

## ANIMALS ARE PROPERTY: THE VIOLATION OF SOLDIERS' RIGHTS TO STRAYS IN IRAQ

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*The negative impact of the Department of Defense's General Order 1B (GO-1B) paragraph (2)(j), which prevents soldiers from "[a]dopting as pets or mascots, caring for, or feeding any type of domestic or wild animal," is extensive. GO-1B(2)(j) not only violates the property rights of soldiers, but is misplaced and misguided in its attempt to ensure good order, discipline, and readiness, as well as preserve host relations. Under both U.S. and Iraq law, property rights allow soldiers to claim and remove domestic stray cats and dogs from Iraq as "souvenirs" under GO-1B(2)(1)(3). The Department of Defense must revise GO-1B(2)(j) to allow soldiers to care for and possess domestic stray animals, for not only legal, but public policy reasons.*

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### I. INTRODUCTION

Three-tour Lieutenant Colonel Jay Kopelman was shocked to hear his rough-and-tumble elite force Marines gushing "[Y]ou had yuckee little

buggees all over you . . . now you're a brave little toughie . . . yessiree.”<sup>1</sup> They were talking to a starved, flea-bitten, six-week old puppy, later named Lava, discovered just a few days earlier in an abandoned building.<sup>2</sup> Lava instantly became one of the team. The soldiers fed, slept with, and protected him. In return, he helped them to forget. Lava's presence at the compound “allow[ed] all humans a temporary exit pass from reality . . . into the Land of Make-Believe where puppies romp on plush, green grass and it's a beautiful day in the neighborhood.”<sup>3</sup> Lieutenant Kopelman fell especially hard for Lava, who peed in his boots, and eventually shared his sleeping bag.<sup>4</sup>

Fallujah, Iraq greets American soldiers with “human slaughterhouses . . . hooks hanging from the ceilings, black masks, knives, bloody straw mats, . . . videos of beheadings . . . emaciated prisoners . . . [and] stray dogs feasting on the dead.”<sup>5</sup> Soldiers are constantly on alert for suicide bombers, snipers, and car bombs, which are so prevalent that the tiniest sound sends their nerves into overdrive.<sup>6</sup> Despite experiencing situations that most ordinary civilians can never imagine, nor wish to imagine, soldiers are human. It is no wonder that a “three-tour tough-guy Marine [tried to] save a little puppy in the middle of the war.”<sup>7</sup> However, like most other things in Iraq, keeping dogs like Lava is not as simple as it seems. General Order 1A (GO-1A) prohibited Marines and other U.S. soldiers from keeping pets, and under this law, Kopelman's choices were to “put [Lava] out on the street, execute him, or ignore him as he slowly died in a corner.”<sup>8</sup> Violations subjected soldiers to Article 92,<sup>9</sup> failure to obey an order, which meant stiff consequences.<sup>10</sup> As a seasoned officer, Lieutenant Kopelman knew this, and he knew it well.<sup>11</sup> He tried to ignore the small cooing ball of fur, but it was too late. Kopelman sent emails, made phone calls, and reached out to every contact he had in a desperate attempt to bring Lava back to the United

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\* Executive Articles Editor, Case Western Reserve Journal of International Law. B.A., Arcadia University (2008); J.D., Case Western Reserve University School of Law (expected 2011). Many thanks to my mom, dad, and sister for their love, patience, and support. To my furchildren, Gurble and Bertram, for being my constant stress relief and never letting me overlook their need for belly-rubs throughout this process. Finally, to our soldiers—thank you.

<sup>1</sup> JAY KOPELMAN & MELINDA ROTH, FROM BAGHDAD, WITH LOVE: A MARINE, THE WAR, AND A DOG NAMED LAVA 10 (The Lyons Press) (2006).

<sup>2</sup> *Id.* at 9.

<sup>3</sup> *Id.* at 103.

<sup>4</sup> *Id.* at 83 & 50.

<sup>5</sup> *Id.* at xi.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 62.

<sup>8</sup> *Id.* at 9.

<sup>9</sup> Uniform Code of Military Justice, § 892, art. 92, 10 U.S.C. § 892 (2008).

