendations of the National Association of Drug Court Professionals. *Defining Drug Courts: The Key Components*, NAT'L CRIM. JUST. REFER. SERV. (Oct. 2004) <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf>:

"(1) For those participants with substance use disorders, the program integrates alcohol and drug treatment services with justice system case processing. (2) Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights. (3) Eligible participants are identified early and promptly placed in the program. (4) For those participants with substance use disorders, the program provides access to a continuum of alcohol, drug, and other related treatment and rehabilitation services. (5) For those participants with substance use disorders, abstinence is monitored by frequent alcohol and drug testing. (6) A coordinated strategy governs the program's responses to participants' compliance and noncompliance. (7) Ongoing judicial interaction with each program participant is essential. (8) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness. (9) Continuing interdisciplinary

education promotes effective program planning, implementation, and operations. (10) Forging partnerships among the program's agency participants, other public agencies, and community-based organizations generates local support and enhances the program's effectiveness."

Id. These are similar to those developed for Mental Health Courts. *See Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court*, BUREAU OF JUST. ASSIST. (2007), https://www.bja.gov/Publications/mhc_essential_elements.pdf.

¹⁰⁶ Aside from the opportunity cost associated with the effort. *See* discussion *supra* Part IV.

¹⁰⁷ The rewards in the Fort Hood VETS Court include an "ID Tag" inscribed with Army Values and a certificate acknowledging the advancement. Professional Experiences, *supra* note 81.

¹⁰⁸ A "true plea" is entered for probation revocation hearings. With such a plea, the probationer admits the alleged violation is true. *See* FED. JUD. CTR., BENCHMARK FOR U.S. DISTRICT COURT JUDGES 141 (6th ed. 2013), [http://www.fjc.gov/public/pdf.nsf/lookup/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf/\\$file/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf/$file/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf).

¹⁰⁹ Russell, *supra* note 21, at 523.

¹¹⁰ Veterans' applications to the Fort Hood VETS Court have been declined for various reasons, including: there being no apparent connection between the offense and the mental health issue; the defendant did not live within 100 miles of Fort Hood precluding participation in treatment and mentoring components; and no diagnosed substance use disorder or other mental health issue.

by the Veteran-applicant during this process as part and parcel of plea discussions.¹¹¹

The VETS Court team evaluates applications to the program against admission requirements and space available. The Fort Hood VETS Court requires the defendant (1) to be charged with a misdemeanor, (2) to have prior military service, (3) to be eligible for VA Health benefits, (4) to have an underlying diagnosed substance use disorder or other mental health issue that contributed to the offense,¹¹² and (5) to have a connection between the substance use disorder or other mental health issue and the Veteran's military service. The VETS Court Team considers the connection between the mental health issue and the offense, and the connection between the issue and the Veteran's military service, in light of all available information, to include the Veteran's perspective conveyed on his application. Generally, the VETS Court Team finds defense counsel advocacy most valuable in assessing these criteria.

Finally, priority in the Fort Hood VETS Court is given to those Veterans who are not already connected with VA Healthcare, though prior enrollment in VA Healthcare does not necessarily preclude admission into the Fort Hood VETS Court. This "priority" status is intended to maximize the impact of the Fort Hood VETS Court by establishing connections to VA Healthcare for Veterans who had not previously accessed these resources.

If approved for acceptance by a majority vote of the VETS Court Team, the Veteran enters a guilty or true plea during his arraignment or revocation hearing at the next VETS Court session. During that court session, the federal magistrate judge conducts the standard plea colloquy with the Veteran, noting the enrollment agreement to the VETS Court as the "plea agreement" in the case. However, no ultimate finding regarding the offense or violations is entered after acceptance of the plea. Instead the federal magistrate judge makes findings that the plea is knowing and voluntary, and then holds the plea in abeyance pending discharge of the Veteran from the VETS Court program. The Veteran's bond or probation conditions are subsequently amended to require participation in the VETS Court program. The federal magistrate judge then departs the courtroom momentarily. When he returns, he does so in civilian attire but without his robe as a means of signifying a different form of engagement with the Veterans. Then he begins the VETS Court Open Hearing.

The federal magistrate judge prepares for the VETS Court Open Hearing during the same staffing session used to consider new applicants. During that staffing session, the Supervision Officers and VJO provide status updates to the

VETS Court Team regarding each Veteran's compliance, participation, and outstanding issues. If appropriate,¹¹³ the Mentor Coordinator also updates the Court on the mentor relationship and participation. The Supervision Officers record much of this information in a staffing sheet shared with the VETS Court Team at the staffing session.

During the VETS Court Open Hearing, the Federal Magistrate Judge engages directly with each of the Veterans in a round table setting. All of the Veterans and the VETS Court team gather around a table set up in the courtroom. This is designed to facilitate greater participation by the Veterans and collaboration among the VETS Court Team. The discussion with each Veteran led by the federal magistrate judge addresses the current progress of each of the Veterans, praise for effort when appropriate, admonitions or sanctions if necessary, along with an update from the Veteran about his perceived successes and challenges.

The full agenda of the Fort Hood VETS Court takes approximately two to three hours on two afternoons each month. The first hour is used for staffing the cases and considering new applications. This is followed by thirty minutes of time for the Veteran Mentors to gather and conduct their group meeting. The Veteran participants then meet with the Veteran Mentors en masse for thirty minutes. The agenda concludes with the open court hearing, which typically lasts from thirty to sixty minutes depending on the number of participants.

Upon a Veteran's acceptance into the VETS Court, the Veteran's Supervision Officer and the VJO prepare a case plan for the Veteran in consultation with VA treatment providers and the VETS Court Team. At the first staffing of the Veteran's case, the federal magistrate judge reviews and approves the case plan. At subsequent staffing meetings, the VETS Team may discuss and recommend modifications of the case plan, ultimately subject to the approval of the federal magistrate judge.

As the Veteran progresses through the program, reporting requirements and supervision are gradually reduced. "Promotions" signify the progress of each Veteran with each promotion having set time-in-program and achievement requirements. A Veteran must be recommended for promotion by her Supervision Officer and the SAUSA. The federal magistrate judge approves each promotion. The Veteran is praised and recognized with each promotion, and, after reading a written statement reflecting on her experience, receives a nominal award (currently a Military ID Tag with an imprinted Army Value along with a certificate). Once a Veteran reaches Veteran Grade 5, she has reached the "maintenance period" of the VETS Court and no longer must

¹¹¹ FED. R. EVID. 410.

¹¹² The diagnosis must be verifiable by VA Healthcare providers. Interagency Agreement, *supra* note 104.

¹¹³ The Mentor Coordinator and the Veteran Mentors are instructed not to betray the confidence of the Veteran participant unless there is an imminent

risk to life or limb. For example, continued illegal drug use by the Veteran would not ordinarily require the Mentor to inform the Court. Instead, the Mentor would encourage the Veteran to self-report violations for the sake of obtaining help and treatment. Professional Experiences, *supra* note 81.

attend every court proceeding. Grades 1 thru 4 each typically last for eight to twelve weeks. Grade 5, the “maintenance period,” extends for six months. Successful completion of Grade 5 results in dismissal with prejudice of the charges pending against the Veteran.

V. Alternatives to the Fort Hood Model

While the Fort Hood program has been designed with the intent of creating a model replicable at other Army installations, other alternatives may work better in some situations.¹¹⁴ For example, some VTCs address Veterans in a reentry model as opposed to a pretrial diversion model.¹¹⁵ Reentry models provide Veterans who must be supervised following a term of incarceration with a structured, therapeutic environment which rewards progress.¹¹⁶ Successful completion results in a reduction in the supervision period or intensity.¹¹⁷ Such models are particularly effective if the VTC is open to more serious offenses.¹¹⁸

Other VTCs look to different eligibility criteria, for example, restricting eligibility to certain categories of Veterans (e.g., “combat” Veterans only), or certain types of offenses (e.g., no domestic violence cases).¹¹⁹ Some VTCs incentivize completion of the program differently; instead of dismissal of charges, completion merits expungement, a reduction in charge, or a recommendation for supervision in lieu of incarceration.¹²⁰ Finally, some federal courts may place supervision conditions on Veterans that require their participation in a state jurisdiction VTC; such arrangements rely on close coordination between federal and state authorities, along with possible remuneration.¹²¹ Ultimately, the parameters of the program must meet the needs of the Veterans, the court, and the community.¹²² As these

programs become more established, broadly accepted best-practices and guidelines will surely follow.¹²³

VI. How to Establish a Federal Veterans Treatment Court at Other Army Installations

The establishment of a federal VTC needs support from the key leaders who can approve the use of existing resources for such an initiative. Ultimately, a federal VTC will require the participation of a judge, prosecutor, defense counsel, VJO, and court supervision officer from U.S. Pretrial Services and U.S. Probation. Each of these individuals play a necessary role in some aspect of the VTC program. Some VTCs also involve a benefits officer from the VA to review the Veteran participants’ benefits eligibility. In addition to rallying leaders from each of those agencies, a successful VTC will need someone to recruit and coordinate a team of Veteran mentors who will support, coach, and encourage the participants in the court, complementing the VETS Court team with Veteran and local community participation.

First, a prospective VTC champion¹²⁴ must learn as much as possible about Problem Solving Courts and VTCs. Advocating for the program requires fluency in the program’s benefits and a forecast of anticipated resistance points. For the champion to develop this fluency, she must read as much as possible about the VTCs, reach out to current practitioners,¹²⁵ and schedule visits to operational VTCs. Seeking out training through Justice for Vets and the National Association of Drug Court Professionals should also be a priority.¹²⁶

As one example of an anticipated resistance point, consider that the operation of a VTC requires a significant time commitment from an otherwise exceptionally busy Federal Magistrate Judge. Judge Jeffrey Manske leads the

¹¹⁴ See Russell, *supra* note 21, at 523; MCGUIRE, *supra* note 25.

¹¹⁵ See Russell, *supra* note 21.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² VETS Courts have been endorsed by the ABA in all of their formats:

FURTHER RESOLVED, that the American Bar Association urges state, local, and territorial courts to facilitate the development of Veterans Treatment Courts, including but not limited to specialized court calendars or the expansion of available resources within existing civil and criminal court models focused on treatment-oriented proceedings.

AMER. BAR ASS’N, RECOM. 105A, at 1, http://www.americanbar.org/content/dam/aba/migrated/homeless/publicdocuments/ABA_Policy_on_VETS_Treatment_Courts_FINAL.authcheckdam.pdf.

¹²³ As an example, some studies have found that courts that dismissed or expunged convictions appear more effective than those with mixed or no uniform incentive. Wilson, *supra* note 8, at 479.

¹²⁴ For this audience, the prospective champion is the SAUSA assigned to the jurisdiction.

¹²⁵ Attending the National Association of Drug Court Professionals Annual Training and Vets Court Conference is a great means of gathering information necessary to start or improve a VTC.

¹²⁶ The Justice for Vets Treatment Court Planning Initiative can be of tremendous assistance for champions seeking to launch a VTC. See *Veterans Treatment Court Planning Initiative*, JUST. FOR VETS, <http://www.justiceforvets.org/2016-vtpei> (last visited Sept. 20, 2016). Justice for Vets runs a national mentor court program in collaboration with the Center for Substance Abuse Treatment and Substance Abuse and Mental Health Services Administration, and this is a tremendous means of training the VTC’s champion and other stakeholders. See *Veterans Treatment Court Mentor Program*, JUST. FOR VETS, <http://justiceforvets.org/veteran-mentor-courts> (last visited Sept. 20, 2016).

Fort Hood VETS Court; he is a Federal Magistrate Judge who has presided over cases arising at Fort Hood for fifteen years. His experience and familiarity with the military led him to prioritize the VTC alongside his many other obligations.

The initiative must be staffed for approval like any other interagency cooperation arrangement. The court's champion should rely on her strongest personal relationships among the key court stakeholders and seek assistance to elevate the initiative to the priority list of senior officials within the organizations. Convincing arguments supported by data and metrics will compel these senior officials to listen. The champion must have a clear vision of the way forward and be prepared to incorporate feedback and compromise where necessary. When the champion finds initial receptiveness, she can lead guided visits to operational VTCs to further develop interest in the initiative. Practitioners at other VTCs are uniformly supportive of other courts' initiatives and will share their charter documents and lessons learned with others who are developing new projects.

Once momentum is building, the champion must identify the appropriate VJO,¹²⁷ and bring him into the planning process. The VJO is a social worker from the Department of Veterans Affairs who connects Veterans involved in the criminal justice system to health and social services.¹²⁸ In the context of the VTC, the VJO provides a linkage between the VTC and treatment providers at the VA, ensuring appropriate communication regarding each Veteran's participation in treatment and progress.¹²⁹

The team, including the Judge, USAO, VJO, U.S. Pretrial Services and Probation Officers, and Defense Representative or Federal Defender, must iron out the details of the interagency agreement and the participant enrollment agreement. These two documents will form the charter for the VTC and address key policy issues such as admission criteria, program length, and possible incentives and sanctions.¹³⁰

As the team settles the details and the planning comes to a close, the champion should begin work on a launch event—something that will promote awareness of the VTC and recognize the efforts of those involved in the planning. The Public Affairs Office (PAO) of the senior installation headquarters and corollary from the USAO should be able to assist; they can arrange a press release and media availability. The PAO section may also arrange for the attendance of senior installation and USAO officials.

Throughout this process, the champion must be attentive to the critical issue of developing the mentor program. This may be the biggest challenge of launching an effective VTC, but it is also the true key to the VTC's effectiveness. Among the first tasks in developing the mentor program, the champion must identify a suitable mentor coordinator. This person must fully appreciate the role of the mentor and be able to take on the herculean task of growing and maintaining a base of quality, trained, and vetted Veteran mentors to work with the Veterans participating in the court. The mentor program at Fort Hood has thrived under the leadership of CSM (Ret.) Frank Minosky and SFC (Ret.) Acquanetta Pullins.

To find the right mentor coordinator, the champion will need to network and socialize the VTC in and around the local community with Veterans organizations and through VA contacts. The installation Retiree's Council will be a great resource (the Fort Hood mentor coordinators were both active on the Fort Hood Retiree's Council), as will local chapters of the American Legion, Veterans of Foreign Wars, Rotary International, Kiwanis, etc. The Mentor Coordinator must buy into the vision of the VTC and work well with the Judge and other stakeholders. Retired senior enlisted members are ideal for this position; they can then serve as a de facto senior enlisted advisor to the federal magistrate judge, a relationship similar to a brigade commander with her command sergeant major.

Working together, at least initially, the VTC's champion and the Mentor Coordinator need to rally a group of Veterans available to mentor the Veteran participants in the VTC. The VETS Court at Fort Hood did this by inviting prospective mentors to attend and observe all facets of the VETS Court proceeding without pushing for immediate commitment. Prospective mentors get an overview of the VTC from the champion and other key stakeholders before the staffing of applications and discussion of current cases. After the end of the open court hearing, the key stakeholders solicit input from the prospective mentors and may seek an informed commitment when the appropriate.

Not every Veteran is up to the task of mentoring in a VTC. In addition to the obvious volunteer time commitment, the mentor must be a positive influence on the Veterans and the VTC. At a minimum, prospective mentors should be screened for current criminal issues (noting that some tremendous mentors may have past criminal transgressions or be in substance use recovery) so the VTC team may make an

¹²⁷ See *Veterans Justice Outreach Program*, U.S. DEP'T OF VETERANS AFF., <http://www.va.gov/HOMELESS/VJO.asp> (last visited Sept. 20, 2016) (providing a complete list of Veterans Justice Outreach Specialists employed by the Department of Veterans Affairs).

¹²⁸ U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-393, *VETERANS JUSTICE OUTREACH PROGRAM: VA COULD IMPROVE MANAGEMENT BY ESTABLISHING PERFORMANCE MEASURES AND FULLY ASSESSING RISKS* (April 2016).

¹²⁹ *Id.*

¹³⁰ In addition to the Interagency Agreement and Veterans Enrollment Agreement, the VETS Court at Fort Hood found a need for a Veteran's participant application, a confidentiality notice for observers, staffing meeting notes, and a mentor charter. Several of these documents are available online. See *Fort Hood VETS Court*, FORT HOOD, <http://www.hood.army.mil/vetscourt.aspx> (last visited Sept. 20, 2016).

informed decision regarding the prospective mentor's participation in the VTC.

