

FROM WAR DOGS TO SERVICE DOGS:
THE RETIREMENT AND ADOPTION OF
MILITARY WORKING DOGS¹

By
Mackenzie Landa*

Military Working Dogs (MWD) are canine service members that provide safety, comfort, love, and sometimes their lives to their human teammates. Soldiers rely on these dogs for companionship, support, and protection. However, handler dog teams are often separated when human soldiers return home from deployment. The dogs, classified as property by the Department of Defense, remain overseas and work until they are no longer useful to the military. Once the military decides a MWD is unable to serve, the dog is often left abroad unless a handler or nonprofit organization can fund the dog's transport back to the United States.

This separation is damaging to both human and canine. When human soldiers returning home from war are unable to remain with their MWD partner, it takes a toll on their health and emotional well-being. Moreover, leaving dogs overseas is an injustice to the dogs who involuntarily serve their country with bravery and loyalty.

Although lawmakers have achieved some legislative success to ensure that MWDs are no longer left behind and handlers are given the opportunity to adopt their dogs, there are gaps in the policy and there has been a significant failure to properly implement the legislation. This paper argues that it is necessary to amend military policy to ensure that dog and handler teams remain intact and each handler is given the opportunity to adopt his or her MWD.

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¹ To be clear, the author of this paper realizes the moral and ethical problems in using nonhuman animals who are unable to consent to participating in warfare for labor in military operations and does not consent to their exploitation for this purpose. However, that debate goes beyond the scope of this paper. This paper merely addresses the ethical implications of the way the Department of Defense manages the retirement of Military Working Dogs.

* © Mackenzie Lee Landa is a congressional staffer where she focuses on animal welfare, wildlife conservation, environmental, and energy issues. Ms. Landa formerly served as a criminal prosecutor and previously worked with organizations such as the Foundation to Support Animal Protection, Earthjustice, and Meyer Glitzenstein & Eubanks. She holds a B.A. in Philosophy and Political Science from Emory University; a J.D. from Florida State University College of Law; and an LL.M. in Environmental Law from Vermont Law School.

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I. INTRODUCTION

A. *Satan*

Former Army Sergeant Ryan Henderson says he is not afraid of much, but admits he was nervous the day he was paired with an enormous, all black German Shepherd military working dog (MWD), Satan.² Nevertheless, the two bonded quickly. From the first day of training, which Henderson fondly remembers as a day of being dragged around by Satan all day, through the eight months of detecting bombs side-by-side in Afghanistan, the pair had an intense relationship.³ “They tell you not to get too close with [the dogs],” Henderson says, “but you do. . . . You can’t help it. You know the normal relationship between a human and dog but multiply it times a thousand because of the amount of time you spend together. . . . There’s no way you can’t form a bond with these dogs.”⁴ Henderson jokes that he is the only Christian with the name “Satan” tattooed on his arm.⁵

The two first met in January of 2012.⁶ Satan is a tactical explosive detector dog (TEDD), which means he is trained to sniff out Improvised Explosive Devices (IEDs) and falls under the larger umbrella of MWDs.⁷ After several months of training, the pair deployed to Afghanistan.⁸ One day in late July 2012, as Henderson and Satan were preparing to embark on a mission, Henderson suffered a grand mal seizure—a result of repetitive concussions caused by explosive blasts.⁹

² Cristin Severance, *Soldiers: The Army Gave Away Our Military Dogs Behind Our Backs*, CBSDFW (May 11, 2016), <http://dfw.cbslocal.com/2016/05/11/soldiers-the-army-gave-away-our-military-dogs-behind-our-backs/> [<https://perma.cc/7TL7-BHJ2>] (accessed Jan. 19, 2018).

³ *Id.*

⁴ Telephone Interview with Ryan Henderson, Sergeant, U.S. Army (Oct. 30, 2016).

⁵ Severance, *supra* note 3.

⁶ Interview with Ryan Henderson, *supra* note 5.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*; Severance, *supra* note 3.

Henderson was medevacked to Bagram Airfield, a military base in Afghanistan.¹⁰ Satan was left behind.¹¹ Within thirty-six hours, Henderson was on a flight to Germany where he regained consciousness but had to be sedated by medics because he demanded they turn the plane around and go back for Satan.¹² “[The medics on the helicopter] thought I was crazy because no one told them Satan was a dog,” Henderson says, able to see the humor in retrospect.¹³ Eventually, Henderson was sent to the United States to recover but Satan, still healthy and useful to the military, stayed in Afghanistan and was assigned a second handler.¹⁴ After five years of waiting, Henderson finally got the chance to adopt Satan.¹⁵

As a result of the injuries he suffered while deployed, Henderson is 100% disabled.¹⁶ He also suffers from post-traumatic stress disorder (PTSD).¹⁷ He has been cleared to receive a service dog and even had a group offer him one.¹⁸ While he appreciates the offer, Henderson believes the only dog that can help him—and the only dog he wants—is Satan.¹⁹

Satan and Sergeant Henderson’s story is not a unique one. While Henderson and Satan were eventually reunited, many separated dogs and handlers are never reunited.

