

VETS AND DEBTS

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On October 30, 2015, the American Bankruptcy Institute Law Review, the St. John's Center for Bankruptcy Studies, and the Armed Forces Society at St. John's University School of Law joined the New York State Division of Veterans' Affairs for their symposium, entitled "Veterans in Bankruptcy." Dr. Jack Williams gave the keynote address. The following is a revised and annotated transcription of his remarks.

INTRODUCTION

Throughout history, societies have attempted, in one way or another, to help those who have fought and sacrificed for them. This noble form of recognition of the few by the many appears to transcend time, space, and culture. It is not an artifact nestled within traditional western civilization; its presence goes well beyond that. Special dispensation to those who fight may be found in holy texts, such as the Torah, Christian religious writings, and the Qu-ran. The United States of America is no different in this regard. We have, with a few notable exceptions, honored those that have served this country in its armed forces.

Professor Ray Warner,¹ a thoughtful scholar and great friend, introduced me to you all as an anthropologist and law professor. That is not quite the case; I am an archaeologist and law professor. An archaeologist, being introduced as an anthropologist, is like a Yankees fan being introduced as a Red Sox fan or *vice versa*. Just to give you a taste of the difference between the two disciplines: anthropologists believe that the way to understand culture and civilization is to embed yourself. You learn through observation. You study with the people, partake in their rituals, their habits, their routines, you talk with them, walk with them, eat with them; you engage them in a robust manner over a significant period of time.

* I would like to thank the American Bankruptcy Institute Law Review, the St. John's Center for Bankruptcy Studies, the Armed Forces Society at St. John's University School of Law, and the New York State Division of Veterans' Affairs for sponsoring this symposium. I further would like to thank my colleague, Susan H. Seabury, Esq., for her helpful comments on this speech. I would also like to thank Tosha Donn, Georgia State Law class of 2017, and the wonderful staff at the Law Review for their great help. Finally, I would like to thank the present servicemembers, veterans, and their families for their service. My email is jwilliams@gsu.edu. My office number is (404) 413-9149. Any errors are mine alone.

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Archaeologists think, "No, that's not the way to do it." If you really want to learn about a community, study their trash—the stuff they discard when they think no one is looking—and their most intimate possessions—the stuff they attempt to take with them for eternity. That is where you find intimacy, a soul laid bare; where you find the lack of pretense, or pretext, or any attempt to spin the "truth."

Archaeology, all humor aside, teaches us the importance of context. Archaeologists are not necessarily experts in pottery, funerary, or lithics. Rather, the archaeologist's expertise rests on a deep appreciation and understanding of context. It is not that we find a skeleton in an ancient grave boring—far from it. Rather, what excites us is the context: the location of that grave, the placement of the skeleton, the close proximity of another skeleton placed much later in the grave, the fact that one skeleton holds the other for eternity in a deep embrace, the placement of various funerary on and about the skeletons, etc. It is context that is important; it is the platform by which voices silenced for possibly millennia speak to us. I suggest to you all present today, many of you here as budding lawyers, that we as lawyers share the process of appreciating and evaluating context with archaeologists.

Law as a profession is devoted to context. Our artifacts are facts. When those facts tend to prove or disprove issues of importance to us, they become evidence. We marshal evidence through discovery, just as an archaeologist marshals artifacts from an excavation. We weave and synthesize the facts in an effort to develop narratives that support our client's position. We transform facts through narrative to facts in being; they are part of a context that tells a story. We give voice to past events that created the dispute of interest just like an archaeologist gives voice to past generations, those very people, and this is what makes it so rewarding, often overlooked or underappreciated in history. Of course, the closer our narrative fits the facts, the stronger our story becomes; and the more powerful our story becomes, the more our story will resonate with our intended audience.

You will hear from a wonderful group of experts today. They are truly blessed people; they have the opportunity to do each day that which they most care about—coming to the aid and comfort of those military personnel and veterans in need. They know, better than most, that to provide robust representation to veterans, you must appreciate the context in which veterans' issues present.

As you hear from these engaging experts, I would humbly suggest that you think about the troubling issues facing our veterans in a broader context. I want you to do so, however, in such a way that you do not diminish the particular struggle that any individual veteran may face. Attempt to recognize their systemic problems—problems that may be better solved at a macro level.² The people you are going to hear from today are professionals who have dedicated their lives to

² See Rosa Brooks, *Civil-Military Paradoxes*, in *WARRIORS & CITIZENS: AMERICAN VIEWS OF OUR MILITARY* 22 (Kori Schake & Jim Mattis eds., 2016) (noting that while there is broad support for the military, there is also a large gap in the knowledge the general populace has about the military).

doing that very thing, trying to understand the problems of veterans holistically, by considering commonality and context. Yet, and this is so vitally important and the challenge of our profession, analyzing with macro must be done without ever losing sight of the individual live and vulnerable men and women who have served this country. That remains a great challenge.

Today's subject is not new to me. Professor Warner pointed out that we discussed this topic soon after the invasions in Afghanistan and Iraq. Military personnel and veterans in financial distress and bankruptcy are recurring challenges that every nation state faces. The subject addresses support of military personnel, veterans, and their families, and the challenges unique to those groups. Sadly, this is the case, and there are many problems, beyond finances, to confront.

We have problems with high levels of veteran homelessness.³ We have veterans with emotional and mental problems.⁴ We have veterans who have difficulty in family relationships, giving rise to divorce and custody disputes.⁵ We have veterans experiencing severe financial distress.⁶ We have veterans with excessive student loan debt.⁷ We have veterans with excessive tax debts on the federal, state, and local levels.⁸ And, of course, we have veterans trying to cope with myriad physical challenges resulting from service-connected disabilities, sometimes catastrophic.⁹

We are in the presence of great people today. These people are sacrificing in many ways to ensure that veterans and their families are receiving the type of attention and care that they so greatly deserve. We have those who advise veterans and provide aid and comfort in facing many of the significant challenges outlined above.¹⁰ We have those who have dedicated themselves to providing an array of legal services, often with insufficient resources. We have states—two exemplars being New York and Georgia—that have pushed forward creative programs to help

³ See Robert N. Davis, *Veterans Fighting Wars at Home and Abroad*, 45 TEX. TECH L. REV. 389, 393–94 (2013) (detailing disproportionately higher rates of homelessness in veteran population).