After suitable mentors are identified, they must be trained in the methods of a VTC so they fully understand their role and the role's limitations. Above all else, the mentors must recognize they are present to encourage and support the Veterans during treatment; the mentors may not substitute their judgment as to what is best for the Veteran in the place of the VTC treatment professionals or the court. At Fort Hood, the mentor program did not coalesce until a few months after the VETS Court was up and running. Incremental progress, both in developing the mentor program and expanding the number of Veteran participants made this appropriate and manageable.

Each VTC will develop its own flavor. Continued training of the VTC team, to include the federal magistrate judge, SAUSA, Supervision Officers, and Mentor Coordinator, will ensure use of best practices and fidelity to the treatment court model that has proven so successful.¹³¹ Much of the VTC's personality will rely on the federal magistrate judge and how she wants to work with the Veterans. Regardless, the VTC will be successful so long as the stakeholders have a genuine desire to help Veterans deal with their current challenges and reconcile them with the Veteran and local community.

VII. Conclusion

The Army JAG Corps should lead the way in demonstrating care for Veterans through development of federal VTCs. Relying on the relationships built and maintained through a successful SAUSA program, major Army installations could make a significant impact in connecting Veterans to needed treatment, thereby reducing Veteran recidivism, Veteran suicide, and Veteran homelessness. As described above, VTCs advance DoD and DoJ priorities, and by leading the organization of federal VTCs the Army JAG Corps can shape the implementation of these programs while making a lasting, positive impact on the lives of justice involved Veterans and their communities.

¹³¹ See, e.g., *supra* notes 125-26.

Making the Most Out of Your Pay and Allowances: Military Income and Tax-Free Benefits

Major Heidi M. Steele*

*I am proud to be paying taxes in the United States; the only thing is, I could be just as proud for half the money.*¹

I. Introduction

So you did not win the \$1.5 billion dollar *Powerball* drawing this year; considering your odds were one in 292,201,338, it really should not be all that surprising.² While now you may not be able to afford that Mansion in Beverly Hills, or the *Gulfstream* private jet you have always wanted, the good news is that the tax-free benefits of your military service are almost as good as hitting the jackpot. Having an understanding of these benefits will help leverage them during tax season and when conducting basic wealth management. Taking full advantage of military tax-free benefits enables servicemembers to make informed decisions about their finances, investments, and career path. It might also leave a few extra dollars in the bank account for next week's *Powerball* drawing.

No one likes paying taxes on their hard-earned money. This is especially true when that money was earned by those who volunteer to place their lives on the line in service to their country. In recognition of this service and sacrifice, Congress has built certain deductions, exemptions, and credits into the tax code to take care of those who take care of America.³ This article is intended as a guide for servicemembers, their families, and those professionals tasked with providing tax and financial planning advice to the military community so that they might fully avail themselves of these significant tax-free benefits.

This article provides a basic overview of how income taxes are calculated and highlights the considerable tax breaks

that servicemembers receive through non-taxable pay and allowances. The article then examines the combat-zone tax exclusion and combat-zone savings opportunities, the extension of tax filing deadlines, the inclusion of combat pay for purposes of the Earned Income Tax Credit, the exclusion of certain capital gains, and the tax deferments available under the Servicemembers Civil Relief Act.⁴ The article then focuses on the many tax-free education benefits available to servicemembers, veterans, and their family members. Finally, the article addresses how qualifying spouses and dependents of deceased servicemembers and veterans are taken care of through tax-free stipends and education benefits.

II. Military Income Tax "101"

The prevailing wisdom is that taxes are complicated.⁵ While one does not need to be a genius or an expert on the tax code to conduct personal financial planning, it is helpful to have a basic understanding of how taxes are calculated to know if any expense item, deductible, or tax credit are missing come tax time.⁶

A. Computing Tax Liability

There are several steps that must be undertaken to determine a taxpayer's income tax liability. The good news is that not all income is taxable. An individual's taxable income is determined by first calculating gross income.⁷ Gross income generally "means all income from whatever

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¹ Arthur Godfrey, *Tax Quotes*, IRS.GOV (Jan. 11, 2016), <https://www.irs.gov/uac/Tax-Quotes>. The original quotation published in the October 1951 edition of *The Reader's Digest*.

² *Powerball*, VA. ST. LOTTERY, <https://www.valottery.com/gamesandmore/powerball/> (last visited Oct. 20, 2016).

³ *Special Tax Breaks for Military Members*, MILITARY.COM, <http://www.military.com/money/personal-finance/taxes/special-tax-breaks-for-military-members.html> (last visited Oct. 20, 2016).

⁴ 50 U.S.C.A. § 4000 (West 2015).

⁵ In fact world-renowned physicist Albert Einstein is famously quoted as saying, "[t]he hardest thing in the world to understand is income taxes. *The Hardest Thing in the World to Understand is Income Taxes*, QUOTE INVESTIGATOR (Mar. 7, 2011), <http://quoteinvestigator.com/2011/03/07/einstein-income-taxes/>. Albert Einstein reportedly said this to his longtime friend and income tax preparer, Mr. Leo Mattersdorf, sometime before his death in 1955. *Id.* Mr. Mattersdorf later recounted this conversation in a 1963 letter to *Time Magazine*. *Id.*

⁶ It is important to stay organized and keep good records throughout the year. When filing your taxes, ensure to have copies of all Form W-2, Wage & Tax Statements; all Form W-2, Travel/Miscellaneous Tax Statements; Form 1095-C, Employer Provided Health Insurance Offer & Coverage; receipts for expensive and unreimbursed medical and dental bills; records of charitable donations; records of purchases, sales, and improvements to real estate; annual tax statements for all investments and Individual Retirement Accounts (IRA), and a copy of the previous year's income tax return.

⁷ BLOOMBERG BNA, 2015 FEDERAL TAX GUIDE 1 (2014).

source derived.”⁸ Examples of gross income include wages for services rendered to include commissions, tips, and any fringe benefits.⁹ Gross income can also include profits derived from business activities and gains realized from property sales, as well as interest income and rents.¹⁰ Other examples of gross income can include royalty payments, dividends, alimony payments, and income from life insurance and annuities.¹¹ Finally, gross income includes monies derived from pensions, income in respect of a decedent (IRD),¹² and income from an interest in an estate or trust.¹³

After gross income is determined, then any applicable adjustments,¹⁴ deductions, and tax exemptions are subtracted, thereby yielding the taxable income.¹⁵ The taxpayer will then be placed in a tax-bracket¹⁶ based on taxable income, and the applicable tax rate will determine the actual dollar amount owed to the Internal Revenue Service (IRS).¹⁷ After

determining the dollar amount owed, it is possible to reduce the tax bill, if the taxpayer is entitled to any tax credits.¹⁸ Tax credits are different from tax deductions because they are applied after the individual’s tax rate is calculated and serve to reduce the taxpayer’s tax liability dollar-for-dollar.¹⁹ Tax credits are preferable to tax deductions because deductions only decrease the amount of income upon which the tax bill is calculated, whereas credits cut the final bill by the dollar amount of the credit,²⁰ which in some cases can even provide a refund.²¹

B. Taxable Income

Servicemembers receive many forms of compensation for their service.²² Some of these are taxable, and some are

⁸ 26 U.S.C.A. § 61 (West 2015).

⁹ *Id.* “A fringe benefit is a form of pay for the performance of services. For example, you provide an employee with a fringe benefit when you allow the employee to use a business vehicle to commute to and from work.” INTERNAL REVENUE SERV., PUB. 15-B, EMPLOYER’S TAX GUIDE TO FRINGE BENEFITS 3 (2015) [hereinafter I.R.S. PUB. 15-B].

¹⁰ 26 U.S.C.A. § 61 (West 2015).

¹¹ *Id.*

¹² Income in respect of a decedent (IRD) is defined as, “[m]oney that was due to a decedent and will pass through to the recipient or estate as income during that tax year.” *Income in Respect of a Decedent—IRD*, INVESTOPEDIA, http://www.investopedia.com/terms/i/income_respectof_decedent.asp (last visited Oct. 20, 2016). An example of IRD would be a deceased Service member’s unpaid pay and allowances.

¹³ 26 U.S.C.A. § 61 (West 2015).

¹⁴ Adjustments can include (but are not limited to) business deductions, travel expenses for members of the reserve components, deductions attributable to rents, penalties for the early withdrawal of savings, alimony payments, moving expenses, interest paid on student loans, higher education expenses, health savings account deductions, and others. 26 U.S.C.A. § 62 (West 2015). Gross income minus all applicable adjustments equals the taxpayer’s adjusted gross income (AGI). *Id.*

¹⁵ INTERNAL REVENUE SERV., PUB. 17, YOUR FEDERAL INCOME TAX FOR INDIVIDUALS (2015) [hereinafter I.R.S. PUB. 17].

¹⁶ There are seven established tax-brackets which quantify the percentage of income tax owed based on filing status and taxable income: 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%. 26 CFR § 601.602 (2016). For example, married persons filing jointly that have taxable income over \$75,300 but less than \$151,900 would be in the 25% tax-bracket. *Id.* Their tax would be \$10,367.50 + 25% of the excess taxable income over \$75,300. *Id.* Whereas an unmarried individual whose taxable income is over \$37,650 but less than \$91,150 would also fall in the 25% tax-bracket. *Id.* The unmarried taxpayer would owe \$5,183.75 + 25% of the excess taxable income over \$37,650. *Id.*

¹⁷ I.R.S. PUB. 17, *supra* note 15, at 202.

¹⁸ *Id.*

¹⁹ Kay Bell, *Why Tax Credits are Better*, BANKRATE (Feb. 11, 2009), <http://www.bankrate.com/finance/money-guides/why-tax-credits-are-better-2.aspx>.

²⁰ *Id.* By way of example,

The tuition and fees deduction offers eligible taxpayers a \$4,000 deduction. Another tax break for educational expenses, the Lifetime Learning Credit, is only half that. But don’t be so fast to opt for the deduction. With the \$4,000 deduction, you subtract that amount from your earnings to reach a smaller taxable income amount; \$50,000 then becomes \$46,000. But that \$46,000 still leaves you in the 25% tax bracket, meaning that your \$4,000 deduction is worth, when you finally compute your tax bill, only a fourth of its dollar value: \$4,000 x 25%, or \$1,000. The \$2,000 Lifetime Learning credit, however, is subtracted from your final tax bill. So if you owed \$2,200 on your \$50,000 income, the credit will knock that down to only \$200.

Id.

²¹ There are currently five refundable tax credits which could provide a refund beyond your tax liability: the Earned Income Tax Credit (EITC), the Health Coverage Tax Credit, the Making Work Pay Credit, the Child Tax Credit, and the Additional Child Tax Credit. *Tax Credits vs. Tax Deductions*, NERDWALLET (Dec. 17, 2015), <https://www.nerdwallet.com/blog/taxes/tax-credit-vs-tax-deduction/>.

²² *Pay*, MILITARY COMPENSATION, <http://militarypay.defense.gov/Pay.aspx> (last visited Oct. 20, 2016).

There are various types of pay. Basic pay is received by all [servicemembers] and is the main component of an individual’s salary. The other pays, often referred to as special and incentive pays, are for specific qualifications or events. For example, there are special pays for aviators and parachutists; special pays are also paid for dangerous or hardship duties. Allowances are the second most important element of military pay. Allowances are moneys provided for specific needs, such as food or housing. Monetary allowances are provided when the government does not provide for that specific need. For example, the quantity of government housing is not sufficient to house all military members and their families. Those who live in government housing do not receive full housing allowances. Those who do not live in government housing receive allowances to assist them in obtaining commercial housing. The most common allowances are Basic Allowance for Subsistence (BAS) and Basic Allowance for Housing (BAH). A majority of the force receives both of these allowances and, in many cases, these allowances comprise a significant portion of the member’s total pay.

Id.

non-taxable, thereby conferring a tax benefit.²³ Some types of military pay are considered part of gross income and subject to federal income tax.²⁴ Military allowances, however, are generally not part of gross income and are not subject to federal income tax.²⁵

For example, active duty basic pay, reserve training and drill pay, and continental United States cost of living allowance (CONUS COLA) are all taxable forms of income.²⁶ Many forms of special pay, including foreign language proficiency, hardship duty, and foreign duty pay are also taxable.²⁷ Bonus pay for career status, enlistment and reenlistment, officer continuation pay, and overseas extensions are subject to tax.²⁸ Incentive pay for submarine, flight, hazardous duty, and high altitude/low opening (HALO) are also examples of taxable income.²⁹ Finally, other pay such as personal money allowances paid to high-ranking officers and student loan repayments fall under taxable income.³⁰

²³ IRC § 134. See, e.g., LAWRENCE KAPP & BARBARA SALAZAR TORREON, CONG. RES. SERV., RL33446, MILITARY PAY: KEY QUESTIONS & ANSWERS 7 (2015).

²⁴ *Id.*

²⁵ *Id.* See, e.g., IRC § 134.

²⁶ INTERNAL REVENUE SERV., PUB. 3, ARMED FORCES TAX GUIDE 4 (Jan. 14, 2015) [hereinafter I.R.S. PUB. 3]. Other taxable forms of basic pay include attendance at service schools and back wages. *Id.*

²⁷ *Id.* Additional forms of taxable special pay include aviation career incentives, career sea pay, diving duty, hostile fire or imminent danger pay if not in a designated combat-zone, medical and dental officer pay, nuclear-qualified officer pay, optometry and pharmacy pay, special compensation for assistance with activities of daily living, special duty assignment pay, veterinarian pay, and voluntary separation incentive pay. *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* Other pay subject to tax also includes pay for accrued leave and high deployment per diem. *Id.*

³¹ *Id.* at 5.

³² “The purpose of DLA [Dislocation Allowance] is to partially reimburse a member, with or without dependent(s), for the expenses incurred in relocating the member’s household on a PCS [Permanent Change of Station], on a housing move ordered for the government’s own convenience, or incident to an evacuation.” U.S. DEP’T OF DEF., JOINT TRAVEL REG. 5A10-1 (1 Nov. 2015) [hereinafter JTR]. Current DLA rates can be found by visiting the Defense Travel Management Office’s website. DLA, DEF. TRAVEL MGMT. OFF., <http://www.defensetravel.dod.mil/site/otherratesDLA.cfm> (last visited Oct. 20, 2016).