B. *Leaving No Man Behind*

Bonds like Satan and Sergeant Henderson’s are not only typical of handler and MWD relationships, they are essential to the job. Staff Sergeant Sara Lyons, a handler with the Air Force, describes the bond

¹⁰ Interview with Ryan Henderson, *supra* note 5; *U.S. Air Forces Central Command*, U.S.A.F. (July 1, 2017), <http://www.afcent.af.mil/About/Fact-Sheets/Display/Article/217800/us-air-forces-central-command/> [<https://perma.cc/BHN2-HCH2>] (accessed Jan. 19, 2018).

¹¹ *See* Interview with Ryan Henderson, *supra* note 5 (explaining that Ryan had already loaded Satan onto a helicopter heading for another base when Ryan had the seizure).

¹² *Id.*

¹³ *Id.*

¹⁴ Severance, *supra* note 3.

¹⁵ Cristin Severance, *Military Dog Reunited With Soldier Five Years Later*, CBSDFW (July 27, 2017), <http://dfw.cbslocal.com/2017/07/27/military-dog-reunited-with-soldier-5-years-later/> [<https://perma.cc/D2X6-ZN5M>] (accessed Jan. 19, 2018) (“[The family that had adopted Satan] decided to give Satan back to me,’ Ryan recalled. ‘I called my Dad, and I said ‘Dad, we are getting Satan back but we gotta go now.’” The father and son drove through the night all the way to North Carolina. A day later, Satan and Ryan were united.”).

¹⁶ Interview with Ryan Henderson, *supra* note 5.

¹⁷ Maureen Callahan, *Troops Betrayed as Army Dumps Hundreds of Heroic War Dogs*, N.Y. POST (Feb. 14, 2016), <http://nypost.com/2016/02/14/troops-betrayed-as-army-dumps-hundreds-of-heroic-war-dogs/> [<https://perma.cc/8CSW-37SE>] (accessed Jan. 19, 2018).

¹⁸ Interview with Ryan Henderson, *supra* note 5.

¹⁹ *See id.* (“[H]e is waiting to see if he can get Satan.”).

with a MWD as one “that you won’t forget.”²⁰ She says that despite the challenging days, “they are all worth it.”²¹ Staff Sergeant Monica Rodriguez, who is also a handler with the Air Force, explains that handlers are so passionate about their jobs and their canine partners “because they are not only working dogs, they are family. We literally trust them with our life.”²²

When these handlers are separated from their dogs, it takes an emotional toll on both the dog and handler. Moreover, although lawmakers are making efforts to ensure that all MWDs retire on United States soil,²³ some dogs are still left overseas.²⁴ “The United States military prides itself on ‘leaving no man behind.’”²⁵ Yet, entire groups of soldiers—MWDs and their human handlers—are seemingly excluded from this mantra.

II. A BRIEF HISTORY OF DOGS IN WAR

A. *The Beginning and World War II*

Dogs have been an integral part of the United States Armed Forces since the Revolutionary War; however, the first official war dog program was not created until 1942, during World War II.²⁶ The program began shortly after the attack on Pearl Harbor and encouraged

²⁰ Ashley Bunch, *What it’s Really Like to be a Dog Handler in the US Military*, MIL. TIMES (June 1, 2017), <http://www.militarytimes.com/2017/06/01/what-it-s-really-like-to-be-a-dog-handler-in-the-us-military/> [https://perma.cc/VE85-SCYE] (accessed Jan. 19, 2018).

²¹ *Id.*

²² *Id.*

²³ Rowan Scarborough, *New Law Facilitates Military Dogs’ Return to U.S., Adoption by Battlefield Handlers*, WASH. TIMES (Nov. 30, 2015), <http://www.washingtontimes.com/news/2015/nov/30/military-dogs-return-to-us-adoption-by-battlefield/> [https://perma.cc/D278-GXQZ] (accessed Jan. 19, 2018) (“Tucked inside the 2016 Defense Department budget bill signed by President Obama is a new law that directs the military to bring home all working dogs stateside if they are being retired.”).

²⁴ *See id.* (“America’s fighting canines . . . do not always make it home during the long war on terrorism for a variety of reasons. Some were retired overseas, making them ‘civilians’ ineligible for military-funded transportation back to the States.”).