⁴ See *id.* at 394–95 (discussing mental health issues confronting veterans, particularly post-traumatic stress disorder and suicide).

⁵ See Evan R. Seamone, *Educating Family Court Judges on the Front Lines of Combat Readjustment: Toward the Formulation and Delivery of a Core Curriculum on Military Family Issues*, 52 FAM. CT. REV. 458, 459–60 (2014) (comparing marital and custodial issues faced by Iraq and Afghanistan veterans and the experiences of Vietnam veterans in the same area).

⁶ See Bill Briggs, *Financial strain pushes many veterans to the breaking point*, NBC NEWS (May 4, 2013, 3:53 AM), <http://www.nbcnews.com/feature/in-plain-sight/financial-strain-pushes-many-veterans-breaking-point-v17987594> (noting that severe financial distress is pushing many veterans to suicide).

⁷ See Alan Zarembo, *Generous GI Bill Isn't Keeping Today's Veterans Out of Student Loan Debt*, L.A. TIMES (Oct. 30, 2015, 7:48 PM), <http://www.latimes.com/nation/la-na-veteran-debt-20151031-story.html> (indicating veterans incurring higher rates of debt than average students especially at for-profit schools).

⁸ See Eric M. Nemeth, *Working with Army Reservists and Veterans*, ASPATORE, 2014 WL 4785174 at *2 (Aug. 2014) (highlighting the various tax issues faced by many service members and veterans).

⁹ See Davis, *supra* note 3, at 396–97 (providing statistics and reasoning for significant number of severe injuries suffered by Iraq and Afghanistan veterans).

¹⁰ See, e.g., U.S. DEP'T OF VETERANS AFFAIRS, DIRECTORY OF VETERANS SERVICE ORGANIZATIONS (2013-2014), https://www.va.gov/vso/VSO-Directory_2013-2014.pdf (offering information on various services available to veterans through the federal government).

veterans in need. We have law schools—an exemplar being St. John's University—that have developed and implemented outstanding legal clinics to help veterans in need.

I have studied these issues for several decades. I have concentrated my recent work primarily in two areas: vocational and rehabilitation challenges and the financial issues, the latter being particularly relevant today. First, let me say something about vocational and rehabilitation programs. I have had the honor to work with several great governors of the State of Georgia.¹¹ Georgia has a large presence of military personnel, with some significant military bases in the state.¹² The State has collaborated with the Veteran's Administration ("V.A.") and other government and non-government organizations to develop vocational rehabilitation programs for our veterans, including wounded veterans who seek to return to the civilian workforce. The Georgia Department of Human Services has recognized, for example, the special challenges of many young disabled veterans who are suffering catastrophic combat injuries. These young men and women, full of vigor, are not the least interested in living out their lives in a V.A. hospital ward or nursing home or assisted-living facility. They want to come home, to be with family. Georgia agencies are developing programs to meet these needs.¹³ The State has found that a stable home environment leads to stability in all spheres of a disabled veteran's life and a better quality of life. While these programs have been surprising cost effective,¹⁴ these programs, more importantly, help restore and reaffirm the humanity that each of these soldiers, sailors, marines, coast guardsmen, and airmen deserve.

Now I would like to turn to the topic of financial distress. In this talk, I plan on addressing three broad topics. I promise no holistic solution to the problems we will explore together. However, much of resolving any challenge is identifying the nub of the problem. I do hope to help in doing that.

First, I plan to address the problem of financial distress and servicemembers. We will look at some common patterns of lending, some of which commentators have called predatory. We will then turn to a concise but important introduction to the Servicemembers Civil Relief Act, its predecessors, and the history behind this current version of remedial legislation. We will also consider some of the changes in the Bankruptcy Code and possible needed changes that may respond to the needs of military personnel and veterans.

Second, I plan to confront the question of debt and national security. Financial distress may be a significant factor in a person's denial or revocation of security

¹¹ I have served as a member of the board of the Georgia Department of Human Services, having been nominated by two governors, since 2009.

¹² See generally Brooks, *supra* note 2, at 34–35.

¹³ See, e.g., *Veterans' Resources*, DEPT OF HUMAN SERVS., <https://dhs.georgia.gov/veterans-resources> (giving information on services the state of Georgia offers to senior veterans).

¹⁴ See *id.* (presenting information on financial resources available to veterans to assist with medical costs).

clearances. How that happens, the roll active debt management plays, and how a personal bankruptcy influences the process will be considered.

Third, I plan to touch briefly on an overarching theme. I will take this opportunity to speak on the subject of citizenship and the military. I hope to offer up several reasons why citizenship and service, particularly military service, is an important part of our republican form of government. It is not enough to honor our military, but also to understand it, what it is capable of doing, and what it is asked to do.

FINANCIAL DISTRESS AND SERVICEMEMBERS

The very nature of military service often compromises the ability of service members to fulfill their financial obligations, and usurps many of their legal rights in response to debt collection and enforcement efforts.¹⁵ This is not something new, and Congress and many states have passed legislation¹⁶ that recognized the need for protective legislation for those who served their country, and in many instances, this includes their families, their spouses, and dependents, as well.