<sup>10</sup> *Id.*

<sup>11</sup> KOPELMAN & ROTH, *supra* note 1, at 17.

States.<sup>12</sup> After months of exasperation, Kopelman's deployment ended and he left Iraq, unsure if he would ever see Lava again.<sup>13</sup>

The United States Army's "Soldier's Creed" recognizes a motto that has long been used and honored amongst military forces in various forms: Leave no man behind.<sup>14</sup> It is a motto that calls for responsibility, indicating that the strong must protect the weak or hurt, and above all "stick together, . . . never leave a fellow Soldier behind, never."<sup>15</sup> Yet, in Iraq and other Areas of Responsibility (AOR) of the United States Central Command (USCENTCOM), the Department of Defense (DoD) has ordered that soldiers leave their unconventional comrades behind. General Order 1B (GO-1B), paragraph (2)(j), prevents soldiers from "[a]dopting as pets or mascots, caring for, or feeding any type of domestic or wild animal."<sup>16</sup> In hundreds of cases, soldiers have violated this rule in an attempt to save domestic stray cats and dogs, their comrades and confidants, from certain death amongst the violence occurring in Iraq. Some travel dangerous routes through Jordan,<sup>17</sup> some hide their pets for days to prevent capture,<sup>18</sup> and some never make it, sparing their friend a painful death with an overdose of morphine rather than the sting of a bullet.<sup>19</sup>

This Note examines how GO-1B(2)(j) violates soldiers' property rights by prohibiting them from owning domestic stray animals found in Iraq. Under both U.S. and Iraq law, property rights allow soldiers to claim and remove domestic stray cats and dogs from Iraq as "souvenirs" under

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<sup>12</sup> *Id.* at 56.

<sup>13</sup> *Id.* at 161.

<sup>14</sup> See Enlisted Proponency, Soldier's Creed, [http://www.eustis.army.mil/OCOT/Documents/ENLISTED\\_PROPONENCY/SoldiersCreed.htm](http://www.eustis.army.mil/OCOT/Documents/ENLISTED_PROPONENCY/SoldiersCreed.htm) (last visited Sept. 18, 2010). See also United States Army 2007 Posture Statement—Warrior Ethos, <http://www.army.mil/aps/07/infopapers/153.html> (last visited Sept. 18, 2010) (The Soldier's Creed is a dogma taught to United States Soldiers during basic training, which embodies the "Warrior Ethos," a set of principles to live by. In part, it reads: "I will always place the mission first. / I will never accept defeat. / I will never quit. / I will never leave a fallen comrade . . . I am a guardian of freedom and the American way of life." Sergeant Major of the Army Kenneth O. Preston referred to this segment in 2007 as "*the common thread that ties us as Soldiers together for the last 229 years.*").

<sup>15</sup> GoArmy.com, <http://www.goarmy.com/home/vw/nfindex.jsp> (last visited Sept. 18, 2010).

<sup>16</sup> UNITED STATES CENTRAL COMMAND, GENERAL ORDER NO. 1B para. 2(j) (Mar. 13, 2006), available at [http://www.tac.usace.army.mil/deploymentcenter/tac\\_docs/GO-1B%20Policy.pdf](http://www.tac.usace.army.mil/deploymentcenter/tac_docs/GO-1B%20Policy.pdf) [hereinafter GO-1B].

<sup>17</sup> Bernard Unti, *United States Military Treats Stray Dogs and Cats Befriended by Troops as Enemies of the State*, [http://www.hsus.org/pets/pets\\_related\\_news\\_and\\_events/enemies\\_of\\_the\\_state.html](http://www.hsus.org/pets/pets_related_news_and_events/enemies_of_the_state.html) (last visited Mar. 21, 2010).

<sup>18</sup> SPCA International, *No Buddy Gets Left Behind!*, <http://www.spcai.org/baghdad-pups/successful-stories/item/242-band-aid.html> (last visited Sept. 18, 2010).

<sup>19</sup> Unti, *supra* note 17.