²⁵ *Id.*

²⁶ *See* Charles F. Sloane, *Dogs in War, Police Work and on Patrol*, 46 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 385, 387 (1955) (“It was in March, 1942, several months after Pearl Harbor, that the War Department finally recognized our four-footed canine friends as allies in our greatest war effort.”); Major Charles T. Kirchmaier, *Unleashing the Dogs of War: Using Military Working Dogs to Apprehend Enemy Combatants*, ARMY LAW. 1, 6 (2006) (“For over sixty years, the U.S. military has relied on the invaluable service rendered by MWDs during numerous combat operations.”); Kathleen L. Beach, *The Dogs of War: History of the U.S. Military Dog*, 36 VETERINARY HERITAGE 3, 3 (2013) (“Dogs have had a place in American history since the time the nation was founded in the 1700s.”). For example, in the American Civil War, dogs were used as prison guards. *Id.* During World War I, the U.S. military adopted dogs as mascots, many of whom provided not only companionship, but also saved lives. *Id.* Stubby, a stray pit bull who warned his infantry of an incoming gas attack and apprehended an infiltrator is one famous example. *Id.* Although the United States created their first official war dog program during World War II, other countries, Germany in particular, had already been

civilians to donate their dogs to the war effort.²⁷ The program accepted the voluntary contributions of over 40,000 dogs.²⁸

At the end of the war, the United States military spent a significant amount of time and effort demilitarizing the dogs—that is, retraining them so that they could return to civilian life—and returning them to their original civilian families.²⁹ This effort was largely successful and the majority of the dogs were reunited with their owners.³⁰

B. Vietnam

Dogs were also heavily used in the Vietnam War; however, in contrast to World War II, the United States military mismanaged the retirement of these dogs on a massive scale and the treatment of canine soldiers took a dark turn.³¹ Indeed, the Vietnam War is “viewed as the lowest point in the history of the military’s treatment of MWDs.”³² It was during the Vietnam War that the decision was made by the Department of Defense to define MWDs as “equipment.”³³ This meant that when the dogs were no longer able to perform their desired functions, they were considered excess and euthanized.³⁴

It is estimated that nearly 5,000 MWDs and 10,000 handlers were deployed to Vietnam and are credited with saving over 10,000 lives.³⁵

heavily using dogs, and by the Second World War, it had built the largest, best-trained canine army in the world. Sloane, *supra* note 26, at 386–87.

²⁷ Sarah D. Cruse, *Military Working Dogs: Classification and Treatment in the U.S. Armed Forces*, 21 *ANIMAL L.* 249, 254–55 (2015); see also Janet M. Alger & Steven F. Alger, *Canine Soldiers, Mascots, and Stray Dogs in U.S. Wars: Ethical Considerations*, in 15 *HUMAN-ANIMAL STUDIES: ANIMALS AND WAR: STUDIES OF EUROPE AND NORTH AMERICA* 77, 81 (Ryan Hediger ed., 2012) (“Civilian involvement was also central to the introduction of military working dogs into the war effort through an organization known as Dogs for Defense.”).

²⁸ Beach, *supra* note 26, at 6.

²⁹ Cruse, *supra* note 27, at 255.

³⁰ See Alger & Alger, *supra* note 27, at 84 (“Their first choice was to return the dogs to their original owners, and the majority of them were reunited with their owners.”); Cruse, *supra* note 27, at 255 (“If possible, the dogs were returned to their original owners.”).

³¹ See Josiah Hesse, *The US Military Euthanized or Abandoned Thousands of Their Own Canine Soldiers at the End of the Vietnam War*, *VICE* (May 24, 2015), https://www.vice.com/en_us/article/qbxpdx/the-us-military-euthanized-or-abandoned-thousands-of-their-own-canine-soldiers-at-the-end-of-the-vietnam-war-253 [https://perma.cc/BJ8G-G5ZU] (accessed Jan. 19, 2018) (“[S]ome 40,000 dogs that served in World War II, and all the dogs that were physically able at the end of the war [came home]. . . . There were about 4,000 dogs that served in Vietnam[,]” says former US soldier Rick Claggett. “[T]he US military decided to abandon—and likely euthanize—many of the dogs, leaving the rest to the South Vietnamese.”).

³² Cruse, *supra* note 27, at 257.

³³ Alger & Alger, *supra* note 27, at 86.

³⁴ *Id.*

³⁵ *Vietnam*, THE U.S. WAR DOG ASS’N, INC., <http://www.uswardogs.org/war-dog-history/vietnam/> [https://perma.cc/Z432-9M5V] (accessed Jan. 19, 2018); Alger & Alger, *supra* note 27, at 88. *But see* Cruse, *supra* note 27, at 257 (estimating 4,000 MWDs were deployed to South Vietnam).