During the Civil War, for example, the United States Congress enacted an absolute moratorium on civil actions brought against federal soldiers and sailors,¹⁷ and various southern states in the confederacy enacted similar legislation.¹⁸ These protections did not have to be invoked; they were not in the nature of an affirmative defense.¹⁹ Congress concluded that the burden should be on the party seeking relief against an active duty soldier and sailor to obtain a special dispensation, if at all even possible.²⁰

That statutory scheme does not exist today. Generally, the burden is on the servicemember or veteran to seek enforcement of laws designed to protect him or her. Most of these remedial statutes are not automatically enforced. This duty to invoke the protection of the various statutes is less than advantageous, generally requires the servicemember to hire an attorney, and is costly, at times when finances

¹⁵ See generally Brooks, *supra* note 2, at 26–27 (discussing obligations upon joining military; "once you sign up, there is no changing your mind until you have fulfilled your service obligation."); Benjamin Wittes & Cody Poplin, *Public Opinion, Military Justice, and the Fight Against Terrorism Overseas*, in WARRIORS & CITIZENS: AMERICAN VIEWS OF OUR MILITARY 152 (Kori Schake & Jim Mattis eds., 2016) ("It is particularly hard to square in the justice arena, where civilian norms are extremely string and normally do not have to be reconciled with a legal culture that mandates taking orders from other people . . . in the military, not showing up to work can be a crime, as can just about anything that constitutes conduct unbecoming an officer and a gentleman or erodes military discipline.").

¹⁶ See R. CHUCK MASON, AM. LAW DIV. RL34575, THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA): SUMMARY AND PROPOSED AMENDMENTS 1 (2008); see also R. CHUCK MASON, CONG. RES. SERV. RL34575, THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA): AN EXPLANATION (2014).

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.* at 2.

²⁰ See *id.* at 8.

are at the straining point. Thus, in practice, when Lender A commences an action against someone presently in the military on active duty, there may be special protections in the Servicemembers Civil Relief Act²¹ (the present version of the old Soldiers' and Sailors' Civil Relief Act).²² However, it is generally incumbent on the servicemember to assert those protections. Keep this procedural point in mind. Some of you are going to be in very important policy positions someday. The manner in which you draft rules, regulations, and legislation is important. The simple shifting of burdens of proof, or a characterization of something as an affirmative defense, an election, or an opt-out right could dramatically change how that legislation is ultimately interpreted and applied, and whether the legislation achieves its purpose.²³ Think affirmative defense, think election, think cost—costs borne by people who already are in a situation in which they might be struggling physically, financially, or emotionally.²⁴

From the Civil War to World War II, some form of protectionist legislation was in place for the benefit of soldiers and sailors. Interestingly, one piece of legislation passed provided for a cash bonus to veterans of World War I, a form of deferred compensation.²⁵ During the early period of the Depression in America, World War I veterans marched on the government in Washington, D.C., demanding the early payment of their bonuses. The United States government responded through the use of military force (including tanks), violently ending the protests.²⁶ The army unit was, interestingly, commanded by Douglas MacArthur.

In 1940, the law that protected members in active duty and certain veterans' benefits, was completely rewritten.²⁷ In World War II, all Americans embraced a war footing. Everyone felt it, whether you were in the military or not, and our protective legislation, our remedial legislation, was completely rewritten to expand legal protections to servicemembers and to address more holistically the issue of providing veteran benefits.²⁸ The experience during World War II and after World

²¹ See Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 501–597b (2012) (hereinafter "50 U.S.C. app. §§ 501–597b") The present-day version of this statute was passed in 1940. It was a reenactment of the Soldiers' and Sailors' Civil Relief Act of 1918 and of 1940.

²² See *id.* The Soldiers' and Sailors' Civil Relief Act, which was enacted in 1918, was reenacted and renamed the Soldiers' and Sailors' Civil Relief Act of 1940, which is presently titled the Servicemembers Civil Relief Act.

²³ See generally Matthew D. McCubbings & Daniel B. Rodriguez, *Deriving Interpretative Principles from a Theory of Communication and Lawmaking*, 76 BROOK. L. REV. 979 (2011) (discussing intricacies of effectively communicating policy views through the process of legislation and those elements which go into the legislative process).

²⁴ See generally Wittes & Poplin, *supra* note 15 (noting pronounced disconnect between public understandings of the military, its personnel, and the needs of veterans and actual military experiences).

²⁵ See *The Bonus March (May-July, 1932)*, PBS AMER. EXPERIENCE: PEOPLE & EVENTS, <http://www.pbs.org/wgbh/amex/macarthur/peopleevents/pandeAMEX89.html>.

²⁶ See 50 U.S.C. app. §§ 501–597b.

²⁷ See *id.*

²⁸ See generally Servicemembers Civil Relief Act, ch. 888, 54 Stat. 1178 (Oct. 17, 1940) (current version at 50 U.S.C. app. §§ 501–597b (2012)).

War II, including the armed conflicts that occurred in Korea and Vietnam, through the more current conflicts in Afghanistan and Iraq, led to a number of amendments that culminated in the Servicemembers Civil Relief Act.²⁹ It was, in many ways, a dramatic rewrite of the protections of servicemembers on active duty, but it also became a catalyst for rethinking the benefits and services we provide veterans.

At the heart of the renaissance are many servicemembers and veterans' lawyers donating their time to help them overcome issues with regard to financial distress. Lawyers attend continuing education classes on the relevant body of law, coordinate with local JAG officers and step up to represent servicemembers and veterans facing challenging credit card debt problems, interest accruals, aggressive debt collection efforts, and improper foreclosure proceedings.

It was a powerful moment when those lawyers came together, represented today by the folks who are going to visit with you. I have always thought in the United States, that we the people are something more than a loose group or organization. In fact, we are something greater, we are a covenantal society.

As Americans, we enter into a covenant, a special bond, sometimes strained, between those of us who are protected and those of us who serve to protect us.³⁰ This covenant leads us to create and recognize certain indulgences that protect the servicemember or veteran.

This covenant springs from a rich tradition. Special dispensation for servicemembers can be traced back to the Book of Deuteronomy,³¹ where the narrative introduces the question of war. When you put this holy writing in its historical context, the notion of rules of war and special dispensations afforded citizen soldiers were revolutionary.

This holy writing provides that no one—male or female—is exempt from service in a defensive war and that in an offensive war, generally all males must report for duty. Thus, all male citizens muster. Then your commanding officers stand before you along with the Israelites' equivalent of the chaplain (the priest). The chaplain would ask the following questions before those who have mustered. First, who has built a new house but has not had the opportunity to live in it?³² Certain people would step forward. Second, who has planted a vineyard but has never had the opportunity to harvest it? Others would step forward.³³ Third, who has proposed to someone but has not had the opportunity for marriage?³⁴ Still others

²⁹ See *id.*; see also 50 U.S.C. app. §§ 501–597b (2012).