GO-1B(2)(1)(3).<sup>20</sup> This Note makes the case for revision of GO-1B(2)(j) to allow soldiers to care for and possess domestic stray animals, for not only legal, but public policy reasons. Part II provides background information about GO-1B and its predecessor, GO-1A. Part III analyzes property and importation law to explain how a stray animal may be considered a souvenir under GO-1B(2)(1)(3), and also addresses liability. Part IV assesses the concerns of the DoD and suggests that they are outweighed by public policy reasons for revising GO-1B(2)(j) to allow soldier pets. Finally, Part V concludes that GO-1B(2)(j) not only violates the property rights of soldiers, but that the order is misplaced and misguided in its attempt to ensure good order, discipline, and readiness, as well as preserve host relations.

## II. THE HISTORY OF GO-1B

Issued on December 19, 2000, GO-1A was promulgated to govern the behavior of uniformed military personnel serving in areas of USCENTCOM military authority, including Iraq and Afghanistan.<sup>21</sup> GO-1A intended to identify “conduct that is prejudicial to the maintenance of good order and discipline of all forces” and preserve relations between the United States and its host nation by “prohibit[ing] or restrict[ing] certain activities which are generally permissible in western societies.”<sup>22</sup> These activities included, but were not limited to: purchase of private weapons, entrance into Islamic religious buildings by non-Moslems, possession or sale of alcohol or drugs, display of pornography, and defacement of national artifacts or treasures.<sup>23</sup> Revised in 2001 and 2003, the order continued to contain a provision prohibiting soldiers from “[a]dopting as pets or mascots, caring for, or feeding any type of domestic or wild animal.”<sup>24</sup>

On March 13, 2006, General John Abizaid issued GO-1B, which superseded GO-1A. GO-1B, the general order currently in effect for Iraq, contains new, more detailed, and arguably stricter provisions governing soldier behavior. GO-1B, while professing the same purpose as its predecessor, additionally prohibits the photographing or filming of human detainees or casualties.<sup>25</sup> GO-1B also further defines GO-1A’s provision on souvenirs. GO-1B prohibits “[t]aking or retaining of public or private property of an enemy or former enemy, except as granted by applicable

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<sup>20</sup> GO-1B, *supra* note 16, para. 2(1)(3).

<sup>21</sup> UNITED STATES CENTRAL COMMAND, GENERAL ORDER NO. 1A (2000), *available at* <http://www.cemml.colostate.edu/cultural/09476/pdf/GeneralOrderGO-1A.pdf> (last visited Mar. 21, 2010) [hereinafter GO-1A].

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* paras. 1, 2(a)–(e) & (g).

<sup>24</sup> *Id.* para. 2(i).

<sup>25</sup> GO-1B, *supra* note 16, para. 2(e)–(f).

USCENTCOM waivers and as noted [in subsequent sections].”<sup>26</sup> Similar to GO-1A, however, “[t]his prohibition does not preclude the lawful acquisition of souvenirs that can be legally imported into the United States.”<sup>27</sup> GO-1B further defines these items as “tourist souvenirs.”<sup>28</sup> Citing concerns about soldiers attempting to bring home “war trophies,” Abizaid attempted to curb the removal of potentially dangerous items such as weapons and munitions, by requiring express authorization for removal of these items from Iraq.<sup>29</sup>

A. *Animal Activists React to GO-1A*

Once complaints began surfacing about the DoD’s policy on prohibiting and euthanizing soldier pets, animal activists rapidly began attempting to protect those pets and their soldiers. As early as 2005, less than two years after the beginning of Operation Iraqi Freedom, the Humane Society of The United States (HSUS) issued a letter to General Rumsfeld asking for revisions to GO-1A’s animal provision.<sup>30</sup> The letter went unanswered, while hundreds of American soldiers continued to reach out to the HSUS and other animal rescue organizations for help transporting their pets out of Iraq. Online, pleas to allow soldiers to bring their pets home inundated petition sites.<sup>31</sup> Military Mascots, an organization formed by a single volunteer, began providing supplies for soldier pets<sup>32</sup> and small, individual rescue teams flew to Iraq to remove pets.<sup>33</sup> In September 2007, coinciding with the sixth anniversary of the 9/11 attacks, the Society for Prevention of Cruelty to Animals International (SPCAI) could not ignore the email of Sergeant Ed-

<sup>26</sup> *Id.* para. 2(1).