Yet, when United States troops withdrew from Vietnam in 1973, several thousand surviving MWDs were left behind.³⁶ Of the 5,000 dogs who served, only an estimated 200 left Vietnam alive.³⁷ None returned to civilian life.³⁸ It is estimated that 1,600 MWDs were euthanized in Vietnam and approximately 2,700 were left behind and turned over to the South Vietnamese Army.³⁹ The South Vietnamese Army lacked “the same level of sophistication as the United States Army in terms of medical care, treatment, and training, and were overwhelmed by the surplus dogs turned over by the United States Army.”⁴⁰ Although there is no accurate accounting of what happened to the dogs who were left behind, most were likely euthanized or worse.⁴¹

Handlers were not given the opportunity to adopt their canine partners and all requests to do so were denied.⁴² Some handlers even offered to pay the expense to return the dogs back to the United States, but military policy prohibited their return.⁴³ Naturally, these handlers had bonded with their dogs, many of whom had saved their human handler’s life, and the experience of having to leave the dogs behind was emotionally devastating.⁴⁴ Eventually, a group of former Vietnam MWD handlers formed the Vietnam Dog Handlers Association, and today they have a membership of over 2,000 former handlers and supporters.⁴⁵

C. *Iraq and Afghanistan*

Today, military dogs continue to play an invaluable role within the United States Armed Services, especially in detecting IEDs. Indeed, canine soldiers are, on average, 98% accurate in their ability to detect IEDs,⁴⁶ and it is estimated that each MWD saves the lives of between 150 and 200 service members.⁴⁷ Perhaps the most famous

³⁶ Cruse, *supra* note 27, at 257.

³⁷ Alger & Alger, *supra* note 27, at 88; *Vietnam*, *supra* note 35; Cruse, *supra* note 27, at 258.

³⁸ *Vietnam*, *supra* note 35; Cruse, *supra* note 27, at 258.

³⁹ Cruse, *supra* note 27, at 258.

⁴⁰ *Id.*

⁴¹ Rebecca Frankel, *Dogs of War: Left Behind in Vietnam*, NAT’L GEOGRAPHIC (May 19, 2014), <http://news.nationalgeographic.com/news/2014/05/140519-dogs-war-canines-soldiers-troops-military-vietnam/> [<https://perma.cc/3LYY-S8WH>] (accessed Jan. 19, 2018); Josiah Hesse, *supra* note 31; *see also* Alger & Alger, *supra* note 27, at 87 (“As for the dogs remaining in Vietnam, most of [the dogs] were transferred to the [Army of the Republic of Vietnam] and thus faced an uncertain future.”).

⁴² Alger & Alger, *supra* note 27, at 86.

⁴³ Cruse, *supra* note 27, at 257.

⁴⁴ Alger & Alger, *supra* note 27, at 87.

⁴⁵ *Id.*

⁴⁶ *Id.* at 93.

⁴⁷ Cameron Keady, *Every U.S. Military Dog Will be Brought Home, Thanks to New Law*, HUFFINGTON POST (Dec. 28, 2016), http://www.huffingtonpost.com/entry/military-dog-law-transportation-home_us_5665c0b1e4b079b2818f4cab [<https://perma.cc/93RG-RS44>] (accessed Jan. 19, 2018); *American Humane Says: Reunite Military Working Dogs and Handlers, as Per New Law Passed by Congress* (May 24, 2016), <https://www.ameri->

member of SEAL Team 6, which located and killed Osama Bin Laden, was a Belgian Malinois named Cairo.⁴⁸

Thousands of dogs have served in the Iraq and Afghanistan conflicts with approximately 2,500 currently serving overseas.⁴⁹ Although MWDs are particularly important to the military in detecting IEDs, they serve many roles, including searching for missing comrades and targeting enemy combatants.⁵⁰ These dogs serve alongside their human soldiers, providing comfort, love, companionship, and safety, sometimes sacrificing their lives in the process.

III. EXISTING LEGAL REGIME

The Vietnam-era military policy governing MWDs continued until November 2000, when President Bill Clinton signed into law what is now referred to as Robby's Law.⁵¹ Robby's Law was intended to facilitate the adoption of MWDs and allow them to enjoy a life of retirement.⁵² Prior to the enactment of Robby's Law, government policy prohibited the adoption of MWDs—even by their handlers—and it was military policy for dogs to be euthanized when they became unable to serve.⁵³ Robby's Law limited euthanasia to situations in which it was medically necessary or necessary for public safety and allowed dogs to be made available for adoption at the end of their military service.⁵⁴

Robby's Law has been amended—and strengthened—several times since its enactment. Most recently, in 2015, President Barack Obama signed a bill into law that was intended to guarantee that no MWD would ever again be left behind overseas.⁵⁵ The amendment to Robby's Law was part of the 2016 National Defense Authorization Act and required all MWDs be returned to retire in the United States, paid

canhumane.org/press-release/american-humane-association-says-reunite-military-working-dogs-and-handlers-as-per-new-law-passed-by-congress/ [https://perma.cc/5BWW-69K4] (accessed Jan. 19, 2018) [hereinafter *American Humane*].

⁴⁸ Arthur Jeon, *Cairo, Seal Team Six Dog, Meets President Obama*, GLOBAL ANIMAL (Aug. 7, 2011), <https://www.globalanimal.org/2011/08/07/cairo-seal-team-six-dog-meets-president-obama/> [https://perma.cc/8H49-WEJG] (accessed Jan. 19, 2018).