³⁰ See Brooks, *supra* note 2, at 22 (noting "[m]anifestations of public support for the military are everywhere in post-9/11 America;" however the author further notes that this support "has become a kind of American civil religion . . . [where these] gestures sometimes seem only to emphasize the distance between the military and civilian society;" this highlights the bond between civilians and the military and the strain between the two.).

³¹ See Deuteronomy 20:5-9.

³² See Deuteronomy 20:5.

³³ See Deuteronomy 20:6.

³⁴ See Deuteronomy 20:7.

would step forward. These three categories of citizens would be ordered not to go forth in battle, but to step back, in a support role.³⁵ These citizen soldiers had the opportunity to take care of the completion of their home, and the completion of their business, and the completion of their marriage ceremony. Finally, the chaplain asked who is afraid and has a tender heart? Those persons who stepped forward were immediately exempt from combat, but were not exempt from alternative service or duty.³⁶

There was always something when a nation went to war—whether it was providing logistics or support, medical aid, stores, foodstuff, the environment needs; whether it was providing moral support or care for the widows and orphans of the combat soldiers that were going out—for every citizen, even those that otherwise would be exempt from combat.

But there was an interesting additional category, one category that was exempt, not only from combat, but also from the muster itself. Recall that all the other citizens still had to muster and had to step forward, affirm and substantiate their exemption. However, if you have taken a new bride, you were given a one year exemption from even muster, absent a defensive war, also known as a war of obligation.³⁷ You were not even required to muster, so that you could establish your family.

When you step back from those special dispensations in the Book of Deuteronomy, one revolutionary idea emerges. These exemptions are universal. There is no exemption that I have shared that is based on birth, education, professional class, clerical position, or how much one's folks make or how they make it, or how well connected your family may be. These are the types of things that transcend time and culture; things every young person, would aspire to have—a home, a family, and personal beliefs respected. There have been great sacrifices made by the men and women who serve honorably in our armed forces, protecting this nation on land, sea, and air. Along with military personnel, their dependents make sacrifices as well.³⁸

We have had robust legislation since the Civil War, recognized by the Supreme Court of the United States, representing the special relationship between this country and its soldiers and sailors.³⁹ The Supreme Court has informed us that the Servicemembers Civil Relief Act, as well as other federal and state veteran laws, are to be liberally construed to protect those who have been obliged to take up the burdens of the nation. These indulgences allow servicemembers to devote their entire energy to the defense of the nation, in a manner that should be unhampered

³⁵ See Deuteronomy 20:5-7.

³⁶ See Deuteronomy 20:8.

³⁷ See Deuteronomy 24:5.

³⁸ See Brooks, *supra* note 2, at 26 ("Military families too must make substantial sacrifices: they are constantly uprooted, with consequent costs to friendships, children's performance in school, and the ability of military spouses to build their own careers.").

³⁹ See *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

by obligations incurred prior to their call. It removes one overhanging fear associated with combat and combat support: to know, regardless of the consequences, they or their survivors will be taken care of. Not only is it good for an army—history teaches us to know that—to believe that, and to internalize that, it is also the right thing for a country to do.

DEBT AND NATIONAL SECURITY

Of late, there has been an interesting development in the context of financial distress issues for active military personnel and veterans. Specifically, I would like to address their personal debt levels, bankruptcies, and consequences that many active duty military and veterans face when their debts simply outweigh their ability to pay.

Active duty personnel and veterans are losing, or being threatened with the loss of, their security clearances because of excessive debt problems. They find themselves in the conundrum with debt problems, the rules regarding security clearances, and of course, the overhang of the Uniform Code of Military Justice.⁴⁰

It should not surprise anyone there is a personnel debt problem in the United States, including mortgage, credit card, medical, and student loan debt. The military—Servicemembers and veterans—is not exempt from these problems. Approximately six out of every ten enlisted military personnel has reported significant difficulty with their family finances.⁴¹ Five out of ten say they are in over their heads.⁴² They worry about it at least five to six times a week. In essence, every day they are thinking about financial distress. That takes an emotional toll on both the servicemember/veteran and his or her relationships.

What is causing this level and volume of financial distress? Mostly it is excessive credit card debt, but not in the context that one might think. This is not excessive credit card debt because of splurging on new gadget and expensive trinkets. Then one might well conclude there is some form of culpability or lack of responsibility. There are several reasons for this avalanche of debt. For example, much of this credit card debt is actually related to medical expenses. Veterans have had difficulty with the V.A., difficulties well documented in the press and before Congress.⁴³

Mortgages are a second area that have posed problems. Many veterans and servicemembers bought houses that they thought they could afford in the location

⁴⁰ See Uniform Code of Military Justice, 10 U.S.C. §§ 801–946 (2012).

⁴¹ See *To amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to exempt the means test in bankruptcy cases, for a limited period, qualifying reserve component members: Hearing on H.R. 4044 Before the House Judiciary Subcomm. on Commercial and Administrative Law, 110th Cong. 7* (2008) (statement of Jack F. Williams).

⁴² See *id.*

⁴³ See generally U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-290, HIGH-RISK SERIES: AN UPDATE (2015).

they were then stationed. Although they can still afford their homes, they can't afford their mortgages. Home prices drop and mortgage payment obligations did not. Mortgage relief is a divisive issue on Capitol Hill.⁴⁴ However, the unique problem of the servicemember does not get the attention it deserves. Servicemembers get reassigned and must move. They cannot necessarily wait for housing markets to improve before selling a house. Short sells then become commonplace.