<sup>27</sup> *Id.* para. 2(1)(3); GO-1A, *supra* note 21, para. 2(k)(4).

<sup>28</sup> GO-1B, *supra* note 16, para. 2(1)(3).

<sup>29</sup> Jim Garamone, *No War Trophies Allowed from Iraq, Afghanistan*, Dec. 11, 2003, <http://www.defense.gov/news/newsarticle.aspx?id=27640>.

<sup>30</sup> Letter from Wayne Pacelle, President and CEO of the Humane Society of the United States, to Donald Rumsfeld, Secretary of Defense, at 1 (Mar. 29, 2005), *available at* [http://www.humanesociety.org/assets/pdfs/Letter\\_to\\_Rumsfeld-Soldiers\\_and\\_Dogs-3-29-05.pdf](http://www.humanesociety.org/assets/pdfs/Letter_to_Rumsfeld-Soldiers_and_Dogs-3-29-05.pdf).

Pacelle asked Secretary Rumsfeld to allow every soldier to bring one stray animal obtained in Iraq of Afghanistan back to the United States. *Id.* at 2. Pacelle offered to help provide medical attention to those animals and assist the DOD with planning and execution. *Id.*

<sup>31</sup> See generally Stephanie Gaskell, Thousands urge Army to let Minnesota soldier bring home rescued puppy, N.Y. DAILY NEWS, Oct. 14, 2008, *available at* [http://www.nydailynews.com/news/national/2008/10/14/2008-10-14\\_2008-10-14\\_thousands\\_urge\\_army\\_to\\_let\\_minnesota\\_sol.html](http://www.nydailynews.com/news/national/2008/10/14/2008-10-14_2008-10-14_thousands_urge_army_to_let_minnesota_sol.html) (more than 30,000 people signed petition).

<sup>32</sup> Bonnie Buckley, Military Mascots, <http://www.militarymascots.org> (last visited Aug. 28, 2010). Military Mascots later began removing pets from Iraq and Afghanistan.

<sup>33</sup> See SPCA International, *A Book to Bark About: Saving Cinnamon* (2009), <http://www.spcai.org/about-us/in-the-news/item/333-a-book-with-bark-saving-cinnamon.html> (last visited Aug. 28, 2010) (reviewing a book about Terri Crisp’s rescue of a dog named Cinnamon in 2006. Crisp later helped to develop Baghdad Pups).

ward Watson, a U.S. soldier desperately trying to get his regiment's dog, Charlie, out of Iraq.<sup>34</sup>

Discovered during patrol of a high-risk Baghdad neighborhood, Charlie was starving, flea-bitten, and the size of a potato.<sup>35</sup> Despite knowing the risks of keeping the dog, the soldiers snuck Charlie onto a coalition forces outpost, where they cared for him until their fifteen month deployment was about to end.<sup>36</sup> Watson wrote SPCAI of his promise to Charlie, that he would bring him home because, "[w]hen all the guys got to playing with Charlie, we'd forget where we were, at least temporarily . . . you could almost imagine being home."<sup>37</sup> Months later, on Valentine's Day 2008, the newly formed SPCAI program "Operation Baghdad Pups" completed its first mission. With costs totaling over four thousand dollars, volunteers from Baghdad Pups flew to Baghdad and picked Charlie up, the only legal way to remove him because of GO-1B's restrictions.<sup>38</sup>

Since Charlie's rescue, Baghdad Pups has rescued over one hundred and seventy-one cats and dogs for American soldiers.<sup>39</sup> In 2008, Baghdad Pups reported that it received about five new individual requests from soldiers weekly.<sup>40</sup> That year, Baghdad Pups completed fifteen missions, bringing seventy-five animals to the United States.<sup>41</sup> SPCAI generally sends three people, with each person able to rescue a maximum of four animals.<sup>42</sup> The cost for one three-person mission to bring twelve dogs to the United States amounts to over fourteen thousand dollars after airfare donations.<sup>43</sup> This excludes airline fees for each animal of five hundred dollars for dogs and two-hundred and fifty dollars for cats, SPCAI administrative costs, vaccinations, veterinary care, and transportation once the animal arrives in the United States.<sup>44</sup> SPCAI requires soldiers to contribute one thousand dollars to these costs, which usually amount to four thousand dollars per animal.<sup>45</sup> Faced with prohibitive costs and dangerous conditions in Iraq, hundreds of