⁴⁹ Cruse, *supra* note 27, at 250; Keady, *supra* note 47.

⁵⁰ Alan Taylor, *Afghanistan: Dogs of War*, ATLANTIC (June 3, 2014), <https://www.theatlantic.com/photo/2014/06/afghanistan-dogs-of-war/100750/> [https://perma.cc/D7CB-CFN7] (accessed Jan. 19, 2018).

⁵¹ See Cruse, *supra* note 27, at 259–60 (“Representative Roscoe Bartlett introduced the legislation after learning about the unfortunate circumstances of a Belgian Malinois named Robby. At 11 years old, multiple health problems prohibited Robby from working even light duty. When Robby's handler requested permission from the DoD to adopt the canine, the Department rejected the request.”).

⁵² *Id.* at 259.

⁵³ Michael J. Kranzler, *Don't Let Slip the Dogs of War: An Argument for Reclassifying Military Working Dogs as “Canine Members of the Armed Forces,”* 4 U. MIAMI NAT'L SEC. & ARMED CONFLICT L. REV. 268, 284 (2014); Cruse, *supra* note 27, at 259.

⁵⁴ Kranzler, *supra* note 53, at 284–85.

⁵⁵ Keady, *supra* note 47; *American Humane*, *supra* note 47.

for by the government.⁵⁶ Prior to its passage, handlers could adopt MWDs but were responsible for the costs associated with bringing them home.⁵⁷

Under current legislation, MWDs are to be made available for adoption at the end of their “useful life” or when “the animal is otherwise excess to the needs of such military department.”⁵⁸ Former handlers are to be given first priority in adoption.⁵⁹ Robby’s Law and the amendment signed by President Obama were championed as pieces of legislation to ensure all canine soldiers are returned to the United States and reunited with their handlers. Unfortunately, this is currently not the reality.

IV. REALITIES OF RETIREMENT

A. *Why Reunification Fails*

Despite the efforts lawmakers have made, the reality is that handler and MWD teams are almost always separated upon returning to the United States and often not reunited, regardless if the handler attempts to adopt the dog.⁶⁰ This failure to reunite dogs with their handlers can happen for many reasons.

For example, one dog can—and typically does—have multiple handlers.⁶¹ In these situations, the human soldier’s deployment comes to an end (typically either because the soldier’s term of deployment ends or because of injury) before the canine soldier is permitted to retire.⁶² Because dogs are still classified as equipment by the military, they are not retired until the end of their useful working life. Therefore, the handler retires before the dog and the dog is assigned a subsequent handler.

Although a dog may have multiple handlers, he or she can only be adopted by one.⁶³ So while reports may say that a MWD and human soldier were reunited, what they do not say is that particular dog likely had multiple handlers.⁶⁴ Many handlers wait until their dog is able to retire and in the end, are unable to adopt him or her because a subsequent handler will get the opportunity first.⁶⁵

⁵⁶ Keady, *supra* note 47; *American Humane*, *supra* note 47; Scarborough, *supra* note 23.

⁵⁷ Keady, *supra* note 47.

⁵⁸ 10 U.S.C. § 2583 (2012).

⁵⁹ *Id.* § 2583(c)(A); Kranzler, *supra* note 53, at 286.

⁶⁰ *See* Bunch, *supra* note 20 (“Often there is talk of reunion with a handler, but there’s rarely a mention about other handlers who worked with the dog at some point, and how they all want to take the dog home with them.”).

⁶¹ *Id.*

⁶² *See id.* (“It’s kind of sad because you wait until the dog is able to retire, but in the end you most likely won’t get to take the dog home with you . . .”).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

Furthermore, although dogs technically are required by law to return to the United States, the legislation governing their return has yet to be implemented and funded. Therefore, organizations such as the American Humane Association continue to assist in raising funds for the transportation costs involved.⁶⁶ Handlers themselves also often pay the transportation costs when they are financially capable.⁶⁷

It is also important to note that, despite the fact that the law requires handlers and their families be given the first right of adoption, an investigation found that hundreds of soldiers say that the army adopted out their MWDs to civilian families without contacting them first.⁶⁸

B. Effects on Dogs and Handlers

For many soldiers in war zones, the relationships they have with their dogs are the only solace they have from the stress and terror of armed combat. These dogs provide comfort, love, and, sometimes, their lives for their human companions. Handlers describe their dogs as their brothers and teammates and say that the bond between handler and MWD is unlike any other.

Many of these handlers, like any other soldier, return home from serving overseas suffering from physical and mental health issues such as PTSD.⁶⁹ When these soldiers are separated from their canine companions—sometimes for weeks, sometimes forever—it worsens these war wounds. There are countless stories of handlers returning home, struggling with post-traumatic stress disorder (PTSD) and other health issues, and the loss of their dog, their partner, with whom they have established an unspeakable bond, exacerbates these issues.