Notwithstanding the commercials that one sees on late night TV, a chapter 13 bankruptcy filing gives a debtor-homeowner very limited relief in a home mortgage situation, where the mortgage is upside down.⁴⁵ Chapter 7 bankruptcy gives, essentially, no relief.⁴⁶ Veterans are suffering disproportionately, on average, with mortgage foreclosures, and it should be understood what that means to many veterans and non-veterans as well. Losing one's home is a psychological and emotional blow. It is bad enough to have to move somewhere else, but sometimes, you have no place to go. Families break up because of home mortgage problems, and veterans go homeless because of home mortgage problems, notwithstanding the movements among states, like Michigan, to commit to zero tolerance with regard to the homelessness of veterans.

Another point to keep in mind is that the case is not always isolated. There are other causes of financial distress, but recognize that rarely is financial distress the only thing that veterans are dealing with, and that becomes important in trying to develop a holistic response and remedy to their needs.

Student loans are another area of concern: servicemembers and veterans are not exempt from their obligations under student loans, notwithstanding the GI Bill.⁴⁷ Many veterans and spouses have student loans often in situations of unstable employment.⁴⁸

These are some of the primary causes of financial distress, and at least since 2005, the Department of Defense ("DoD") has been aware of the pressing financial situation of military personnel and veterans.⁴⁹ The DoD has attempted to take steps,

⁴⁴ See Martin Feldstein, *The Problem is Still Falling House Prices*, WALL ST. J. (Oct. 4, 2008), <http://www.wsj.com/articles/SB122307486906203821>; Alan Zibel, *Regulator Says Banks Slow to Buy Back Bad Loans*, THE SEATTLE TIMES (Sept. 17, 2010, 5:06 PM), <http://www.seattletimes.com/business/real-estate/regulator-says-banks-slow-to-buy-back-bad-loans/> (updated Sept. 17, 2010, 7:16 PM).

⁴⁵ See 11 U.S.C. § 1325 (2012); General Comparison of Chapter 7 and Chapter 13 Bankruptcy, A.B.A., <http://www.americanbar.org/aba.html> (search "general comparison of Chapter 7 and Chapter 13"; then click second link to downloadable PDF).

⁴⁶ See A.B.A., *supra* note 45.

⁴⁷ See Jillian Berman, *Why Veterans and Servicemembers Struggle with Student Loan Debt, Despite a Generous GI Bill*, MARKET WATCH (Nov. 11, 2015, 5:01 AM), <http://www.marketwatch.com/story/why-veterans-and-servicemembers-struggle-with-student-loan-debt-despite-a-generous-gi-bill-2015-11-11>.

⁴⁸ See *id.*; Michelle Villarreal Zook, *The Big Problem Faced by Military Spouses Around the Country*, TASK AND PURPOSE (Dec. 22, 2014), <http://taskandpurpose.com/big-problem-faced-military-spouses-around-country/>.

⁴⁹ See H.R. 4044, *supra* note 41.

along with Congress, to alleviate some of the problems and abuses associated with the debt shouldered by military personnel.⁵⁰ Multiple DoD surveys⁵¹ show that anywhere from a third to half of all military personnel are in financial distress, and one in four have very serious problems making ends meet.⁵² In fact, looking at the financial profile, one concludes that close to half are in dire need of credit counseling and potential bankruptcy help right now.⁵³ If there were ever a candidate for bankruptcy relief, it just might be almost half of the military that's presently serving.

Recognizing the problem is, of course, only the first step. Developing a program that systematically addresses the financial problem becomes essential. I have attempted since 2007 to reform bankruptcy law to make bankruptcy relief easier for veterans and to recognize the special needs of both veterans and those who are serving on active duty. I have written a bit on the subject with a book⁵⁴ and a couple of articles⁵⁵ that I have co-authored. Then one day I realized, while talking to my dad back in Oklahoma, who was career military and a police officer, that writing might not be enough. He often says, "Writing's just fine, but it doesn't feed the bulldog. Do something about it." So, I have tried, on a pro bono basis, to work with various bankruptcy clinics, veterans, and servicemembers in an effort to address the special issues servicemembers and veterans face in financial distress.

I made a promise to myself, when I speak on veterans' issues in whatever context, I leave behind a means to contact me. So if you happen to know someone that has a problem, do not hesitate to reach out to me.⁵⁶ I do not care where they live or what the financial problem is, I am happy to help find someone who can help them with problems related to financial distress. Again, if there is anything I can do to help with servicemembers and veterans facing challenging financial issues in any way, I stand ready to do that.

Now back to the question of security clearances in the context of financial distress. The government generally grants three types of security clearances: top secret, secret, and confidential.⁵⁷ Top secret security clearance is given to those who have access to information that one could reasonably expect to cause exceptionally

⁵⁰ See H.R. 4044, *supra* note 41.

⁵¹ See H.R. 4044, *supra* note 41.

⁵² See H.R. 4044, *supra* note 41.

⁵³ See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-04-465-R, MILITARY PERSONNEL: BANKRUPTCY FILINGS AMONG ACTIVE DUTY SERVICE MEMBERS (2004).

⁵⁴ See JACK F. WILLIAMS & SUSAN H. SEABURY, *BANKRUPTCY AND DEBT THE SERVICEMEMBER CIVIL RELIEF ACT* (Am. Bankr. Inst. 2009).

⁵⁵ See Jack F. Williams & Susan H. Seabury, *Bankruptcy and Debt Under the Servicemembers Civil Relief Act*, NORTON ANN. SURV. OF BANKR. LAW 18 (September 2008); See also Jack F. Williams & Susan H. Seabury, *Debt, Bankruptcy, Taxes, and the Servicemember Civil Relief Act*, NORTON ANN. SURV. OF BANKR. L. 441 (2008).

⁵⁶ See Author's Biographical Note, *supra*.