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<sup>34</sup> SPCA International, *Charlie's Tale: The Beginning of Operation Baghdad Pups*, <http://www.spcai.org/baghdad-pups/first-rescue.html> (last visited Aug. 28, 2010).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> SPCA International, *supra* note 33.

<sup>40</sup> SPCA International, Operation Baghdad Pups 1 (2008), <http://www.spcai.org/document-library/obp/39-1-obp-general-information/download.html> (last visited Mar. 21, 2010).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 3.

<sup>43</sup> *Id.* at 5.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

soldier pets remain there, where they face an average life span of two to three years, about ten years less than their U.S. counterparts.<sup>46</sup>

*B. Military Inaction and "Sometimes Action" Toward the Enforcement of Pet Provision*

Even if a soldier can overcome the costs and dangers of removing a pet from Iraq, GO-1B(2)(j) ensures that these will not be their only obstacles. Soldiers who merely feed a stray animal are at risk of prosecution under Article 92, failure to obey a lawful general order.<sup>47</sup> Punishment can range from bad-conduct discharge to confinement for two years.<sup>48</sup> Additionally, the stray animal can be confiscated and destroyed under GO-1B(6).<sup>49</sup> However, the military has not been consistent in its enforcement of GO-1B(2)(j). This has led to further uncertainty, confusion, and heartbreak for soldiers who care for stray animals while in Iraq. In some instances, higher-ranking officials have turned a blind eye to soldier pets<sup>50</sup> or even helped to provide for the animals.<sup>51</sup> In other cases, officials or hired contractors have killed soldier pets outright.<sup>52</sup> Perhaps most disturbingly, some officials have ignored pet ownership until the animal is about to be transported to the United States and then destroyed it.<sup>53</sup> This volatile treatment of soldier pets has not only created paranoia, but also encouraged some soldiers to ensure their animal's safety by taking extreme measures.<sup>54</sup>

### III. ANIMALS AS SOUVENIRS

The prohibition faced by rescue organizations and soldiers, which ostensibly does not allow soldiers to remove pets from Iraq, is inconsistent with a later paragraph, GO-1B(2)(1)(3).<sup>55</sup> This paragraph allows soldiers to take home both war trophy souvenirs and tourist souvenirs, under certain

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<sup>46</sup> SPCA International, Socks, <http://www.spcai.org/baghdad-pups/successful-stories/item/235-socks.html> (last visited Mar. 21, 2010); Joan Froling, Finding a Suitable Candidate for Assistance Dog Work, <http://www.iaadp.org/breed.html> (last visited Mar. 21, 2010).

<sup>47</sup> Uniform Code of Military Justice, *supra* note 9.

<sup>48</sup> *Id.*

<sup>49</sup> GO-1B, *supra* note 16, para. 6.

<sup>50</sup> KOPELMAN & ROTH, *supra* note 1, at 74 (indicating that officers who strictly followed the rules ignored Lava).

<sup>51</sup> SPCA Int'l, *Beatrice*, <http://www.spcai.org/baghdad-pups/successful-stories/item/225-beatrice.html> (last visited Mar. 21, 2010) (suggesting that officers helped build a pen for the puppies).

<sup>52</sup> KOPELMAN & ROTH, *supra* note 1, at 56.

<sup>53</sup> *Id.* ("then at the last minute . . . some jerk . . . yanks her away, and shoots her.")

<sup>54</sup> SPCA Int'l, *supra* note 18 (noting SSG Luke Henry hid with his dog, Band-Aid, in an abandoned shack to protect the puppy). *See also* KOPELMAN & ROTH, *supra* note 1, at 59 ("I'll be damned if I'm going to let anyone shoot my puppy.")