Conversely, there are cases in which reuniting with their canine partner has provided the emotional support human soldiers need, and reuniting handlers and their MWDs—who can also suffer from canine PTSD—helps both heal.⁷⁰ Indeed, “[r]euniting military dogs with their handlers is about healing these veterans—both human and canine—and their families.”⁷¹

⁶⁶ Keady, *supra* note 47.

⁶⁷ *Id.*

⁶⁸ *American Humane*, *supra* note 47; see also JUSTICE FOR TEDD HANDLERS, <https://justice4tedds.com/> [<https://perma.cc/MB9R-DL8Y>] (accessed Jan. 19, 2018) (“Very few handlers received notification about the adoptions . . .”); Severance, *supra* note 2 (“The handlers said they were never notified; never given the chance to adopt their dogs.”).

⁶⁹ Keady, *supra* note 47. MWDs experience combat PTSD in the same way that humans do and it is estimated that more than 5% of MWDs deployed overseas develop canine PTSD. Cruse, *supra* note 27, at 276.

⁷⁰ *American Humane*, *supra* note 47; see also Keady, *supra* note 47 (“When they come back suffering from those invisible wounds of war, we’re hoping that their four legged battle buddy will help them heal from PTSD,” [said] Robin Ganzert, president and CEO of the American Humane Association.”).

⁷¹ *Caring for Military Working Dogs After They Finish Their Service*, MIL. TIMES (Nov. 1, 2016), <https://www.militarytimes.com/native/lendingpoint/2016/11/02/caring->

One example is Lance Corporal David Pond and his MWD partner, Pablo, who together spent seven months in Afghanistan nosing out hidden bombs.⁷² Pond describes Pablo as his best friend, rock, foundation, and protector.⁷³ “He saved my life more than once,” Pond says.⁷⁴ The pair was separated when Pond’s service ended in 2011.⁷⁵ Pond suffered from PTSD and a traumatic brain injury, but he remained focused on bringing Pablo home.⁷⁶ Pond’s therapist agreed that being reunited with Pablo could help Pond’s mental health problems.⁷⁷ It took years of writing letters to politicians, starting on-line petitions, and bureaucratic red tape, but eventually, the two were reunited and were able to begin the transition to civilian life together.⁷⁸

Another example is Sergeant Matthew Bessler and the Belgian Malinois, Mike, who had been a MWD and handler team in Iraq.⁷⁹ When they returned home, they were separated and both suffered from PTSD.⁸⁰ Bessler describes Mike as a soldier and a brother. Upon returning home, Bessler applied to adopt his canine partner.⁸¹ While the adoption was pending, Bessler would get up at dawn and drive the twelve miles to where Mike was being kept in a kennel.⁸² Mike refused to eat unless Bessler was there, and three times a day, Bessler would return to the kennel to feed Mike and play ball.⁸³ Eventually, the adoption went through and Bessler brought his canine companion home.⁸⁴ Both were suffering severely from PTSD, and Bessler had the idea to retrain Mike as a service dog.⁸⁵ The new sense of purpose eased Mike’s PTSD, and Mike’s work as a service dog helped ease Bessler’s,

for-military-working-dogs-after-they-finish-their-service/ [https://perma.cc/8C8B-JJSX] (accessed Jan. 19, 2018).

⁷² Tracy Connor & Gabe Gutierrez, *‘He Was My Rock’: Veteran with PTSD Reunited with Military Dog*, NBC NEWS (Jan. 21, 2016), <http://www.nbcnews.com/news/us-news/he-was-my-rock-veteran-ptsd-reunited-military-dog-n481166> [https://perma.cc/HGK7-PEN5] (accessed Jan. 19, 2018).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Sarah Kershaw, *A Solider and His Combat Dog Both Returned from Iraq with PTSD – and Found Support in Each Other*, WASH. POST (July 2, 2015), https://www.washingtonpost.com/news/inspired-life/wp/2015/07/02/a-decorated-soldier-and-his-beloved-combat-dog-both-returned-from-iraq-with-ptsd-and-found-support-in-each-other/?utm_term=.41039713f76d [https://perma.cc/PUT6-UQFC] (accessed Jan. 19, 2018).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

and in more than one way, they saved each other's lives both during their service and after.⁸⁶

Indeed, although there has been a lack of medical studies on the issue, Colonel Daniel Shoot, Chief of Medical Modernization and Chief of Air Force Medical Modeling and Simulation Training, has said that there are, in fact, “many situations when[] a dog handler with PTSD being reunited with his combat dog would be therapeutic.”⁸⁷

Moreover, dogs that are left behind overseas face an uncertain fate. According to the American Humane Association, in some cases, dogs that are left abroad are left in kennels for an indefinite amount of time until someone abroad adopts them.⁸⁸ In the best cases, they are adopted by United States military members living abroad; however, some dogs are adopted by members of the local community and, in some cases, are abused.⁸⁹