⁵⁷ See JENNIFER K. ELSEA, CONG. RESEARCH SERV., RS21900, THE PROTECTION OF CLASSIFIED INFORMATION: THE LEGAL FRAMEWORK 3 (2013).

grave harm or damage to national security if disclosed.⁵⁸ The operative language is "exceptionally grave harm or damage to national security." It is reviewed every five years.⁵⁹ Among other things, a credit report will be drawn for the individual under investigation.⁶⁰ Secret clearance is required to have access to information that may cause serious damage to national security.⁶¹ The applicant is reviewed every 10 years.⁶² Confidential information is the most common clearance level among military personnel.⁶³ Veterans who have security clearances with government agencies or contractors are generally in the top secret mode, but most military personnel will have a clearance that gives them access to information that may otherwise cause damage to national security,⁶⁴ which is generally reviewed every 15 years.⁶⁵

As our weapons systems and logistics support platforms become increasingly sophisticated, we see more and more personnel whose military occupational specialty ("MOS"), rank, or occupation in the military require secret or top secret clearance.⁶⁶ Every five or ten years the credit history of personnel will be reviewed anew. In the military, if a security clearance is a precondition to a job, the servicemember would not simply lose a security clearance; they will lose their job or career.⁶⁷ If it is associated with debt, the servicemember is often given a choice to

⁵⁸ See *id.*

⁵⁹ See *Security Clearance and Periodic Reinvestigation*, DEP'T OF DEF., <http://www.military.com/veteran-jobs/security-clearance-jobs/security-clearance-and-periodic-reinvestigations.html> (last visited Feb. 18, 2017).

⁶⁰ See Sgt. James Humbucker, *Security Clearances: Get the Answer to What, Who, When, and Why*, VETERANS TODAY (Jan. 25, 2010), <http://www.veteranstoday.com/2010/01/25/security-clearances-what-who-when-and-why-get-the-answers/>.

⁶¹ See Elsea, *supra* note 57.

⁶² See *Security Clearance and Periodic Reinvestigation*, *supra* note 59.

⁶³ See U.S. DEP'T OF STATE, UNDER SEC'Y OF MGMT., BUREAU OF DIPLOMATIC SEC., SEC. CLEARANCES, FREQUENTLY ASKED QUESTIONS, available at <http://www.state.gov/m/ds/clearances/c10977.htm#4> (see response to Question #5, inferring from the fact that "Top Secret" and "Secret" are higher clearance levels than "Confidential" so more personnel would have the "Confidential" level than the other two levels).

⁶⁴ See Rod Powers, *Security Clearance Military Secrets: The Basics of Getting a Security Clearance in the Military*, THE BALANCE (Oct. 18, 2016), <https://www.thebalance.com/security-clearance-secrets-3331997> (confidential information is defined as information whose "unauthorized disclosure could cause damage to the national security." (emphasis in original)).

⁶⁵ See *id.* ("A Periodic Reinvestigation (PR) is required every five years for a Top Secret Clearance, 10 years for a Secret Clearance, or 15 years for a Confidential Clearance.").

⁶⁶ See Eilene Zimmerman, *Top-Secret Security Clearance Is a Ticket to Lots of Job Offers*, N.Y. TIMES (Apr. 9, 2006), <http://www.nytimes.com/2006/04/09/jobs/topsecret-security-clearance-is-a-ticket-to-lots-of-job-offers.html> (personnel with high clearance levels are in greater demand than those with lower clearance levels, with several employers vying for the same candidate—the higher the clearance, the faster the candidate becomes employed).

⁶⁷ See, e.g., *Carlucci v. Doe*, 488 U.S. 93, 97–98 (1988), *rev'd and remanded* *Doe v. Weinberger*, 820 F.2d 1275, 1277 (D.C. Cir. 1987) (citing 50 U.S.C. §§ 831–32 authorizing security clearance as a prerequisite to work at the National Security Agency); *Smith v. Schlesinger*, 513 F.2d 462, 465 (D.C. Cir. 1975) (aerospace engineer required clearance to begin employment with government contractor).

accept an "involuntary reclassification" to a different occupation.⁶⁸ Or, in many instances, the servicemember is given the opportunity to separate under Article 134 of the Uniform Code of Military Justice,⁶⁹ which can be triggered in very peculiar situations. Thus, financial distress puts veterans with security clearances at risk.⁷⁰ There are some helpful materials on the web to make veterans eminently employable in a number of areas requiring security clearances.⁷¹

Financial distress is a problem for security clearances because the DoD has concluded that an individual who has financial difficulties is vulnerable to bribes and other pressures, and they may compromise national security information and concerns.⁷² The DoD takes this issue very seriously. The DoD does point out in their materials that a bankruptcy filing, in and of itself, does not result in a forfeiture of one's security clearance.⁷³ In fact, that point is clearly stated in a number of places on various relevant websites and pamphlets. While I can understand why the DoD would take that position, it is not what veterans and military personnel believe the situation to be. We have to do a better job of bridging the gap in knowledge and trust.

To explain why financial distress would potentially compromise national security concerns, an indebted veteran or active service member may become vulnerable to bribery to "solve" the financial problem or because of a concern that someone would disclose your situation to a commanding officer. Either way, the light of day is the way to go, that is disclosures would be the way to handle the

⁶⁸ See Jackie Zimmermann, *The Lenders That Prey on Service Members – and How to Keep Them at Bay*, TIME, <http://time.com/money/collection-post/3577387/predatory-lenders-military-veterans/> (last visited Feb. 18, 2017).

⁶⁹ See 10 U.S.C. § 934 (2012) (this is a general article that states that "all disorders and neglects" which are not specifically mentioned in this chapter are to be punished at the court's discretion); see generally *United States v. Bullman*, No. 01-0647 (C.A.A.F. 2002) available at <http://www.armfor.uscourts.gov/newcaaf/opinions/2002Term/01-0647.htm> (this provision has been used to dismiss military personnel for failure to pay debt under certain circumstances).

⁷⁰ See Denis Poroy, *How Big Debt is Threatening Security Clearances for Thousands of Troops*, NBC NEWS (Aug. 13, 2012, 10:12 AM), http://usnews.nbcnews.com/_news/2012/08/13/13221657-how-big-debt-is-threatening-security-clearances-for-thousands-of-troops (claiming "36,000 active-military members who hold security clearances have recently sought urgent financial advice or aid because heavy debts and delinquent bills threatened to void their classified status . . .").