³³ “TLE [Temporary Lodging Expense] is an allowance intended to partially pay members for lodging/meal expenses incurred by a member/dependent(s) while occupying temporary lodging in CONUS [contiguous United States] ICW [in conjunction with] a PCS.” JTR, *supra* note 32, at 5A9-1 Temporary Lodging Expense is limited to ten days. *Id.*

³⁴ “TLA [Temporary Lodging Allowance] is an allowance intended to partially pay members for the more than normal expenses incurred by a member/dependent(s) while temporary lodging OCONUS [outside the

C. Non-Taxable Income

1. Active Duty and Reserve Component

Active duty servicemembers and reserve component members serving on U.S. Code Title 10 orders receive a significant tax benefit through different forms of non-taxable allowances. Some of the most common and substantial benefits include living allowances, such as basic allowance for housing (BAH), basic allowance for subsistence (BAS), overseas housing allowance (OHA), and outside the Continental United States cost of living allowance (OCONUS COLA).³¹ Certain relocation and travel allowances are included in non-taxable income, such as the Dislocation Allowance (DLA),³² Temporary Lodging Expense (TLE),³³ Temporary Lodging Allowance (TLA),³⁴ and per diem pay when in a temporary duty yonder (TDY) status.³⁵ Some other forms of non-taxable income include uniform allowances,³⁶ state bonus pay for combat-zone service,³⁷ and military base and realignment and closure benefits.³⁸

continental United States].” *Id.* at 9C1-1. Outside the Contiguous United States, TLA will not be paid for more than sixty days, unless an extension is granted by the appropriate approving authority. *Id.*

³⁵ I.R.S. PUB. 3, *supra* note 26, at 5. Other non-taxable moving and travel allowances include reimbursement for moving household items to a permanent duty station (PDS) and leave between consecutive overseas tours (COT). *Id.*

³⁶ Enlisted servicemembers receive an initial clothing allowance consisting of either an in-kind issue or a combination of in-kind issue and cash payment, and a cash clothing replacement allowance annually thereafter. An extra clothing allowance may be paid for servicemembers performing special duties or to those requiring civilian clothing for their duties. U.S. DEP’T OF DEF., 700.14-R, DOD FIN. MGMT. REG., vol. 7A, ch. 29 (Feb. 2015). Current uniform allowance rates for enlisted servicemembers can be found by visiting the Defense Finance and Accounting Services (DFAS) website. *FY2016 Military Clothing Allowances*, DEF. FIN. AND ACCT. SERV., <http://www.dfas.mil/militarymembers/payentitlements/2016ClothingAllowance.html> (last visited Oct. 20, 2016). Officers are entitled to an initial uniform allowance of \$400.00 when first reporting to active duty, regardless of the source of commission or previous enlisted status. U.S. DEP’T OF DEF., 700.14-R, DOD FIN. MGMT. REG., vol. 7A, ch. 30 (June 2015). Qualified officers will thereafter receive a one-time additional active duty uniform allowance of \$200.00 after completing ninety days of active service. *Id.*

³⁷ Several states offer cash bonuses ranging from fifty dollars up to several thousand dollars for active duty servicemembers or veterans meeting certain criteria. Massachusetts, for example, offers residents who have served one or more days in Iraq or Afghanistan since September 11, 2001, a \$1,000 cash bonus and a \$500 cash bonus for each subsequent deployment. Deborah B. Goldberg, *Veterans’ Bonus—Active Status Applicants*, MASS.GOV (2016), <http://www.mass.gov/treasury/veterans/welc-home-bonus/first-time-applicants.html>. Servicemembers who did not deploy but served over six months on active duty are eligible to receive a \$500 bonus. *Id.* To check if your state of legal residence offers state bonus pay for military service, visit your state’s department of veteran’s affairs or veteran’s services website. Most states require servicemembers to file applications with substantiating documents and meet certain filing deadlines. Only state bonuses paid because of service in a designated combat-zone, however, are tax-exempt. I.R.S. PUB. 3, *supra* note 26, at 5.

³⁸ I.R.S. PUB. 3, *supra* note 26, at 5. Servicemembers who acquired property that was located at or near military installations that were ordered to be closed may be eligible to receive reimbursement for qualifying losses incurred, if the property was sold under market value or the property was

To better understand these tax consequences, take for example Sergeant First Class (SFC) Jenna Schwartz who has been in the military for eleven years. She is stationed at Fort Drum, New York, and is divorced with one child. In 2015, SFC Schwartz made \$3,747.00 monthly in Base Pay, \$367.92 monthly in BAS, and \$1,827.00 monthly in BAH, for a total monthly income of \$5,941.92. Of that amount, SFC Schwartz did not have to pay taxes on \$2,194.92, which is approximately thirty-seven percent of her total monthly income. In addition, at the end of the year, this non-taxable income will allow SFC Schwartz to be in a lower overall income tax bracket, further lowering her tax liability.³⁹ Over the course of a year, and over the course of a military career, those savings add up.

2. Veterans

Certain types of pay and allowances received by veterans⁴⁰ and their families fall into the non-taxable income category.⁴¹ This includes benefits paid by the Department of Veterans Affairs (VA), to include monies received for education, training, and subsistence allowances, disability compensation, and pension payments for disabilities paid either to veterans or their families.⁴² Veterans can also receive tax-free grants for homes designed for wheelchair living, grants for motor vehicles for veterans who lost their sight or the use of their limbs, and payments made under the compensated work therapy program.⁴³ In addition, veterans' insurance proceeds and dividends paid either to veterans or their beneficiaries, including the proceeds for a veteran's endowment policy paid before death, and interest on insurance dividends left on deposit with the VA are tax-free.⁴⁴

foreclosed. 42 U.S.C.A. § 3374 (West 2015). Additionally, certain disabled servicemembers who were reassigned in furtherance of medical treatment or medical retirement may receive similar reimbursement for qualifying property losses. *Id.*

³⁹ If all of Sergeant First Class (SFC) Schwartz's annual military income was taxable (\$5,941.92 per month x 12 months = 71,303.04 - \$9,250 standard deduction = \$62,053.04) she would end up in a 25% tax bracket, if filing as head of household. 2015 *Federal Tax Rates, Personal Exemptions, & Standard Deductions*, U.S. TAX CENTER, <https://www.irs.com/articles/2015-federal-tax-rates-personal-exemptions-and-standard-deductions> (last visited Oct. 20, 2016). However, after excluding the non-taxable allowances from her income, (\$3,747.00 per month x 12 months = \$44,964 - \$9,250 standard deduction = \$35,714) she would end up in a 15% tax bracket, if filing as head of household. *Id.* (calculations on file with author).

⁴⁰ See *infra* Appendix A for state tax exemptions such as property tax, income tax, and tax-free educational benefits as this paper only addresses certain federal income tax exemptions for veterans.

⁴¹ I.R.S. PUB. 17, *supra* note 15, at 51. "Do not include in your income any veterans' benefits paid under any law, regulation, or administrative practice administered by the Department of Veterans Affairs (VA)." *Id.*

⁴² *Id.*

⁴³ *Id.* at 52.

⁴⁴ *Id.*

III. Tax Benefits for Servicemembers

Tax-exempt combat pay and tax-free allowances are unique and important components of the military compensation system. These special tax-free benefits were enacted as recognition of the significant risks and dangers faced by Servicemembers.⁴⁵

A. Combat-Zone Exclusions

1. Qualified Service

During World War II, Congress established a combat-zone tax exclusion to help alleviate some of the financial burdens on those fighting the nation's wars.⁴⁶ Today, servicemembers ordered to serve in designated combat-zones (CZ) or qualified hazardous duty areas (QHDA) receive tax-free income.⁴⁷ The President of the United States designates CZs for taxation purposes through the issuance of Executive Orders.⁴⁸ Congress has the authority to designate QHDAs.⁴⁹ Servicemembers may also qualify for tax-free income if they are performing a service that is in "direct support of military operations in a combat zone or qualified hazardous duty area" as certified by the Department of Defense (DoD).⁵⁰ To qualify for tax-free income under this provision, servicemembers will typically be stationed in close proximity to a designated CZ or QHDA and must be receiving hostile fire pay or imminent danger pay.⁵¹ Collectively, these income tax exclusions are referred to as "combat-zone" exclusions.⁵² Additionally, servicemembers who are evacuated from a CZ due to being wounded, injured, or having contracted a disease, can continue to receive tax-free income throughout the duration of their hospitalization.⁵³

⁴⁵ SAUL PLEETER ET AL., THE QUADRENNIAL REVIEW OF MILITARY COMPENSATION 359 (2011).

⁴⁶ *Id.* at 379.

⁴⁷ I.R.S. PUB. 3, *supra* note 26, at 9. "Service in a combat zone includes any periods you are absent from duty because of sickness, wounds, or leave." *Id.* at 10. See *infra* Appendix B for enumerated combat-zones (CZ), qualified hazardous duty areas (HDA), and areas used in providing direct support for military operations.

⁴⁸ 26 U.S.C.A. § 112 (West 2015).

⁴⁹ 37 U.S.C.A. § 310 (West 2015).

⁵⁰ I.R.S. PUB. 3, *supra* note 26, at 9.

⁵¹ *Id.*

⁵² *Id.*

⁵³ 26 U.S.C.A. § 112 (West 2015). The tax-free status will terminate at the conclusion of the Service member's hospitalization, or not more than two years after the end of combatant activities in the area. *Id.* Additionally, servicemembers who are hospitalized after leaving a CZ for a wound, disease, or injury received while serving in a CZ can still exclude military pay earned during the hospitalization. I.R.S. PUB. 3, *supra* note 26, at 10. Illnesses that do not manifest for over a year after the Service member leaves the CZ are presumed to not be combat-related for purposes of taxation. *Id.*

2. Amount of Exclusion

All enlisted servicemembers, warrant officers, and commissioned warrant officers' basic active duty pay are non-taxable while serving in a CZ.⁵⁴ However, Medicare and Social Security taxes will continue to be withheld.⁵⁵ In contrast, commissioned officers' basic active duty pay is non-taxable up to the amount earned by the highest ranking enlisted servicemembers.⁵⁶ Servicemembers serving at least one day in a CZ are entitled to tax-exemption of their basic pay for the entire month.⁵⁷ In addition to tax-exemption of basic pay, servicemembers will not be taxed on certain other types of compensation received while serving in a CZ, including imminent danger/hostile fire pay; any reenlistment bonuses earned after voluntarily reenlisting while in the CZ; certain student loan repayments;⁵⁸ and pay for accrued leave earned while serving in a CZ, among others.⁵⁹ All qualifying CZ income will be excluded from the wages reported on the Form W-2, Wage & Tax Statements.⁶⁰

3. Combat-Zone Savings

Tax-free pay earned in a CZ can provide a great investment opportunity. The IRS allows tax-free combat pay to be used for contributions to an Individual Retirement Account (IRA), which grows tax-deferred until withdrawn.⁶¹ An even better option for servicemembers in a CZ is to make

contributions to a Roth IRA, because the tax-free pay earned there can turn into tax-free withdrawals in retirement, as distributions of earnings are not taxed.⁶² Servicemembers can contribute up to \$5,500 per year into their Roth IRA, and in some cases, an additional \$5,500 per year into their spouse's Roth IRA.⁶³ An additional investment option for servicemembers is the federal Roth Thrift Savings Plan (Roth TSP). The normal annual contribution limit is \$18,000.⁶⁴ However, when serving in a CZ, the annual contribution limit increases to \$53,000.⁶⁵ The money deposited while in a CZ into the Roth TSP is tax-free and also comes out tax-free at withdrawal, as long as certain IRS requirements are met.⁶⁶

4. Deadline Extensions

In addition to receiving tax-free income while serving in a CZ, servicemembers also receive another tax benefit in the form of a tax filing and payment extension.⁶⁷ Servicemembers receive a 180-day extension from the last day spent in a CZ or performing qualifying service outside a CZ, deployed in support of a contingency operation, or while hospitalized as a result of combat injuries.⁶⁸ The 180-day extension is added to any remaining time the Service member had to file or pay taxes before the deployment.⁶⁹

To highlight this point, take for example Specialist (SPC) Willy Melvin, who deployed to Afghanistan on March 31,

⁵⁴ 26 U.S.C.A. § 112 (West 2015).

⁵⁵ *Employers with Employees in a Combat Zone*, IRS.GOV (Feb. 18, 2016), <https://www.irs.gov/uac/Employers-with-Employees-in-a-Combat-Zone>.

⁵⁶ 26 U.S.C.A. § 112 (West 2015). For 2016, this amount is equal to \$8,222.10 per month. This is based off the basic pay paid to the Master Chief Petty Officer of the Navy, the Chief Master Sergeant of the Air Force, the Sergeant Major of the Army and Marine Corps, and the Senior Enlisted Advisor to the Joint Chiefs of Staff, which amounts to \$7,997.10 plus \$225.00 for Hostile Fire/Imminent Danger Pay. See *2016 Military Pay Chart*, DEF. FIN. AND ACCT. SERV., <http://www.dfas.mil/militarymembers/payentitlements/military-pay-charts.html> (last visited Oct. 20, 2016).

⁵⁷ I.R.S. PUB. 3, *supra* note 26, at 9.

⁵⁸ *Id.*

If the entire year of service required to earn the repayment was performed in a combat zone, the entire repayment made because of that year of service is excluded. If only part of that year of service was performed in a combat zone, only part of the repayment qualifies for exclusion.

Id.

⁵⁹ *Id.* Family Separation Allowance (FSA), provided to servicemembers separated from their dependents for more than thirty continuous days due to unaccompanied PCS orders, deployment orders, or Temporary Duty (TDY), is another example of a non-taxable allowance. U.S. DEP'T OF DEF., 7000.14-R, DOD FIN. MGMT. REG., vol. 7A, ch. 25 (Apr. 2016).

⁶⁰ I.R.S. PUB. 3, *supra* note 26 at 9.

⁶¹ *Special Tax Breaks for Military Members*, MILITARY.COM (2016), <http://www.military.com/money/personal-finance/taxes/special-tax-breaks-for-military-members.html>.

⁶² *Roth IRAs*, IRS.GOV (Dec. 17, 2015), <https://www.irs.gov/Retirement-Plans/Roth-IRAs>.

⁶³ *Retirement Topics—IRA Contributions*, IRS.GOV (Dec. 23, 2015), <https://www.irs.gov/Retirement-Plans/Plan-Participant-Employee/Retirement-Topics-IRA-Contribution-Limits>. Individuals over fifty years old can contribute up to \$6,500 per year. *Id.* Servicemembers can contribute to a spouse's IRA account, even if the spouse does not have taxable income, so long as they file a joint tax return. *Id.*

⁶⁴ *Contribution Limits*, THRIFT SAVINGS PLAN (2016), <https://www.tsp.gov/PlanParticipation/EligibilityAndContributions/contributionLimits.html>.

⁶⁵ *Id.* For 2015 and 2016, \$18,000 is the elective deferral limit in accordance with Internal Revenue Code (IRC) 402(g), but \$53,000 is the annual additional limit in accordance with IRC 415(c). As a result, if a servicemember is in the combat zone, the servicemember could contribute \$18,000 to a Roth TSP, and the remaining \$35,000 to a traditional TSP account. See Treas. Reg. § 1.402(g)-1 (2016) (Limitation on exclusion for elective deferrals) "(b) Elective deferrals. An individual's elective deferrals for a taxable year are the sum of the following: (5) Any designated Roth contributions described in section 402A (before applying the limits of section 402(g) or this section)." *Id.* Members can contribute to Roth TSP, because Treasury authorized individuals subject to the foreign income tax exclusion to contribute to a Roth 401(k). See Treas. Reg. § 1.401(k)-1.

⁶⁶ *Tax Treatment of Your Contributions: Traditional and Roth Contributions*, THRIFT SAVINGS PLAN (2016), <https://www.tsp.gov/PlanParticipation/EligibilityAndContributions/TaxTreatment/index.html>.

⁶⁷ I.R.S. PUB. 3, *supra* note 26, at 24.

⁶⁸ *Id.*

⁶⁹ *Id.*

2015, and had not yet filed his 2014 taxes (which under normal circumstances were due on April 15, 2015). The unit re-deployed from Afghanistan on October 1, 2015, and SPC Melvin now has 180 days to file his 2014 taxes, plus an extra fifteen days (for a total of 195 days) to account for the time he had left to file his tax return before he entered the CZ (April 1–15, 2015). His 2014 tax filing is now due on April 13, 2016, providing a welcome reprieve for the Service member.

B. Earned Income Tax Credit

The Earned Income Tax Credit (EITC) is a credit available for individuals with low to moderate income levels.⁷⁰ The credit may provide a tax refund even when taxes are not owed.⁷¹ To qualify for the credit, one must meet certain income thresholds and file a tax return.⁷² In 2015 for example, a married taxpayer⁷³ filing jointly who does not have children can have an adjusted gross income (AGI) of up to \$20,330 and qualify for the credit, whereas a married taxpayer filing jointly with three or more children can have an AGI up to \$53,267.⁷⁴ For purposes of calculating the EITC, income must be taxable.⁷⁵ Servicemembers, however, have the option of including non-taxable combat pay in their earned income for purposes of calculating the EITC, *if* it would benefit them to do so.⁷⁶ If a servicemember elects to include non-taxable combat pay, then all combat pay for that tax year must be included in the calculation.⁷⁷

To fully understand the tax benefits of the EITC, consider Sergeant (SGT) Andres Hernandez. He is thirty years old, married with three children, and has five years of service. In 2015, SGT Hernandez made \$2,580.60 per month in base pay, and was stationed at Fort Bragg, North Carolina, for the months of January and February. On March 1, 2015, SGT

Hernandez deployed to Iraq and remained there until re-deploying on December 31, 2015. During 2015, SGT Hernandez only made \$5,161.20 in taxable income for the two months he was stationed at Fort Bragg, while the other ten months he earned tax-free combat pay. When filing his 2015 taxes, SGT Hernandez claims the EITC without including his non-taxable combat pay. He is thrilled to learn that he will get a tax refund of \$2,329.00. However, when SGT Hernandez asks his friendly military tax preparer to run the numbers again, this time including his discretionary non-taxable combat pay, SGT Hernandez is ecstatic to learn that now he will receive a tax refund of \$4,690. In other words, not only did SGT Hernandez not pay any income tax during 2015, the government actually paid him “bonus money.”