V. SOLUTIONS

A. *Reclassification*⁹⁰

Under current law, MWDs are considered equipment.⁹¹ Military animals fall under 10 U.S.C. Chapter 153 entitled *Exchange of Material and Disposal of Obsolete, Surplus, or Unclaimed Property*.⁹² The Department of the Army notes that “MWDs are a unique item; they are the only living item in the Army supply system.⁹³ Like other highly specialized equipment, MWDs complement and enhance the capabilities of the military policy.”⁹⁴

Efforts have been made to reclassify MWDs; however, none have been successful. For example, the Canine Members of the Armed Forces Act—the bill ultimately signed by President Obama to require MWDs retire in the United States at the expense of the government—was initially introduced with a provision that would reclassify MWDs as “Canine Members of the Armed Forces” rather than “excess equip-

⁸⁶ *See id.* (“[O]nce Mike had been on Prozac for six months or so, he became calmer, more focused, more trusting . . . There is also a science to Mike’s ability to help Bessler with his anxiety and fear: the hormone oxytocin, which creates feelings of safety and calm, and is stimulated in both dogs and humans when they interact with each other.”).

⁸⁷ Gale Scott, *Can Veteran Combat Dogs Cure Post-Traumatic Stress?*, MD MAG. (June 12, 2016), <http://www.mdmag.com/medical-news/can-veteran-combat-dogs-cure-post-traumatic-stress> [https://perma.cc/ZV4H-K76S] (accessed Jan. 19, 2018).

⁸⁸ Keady, *supra* note 47.

⁸⁹ *Id.*

⁹⁰ To be clear, this paper does not argue that canine soldiers should be provided the same status, treatment, and benefits as their human counterparts; it simply makes the argument that MWDs should be moved from the equipment category and reclassified so that they are provided with more benefits than mere equipment.

⁹¹ Cruse, *supra* note 27, at 251.

⁹² 10 U.S.C. ch. 153 (2012).

⁹³ HEADQUARTERS, DEP’T OF THE ARMY, MILITARY WORKING DOGS 1–2 (2005).

⁹⁴ *Id.*

ment”; however, the provision was removed from the version of the House bill that ultimately passed congress.⁹⁵

Although MWDs are clearly no longer treated as mere property (as evidenced by legislation aimed at ensuring their safe return to the United States), the classification of MWDs as equipment is problematic in the way the military thinks and talks about these dogs. Language matters, and the way that the military currently classifies and categorizes MWDs may be a launching point for changing the way that it treats canine soldiers. In a more concrete sense, reclassifying MWDs would change the military’s obligations towards these dogs.⁹⁶

Although reclassifying dogs as canine service members would not solve the problem alone, it would help to shift the way the military views MWDs. Instead of being seen as pieces of equipment to be used until they are “excess,” they may start to be viewed as service members who risk their lives alongside their human teammate.

B. *Funding and Amending Robby’s Law*

The first step to ensuring MWDs are retired to the United States and adopted by their handlers is for Congress to budget for retirement and transportation costs for each dog when he or she enters the MWD program from the outset. Lawmakers have made an effort through Robby’s Law and subsequent amendments to ensure that dogs return to the United States; however, the problem is that the legislation has yet to be funded and implemented. Without funding from Congress, the law requiring dogs be brought home at the government’s expense is rendered essentially useless.

Second, the best way to ensure that dog and handler teams remain intact is to amend Robby’s law to require that each dog and handler team remain intact—regardless of the dog’s potential further use to the military. In theory, the current legislation serves a noble purpose: to make dogs eligible for adoption by their handlers. However, there are gaps in the law that hinder its intended goal.⁹⁷ Currently, as discussed above, if the handler returns home from deployment—whether because his or her deployment comes to an end or because of injury—if the MWD is still useful to the military, the dog stays overseas and is assigned another handler. The law should be amended to require that if a handler comes home from deployment, the MWD should return with the handler if the handler chooses to adopt the dog.

⁹⁵ Kranzler, *supra* note 53, at 291.

⁹⁶ Cruse, *supra* note 27, at 252.

⁹⁷ See *supra* text accompanying note 60 (“Despite the efforts lawmakers have made, the reality is that handler and MWD teams are almost always separated upon returning to the United States and often not reunited, regardless if the handler attempts to adopt the dog.”); *supra* text accompanying note 66 (“Furthermore, although dogs technically are required to return to the United States, the legislation governing their return has yet to be implemented and funded. Therefore, organizations such as the American Humane Association continue to assist in raising funds for the transportation costs involved.”).