⁷¹ See, e.g., *Security Clearance Jobs*, MILITARY.COM, <http://www.military.com/veteran-jobs/security-clearance-jobs> (last visited Feb. 18, 2017) (offering links to lists of industry-specific jobs for veterans with security clearances); FEDSHIREVETS, <https://www.fedshirevets.gov/> (last visited Feb. 18, 2017) (providing information on federal government employers seeking to hire veterans); CLEARANCEJOBS.COM, <https://www.clearancejobs.com/> (last visited Feb. 18, 2017) (indicating job opportunities for individuals, including veterans, with security clearances).

⁷² See Meghan Stringer Musselman, *Talent Amendments: Limitations on Military Lending*, 40 MD. B.J. 38, 39–40 (2007) (discussing financial difficulties faced by service members and possible consequences with security clearance); see also *Jamil v. Sec'y, Dep't of Def.*, 910 F.2d 1203, 1205 (4th Cir. 1990) (detailing the procedure whereby an individual lost his security clearance due to financial irresponsibility).

⁷³ See *Under Secretary of Defense (Comptroller)*, DEP'T OF DEF., <http://comptroller.defense.gov/Portals/45/documents/fmr/archive/07aarch/07a50.pdf> (last visited Feb. 18, 2017) (providing Department of Defense rules as to service members filing bankruptcy).

situation coupled with meaningful attempts to manage the debt load. But the perception in the military is that disclosures with regard to financial distress are risky. The perception becomes reality when it comes to trying to manage finances and the concern that one might lose security clearance—and therefore, one's career in the military.

From a servicemember's perspective, they face a conundrum; if they go to the commanding officer or JAG and inform them of their financial situation, they possibly risk their security clearance. Thus, it is not unusual for some to seek help off-base or off the veterans' grid. Many of them internalize the problem and see if they can work the situation out quietly and quickly while there is still a window of opportunity. Oftentimes, because the concern of disclosures and the consequences associated with those disclosures, they do not take steps in a timely manner. This is an area that needs to be revisited with great and deliberate thought and focus.

Security clearances are the coin of the realm in many government contract jobs, not just in the military, but with veterans who are continuing to serve their country in a different capacity. We put the active duty military or veterans in a difficult position without guidance or clarity as to what the appropriate steps should be and what the safeguards are and protections that would otherwise be, or should otherwise be, in place to help and protect them.

FORGIVENESS

These are just some of the issues I wanted to share with you. The financial issues are very important, but they are not the only issues that veterans struggle with.⁷⁴ As bankruptcy professionals, we need to use this particular platform (bankruptcy relief), armed with our specific skills, to give voice to veterans who are struggling with financial distress.

If we step back as students of debt relief and bankruptcy, we would see that the Old Testament devotes a considerable amount of text to two interesting phenomena. The first is the commandment to be kind to strangers, the foreigner among us. It is mentioned dozens of times.⁷⁵ And then almost with the same regularity, we read about debtor-creditor relationships.⁷⁶ Commentators suggest that the power that creditors have over debtors is something that has concerned people for thousands of

⁷⁴ See Robert N. Davis, *Veterans Fighting Wars at Home and Abroad*, 45 TEX. TECH L. REV. 389, 391–97 (2013) (discussing emotional, social, and physical problems veterans face).

⁷⁵ See, e.g., *Deuteronomy* 10:19 ("So you too must befriend the alien, for you were once aliens yourselves in the land of Egypt."); *Leviticus* 19:34 ("You shall treat the alien who resides with you no differently than the natives born among you; have the same love for him as yourself; for you too were once aliens in the land of Egypt.").

⁷⁶ See, e.g., *Deuteronomy* 15:2 ("Every creditor shall relax his claim on what he has loaned his neighbor; he must not press his neighbor, his kinsman, because a relaxation in honor of the Lord has been proclaimed."); *Exodus* 22:24 ("If you lend money to one of your poor neighbors among my people, you shall not act like an extortioner toward him by demanding interest from him.").

years—the notion of strong creditors and weak debtors.⁷⁷ Competitive markets bring out the best in people; however, we also know that competition can bring out the worst in people. I have always thought of bankruptcy as part of the safety net that we provide for people in a rough—and—tumble society so that they have the ability, not only to begin their economic lives anew, but also to restart their unique role in the great human experiment.

The marginalization of debtors by a society and their protection from creditors throughout the Holy Scriptures of many different religions (including the largest five religions⁷⁸) is a common theme. The Bankruptcy Code is a grand experiment in regret, forgiveness, and the balancing of debtor protections and creditor rights. It is a living body of law. We tinker with it; sometimes it slides a little closer to creditor rights,⁷⁹ sometimes a little closer to debtor protections.⁸⁰ But when you look at the next best alternative, our present regime is a shining star, providing the type of just relief from the human toll that debt extracts from us all.

CITIZENSHIP AND THE MILITARY

Finally, I would like to talk a bit about the relationship between the military and citizenship. Republican political theory centers on the idea of self-governance.⁸¹ However, this self-governance is more than a right to determine one's own destiny and allow others to do the same.⁸² Rather, republicanism requires civic virtue on the part of citizens. Civic virtue is active engagement within the political sphere; it is the discussion and debating that occurs among citizens.⁸³ But to participate fully, citizens must also be informed and have a stake in the community and a mind towards the common good.

Republicanism, to some degree, requires its citizens to subjugate their individual desires to that of the common good. Individualism is, of course, of central importance to republicanism because it allows the individual to stand up to tyranny, and while individualism is a component of republicanism, the idea of the

⁷⁷ See James J. Kilborn, *Mercy, Rehabilitation, and Quid Pro Quo: A Radical Reassessment of Individual Bankruptcy*, 64 OHIO ST. L.J. 855, 865–75 (2003) (telling the history of creditor and debtor relations from biblical times through to modern times).

⁷⁸ See Will Worley, *What are the Largest Religious Groups Around the World, and Where are They?*, INDEPENDENT, <http://www.independent.co.uk/news/world/what-are-the-largest-religious-groups-around-the-world-and-where-are-they-a6982706.html> (identifying, in alphabetical order, Buddhism, Christianity, Hinduism, Islam, and Judaism as the top five religions in the world).