C. Military Family Tax Relief Act of 2003

To provide military members with improved tax equality, the Military Family Tax Relief Act of 2003 (MFTRA) was passed, enabling qualified servicemembers that sold their principal residence to exclude certain capital gains.⁷⁸ Normally, any gains received on the sale of a principal residence are included in a taxpayer’s gross income, unless they may be excluded or deferred.⁷⁹ Individual taxpayers are able to exclude up to \$250,000 of gain, and married taxpayers up to \$500,000 of gain, if they can meet a five-year ownership and use test.⁸⁰ To meet the test, the taxpayer must have owned and used the home as a principal residence two out of five years directly preceding the sale of the home.⁸¹

Prior to the passage of the MFTRA, many servicemembers had difficulty meeting the five-year test due to the frequency of Permanent Change of Station (PCS) moves. The MFTRA, however, suspended the five-year test for up to ten years for servicemembers that were on military

⁷⁰ *Earned Income Tax Credit (EITC)*, IRS.GOV (Mar. 11, 2016), <https://www.irs.gov/Credits-&-Deductions/Individuals/Earned-Income-Tax-Credit>.

⁷¹ *Id.*

⁷² 26 U.S.C.A. § 32 (West 2015).

⁷³ If the taxpayer does not have children, then he or she must be at least twenty-five years of age but less than sixty-five years of age and not be either the dependent or qualifying child of another person. INTERNAL REVENUE SERV., PUB. 596, EARNED INCOME CREDIT (EIC) (Jan. 6, 2016) [hereinafter I.R.S. PUB. 596]. Unmarried taxpayers without children who have an AGI of less than \$14,820 will also qualify for the EIC. *Id.*

⁷⁴ To qualify for the credit, married taxpayers must file jointly, meaning that they cannot file tax returns “married filing separately.” *Id.* at 5. Additionally, children must meet relationship, age, and residency requirements in order for the taxpayer to claim them for the EIC. *Id.* at 9. Importantly, a child must either be under age nineteen or under age twenty-four and a full-time student. *Id.* The child must also reside with the parents for more than half of the year. *Id.* at 10. Paying for a child’s living expenses is not a substitute for the half year resident requirement. *Id.*

⁷⁵ *Id.* at 7. To qualify for the EIC, any investment income must be less than \$3,400. *Id.* at 3.

⁷⁶ *Id.* at 19. Servicemembers cannot include basic allowance for subsistence (BAS) or basic allowance for housing (BAH) as income for EIC

purposes. *Id.* There are several online EIC calculators that can assist servicemembers in deciding whether or not to include not-taxable combat pay in their income for the purposes of qualifying for the EIC. *See, e.g., Earned Income Credit (EIC) Calculator*, DINKYTOWN.NET, <https://www.dinkytown.net/java/EarnedIncomeCredit.html> (last visited Oct. 20, 2016).

⁷⁷ I.R.S. PUB. 596, *supra* note 73, at 19. To qualify for the EIC, the taxpayer must have lived in the United States for more than half of the calendar year, however, military members stationed (outside the continental United States) OCONUS or on OCONUS deployment orders will be considered to have lived in the United States during that period of time. *Id.* at 17.

⁷⁸ Joint Committee on Taxation, *Technical Explanation of H.R. 3365, the “Military Family Tax Relief Act of 2003,” as Passed by the House of Representatives and the Senate* (2003).

⁷⁹ INTERNAL REVENUE SERV., PUB. 523, SELLING YOUR HOME (Dec. 28, 2015) [hereinafter I.R.S. PUB. 523].

⁸⁰ 26 U.S.C.A. § 121 (West 2015). To be eligible to exclude up to \$500,000.00 in gain, married taxpayers must file jointly the year the home was sold. *Id.*

⁸¹ *Id.*

orders serving on “qualified official extended duty” at least fifty miles from the home.⁸² This ten-year suspension gives servicemembers more flexibility when selling homes they purchased prior to or while on active duty, and allows them to reap the benefits of the capital gains exclusion. Servicemembers that own more than one residential property may only make the ten-year suspension election for one property at a time.⁸³

To better understand the ten-year military suspension exception, consider the example of First Lieutenant (1LT) Melissa Biddle. She bought a single-family home in Colorado Springs, Colorado, in May of 2007 and lived there with her family until May of 2010 when they moved, pursuant to military orders, to Fort Belvoir, Virginia. After her PCS, 1LT Biddle’s mother moved into the home in Colorado and 1LT Biddle never again used the home as her primary residence. First Lieutenant Biddle’s mother moved out of the home in May of 2015, and 1LT Biddle put the house on the market, selling it within the month. Even though 1LT Biddle had not lived in the home since 2010, she was able to use the MFTRA to suspend the ownership and use test for five years (2010-2015) so that when she sold the home, she did not have to pay capital gains taxes on the \$90,000 profit she made.⁸⁴

D. Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA) provides additional tax protections for servicemembers.⁸⁵ If a servicemember provides notice to the IRS or state tax authority that the servicemember is unable to pay income taxes that came due before, or during military service, the taxes may be deferred.⁸⁶ The servicemember must show that military service materially affected the ability to pay the

taxes.⁸⁷ The deferment period will last no longer than 180 days after release from military service.⁸⁸ In addition, no interests or penalties will accrue while the taxes are in a deferred status.⁸⁹

IV. Education-Based Tax Benefits

In addition to tax benefits realized as a result of special military compensation and tax exemptions, since 1944, Congress has provided tax-free education benefits to servicemembers.⁹⁰ These benefits were initially intended to provide assistance to veterans after the completion of their military service, but these benefits have evolved substantially in the decades that followed.⁹¹ Education benefits are now used as a recruiting and retention tool and can comprise a significant portion of a servicemember’s non-cash tax-free compensation, if fully utilized.⁹²

A. Reserve Officers Training Course

The Reserve Officers Training Course (ROTC) is a college-based officer leader development program. Students who sign a contract to serve in the military after college are eligible to receive certain tax-free benefits while still in college.⁹³ Tax-free benefits include ROTC education allowances such as tuition and books⁹⁴ as well as subsistence allowances paid to cadets while in school.⁹⁵ Subsistence allowances typically range from \$300—\$500 per month, depending on the level achieved in the ROTC curriculum.⁹⁶ However, pay received during weekend drills and annual

⁸² *Id.* “The term ‘qualified official extended duty’ means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.” *Id.* “The term ‘extended duty’ means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.” *Id.*

⁸³ *Id.*

⁸⁵ 50 U.S.C.A. § 4000 (West 2015).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ DAVID P. SMOLE & SHANNON S. LOANE, CONG. RES. SERV., RL34549, A BRIEF HISTORY OF VETERANS’ EDUCATIONAL BENEFITS AND THEIR VALUE 5 (2008).

⁹¹ *Id.*

⁹² *Id.* at 2. A little-known program for military spouses is the Military Spouse Career Advancement Accounts (MyCAA). This is a scholarship program for qualifying spouses of active duty servicemembers and reserve component members serving on Title 10. The spouse must be able to start and finish the program of instruction while the military sponsor is on Title

10 orders. The program offers scholarships in an amount up to \$2,000 per fiscal year with a maximum total cap of \$4,000 per spouse. The scholarships are non-taxable and may be used for spouses to obtain professional licenses, certificates, certifications, or certain Associate’s Degrees necessary for their gainful employment. Civilian spouses of servicemembers in the pay grades of E-1 to E-5, W-1, W-2, O-1, and O-2 are eligible to participate in MyCAA. *MyCAA Military Spouse Frequently Asked Questions*, MILITARY ONESOURCE (June 12, 2012) <http://download.militaryonesource.mil/12038/Project%20Documents/MilitaryHOMEFRONT/MyCAA/SpouseFAQs.pdf>.

⁹³ *Tax Help for Military Members and Veterans*, TAX HELP, <http://taxhelp.org/resources/military> (last visited Oct. 20, 2016).

⁹⁴ Scholarships for tuition and related expenses received by a taxpayer seeking a degree at an educational organization are not included in gross income. 26 U.S.C.A. § 117 (West 2015). Expenses can include “fees, books, supplies, and equipment required for courses of instruction at such an educational organization.” *Id.*

⁹⁵ I.R.S. PUB. 3, *supra* note 26, at 5.

⁹⁶ *Scholarships for Students & Enlisted Soldiers*, U.S. ARMY ROTC, <http://www.goarmy.com/rotc/scholarships.html> (last visited Oct. 20, 2016). Currently, first year students will receive a tax-free stipend of \$300, second year students will receive a tax-free stipend of \$350, third year students will receive a tax-free stipend of \$450, and fourth year students will receive a tax-free stipend of \$500 per month. *Id.*

summer advanced training camps are taxable income.⁹⁷

B. The Government Issue Bill

There are currently two versions of the Government Issue (GI) Bill: the Montgomery GI Bill (MGIB) and the Post-9/11 GI Bill. Education assistance received under either GI Bill are non-taxable and do not need to be included in gross income calculations.⁹⁸

1. The Montgomery GI Bill

The MGIB provides up to thirty-six months of education benefits to veterans and servicemembers that have completed at least two years of active duty service, had \$1,200 deducted from their pay for the MGIB program, and meet other eligibility requirements.⁹⁹ Notably, veterans must have been discharged from the service with an honorable discharge.¹⁰⁰ The program covers educational costs of obtaining an undergraduate degree at a college or university, some independent study programs and distance learning, cooperative training programs, and accredited certificate or diploma programs.¹⁰¹ The program also pays for apprenticeships and on-the-job training, correspondence courses, preparatory courses for tests required for admission to an institution of higher learning, flight school, study abroad, and other education programs.¹⁰² Monthly benefits under the MGIB depend on the specific education program, the servicemember's length of service, the eligibility category

⁹⁷ *Special Tax Benefits for Armed Forces Personnel*, IRS (Jan. 23, 2012), <https://www.irs.gov/uac/Special-Tax-Benefits-for-Armed-Forces-Personnel>

⁹⁸ *Education and Training*, U.S. DEP'T OF VETERANS AFFS. (Feb. 29, 2015), http://www.benefits.va.gov/gibill/post911_gibill.asp.

⁹⁹ *Montgomery GI Bill Active Duty (MGIB-AD)*, U.S. DEP'T OF VETERANS AFFS. (Oct. 6, 2015), http://www.benefits.va.gov/gibill/mgib_ad.asp [hereinafter *Montgomery GI Bill Active Duty*]. "Participants must have a high school diploma or GED [General Educational Development (GED) Test] or in some cases 12 hours of college credit" and meet the additional requirements contained in one of the four eligibility categories. *Id.* There is also a version of the Montgomery GI Bill for reservists called the Montgomery GI Bill for Selected Reserve (MGIB-SR). In order to qualify for MGIB-SR benefits, the servicemember must incur a six-year obligation in the selected reserve and actively drill. U.S. DEP'T OF VETERANS AFF., PAM. 22-90-3, THE MONTGOMERY GI BILL—SELECTED RESERVE (Jan. 2007) [hereinafter VA PAM. 22-90-3].

¹⁰⁰ *Montgomery GI Bill Active Duty*, *supra* note 99.

¹⁰¹ U.S. DEP'T OF VETERANS AFF., PAM. 22-90-2, THE MONTGOMERY GI BILL—ACTIVE DUTY 23 (Feb. 2011) [hereinafter VA PAM. 22-90-2].

¹⁰² *Id.* Other education programs include remedial or deficiency courses, refresher courses, tutorial training, vocational rehabilitation courses, work-study programs, small business education, benefits for national admissions exams, and high-cost, high-technology programs. *Id.* at 24-27.

¹⁰³ *Montgomery GI Bill Active Duty*, *supra* note 99. Servicemembers that contributed to the \$600 buy-up program are entitled to an additional \$5,400 in benefits. *Id.* Benefits under the Montgomery GI Bill Active Duty (MGIB-AD) typically expire ten years after the servicemember's honorable discharge. *Id.* Current MGIB-AD rates can be found on the Department of Veterans Affairs website. See *Montgomery GI Bill Active Duty (Chapter 30) Increased Educational Benefit*, U.S. DEP'T OF VETERANS AFFS.,

of the servicemember, and if the Service member contributed to the \$600 buy-up program.¹⁰³

2. The Post-9/11 GI Bill

The Post-9/11 GI Bill is an educational benefit for servicemembers that served on active duty after September 10, 2001.¹⁰⁴ To be eligible, servicemembers must have served on active duty for at least ninety aggregate days or have been honorably discharged with a service-connected disability after having served at least thirty continuous days.¹⁰⁵ Unlike the MGIB, servicemembers are not required to pay for the program. Benefits include a percentage of tuition and fees¹⁰⁶ for the same types of educational programs covered by the MGIB, as well as a monthly housing allowance (MHA) and up to \$1000 per year to cover books and fees.¹⁰⁷ Servicemembers have up to fifteen years after leaving active duty to use Post-9/11 GI Bill benefits, and in some instances, can transfer the benefits to an eligible dependent.¹⁰⁸

3. The Yellow Ribbon Program

The Yellow Ribbon Program was established under the Post-9/11 GI Bill in 2008.¹⁰⁹ The Yellow Ribbon Program allows colleges, universities, and certain degree-granting schools to voluntarily agree to fund tuition and fees that exceed what is normally covered under the standard Post-9/11 GI Bill.¹¹⁰ The institutions enter into an agreement with

http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch30/ch30rates100115.asp (last visited Oct. 20, 2016).

¹⁰⁴ U.S. DEP'T OF VETERANS AFF. PAM. 22-09-01, POST-9/11 GI BILL (May 2012) [hereinafter VA PAM. 22-90-01].

¹⁰⁵ *Id.*

¹⁰⁶ The benefits are based on a sliding scale corresponding to time served on active duty. The minimum benefit is forty percent of in-state tuition and fees payable for up to six months and the maximum benefit is one hundred percent of in-state tuition and fees payable for up to thirty-six months. *Id.*

¹⁰⁷ *Id.* For veterans pursuing resident training, the monthly housing allowance (MHA) is equal to the BAH rate of an E-5 with dependents based on the zip code of the school. Veterans enrolled in classes less than half time are not entitled to the MHA. Servicemembers still on active duty are not entitled to the MHA. *Id.*

¹⁰⁸ To be eligible to transfer Post-9/11 GI Bill benefits, servicemembers must have served at least six years on active duty as of the date of transfer approval and then agree to serve an additional four years. Qualifying members can transfer all or a portion of their unused benefits to their spouse and children as long as their dependents are enrolled in the Defense Eligibility Enrollment Reporting System (DEERS). *Transfer Post-9/11 GI Bill to Spouse and Dependents*, U.S. DEP'T OF VETERANS AFFS. (Mar. 2, 2015), http://www.benefits.va.gov/gibill/post911_transfer.asp.

¹⁰⁹ U.S. DEP'T OF VETERANS AFF., PAM. 22-09-2, POST-9/11 GI BILL YELLOW RIBBON PROGRAM (June 2014) [hereinafter VA PAM. 22-09-2].

¹¹⁰ *Id.* Active duty servicemembers and their spouses do not qualify for the Yellow Ribbon Program. Only veterans eligible for Post-9/11 GI Bill benefits at the one hundred percent rate and non-spouse dependents of active duty servicemembers are eligible to participate. *Id.*

the VA whereby the VA agrees to match the additional contribution up to fifty percent of the difference.¹¹¹ The Yellow Ribbon Program benefits are non-taxable.¹¹²

C. Military Tuition Assistance

The Military Tuition Assistance (MTA) program is another form of financial aid offered to active duty servicemembers and some qualified members of the reserves.¹¹³ Each service component has its own qualification criteria.¹¹⁴ The MTA program is for servicemembers seeking to further their professional or personal self-development through continuing education on a voluntary basis during their off-duty time. The MTA program will generally cover tuition and fees up to \$4,500 per fiscal year.¹¹⁵ Money received under the MTA program does not need to be repaid and is non-taxable.¹¹⁶

V. Tax Benefits for Survivors and Dependents

In the unfortunate event of a servicemember's death, the DoD will provide a non-taxable death gratuity in the amount of \$100,000 to the servicemember's beneficiary to assist with funeral expenses and immediate necessary living expenses.¹¹⁷ In addition, the DoD, VA, Social Security Administration, and IRS provide additional tax breaks and tax-free allowances to dependent-survivors, as outlined below.