It is important to note that allowing MWDs to retire when their handlers retire or are injured would not be a radical shift in the current policy. As the law currently stands, MWDs may be made available for adoption before the end of his or her “useful life,” if “unusual or extraordinary circumstances . . . justify making the animal available for adoption before that time.”⁹⁸ An example of such “unusual or extraordinary circumstances” include situations in which the human handler “is killed in action, dies of wounds received in action, or is medically retired as a result of injuries received in action.”⁹⁹ In these situations, the MWD should be made available for adoption by the handler only or, if the handler dies in action or dies of wounds received in action, the MWD should be made available for adoption by a parent, child, spouse, or sibling of the deceased handler only.¹⁰⁰

The amendment allowing handlers and families to adopt MWDs in these circumstances was enacted in part because of two MWDs with similar stories and, coincidentally, similar names: Rex and Lex. Rex and his handler Jamie Dana were both injured in Iraq, but when Dana tried to adopt Rex, “her adoption request was denied ‘because Rex was not ready for retirement.’”¹⁰¹ Similarly, Lex and his handler, Corporal Dustin Lee, were also injured in Iraq.¹⁰² During the attack, an injured Lex picked himself up to lie over Lee in an effort to protect him.¹⁰³ Lee died from his injuries and his family tried to adopt Lex.¹⁰⁴ It took months of work and congressional help for the Lee family to finally adopt Lex.¹⁰⁵

Opponents to amending Robby’s Law may argue that the cost associated with bringing MWDs home—particularly before the end of their useful working life—is too great. However, considering the enormous budget of the Department of Defense (the agency requested \$79.4 billion in funding for overseas contingency operations in 2014 alone, mainly for Operation Enduring Freedom in Afghanistan)¹⁰⁶ and the number of lives MWDs save each year (it is estimated that the average MWD saves 150 human soldier lives over the course of his or

⁹⁸ 10 U.S.C. § 2583(a)(2) (2012).

⁹⁹ *Id.*

¹⁰⁰ *See* 10 U.S.C. § 2583(c)(2) (listing “other persons capable of humanely caring for the animal” as the next available party to adopt a military animal after handlers).

¹⁰¹ Cruse, *supra* note 27, at 262.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ OFFICE OF THE UNDER SEC’Y OF DEF. (COMPTROLLER) / CHIEF FIN. OFFICER, U.S. DEP’T OF DEF. FISCAL YEAR 2014 BUDGET REQUEST ADD, OVERSEAS CONTINGENCY OPERATIONS, 1 (2013), http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2014/amendment/FY2014_Budget_Request_Overview_Book_Amended.pdf [<https://perma.cc/6HHR-2VXA>] (accessed Jan. 19, 2018).

her service),¹⁰⁷ “it does not seem unreasonable for the government to commit the relatively miniscule amount of additional resources toward ensuring” the just retirement for dog and handler teams.¹⁰⁸

To put these numbers in context, it is estimated that it can cost up to \$2,000 to transport each dog back to the United States.¹⁰⁹ In 2011, 328 MWDs were adopted.¹¹⁰ It would therefore cost \$656,000 per year to bring MWDs home from war, which is less than five-millionths of one percent of the estimated annual cost to the United States government for the wars in Iraq and Afghanistan.¹¹¹

C. Circumventing Acts of Congress

One consideration is whether an act of Congress is necessary to remedy the mismanagement of MWD retirement. Theoretically, this could simply be addressed by a shift in government policy and procedure. It is regular and common practice for the Department of Defense to issue policies and procedures without congressional action.¹¹² An act of Congress simply is not necessary for the Department of Defense to allow a soldier—whether canine or human—to go home.

VI. CONCLUSION

MWDs are canine service members that provide safety, comfort, love, and sometimes their lives to their human teammates. Handlers rely on these dogs for companionship, support, and protection. When human soldiers returning home from war are unable to remain with their MWD partner, it takes a toll on their health and emotional well-being. Moreover, leaving dogs overseas is an injustice to the dogs who involuntarily serve their country with bravery and loyalty.

Although lawmakers have made an effort and have achieved some legislative success to ensure that MWDs are no longer left behind and handlers are given the opportunity to adopt their dogs, there are gaps in the policy and there has been a significant failure to properly implement the legislation.

MWDs can serve their human handlers after their military service ends; however, it is necessary for government law or policy to be amended to ensure that dog and handler teams remain intact, and each handler is given the opportunity to adopt his or her MWD. The military’s overarching goal of “leaving no man behind” must extend to their canine members as well.

¹⁰⁷ Jennifer Rizzo, *When a Dog Isn't a Dog*, CNN (Jan. 6, 2012), <http://security.blogs.cnn.com/2012/01/06/when-a-dog-isnt-a-dog/> [<https://perma.cc/ZUL7-PUN7>] (accessed Jan. 19, 2018).

¹⁰⁸ Kranzler, *supra* note 53, at 293–94.

¹⁰⁹ *Id.* at 285–86.

¹¹⁰ *Id.* at 293.

¹¹¹ *Id.*

¹¹² James M. Lindsay, *Congressional Oversight of the Department of Defense: Reconsidering the Conventional Wisdom*, 17 ARMED FORCES & Soc’y 7, 14, 16 (1990).