⁷⁹ See Kilborn, *supra* note 77, at 858–60 (noting the ebb and flow of the balance of power in the creditor-debtor relationship in the United States).

⁸⁰ See Kilborn, *supra* note 77, at 858–60.

⁸¹ Referring here to the political theory relating to a republic rather than the Republican Party.

⁸² See generally Waldemar Hanasz, *Toward Global Republican Citizenship?*, 23 SOC. PHIL. & POL'Y 282 (2006) ("In order to sustain the free community and make it secure, citizens must conscientiously exercise their duties and responsibilities . . . [and] the republic must actively strive to shape its citizens in a politically effective way, through some form of civic education.").

⁸³ See generally MICHAEL SANDEL, *DEMOCRACY'S DISCONTENT* (1996).

common good is also integral.⁸⁴ But civic virtue is not something that innately occurs; instead, it is something that must be cultivated within the citizenry. One early way of cultivating civic virtue was the universal militia.

When discussing a universal militia, we mean one which draws citizens from all walks of life, "not a narrow slice of society...but rather all citizens in a state... which would always act in the common good."⁸⁵ This method intentionally crosses the citizen and the state, creating a citizen soldier. Moreover, through military training, the citizen soldier is prepared to act virtuously in the political sphere. The very nature of military service requires self-sacrifice for a greater goal: "[m]embership [is] service to the state that always disrupt[s] one's chosen round of activities and often involve[s] hunger, cold, disease, and danger."⁸⁶ Thus participation in the military typifies those qualities most required of a virtuous citizen—military service purposefully curbs individual interests in pursuit of a common good.

At the same time, because the militia is universal, it represents the people, "deriving its legitimacy from them and being virtually synonymous with them."⁸⁷ This representative body of the many was intended as a check on possible governmental tyranny. The militia was not dependent on the state for its furtherance in the world, meaning soldiers were not career soldiers; rather, their enlistment was for a period of time and not continuous. A lack of continuous service is the republican ideal because the more dependent the militia becomes on the state, the more it becomes a tool of the state instead of functioning as a check on state power.⁸⁸

However, our current military form is changing and moving away from the republican ideal of the citizen soldier. Instead, our military is an entity unto itself, drawing from specific areas of the United States and from specific stratum of individuals instead of the entire citizenry.⁸⁹ Those serving often feel cut off from civilians and civilian leaders.⁹⁰ This is, of course, far removed from the republican idea that the military mirrors the people and represents the whole of the republic. Moreover, as soldiers become professionals within the military, the republican

⁸⁴ See David C. Williams, *Civic Republicanism and the Citizen Militia*, 101 YALE L.J. 551, 566 (1991) ("Republican virtue includes two components: a good citizen must be prepared to sacrifice himself for the good of the whole, and he must also be independent enough to know when to resist a corrupt state.").

⁸⁵ *Id.* at 553.

⁸⁶ *Id.* at 580.

⁸⁷ *Id.* at 553.

⁸⁸ See *id.* at 572 ("Its members would follow [the leader's] will rather than the common good because they depend on him for their livelihood.").

⁸⁹ See Brooks, *supra* note 2, at 33 (asserting that the military is distinctly middle class and members come from specific states and family situations because of military base locations).

⁹⁰ See Mackubin Thomas Owens, *Is Civilian Control of the Military Still an Issue*, in WARRIORS & CITIZENS: AMERICAN VIEWS OF OUR MILITARY 22 (Kori Schake & Jim Mattis eds., 2016) ("Civilians and members of the uniformed military possesses different views of the world and that the military's [views] had diverged considerably from those of civilians over a twenty-year period.").

intent of balancing power is lost. The mixing of citizens and state is reduced to a standing army ready to act for the state—this is, under republicanism, a continuing concern for the citizenry.

This detachment of the entire citizenry and the military leads to many people, including policy and decision makers, with a tenuous connection to the military. In addition to the concerns highlighted above, this may lead policy makers to develop well-meaning programs with no real understanding of impact those programs may have on the military. Decisions may be made without an understanding or appreciation of how that decision may affect military personnel, their families, or veterans. Numerous wonderful organizations, like the American Legion, the Veterans of Foreign Wars, and countless other organizations, seek to bridge the gap, to represent military personnel, veterans, and their families in an array of arenas. These organizations should be applauded and supported. It would be a real shame if this country someday finds itself, like so many super powers in history, with a military class disconnected from the citizen body. From our inception, that has not been the case. It is what makes us who we are. It is the foundation that transforms us from a Super Power to a Great Power.

CONCLUDING REMARKS

I would like to close by sharing with you a personal thought. I love this school and the mission it embraces. Some of my fondest memories are of this campus. I look into the audience today and see a number of familiar faces—mentors, colleagues, former and present students. As we move into the real substance of the symposium, let me leave you with one thought. Do not give up on your veteran clients. Bureaucracy is bewildering. When red tape wants to seek out even worse red tape, it migrates to veterans' affairs. The V.A. hospital debacle, a disgrace, is just one example of what I speak.

The burdens of bureaucracy require a steady hand and stout heart to navigate. Most clients who happen to be veterans that you will advise are well adjusted; they just happen to be in need of legal counsel. Unless they have a specific veteran's-related legal issue, you may not even know that they are a veteran. These folks are like that. However, some of your clients who happen to be veterans are there because of the burdens of military service. Some of these folks are in desperate need of help on many levels. Their problems are complex, rarely just legal in nature. At times, the challenges seem insurmountable, the future bleak; as their legal counsel you become so frustrated with the system, and, to be honest, with some of your clients, that you want to give up. Don't. You can tap into many resources; clinics and programs just like the ones that are represented here today. Moreover, there are your former law teachers and other lawyers in your bar association that can help.

If there is but one watchword of faith among all military personnel, it is this: Leave no person behind. Veterans in need are vulnerable people. By their service

to this country, they have earned the right not to be left behind when confronting financial distress. I believe with all my heart and soul that as a profession, we will be judged not by how we treat the most fortunate, but by how we treat the most vulnerable. This is our calling. Thank you and G-d bless you.