A. Survivor Benefit Plan

¹¹¹ *Id.* The Department of Veterans Affairs website contains a list of institutions that participate in the Yellow Ribbon Program. *Yellow Ribbon Program Information 2015–2016*, U.S. DEP'T OF VETERANS AFFS., http://www.benefits.va.gov/GIBILL/yellow_ribbon/yrp_list_2015.asp (last visited Oct. 20, 2016).

¹¹² VA PAM. 22-90-01, *supra* note 103.

¹¹³ *Tax Help for Military Members and Veterans*, TAX HELP, <http://taxhelp.org/resources/military> (last visited Oct. 20, 2016).

¹¹⁴ *Military Tuition Assistance*, MILITARY.COM (Aug. 2014), <http://www.military.com/education/money-for-school/army-tuition-assistance.html> [hereinafter *Military Tuition Assistance*].

¹¹⁵ U.S. DEP'T OF ARMY, REG. 621-5, ARMY CONTINUING EDUC. SYS. (11 July 2006) (RAR 6 Sept. 2009).

¹¹⁶ *Military Tuition Assistance*, *supra* note 114.

¹¹⁷ U.S. DEP'T OF DEF., 7000.14-R, DOD FIN. MGMT. REG., vol. 7A, ch. 36 (Feb. 2014).

¹¹⁸ Simply put, “[a]n annuity is a monthly payment for the lifetime of the beneficiary.” *Survivor Benefit Plan*, DEF. FIN. & ACCT. SERV. (Mar. 20, 2015), <http://www.dfas.mil/retiredmilitary/provide/sbp.html> [hereinafter *Survivor Benefit Plan*]. The annuity payments terminate, however, when a beneficiary dies or becomes ineligible. *Educate Your Beneficiaries*, DEF. FIN. & ACCT. SERV. (Mar. 20, 2015), <http://www.dfas.mil/retiredmilitary/provide/sbp/educate.html>. Payments will stop for children under the Survivor Benefit Plan (SBP) when they

The Department of Defense offers the Survivor Benefit Plan (SBP), which provides a monthly annuity¹¹⁸ to military dependents or authorized designated beneficiaries,¹¹⁹ in the event of a servicemember's or retiree's death.¹²⁰ While on active duty, enrollment in the SBP is automatic for those with eligible dependents and is provided at no cost to the servicemember.¹²¹ Annuities for qualifying active duty deaths will be paid at a rate equal to fifty-five percent of what the servicemember's retirement pay would have been if the servicemember had been retired with full disability benefits.¹²² Upon retirement, servicemembers can opt into the SBP by electing a percentage of their retirement benefits to be paid to their beneficiaries and paying the associated monthly premiums.¹²³

Military retirees can elect to have their monthly annuities automatically deducted from their gross retirement pay prior to federal income tax deductions.¹²⁴ This deduction works to decrease the retiree's total taxable income while allowing them to provide a guaranteed income for their designated beneficiaries upon their death.¹²⁵ This is a tax advantage over similar commercial pension plans that draw premiums from post-tax income.¹²⁶

B. Dependency and Indemnity Compensation

Dependency and Indemnity Compensation (DIC) is a benefit paid by the VA to dependents of servicemembers who died in the line of duty or to dependents of veterans who died as a result of a service-connected injury or disease.¹²⁷ Compensation is typically paid to a surviving spouse, child,

reach age eighteen, and payments will stop for spouses if they remarry before age fifty-five. *Id.*

¹¹⁹ Authorized beneficiaries include spouses, to include same-sex spouses, but not civil unions or domestic partnerships; children; former spouses; and other individuals the Service member has a legitimate insurable interest in, such a sibling. *Survivor Benefit Plan*, *supra* note 118.

¹²⁰ 10 U.S.C.A. § 73 (West 2015).

¹²¹ For servicemembers who are not yet retirement-eligible and die while on active duty, their death must be found to be “in Line of Duty” for SBP benefits to attach. 10 U.S.C.A. § 1448 (West 2015). For more information on line of duty determinations and how the results can affect benefits see Major Melvin L. Williams, *In the Line of Duty? A Primer on Line of Duty Determinations and the Impact on Benefits for Soldiers and Families*, ARMY LAW., Nov. 2014, at 20.

¹²² 10 U.S.C.A. § 1451 (West 2015). This is effectively equal to seventy-five percent of full retired pay.

¹²³ *Survivor Benefit Plan*, *supra* note 118. The cost of the survivor benefit plan (SBP) for retirees will not exceed 6.5% of their gross retirement pay for spousal coverage. *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ The recipients of the SBP annuities are taxed on the benefit and must report it as gross income. *Id.*

¹²⁷ *Dependency and Indemnity Compensation*, U.S. DEP'T. OF VETERANS AFFS. (Jan. 8, 2016), <http://www.benefits.va.gov/COMPENSATION/types->

or parent of the deceased servicemember or veteran.¹²⁸ The basic current DIC entitlement for a spouse or child-dependent is \$1,254.19 per month.¹²⁹ Additional entitlements may be authorized.¹³⁰ Unlike SBP benefits, DIC benefits are tax-free and do not need to be reported in gross income.¹³¹

Surviving spouses and children may be entitled to both SBP and DIC benefits, but under these circumstances, surviving spouses will see a reduction in the amount of the SBP.¹³² Any SBP benefits received by a surviving spouse will be off-set dollar-for-dollar by any authorized DIC benefits.¹³³ Surviving spouses whose SBP payments are reduced by DIC are eligible to receive the Special Survivor Indemnity Allowance (SSIA). The amount of SSIA is currently \$275 per month and is set to increase to \$310 per month on October 1, 2016.¹³⁴

C. Survivors' and Dependents' Educational Assistance Program

The Survivors' and Dependents' Educational Assistance (DEA) Program is an education program for dependents of servicemembers who died while on active duty as a result of a service-connected condition and dependents of veterans that died as a result of a service-connected condition, or that are

dependency_and_indemnity.asp [hereinafter *Dependency and Indemnity Compensation*].

¹²⁸ Dependency and Indemnity Compensation (DIC) will only be paid to a parent if they were financially dependent on the deceased Service member/veteran. The compensation is subject to income limitations. For current Parent DIC rates, see *Parents Dependency and Indemnity Compensation*, U.S. DEP'T OF VETERANS AFFS., http://benefits.va.gov/Pension/current_rates_Parents_DIC_pen.asp (last visited Oct. 20, 2016).

¹²⁹ *Dependency and Indemnity Compensation—Effective 12/1/14*, U.S. DEP'T OF VETERANS AFFS. (Jan. 13, 2016), http://benefits.va.gov/Compensation/current_rates_dic.asp#BM02.

¹³⁰ A surviving spouse of a disabled veteran who was rated totally disabled for a period of eight years preceding the death, and who was married to the Service member for those same eight years, is entitled to an additional payment of \$266.32 per month. *Id.* Each dependent under age eighteen is entitled to \$310.71 per month. *Id.*

¹³¹ *Dependency and Indemnity Compensation*, *supra* note 127.

¹³² Many believe that having SBP benefits off-set by DIC entitlements is unfair to military widows, especially when a Service member has paid for the protection of an annuity. Lawmakers are reviewing several proposals but so far have made no promises for relief. Tom Philpott, *Military Update: House Eyes Giving Widows More Relief from 'SBP-DIC' Offset*, STARS & STRIPES (Dec. 30, 2015), <http://www.stripes.com/news/us/military-update-house-eyes-giving-widows-more-relief-from-sbp-dic-offset-1.386519>.

¹³³ Under these circumstances, the spouse could elect to have a surviving child receive the SBP benefits while the spouse received only the DIC benefits. 10 U.S.C.A § 1451 (West 2015).

If the DIC payment offsets the entire SBP annuity, no annuity is paid and the SBP premiums for spouse coverage paid by the member are refunded to the surviving spouse. If the DIC payment is less than the SBP annuity, the spouse is paid an SBP annuity equal to the difference between the full annuity and the DIC. A refund of SBP premiums is made based on the difference between the costs actually incurred and the costs

permanently and totally disabled as a result of a service-connected condition.¹³⁵ Dependents include both spouses as well as children, to include step-children and adopted children.¹³⁶ Qualified survivors and dependents are eligible to receive up to forty-five months of education assistance for degree and certificate programs, cooperative training, on the job training, as well as other education benefits.¹³⁷ Educational benefits received under the DEA are non-taxable and do not need to be reported as income.¹³⁸

D. Marine Gunnery Sergeant John David Fry Scholarship

The Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) extends the benefits of the Post-9/11 GI Bill to the children and surviving spouses of servicemembers that die in the line of duty after September 10, 2001.¹³⁹ The tax-free benefits include up to thirty-six months of tuition and fee payments, the MHA, and a yearly stipend for books and supplies.¹⁴⁰ Surviving spouses will lose eligibility for the Fry Scholarship upon remarriage, but children's benefits will not be affected by marriage.¹⁴¹ In general, an election must be made between receiving benefits under the DEA Program or the Fry Scholarship.¹⁴²

that would have been incurred in order to provide the annuity payable after the DIC reduction. . . . The SBP cost refund is taxed as income to the spouse since the premiums were not taxed when they were deducted from the member's retired pay; however, any portion of the SBP premium refund that was paid from a member's VA [U.S. Department of Veterans Affairs] disability compensation should not be considered taxable.

Effect on SBP if DIC is Awarded by the VA, A.F. RETIREE SERV. (Jan. 6, 2016), <http://www.retirees.af.mil/factsheets/factsheet.asp?id=11696>.

¹³⁴ *Id.* Special Survivor Indemnity Allowance (SSIA) benefits are taxable and must be reported in gross income. The SSIA benefits are set to expire completely on October 1, 2017, unless re-appropriated. *Id.*

¹³⁵ U.S. DEP'T OF VETERANS AFF., PAM. 22-73-3, DEPENDENTS' EDUC. ASSISTANCE PROGRAM (DEA) (Apr. 2010) [hereinafter VA PAM. 22-73-3].

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Once a child receives payments under the Dependent's Educational Assistance Program (DEA), they are no longer able to receive DIC entitlements. Spouses may continue to receive payments under both DEA and DIC. *Education and Training—Dependents Educational Assistance Program*, U.S. DEP'T OF VETERANS AFFS. (Apr. 6, 2015), <http://www.benefits.va.gov/GIBILL/DEA.asp>.

¹³⁹ *Education and Training—Fry Scholarship*, U.S. DEP'T OF VETERANS AFFS. (Apr. 6, 2015), http://www.benefits.va.gov/GIBILL/Fry_scholarship.asp.

¹⁴⁰ *Id.* Fry Scholarship recipients are not eligible for the Yellow Ribbon Program. *Id.*

¹⁴¹ *Id.*

¹⁴² As of January 1, 2015, surviving spouses must make an irrevocable election between benefit programs. A child whose parent died before August 1, 2011, may be eligible for both benefits but can only use one

E. Tax Forgiveness for Combat-Zone Deaths

If a servicemember on active duty dies in a CZ,¹⁴³ or dies outside of a CZ due to an injury, wound, or illness sustained while serving in a CZ, all tax liability will be forgiven for the tax year in which the death occurred.¹⁴⁴ In addition, the income tax for any earlier tax year ending on or after the first day the Service member served on active duty in a CZ will also be forgiven, subject to the statute of limitations (SOL).¹⁴⁵ As a result, income taxes for prior years in which the servicemember served in *any* CZ can be amended so long as they fall within the SOL, potentially resulting in a significant amount of money going to the servicemember's estate.¹⁴⁶ The CZ tax forgiveness, however, only applies to the servicemember's tax liability, and does not forgive the tax liability of a surviving spouse filing a joint return.¹⁴⁷

To better understand tax forgiveness for CZ deaths, consider the hypothetical example of Staff Sergeant (SSG) Mike Smith. He is married with one child. Staff Sergeant Smith deployed to Afghanistan from February 2012 until February 2013 and filed his 2012 and 2013 taxes within the time allowed by the CZ tax extensions. Staff Sergeant Smith deployed to Iraq in December of 2015 and was killed in action in January 2016. The IRS forgave and refunded all taxes owed by SSG Smith for tax years 2015 and 2016. Staff Sergeant Smith's wife, who was the executor of his estate, also filed amended tax returns for tax years 2012 and 2013. The IRS forgave and refunded all taxes owed by SSG Smith for those years as well since the three year SOL had not yet expired, and SSG Smith had served on active duty in a CZ during that time. The taxes were refunded and paid to SSG Smith's estate.

VI. Conclusion

As a servicemember, it *pays* to be aware of, and take full advantage of, all of the tax-free benefits derived from military service. Understanding the full extent of the military compensation system, including the tax-free income and tax-

free benefits, will help servicemembers properly value military compensation packages against potential civilian employment offers and retirement plans. Virtually no other employer in the country offers the lucrative and tax-free education benefits provided by the military. These education packages can help servicemembers advance in their military careers, set them up for future success if they join the civilian work force, or help them save significant amounts of money when sending a spouse or children to college. In addition, the financial security and benefits provided to families of fallen servicemembers can prove to be invaluable. Working with military tax specialists and financial planners is a sure bet to financial security that certainly beats one in 292,201,338 odds.

program at a time for a combined total of eighty-one months of benefits. A child whose parent died after July 31, 2011, must make an irrevocable election between benefit programs. *Education and Training-Dependents Educational Assistance Program*, U.S. DEP'T. OF VETERANS AFFS. (Apr. 6, 2015), <http://www.benefits.va.gov/GIBILL/DEA.asp>. For a chart comparing the educational benefits of both programs, see *Survivors and Dependents Assistance*, U.S. DEP'T OF VETERANS AFFS., http://www.benefits.va.gov/gibill/survivor_dependent_assistance.asp (last visited Oct. 20, 2016).

¹⁴³ "The term 'combat-zone' means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have engaged in combat." 26 U.S.C.A. § 112 (West 2015).

¹⁴⁴ 26 U.S.C.A § 692 (West 2015). Decedent servicemembers will also qualify for tax forgiveness if they were serving on active duty outside the combat-zone (CZ) if their service was in direct support of military operations in the CZ, and were receiving hostile fire or imminent danger pay. I.R.S. PUB. 3, *supra* note 26, at 9.

¹⁴⁵ *Id.* at 21.

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

26 U.S.C. A. § 6511 (West 2015). In addition to the standard three year statute of limitations (SOL), the Service member's estate will still get the benefit of any CZ tax filing extensions under the Servicemembers Civil Relief Act when calculating which tax years may still be open for purposes of filing amended returns. I.R.S. PUB. 3, *supra* note 26, at 21.

¹⁴⁶ I.R.S. PUB. 3, *supra* note 26, at 21.

¹⁴⁷ *Id.*

Appendix A. Veterans' Benefits

State/Territory	Property Tax	Education Benefits	Income Tax	Resources
Alabama	A disabled veteran in Alabama may receive a full property tax exemption on his/her primary residence if the veteran is 100 percent disabled as a result of service and has a net annual income of \$12,000 or less.	<u>Tuition Waiver for Purple Heart Medal Recipients</u> Public institutions of higher learning in the State of Alabama, including two-year and four-year postsecondary technical colleges, community colleges, and junior colleges, may waive tuition and fees for recipients of the Purple Heart Medal for undergraduate studies. <u>G.I. Dependents' Scholarship Program</u> This program is administered by the ADVA and is governed by ALA. CODE §§ 31-6-1, et seq.	Effective January 1, 1989, and for all successive tax years, all retirement or compensation received as retirement benefits by any person retired from the military service of the United States of America and survivor benefits derived therefrom is hereby exempt from any state, county or municipal income tax or like tax whatever name called.	http://www.military.com/benefits/veteran-state-benefits/alabama-state-veterans-benefits.html
Alaska	A disabled veteran in Alaska may receive a property tax exemption of up to the first \$150,000 of the assessed value of his/her primary residence if the veteran is 50% or more disabled as a result of service.	<u>Free Tuition for Spouse or Dependent of Armed Services Member</u> The spouse or dependent of a Service member who died in the line of duty or who died as a result of injuries sustained while in the line of duty or who was listed as a POW or as MIA is entitled to a waiver of undergraduate tuition and fees the students must be in good standing in a state supported educational institution in Alaska.	No state income tax.	http://www.military.com/benefits/veteran-state-benefits/alaska-state-veterans-benefits.html
Arizona	A disabled veteran in Arizona may receive a property tax exemption of \$3,000 on his/her primary residence if the total assessed value does not exceed \$10,000.	<u>Tuition Waivers for War-Wounded and Dependents of Killed in Action</u> A former member of the Arizona National Guard who received a purple heart citation on or after September 11, 2001 (who was medically discharged because of a service-connected injury) is eligible for a tuition waiver. A tuition waiver for Arizona community colleges and universities is also available to a dependent of the national guard member or member of the United States armed forces who was a resident of the state of Arizona or stationed in Arizona and who was killed in the line of duty or who died from injuries suffered in the line of duty while traveling to or from duty.	Federal (Civil Service or Military Retirement) payments up to \$2,500.00 per year are exempt.	http://www.military.com/benefits/veteran-state-benefits/arizona-state-veterans-benefits.html
Arkansas	A disabled veteran in Arkansas may receive a full	Arkansas Department of Higher Education has the authority to provide free tuition and fees at	Provides an exemption of the first \$9,000.00 of active duty pay or the	http://www.military.com/benefits/veteran-

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	property tax exemption on his/her primary residence if the veteran is blind in one or both eyes, lost the use of one or more limbs or is 100% disabled as a result of service.	any state supported college, university, technical school, or vocational school; to the wife and children of any Arkansan who has been declared to be a POW or placed in a MIA status since January 1, 1960. The same provisions apply to the surviving spouse and children of any Arkansas resident killed in action since 1960.	first \$6,000.00 of retired pay. The exemptions include Reserve and National Guard Components or for retired members who are residents of the State of Arkansas.	state-benefits/arizona-state-veterans-benefits.html
California	A disabled veteran in California may receive a full property tax exemption on his/her primary residence if the full value does not exceed \$150,000, household income does not exceed \$40,000, and the veteran is blind in both eyes, lost the use of two or more limbs or is 100% disabled as a result of service.	<u>College Tuition Fee Waivers for Veterans' Dependents</u> Waiver of mandatory system-wide tuition and fees at any State of California Community College, California State University or University of California campus, for qualified dependents.	There is state tax on military retired pay.	http://www.military.com/benefits/veteran-state-benefits/california-state-veterans-benefits.html
Colorado	A disabled veteran in Colorado may receive a property tax exemption of 50% of the first \$200,000 of the actual value of his/her primary residence if the veteran is 100% disabled.	<u>Tuition Assistance</u> Any member of the Colorado National Guard is eligible for state tuition assistance, up to 100% tuition paid at any CO state-funded school depending on funding available. <u>Tuition Assistance for Children of POWs, MIAs, or Disabled/Deceased ARNG</u> Free tuition in certain State-support schools for children of POWs or persons MIA who were Colorado residents when they entered the Armed Forces, or for children of Colorado National Guardsmen who died or were permanently disabled while on State active duty limited to dependents who do not qualify for Federal Education benefits.	Effective January 1, 2016 active duty military pay is tax-free for Colorado residents. Military retirees ages 55 - 64 can exclude up to \$20,000 in any one taxable year from their retirement pay, those 65 and over can exclude up to \$24,000.	http://www.military.com/benefits/veteran-state-benefits/colorado-state-veterans-benefits.html
Connecticut	A disabled veteran in Connecticut may receive a property tax exemption on his/her primary	<u>Educational Benefit/Tuition Waivers</u> State law provides that tuition and fees at state educational institutions be waived for certain veterans and dependents.	Connecticut veterans receiving federally taxable military retirement pay are eligible for an exemption from the state income	http://www.military.com/benefits/veteran-state-benefits/connecticut-state-

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	residence of \$1,500 if 10-25% disabled and \$3,000 if 75-100% disabled. In addition, a veteran that is blind in both eyes or lost the use of two or more limbs as a result of service is eligible for a \$10,000 exemption. Veterans that lost the use of one limb receive a \$5,000 exemption.		tax. Connecticut applies a 50% exemption from the state income tax on federally taxable military retirement pay to members of the U.S. Army, Navy, Air Force, Marines, Coast Guard, and Army and Air National Guard.	veterans-benefits.html
Delaware	There are currently no state-mandated property tax exemptions for disabled veterans in Delaware.	<u>Educational Benefits For Children of Deceased Veterans</u> Applicant shall be: the child of a member of the armed forces who was killed while on active duty or who died from disease, wounds, injuries or disabilities arising or resulting from performance of duty; a member of the armed forces who is being held, or who was held as a POW; or a member of the armed forces officially declared MIA; a person who at the time of application for benefits is at least 16 years of age, but not more than 24 years of age, and a resident of the State for at least 3 years prior to the date of application; attending or admitted for attendance at an educational institution beyond the high school level in a program not to exceed four years in duration	Persons under age 60 receiving pensions from employers, the United States, the State or any subdivision thereof, may deduct up to \$2,000 off of their federal adjusted gross income. Amounts received as pension by persons age 60 or older from employers, the United States, the State or any subdivision thereof may deduct up to \$12,500 off of their federal adjusted gross income.	http://www.military.com/benefits/veteran-state-benefits/delaware-state-veterans-benefits.html
Florida	A disabled veteran in Florida may receive a property tax exemption of \$5,000 on any property he/she owns if 10% or more disabled and a full exemption if 100% disabled as a result of service.	<u>Tuition Waiver</u> Florida waives undergraduate-level tuition at state universities and colleges for Florida recipients of the Purple Heart and other combat-related decorations superior in precedence to the Purple Heart. <u>Reduced Tuition for National Guard</u> Active Florida Guard members in good standing as of June 30, 1997 are exempt from payment of one-half of tuition and fees. Individuals who enlist in the Guard after June 30, 1997 are eligible for full exemption of	Florida has no state income tax.	http://www.military.com/benefits/veteran-state-benefits/florida-state-veterans-benefits.html

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
		tuition and fees. <u>Education for Children Of Deceased Or Disabled Florida Veterans</u> Florida also provides 4-year college educational opportunities for dependent children and spouses of veterans who died from a service connected disability or who are 100% percent service-connected totally and permanently disabled veterans of the U.S. Armed Forces.		
Georgia	A disabled veteran in Georgia may receive a property tax exemption of up to \$60,000 or more on his/her primary residence, depending on a fluctuating index rate set by the U.S. Secretary of Veterans Affairs.	<u>Georgia HERO Scholarship</u> The Georgia HERO (Helping Educate Reservists and their Offspring) Scholarship Program was created to provide educational grant assistance to members of the Georgia National Guard and U.S. Military Reservists who served in combat-zones or the children of such members of the Georgia National Guard and U.S. Military Reserves. The grant is to attend an approved school for a maximum of up to 4 award years in the sum of \$2,000.00 per award year. No person shall be eligible to receive grant assistance provided under this subsection in excess of \$8,000.00.	Georgia offers a \$35,000 exemption for retirees ages 62 to 64, and a \$65,000 exemption if 65 or older. Disabled Veterans are exempt from payment of occupational taxes, administration fees, and regulatory fees imposed by local governments for peddling, conducting a business, or practicing a profession or semi profession.	http://www.military.com/benefits/veteran-state-benefits/georgia-state-veterans-benefits.html
Guam	Guam does not offer any military-specific property tax benefits.	Guam does not offer any military-specific education benefits.	Guam does tax military retirement pay.	http://myarmybenefits.us.army.mil/Home/Benefit_Library/State__Territory_Benefits/Territory_of_Guam.html
Hawaii	A disabled veteran in Hawaii may receive a full property tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service.	Hawaii does not offer any military-specific education benefits.	Hawaii does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/hawaii-state-veterans-benefits.html
Idaho	A disabled veteran in Idaho may receive a property tax exemption on	Idaho does not offer any military-specific education benefits.	Retirement benefits paid by the United States to a retired member of the U.S. Military or the un-	http://www.military.com/benefits/veteran-state-

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	his/her primary residence if the veteran is 10% or more disabled as a result of service. The exemption amount is determined based on income.		remarried widow of such member if the recipient is age 65 or older, or disabled and age 62 or older is deductible. When stationed outside the State of Idaho, active duty personnel are exempt from Idaho state income tax	benefits/idaho-state-veterans-benefits.html
Illinois	A qualified disabled veteran in Illinois with a disability of at least 50% but less than 70% will receive a \$2,500 reduction in EAV, and a disabled veteran with a disability of at least 70% will receive a \$5,000 reduction in EAV under the Disabled Veterans' Standard Homestead Exemption. In certain cases veterans may receive a property tax exemption of up to \$75,000 of the assessed value of his/her primary residence.	<u>Veterans' Grant</u> The Illinois Veteran Grant (IVG) Program pays tuition and certain fees at all Illinois state-supported colleges, universities and community colleges for qualifying Illinois residents. <u>MIA/POW Scholarship</u> Dependents of a veteran who has been declared by the Department of Defense or U.S. Department of Veterans Affairs to be a prisoner of war; missing-in-action; to have died as the result of a service-connected disability; or be permanently disabled from service-connected causes with 100% disability; and, who was an Illinois resident or was an Illinois resident within six months of entering service may be eligible for the scholarship.	Illinois does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/illinois-state-veterans-benefits.html
Indiana	A disabled veteran in Indiana may receive a property tax exemption of up to \$37,440 on his/her primary residence if the veteran is 100% disabled or is 62 years old or older with at least a 10% disability as a result of service.	<u>Free Tuition Program</u> Indiana offers free tuition at state schools to children under the age of 24 of disabled veterans, Purple Heart Recipients and their children, and children of former POW/MIA.	Indiana offers a \$5,000 exemption for military retirees/survivors age 60 or older.	http://www.military.com/benefits/veteran-state-benefits/indiana-state-veterans-benefits.html
Iowa	A veteran in Iowa may receive a property tax exemption of \$1,850 on his/her primary residence if the veteran	<u>War Orphans Educational Aid</u> Children of Iowa veterans killed in action following September 11, 2001 are eligible for up to \$11,844.00 per year in tuition assistance at an Iowa post-secondary institution.	Federal retirement pay received for military service and survivor benefits are exempted from state individual income tax.	http://www.military.com/benefits/veteran-state-benefits/iowa-state-veterans-benefits.html

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	served on active duty during a period of war or for a minimum of 18 months during peacetime.	<u>Branstad/Reynolds Scholarship Fund</u> The fund provides post-secondary educational scholarships for children of deceased military service members who died while in an active military status after September 11, 2001.		
Kansas	A disabled veteran in Kansas may receive a property tax exemption on his/her primary residence if the veteran is 50% or more disabled as a result of service and meets income requirements.	Kansas does not offer any military-specific education benefits.	Military retirement pay is not taxed by the state.	http://www.military.com/benefits/veteran-state-benefits/kansas-state-veterans-benefits.html
Kentucky	A disabled veteran in Kentucky may receive a property tax exemption of up to \$36,000 on his/her primary residence if the veteran is 100% disabled as a result of service.	<u>Tuition Waiver Program</u> The tuition waiver is provided for children, stepchildren, adopted children, spouses, and unremarried widow[er]s of KY veterans. An approved tuition waiver means a student may attend any two-year, four-year, or vocational technical schools that are operated and funded by Kentucky.	No state tax if retired before 1 Jan 1998, \$41,110 exemption if retired after 31 Dec 1997.	http://www.military.com/benefits/veteran-state-benefits/kentucky-state-veterans-benefits.html
Louisiana	A disabled veteran in Louisiana may receive a property tax exemption of up to the first \$150,000 of the assessed value of his/her primary residence if the veteran is 100% disabled as a result of service.	<u>Dependents Educational Assistance</u> Provides financial aid for children and surviving spouses of certain veterans of the state who died in service in the Armed Forces of the United States or died of a service connected disability incurred during a wartime period.	Military retirement benefits are exempt from Louisiana state taxes.	http://www.military.com/benefits/veteran-state-benefits/louisiana-state-veterans-benefits.html
Maine	A disabled veteran in Maine may receive a property tax exemption of up to \$6,000 on his/her primary residence if the veteran is 62 years or older or is 100% disabled.	Available to dependents of veterans who entered the service from Maine or have been a resident of Maine for 5 years immediately preceding application for the benefit. The veteran must be 100% service-connected, permanently and totally disabled, KIA, or died as a result of injuries suffered in-service.	Main offers a \$10,000 tax exemption for military retired pay.	http://www.military.com/benefits/veteran-state-benefits/maine-state-veterans-benefits.html
Maryland	A disabled veteran in Maryland may receive a property	Spouses and children of veterans who died on active duty or as a result of a service-connected	Military retirees are exempt from Maryland income tax on the first	http://www.military.com/benefits/veteran-

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service. The exemption amount is determined by the Maryland Department of Veterans Affairs.	disability or who are 100% service-connected disabled may qualify for education assistance.	\$5000 of their retirement income. In addition, military retirees who are over the age of 65, totally disabled, or who have a spouse who is totally disabled receive an additional subtraction.	state-benefits/maryl and-state-veterans-benefits.html
Massachusetts	A disabled veteran in Massachusetts may receive a property tax exemption on his/her primary residence of \$400 if 10% disabled, \$750 if the veteran lost the use of one hand, one foot or one eye, \$1,250 if the veteran lost the use of both hands, both feet or a combination of the two, or if the veteran is blind in both eyes as a result of service. A veteran may receive a \$1,000 exemption if 100% disabled as a result of service.	Veterans of Massachusetts can be eligible for a tuition waiver at any state-supported course in an undergraduate degree program offered by a public college or university. To be eligible, a veteran must also be a legal resident of Massachusetts and he/she must not be in default of any federal student loans. <u>Tuition and Fee Waivers for Guard Members</u> The Massachusetts National Guard Education Assistance Program provides a 100% tuition and fee waiver for Massachusetts National Guard soldiers attending a state college, university, or community college program.	Massachusetts does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/massachusetts-state-veterans-benefits.html
Michigan	A disabled veteran in Michigan may receive a full property tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service.	Michigan provides an annual undergraduate tuition grant of up to \$2,800 for the eligible children of certain deceased military personnel or totally and permanently disabled veterans.	Michigan does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/michigan-state-veterans-benefits.html
Minnesota	A disabled veteran in Minnesota may receive a property tax exemption of up to \$300,000 on his/her primary residence if the veteran is 100% disabled as result of service. Veterans with a	<u>Minnesota GI Bill</u> Available to Minnesota Veterans who served honorably in any branch at any time; non-veterans who served honorably for a cumulative total of 5 years or more as a member of the MN National Guard or any other active or reserve component and had active service after September 11, 2001; or eligible	Minnesota does tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/minnesota-state-veterans-benefits.html

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	disability rating of 70% or more may receive an exemption of up to \$150,000.	spouses, surviving spouses, and children of permanently and totally disabled veterans who are eligible for the Federal GI Bill under Chapters 33 or 35.		
Mississippi	A disabled veteran in Mississippi may receive a property tax exemption on his/her primary residence if the assessed value is \$7,500 or less and the veteran is 100% disabled as a result of service.	Children of any member of the armed services whose official home of record is in Mississippi and who is officially reported as being either a POW or MIA can receive an eight-semester scholarship, without cost, exclusive of books, food, school supplies, materials and dues or fees for extracurricular activities at any state supported college or university within the State.	Mississippi does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/mississippi-state-veterans-benefits.html
Missouri	A disabled veteran in Missouri may receive a property tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service.	<u>Missouri Returning Heroes' Education Act</u> This act limits the tuition to no more than \$50 per credit hour at public colleges and universities while enrolled in an undergraduate certificate or degree program after all other financial aid is taken into account. It is applicable to combat Veterans who served after September 11, 2001. Veteran remains eligible for ten years after honorable discharge.	Beginning January 1, 2016, all military retirement pension income will be exempt from state taxes.	http://www.military.com/benefits/veteran-state-benefits/missouri-state-veterans-benefits.html
Montana	A disabled veteran in Montana may receive a property tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service. The exemption amount varies based on income and marital status.	<u>Montana Honorably Discharged Veteran Tuition Waiver</u> The Montana Honorably Discharged Veteran Tuition Waiver eliminates tuition costs charged to a qualifying veteran-students.	Montana exempts the first \$3,600.00 of retired military pay from income tax as long as the federal adjusted gross income is \$30,000 or less when filing a single return, or filing jointly with a spouse and only one has taxable retirement income, or when filing as head of household.	http://www.military.com/benefits/veteran-state-benefits/montana-state-veterans-benefits.html
Nebraska	A disabled veteran in Nebraska may receive a property tax exemption on his/her primary residence if the veteran has lost the use of two or more limbs or has suffered severe eyesight loss as a result of service.	<u>Waiver of Tuition</u> The University of Nebraska, the state colleges, and community colleges on behalf of any eligible child, spouse, widow or widower that meets certain requirements may waive tuition. The waiver shall be valid for one degree, diploma, or certificate from a community college and one baccalaureate degree.	Nebraska allows tax payers who retired after July 18, 2014 the option to exclude 40% of their military retirement income for 7 taxable years or to exclude 15% until they turn 67. All other income is taxable.	http://www.military.com/benefits/veteran-state-benefits/nebraska-state-veterans-benefits.html

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
Nevada	A disabled veteran in Nevada may receive a property tax exemption of up to \$20,000 of the assessed value of his/her primary residence if the veteran is 60% or more disabled as a result of service.	Spouse and children of veterans killed in the line of duty are eligible for in-state tuition benefits.	Nevada does not have personal income tax.	http://www.military.com/benefits/veteran-state-benefits/nevada-state-veterans-benefits.html
New Hampshire	A disabled veteran in New Hampshire may receive a full property tax exemption on his/her primary residence if the veteran is 100% disabled, has lost two or more limbs or is blind in both eyes as a result of service.	<u>Free Tuition at Vocational-Technical College</u> The child of a missing Service member who was domiciled in this State serving after February 28, 1961, is entitled to free tuition at vocational-technical college so long as said missing person is so reported/listed as missing, captured, etc. <u>Free Tuition for Surviving Children of Military</u> Children of servicemembers who die in service during wartime, and children of certain wartime veterans who die from a service-connected disability, may qualify for free tuition at New Hampshire public institutions of higher learning. A scholarship for board, room, rent, books and supplies up to \$2,500 per year for a period of no more than 4 years at such educational institutions may be furnished.	New Hampshire does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/new-hampshire-state-veterans-benefits.html
New Jersey	A disabled veteran in New Jersey may receive a full property tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service.	<u>War Orphans Tuition Assistance</u> Children of servicemembers who died while in the military or due to service-connected disabilities, or who are officially listed as MIA may claim \$500 per year for 4 years of college or equivalent training. <u>POW and MIA Tuition Benefits</u> Free undergraduate tuition is available to any child born or adopted before, during or after the period of time his or her parent was officially declared a POW or MIA after Jan. 1, 1960.	U.S. military pension and survivor's benefit payments are not taxable for New Jersey gross income tax purposes, regardless of the recipient's age or disability status.	http://www.military.com/benefits/veteran-state-benefits/new-jersey-state-veterans-benefits.html
New Mexico	A disabled veteran in New Mexico may receive a full property tax exemption on his/her primary residence if the	<u>Children of Deceased Veterans</u> Children between the ages of 16-26 whose veteran parent was killed in action or died as a result of their wounds incurred in battle, qualify for a full tuition waiver at any state funded post-	New Mexico offers a low- and middle-income exemption. The maximum exemption is \$2,500. To qualify, the amount on line 7 of the state income tax form	http://www.military.com/benefits/veteran-state-benefits/new-mexico-state-

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	veteran is 100% disabled as a result of service.	secondary school. A \$150 stipend, per semester, will be issued to help with books or fees. <u>Wartime Veteran Scholarship Fund</u> Can be used by any veteran who has served in combat since 1990 and who has exhausted all available federal G.I. Education Benefits options.	must be equal to or less than \$36,667 (single), \$27,500 (married filing separately), or \$55,000 (married filing jointly). A deduction also applies for those 65 and older if adjusted gross income is not over \$51,000 for a joint return, \$28,500 for a single taxpayer, or \$25,500 for a married filing separately.	veterans-benefits.html
New York	A disabled veteran in New York may receive a property tax exemption on his/her primary residence. The exemption amount varies based on type of service and disability, as determined by the New York State Division of Veterans Affairs.	Veterans Tuition Awards (VTA) are awards for full-time and part-time study for eligible veterans matriculated at an undergraduate or graduate degree-granting institution or in an approved vocational training program in New York State. <u>New York State Regents Awards (for Children)</u> Regents Awards for Children of Deceased & Disabled Veterans provide up to \$450 per year to students whose parent(s) served in the US Armed Forces during specified times of national emergency. <u>Military Service Recognition Scholarship</u> Available to certain dependents of military personnel killed, severely and permanently disabled or missing in combat or a combat-zone of operation since August 2, 1990.	New York does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/new-york-state-veterans-benefits.html
North Carolina	A disabled veteran in North Carolina may receive a property tax exemption of up to the first \$45,000 of the appraised value of his/her primary residence if the veteran is 100% disabled as a result of service.	A 4-year scholarship program at approved schools in North Carolina has been established for the qualifying natural or adopted (before age 15) children of certain class categories of deceased, disabled, combat or POW/MIA veterans	North Carolina allows military members to receive a deduction up to \$4,000 (\$8,000 on joint returns) for military pay or survivor's benefits. Those with 5 years of service since August 12, 1989 are fully exempt.	http://www.military.com/benefits/veteran-state-benefits/north-carolina-state-veterans-benefits.html
North Dakota	A disabled veteran in North Dakota may receive a property tax exemption of up to the first \$120,000 on his/her primary residence if the	<u>Veterans Educational Training</u> is a free program of study funded by the state to prepare veterans for a certification program, two-year or four-year college degree. <u>Free Tuition to qualified Dependents in North Dakota</u> <u>Institution of Higher Education</u>	North Dakota excludes \$5,000 from military pensions, minus the amount of Social Security received. Out-of-state government pensions are fully taxed.	http://www.military.com/benefits/veteran-state-benefits/north-dakota-state-veterans-benefits.html

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	veteran is 50% or more disabled as a result of service.	Any dependent of a resident veteran who was KIA or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a POW, or was declared MIA will be allowed to obtain a bachelor's degree or certificate, for so long as the dependent is eligible, free of any tuition and fee charges.		
Ohio	A disabled veteran in Ohio may receive a property tax exemption of \$50,000 on his/her primary residence if the veteran is 100% disabled as a result of service.	<u>Ohio War Orphans Scholarship</u> The Ohio War Orphans Scholarship Program awards tuition assistance to the children of deceased or severely disabled Ohio veterans who served in the armed forces during a period of declared war or conflict.	Ohio does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/ohio-state-veterans-benefits.html
Oklahoma	A disabled veteran in Oklahoma may receive a full property tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service.	Oklahoma does not offer any military-specific education benefits.	Oklahoma waives the greater of \$10,000 or 75 percent of retirement income from taxation for retired service members.	http://www.military.com/benefits/veteran-state-benefits/oklahoma-state-veterans-benefits.html
Oregon	A disabled veteran or surviving spouse in Oregon may receive a property tax exemption on his/her primary residence if the veteran is 40% or more disabled as a result of service. The exemption amount varies annually according to income.	<u>Veterans' Dependent Tuition Waiver</u> This benefit is offered by the State of Oregon University System and local community colleges and provides a full tuition waiver (not fees) for a bachelor's or master's degree at an OUS institution for a child or spouse of a member of the United States Armed Forces who either died in active duty, became 100% disabled in connection with military service, or died as a result of a disability sustained in active duty.	Oregon military retirees may be eligible for a tax waiver.	http://www.military.com/benefits/veteran-state-benefits/oregon-state-veterans-benefits.html
Pennsylvania	A disabled veteran in Pennsylvania may receive a property tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service. The	<u>Educational Gratuity</u> Payment of educational gratuities are for children of honorably discharged veterans who have wartime service-connected disabilities rated as totally and permanently disabled or children of veterans who die or have died of war service-connected disabilities or died in service	Pennsylvania does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/pennsylvania-state-veterans-benefits.html

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	exemption amount varies.	during a period of war or armed conflict. Children must be between the ages of 16 and 23, living within the Commonwealth five years prior to application and must attend a school within the Commonwealth. Applicants must demonstrate financial need, the maximum gratuity amount is \$500/semester.		
Puerto Rico	There are several types of property tax exemptions, each with its own eligibility criteria and level of exemption ranging from \$500 and up.	The Commonwealth of Puerto Rico offers several programs to assist military veterans who wish to pursue education or vocational training. One such program covers the cost of education when not otherwise qualified for the GI Bill or when the GI Bill benefit ends.	Every veteran shall be entitled to a deduction in the amount of \$500 for life.	http://www.military.com/benefits/veteran-state-benefits/commonwealth-of-puerto-rico-veteran-benefits.html
Rhode Island	A disabled veteran in Rhode Island may receive a property tax exemption on his/her primary residence. The exemption amount varies based on city and the value of the property.	Gratuities of \$500.00 per semester for children of veterans who died in service during a period of war or conflict or have a 100% permanent service-connected disability.	Rhode Island taxes military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/rhode-island-state-veterans-benefits.html
South Carolina	A disabled veteran in South Carolina may receive a property tax exemption if the veteran is 100% disabled as a result of service.	<u>Education Assistance (Fee tuition for certain veteran's children)</u> Provides for free tuition to the children of certain war veterans attending South Carolina state colleges and universities as well as state supported post high school technical education institutions.	South Carolina retirees with 20 or more years of active duty can deduct up to \$3,000 annually until age 65 and up to \$10,000 per year after age 65.	http://www.military.com/benefits/veteran-state-benefits/south-carolina-state-veterans-benefits.html
South Dakota	A disabled veteran in South Dakota may receive a property tax exemption of up to \$100,000 of his/her primary residence if the veteran is 100% disabled as a result of service.	<u>Free Tuition for Veterans</u> Certain veterans are eligible to take undergraduate courses at a state university without the payment of tuition provided they are not eligible for educational payments under the GI Bill or any other federal educational program. <u>Free Tuition for Children of Veterans Who Die During Service</u> Children who are under the age of 25, are residents, and whose mother or father was KIA or died of other causes while on active duty, are eligible for free tuition at a state supported school, if the deceased	South Dakota does not have state personal income tax.	http://www.military.com/benefits/veteran-state-benefits/south-dakota-state-veterans-benefits.html

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
		parent was a resident of the state for at least six months immediately preceding entry into active service.		
Tennessee	A disabled veteran in Tennessee may receive a property tax exemption of up to the first \$100,000 of his/her primary residence if the veteran is 100% disabled, has lost the use of two or more limbs, or is blind in both eyes as a result of service.	A dependent child (under 23 years of age) or spouse is entitled to receive free tuition, maintenance fees, student activity fees, registration fees, and to be admitted without cost to any of the colleges or universities owned, operated and maintained by the State, whose parent died as a result of injuries received while a POW or MIA while serving as a member of the Armed Forces during an armed conflict.	Tennessee does not tax personal income; it taxes dividend and interest income only.	http://www.military.com/benefits/veteran-state-benefits/tennessee-state-veterans-benefits.html
Texas	A disabled veteran in Texas may receive a property tax exemption of up to \$12,000 on his/her primary residence, depending on the severity of the disability incurred as a result of service. A full property tax exemption is available for veterans who are 100% disabled as a result of service.	<u>The Hazlewood Act</u> Provides qualified veterans, spouses, and dependent children with an education benefit of up to 150 hours of tuition and fee exemptions at public institutions of higher education in Texas. This does NOT include living expenses, books, or supply fees. <u>Legacy Act (Child)</u> Eligible veterans may assign unused hours of exemption eligibility to a child under certain conditions. <u>Hazlewood Act for Spouse/Child</u> Spouses and dependent children of eligible Active Duty, Reserve, and Texas National Guard who died in the line of duty or as a result of injury or illness directly related to military service, are MIA, or who became totally disabled as a result of a service-related injury or illness are entitled to each receive a 150 credit hours exemption.	Texas does not have personal income tax.	http://www.military.com/benefits/veteran-state-benefits/texas-state-veterans-benefits.html
Utah	A disabled veteran in Utah may receive a property tax exemption on his/her primary residence if the veteran is 10% or more disabled as a result of service. A veteran that is 100% disabled may receive an exemption of	<u>Tuition Waiver for Purple Heart Recipients</u> Purple Heart recipients are eligible for a tuition waiver at all public institution of higher learning in Utah. This benefit can be used toward a degree up to and including a Master's Degree. <u>Scott B Lundell Tuition Waiver for Military Members' Surviving Dependents</u> Surviving dependents of servicemembers killed in action	Utah treats military retirement income as taxable income. A taxpayer of 65 may claim a non-refundable tax credit of up to \$450.	http://www.military.com/benefits/veteran-state-benefits/utah-state-veterans-benefits.html

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	\$244,064. A veteran that is 50% disabled may receive an exemption of \$122,032, while a veteran that is 10% disabled may receive an exemption of \$24,406.	on or after September 11, 2001 are eligible for a tuition waiver at state schools.		
U.S. Virgin Islands	Homestead tax exemption of up to \$650.00 from the Real Property Tax Bill is offered to veterans who occupy their primary residence.	Free tuition is offered for attendance at local public educational institutions and the University of the Virgin Islands. This program is for veterans who entered the Armed Forces while residing in the Virgin Islands.	The Virgin Islands taxes military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/virgin-island-vet-benefits.html
Vermont	A disabled veteran in Vermont may receive a property tax exemption of at least \$10,000 on his/her primary residence if the veteran is 50% or more disabled as a result of service. The exemption amount varies by city.	Vermont does not offer any military-specific educational benefits.	Vermont taxes military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/vermont-state-veterans-benefits.html
Virginia	A disabled veteran in Virginia may receive a full property tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service.	<u>Virginia Military Survivors and Dependents Education Program</u> Provides education benefits to spouses and children of servicemembers killed, MIA, taken prisoner, or who became at least 90% disabled as a result of military service in an armed conflict. Military service includes active duty and reserve component service. Armed conflict includes military operations against terrorism or as the result of a terrorist act, a peace-keeping mission, or any armed conflict after December 6, 1941. This program may pay for tuition and fees at any state school for up to 4 years.	Virginia taxes military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/virginia-state-veterans-benefits.html
Washington	A disabled veteran in Washington may receive a property tax exemption on	Washington does not offer any military-specific education benefits.	Washington does not have personal income tax.	http://www.military.com/benefits/veteran-state-benefits/washi

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	his/her primary residence if the veteran is 100% disabled as a result of service. The exemption amount is based on income.			military.com/benefits/veteran-state-benefits.html
West Virginia	A 100% disabled veteran or any veteran over the age of 65 is exempted from paying the taxes on the first \$20,000 of assessed value on a self-occupied property.	<u>Veterans Re-Education Act Fund</u> Provides tuition assistance to veterans who need a new vocation due to dislocation or unemployment. The veteran must have exhausted the G. I. Bill and be in need of tuition assistance. <u>State War Orphans Education</u> Provides for a waiver of tuition and fees in state schools for children between the ages of 16 and 23 whose veteran parent served in World War I, World War II, Korean Conflict, Vietnam Era or any time of conflict as declared by Congress. Parent must have died in such wartime period, or, if subsequent to discharge, death must have been the result of disability incurred in such wartime service.	West Virginia waives up to \$2,000 from taxes for military retirees.	http://www.military.com/benefits/veteran-state-benefits/west-virginia-state-veterans-benefits.html
Wisconsin	A disabled veteran in Wisconsin may receive a property tax exemption on his/her primary residence if the veteran is 100% disabled as a result of service. The exemption amount varies.	<u>Wisconsin G.I. Bill for Veterans</u> Provides a full waiver of tuition and fees for eligible veterans and their dependents for up to 8 full-time semesters or 128 credits (whichever is greater) at any University of Wisconsin System for any degree seeking courses, or for study at the undergraduate, masters or even doctoral level at the UW System.	Wisconsin does not tax military retirement pay.	http://www.military.com/benefits/veteran-state-benefits/wisconsin-state-veterans-benefits.html
Wyoming	A disabled veteran in Wyoming may receive a property tax exemption of \$3,000 of the assessed value of his/her primary residence if the veteran was disabled as a result of service.	<u>Free Tuition and Fees for Education of War Orphans and Veterans</u> Wyoming provides 10 free semesters of tuition and fees for overseas combat veterans at the Wyoming community colleges or the University of Wyoming. Surviving spouses and dependent children are also eligible for this benefit if the military member died in combat.	Wyoming does not have personal income tax.	http://www.military.com/benefits/veteran-state-benefits/wyoming-state-veterans-benefits.html
Washington D.C.	Citizens age 65 or older or those who are totally or partially disabled may qualify for a	There are no veteran-specific education benefits. <u>State Tuition Program</u> The DC National Guard Scholarship will reimburse members of the Army DC	Up to \$3,000 of military retirement pay is exempt from District Individual Income Tax for individuals 62 or older.	http://ova.dc.gov/

State/ Territory	Property Tax	Education Benefits	Income Tax	Resources
	50% property tax abatement.	National Guard up to \$1,500 per individual during any semester or quarter at an approved college, university or educational institution while monies are available.	Survivor benefits are fully excluded from District Individual Income Tax.	

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Appendix B. Designated Combat-Zones, Qualified Hazardous Duty Areas, & Areas Providing Direct Support to Military Operations

Designated Combat- Zones	Authority	Dates	Direct Support Areas	Authority	Dates
Afghanistan	EO 13239	19 Sept. 2001–Present	Jordan	DoD	19 Sept. 2001–Present
			Kyrgyzstan		19 Sept. 2001–31 May 2014
			Pakistan		19 Sept. 2001–Present
			Tajikistan		19 Sept. 2001–31 May 2014
			Uzbekistan		19 Sept. 2001–31 May 2014
			Philippines (with OEF orders)		9 Jan. 2002–30 Sept. 2015
			Djibouti		1 July 2002–Present
			Yemen		10 Apr. 2002–Present
			Somalia		1 Jan. 2004–Present
			Syria		1 Jan. 2004–Present
Arabian Peninsula Area	EO 12744	17 Jan. 1991–Present	Jordan	DoD	19 Mar 2003–Present
Iraq			Lebanon		12 Feb. 2015–Present
Kuwait					
Saudi Arabia					
Oman					
Bahrain					
Qatar					
United Arab Emirates					
Persian Gulf					
Red Sea					
Gulf of Oman					
Gulf of Aden					
The part of the Arabian Sea that is north 10 degrees north latitude and west of 68 degrees east longitude					
			Qualified Hazardous Duty Areas		
Kosovo Area	EO 13119	24 Mar. 1999–Present	Bosnia & Herzegovina	PL 104-117	21 Nov. 1995–Present
Federal Republic of Yugoslavia			Croatia		21 Nov. 1995–Present

Montenegro			Macedonia		21 Nov. 1995–Present
Serbia					
Albania					
Ionian Sea – north of the 39th parallel					
Adriatic Sea					

Sources:

I.R.S. Armed Forces Tax Guide, Publication 3 Cat. No. 46072M, 9-10 (Jan. 14, 2015).

Combat Zones, IRS.GOV (Mar. 20, 2015), <https://www.irs.gov/uac/Combat-Zones>.

The Good Spy: The Life and Death of Robert Ames¹

Reviewed by Major David C. Segraves*

“[Bob Ames] had this flair. He was an American Lawrence [of Arabia], a Lawrence with Stars and Stripes. He was making himself into a legend.”²

I. Introduction

On September 13, 1993, Israel and Palestine achieved a monumental milestone in the quest for peace.³ After signing a Declaration of Principles on Palestinian self-government in Gaza and the West Bank, the Israeli Prime Minister, Yitzhak Rabin, and the chairman of the Palestine Liberation Organization (PLO), Yasir Arafat, shook hands publicly.⁴ This meeting and the negotiation involving the United States was in no small part begun by a single Central Intelligence Agency (CIA) agent, Robert Ames, who had established a back channel to the PLO almost twenty-four years beforehand.⁵ As one of the CIA’s leading “Arabists” and a personal advisor to President Ronald Reagan on Middle East affairs, Robert Ames was a pivotal part of the United States’ efforts for peace in the region.⁶ Tragically, Ames was killed in the 1983 bombing of the United States embassy in Beirut, Lebanon.⁷

Anyone interested in the intelligence field, Middle East near history, the Arab-Israeli Conflict or the historical underpinnings of multiple terrorist groups should read *The Good Spy: The Life and Death of Robert Ames*. *The Good Spy* succeeds in superlatively informing the reader of these topics due to the credibility and access of the author; the details provided of Ames’ daily activities as a CIA agent, especially his relationships with those considered terrorists or despots; and the author’s research into those behind the bombing on the U.S. Embassy in Beirut.

II. Penetrating the Secrecy: Researching the Life of a Secret Agent

Kai Bird was uniquely qualified to explore and explain Robert Ames’ life. Since the CIA would not provide institutional assistance in the author’s research for the book, he had to rely on his background in investigative journalism.⁸ The author began his professional career as a freelance reporter in the Middle East and South Asia.⁹ Before turning to book writing, he served as an editor for *The Nation* where he wrote editorials and edited pieces that covered a number of events that are covered within the book.¹⁰ Bird’s traveling journalist experience paid dividends in researching and supporting the book. He traveled to multiple countries to interview sources including more than forty retired CIA or Mossad sources, including fifteen agents who allowed the use of their real names.¹¹

While the author’s professional beginnings provided his journalistic research ability, his upbringing helped him gain access to Robert Ames’ widow, Yvonne Ames.¹² Bird grew up all over the world as the son of a Foreign Service officer.¹³ While a young boy of 11-13, the author and his family were neighbors of the Ames while stationed in Dhahran, Saudi Arabia.¹⁴ Yvonne Ames provided her perspective but also provided more than 150 pages of letters that her husband had written her which included details on his daily activities as a CIA agent.¹⁵ Finally, Bird found Mustafa Zein (Mustafa), a man who had acted as Robert Ames’ partner and access agent.¹⁶ Mustafa provided more than 100 pages of letters from Ames and had done his own research into discovering

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¹ KAI BIRD, *THE GOOD SPY: THE LIFE AND DEATH OF ROBERT AMES* (2014).

² BIRD, *supra* note 1, at 240. This quote is praise received from Yoram Hessel, a senior Mossad officer. *Id.* Mossad is the Israeli equivalent to the Central Intelligence Agency (CIA), conducting espionage; covert paramilitary operations and other intelligence gathering. *About Us*, MOSSAD ISRAEL SECRET INTELLIGENCE SERV., <https://www.mossad.gov.il/eng/about/Pages/default.aspx> (last visited Oct. 20, 2016).

³ BIRD, *supra* note 1, at 1.

⁴ *Id.*

⁵ *Id.* at 2-4.

⁶ *Id.* at 4, 298, 319, 354.

⁷ *Id.* at 354.

⁸ *Id.* at xi.

⁹ Former Fellow Kai Bird, WILSON CENTER, <https://www.wilsoncenter.org/person/kai-bird> (last visited Oct. 19, 2016).

¹⁰ *Id.*

¹¹ Ron Hogan, *Kai Bird: The Spy Who Lived Next Door*, SHELF AWARENESS (Mar. 5, 2014), <http://www.shelfawareness.com/max-issue.html?issue=93#m189>.

¹² *Id.*; BIRD, *supra* note 1, at xi-xii.

¹³ *Id.* at xiii.

¹⁴ *Id.* at xii.

¹⁵ Politics and Prose, *Kai Bird “The Good Spy”*, YOUTUBE (May 28, 2014), <http://www.youtube.com/watch?v=7jD6jt9UCro>.

¹⁶ Hogan, *supra* note 11; BIRD, *supra* note 1, at 81.

who had been behind the Beirut embassy bombing.¹⁷ The author's exhaustive research and ability to piece together so many sources are truly the signs of a Pulitzer Prize winner.¹⁸

III. Becoming an Arabist

Through a number of decisions and interactions, the author showed how Ames became an Arabist for the CIA and learned to develop his own style of sources. As a young soldier stationed at Kagnew Station, an army listening post in Ethiopia, Ames first experienced the intelligence community and Arab culture.¹⁹ He eventually left the service and joined the CIA.²⁰ After graduating from "the farm," Ames received an assignment to the Near East Division and a posting in Dharhan, Saudi Arabia.²¹ Here, Ames embraced the Arab culture; after learning to track camels, Ames spent most of his free time visiting the Bedu.²² Ames learned the Bedu ways, their proverbs and their motivations.²³ The author showed how his interest in the Bedu allowed him to immerse himself into Arab culture but also provided him sources for Arab nationalist movements and other sources of possible unrest in Saudi Arabia.²⁴ His cultural knowledge allowed Ames to see through ignorant assessments of events.²⁵ The author illustrated this point telling the story of Ames disproving a CIA report that Russians were flying combat missions over Yemen.²⁶ The CIA report relied on accounts of a downed jet's pilot having "red" hair, but Ames discounted the report by informing the CIA that pilot was likely a Hajji who had made a pilgrimage to Mecca and dyed his hair red with henna as was the Arab custom.²⁷

¹⁷ *Author Debriefing: The Good Spy: The Life and Death of Robert Ames*, SPYCAST (June 25, 2014) (downloaded using iTunes) [hereinafter *Author Debriefing: The Good Spy*].

¹⁸ Bob Thompson, *Arts Pulitzer's Make History the Big Winner*, WASHINGTON POST, (Apr. 18, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/17/AR2006041701774.html>.

¹⁹ BIRD, *supra* note 1, at 13, 16. A "listening post" is a location used for signals intelligence where they intercept and process communications. *Id.* at 13.

²⁰ *Id.* at 20.

²¹ *Id.* at 31, 33.

²² *Id.* at 43.

²³ *Id.*

²⁴ *Id.* at 45.

²⁵ *Id.* at 58.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 140 ("You sup with the devil . . . but you use a long spoon.").

²⁹ *Id.* at 348.

IV. Supping with the Devil: Relationships with "Bad Guys"²⁸

To gain information on organizations that are not allies, one must deal with "bad guys."²⁹ Bird illustrates Ames' understanding of this notion through three relationships. First, he detailed a quick visit to Muscat where Ames became a quick confidant of the Sultan's son, Qaboos.³⁰ After listening to Qaboos, Ames warned that Qaboos would overthrow his father; Qaboos staged a coup three years after the visit.³¹ The author further illustrated his point with a story of the relationship between Ames and Abd'al Fatah Ismail.³² While not friends, Ames listened to Ismail and learned about the Soviet influence in the Arab region.³³ The Soviets had taught Ismail that revolutions required twenty years.³⁴ The first step is to remove the young from their traditions establishing new schools to indoctrinate them.³⁵ Ismail did achieve his revolution and became the head of the Yemeni Socialist Party.³⁶ While the author did not uncover any actionable intelligence Ames had received from these "bad guys," these relationships provided a depth of understanding for the dynamics in the region. One could argue that the revolutionary plan enacted by Ismail has been used by radical Islam elements to recruit and that Ames may have seen the similar pattern if he had been alive.³⁷

No other relationship was more important or controversial for Ames than his friendship with Ali Hassan Salameh.³⁸ Salameh was close to Arafat and headed up the PLO's intelligence bureau, Force 17.³⁹ Through his access agent Mustafa Zein, Ames met and befriended Salameh.⁴⁰ Salameh provided a perfect foil for Ames with Ames a conservative family-man and Salameh a cosmopolitan playboy.⁴¹ Despite their differences, Ames and Salameh

³⁰ *Id.* at 59.

³¹ *Id.*

³² *Id.* at 64.

³³ *Id.* at 65.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 66.

³⁷ Mitchell Prothero, *U.S. Training Helped Mold Top Islamic State Military Commander*, MCCLATCHYDC (Sept 15, 2015), <http://www.mcclatchydc.com/news/nation-world/world/middle-east/article35322882.html> (discussing how a new mosque was established by outside sources to spread the Daesh style of Islam to the young).

³⁸ BIRD, *supra* note 1, at 94.

³⁹ *Id.* at 83.

⁴⁰ *Id.* at 91.

⁴¹ *Id.* at 94.

formed a back channel for the United States to covertly communicate with the PLO.

Just as Salameh attempted to use Ames to convince the United States to recognize the Palestinian need for independence, Ames worked to persuade Salameh that the PLO should move away from violent attacks and towards a political solution to their problems.⁴² The author follows the rollercoaster-ride relationship through Salameh being accused of involvement in the killing of Israeli athletes in Munich and through other CIA agents' insulting Salameh in their attempts to recruit Salameh by bribing him with money.⁴³ Ultimately, the author's treatment of this relationship substantially supports his theme that human intelligence, more specifically "the ability to form relationships with people who have good information will ultimately keep us safer in this world."⁴⁴

V. Those Behind the Bombing of the United States Embassy in Beirut

Detailing the twenty-four hours leading up to the bombing and the after effects through many perspectives, the author provides suspense and a very human dimension to the Beirut embassy bombing.⁴⁵ After providing a literary memorial to those lost in the bombing, the author turns his attention to the culpable parties.⁴⁶ While the author finds evidence of local terrorist involvement, Bird uncovered Iran's influence as had been established by a federal court.⁴⁷ The author tracked down Iran's influence specifically through Ali Reza Asgari, a member of the Iranian Revolutionary Guard at the time.⁴⁸ Through his sources and investigative journalism methods, the author has determined that Asgari defected to the United States in 2007 by providing intelligence on Iran's nuclear agenda.⁴⁹ The CIA has denied any involvement with Asgari's defection.⁵⁰ Bird has answered this denial, saying the CIA has to make a denial to preserve their ability to continue to support defections and answers that his book has 1,000 footnotes to back up his claims.⁵¹ While Bird acknowledges dealing with "bad guys" as exhibited by Ames' relationship with Salameh is a part of intelligence work, he questions whether it was the right choice to protect Asgari in this situation.⁵² Further, the author has openly questioned

whether current United States negotiations with Iran can reach a final settlement without addressing the civil judgments still existing against Iran.⁵³

VI. Conclusion

Throughout Robert Ames' life, Kia Bird has shined a light on the virtues and necessity of embracing other cultures. He has shown the necessity of using empathy when dealing with both allies, enemies and those in between. Those interested in the workings of the intelligence field, those interested in the history of the Middle East, or those who might find themselves operating in that region of the world, should read this book. With the author's one-thousand footnotes and more than 170 bibliographic entries peppered throughout the book, any reader should find this book as an excellent jumping off point into the study of Middle East politics. As the author himself has said, biography is the best form of history because it's the most accessible. The author can lay before the reader a wide range of topics without pretending to be all-encompassing because his lens is the life of one individual. By using Robert Ames' life, the author has made recent history in the Middle East, especially the Arab-Israeli conflict and the CIA's involvement in the region, more entertaining and accessible.⁵⁴

⁴² Politics and Prose, *supra* note 15.

⁴³ *All Things Considered: The Winding Stories of a Quintessential American Spy*, NAT'L PUB. RADIO (May 19, 2014), <http://www.npr.org/2014/05/19/313996762/the-winding-stories-of-a-quintessential-americanspy>.

⁴⁴ *Id.*

⁴⁵ BIRD, *supra* note 1, at 299-321.

⁴⁶ *Id.* at 335.

⁴⁷ *Id.* at 336; *see also* Dammarell v. Islamic Republic of Iran, 281 F.Supp.2d 105 (D.D.C. 2003).

⁴⁸ BIRD, *supra* note 1, at 342.

⁴⁹ *Id.* at 344-47.

⁵⁰ Jeff Stein, *Top Iran Terrorist Under CIA Protection in U.S., Book Says*, NEWSWEEK (May 19, 2004), <http://www.newsweek.com/top-iran-terrorist-under-cia-protection-us-book-says-251378>.

⁵¹ *The Situation Room with Wolf Blitzer*, CNN (May 20, 2014), http://situationroom.blogs.cnn.com/2014/05/20/author-iranian-terrorist-living-in-us/?hpt=sr_mid.

⁵² BIRD, *supra* note 1, at 344-48.

⁵³ Kai Bird, *The Ghosts That Haunt an Iran Accord*, N.Y. TIMES (Apr. 28, 2015) http://www.nytimes.com/2015/04/29/opinion/the-ghosts-that-haunt-an-iran-accord.html?_r=0.

⁵⁴ *Author Debriefing: The Good Spy*, *supra* note 17.

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