<sup>55</sup> GO-1B, *supra* note 16, para. 2(1)(3).

conditions. Souvenir, defined by Merriam-Webster as “something that serves as a reminder,”<sup>56</sup> sometimes consists of an article or item “given, kept, or purchased.”<sup>57</sup> Generally, the item must be something that the holder can legally obtain property rights to, so that it is removable from its place of origin. A souvenir item can range from shells collected on the seashore to an expensive piece of native artwork. If the item serves as a memento of times past, a holder may consider it a souvenir. Both the United States and Iraq consider pets to be property, often to the dismay of many animal activists.<sup>58</sup> Animals do not possess specific rights or control over their environment or handling. Generally, with the exception of cruelty,<sup>59</sup> humans may treat their animal companions as they wish. As property, soldiers may acquire domestic pets through purchase or barter, like any other commodity, which essentially qualifies them as a souvenir.<sup>60</sup> Since many soldiers attempt to acquire stray domestic animals, the animals do not qualify as property until certain conditions, discussed fully in Sections A and B below, are met.

Though GO-1B(1) prohibits soldiers from taking souvenir items that are the property of enemies, this section is inapplicable because animals are not considered property while they are stray. Therefore, stray animals cannot be considered private or public property of an enemy.<sup>61</sup> With GO-1B(1) inapplicable, stray animals can be considered souvenirs under either GO-1B(1)(1) as a war trophy, or GO-1B(1)(3) as a tourist souvenir. Though

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<sup>56</sup> Merriam-Webster Online Dictionary, *Souvenir*, <http://www.merriam-webster.com/dictionary/souvenir> (last visited Aug. 26, 2010).

<sup>57</sup> Dictionary.com Unabridged, <http://dictionary.reference.com/browse/souvenir> (last visited Mar. 21, 2010).

<sup>58</sup> See Nicholas deB. Katzenbach, Book Note, *Abrogating Property Status in the Fight for Animal Rights*, 107 *YALE L.J.* 569 (1997).

<sup>59</sup> “The omissions and neglect that constitute cruelty consist primarily of failures by one having control or custody of an animal to do some act necessary for its well being, as a failure to provide necessary sustenance, food, water, shelter, protection from the weather, or the like.” 4 *Am Jur 2d Animals* § 29.

<sup>60</sup> A wide variety of animals are regularly treated as souvenirs in the United States and other countries. See generally Linda Lombardi, *Hermit Crabs Don't Have to Fade Away*, ASSOCIATED PRESS, July 28, 2008, available at [http://www.lubbockonline.com/stories/072508/liv\\_309458524.shtml](http://www.lubbockonline.com/stories/072508/liv_309458524.shtml) (indicating hermit crabs serve as common beach souvenirs); Frank Greco, *Think Tank: The Golden Gills*, NEW YORK TAILS, <http://www.newyorktails.com/goldfish.htm> (describing goldfish as carnival/fair souvenirs); Mandy Bolen, *Iconic Cat Spared Life as a Souvenir*, KEYS NEWS, Apr. 2, 2009, available at <http://keysnews.com/node/11834> (indicating students tried to take a cat as a souvenir); ISLAND DOG, INC., <http://www.islanddog.org/openairshelters.html> (last visited Aug. 29, 2010) (encouraging the adoption of dogs as souvenirs).

<sup>61</sup> A stray animal can only be considered private or public property of an enemy once possession is established. However, by doing this, the animal is no longer stray.



sometimes characterized as being such,<sup>62</sup> animals do not necessarily qualify as war trophies, which more aptly include items such as “helmets and head coverings, bayonets, uniforms . . . , canteens . . . [and] flags.”<sup>63</sup>

More appropriately, pets would fall under GO-1B(2)(1)(3), which “does not preclude the lawful acquisition of other items as tourist souvenirs if such items can be legally imported into the United States.”<sup>64</sup> Therefore, if a stray animal can be lawfully acquired and imported to the United States, it would qualify as a tourist souvenir under provision GO-1B(1)(3). Soldiers would have the ability to remove their stray pets from Iraq without the assistance of rescue groups, requiring only a one-way ticket for the pet, saving the soldier and rescue organization thousands of dollars, among other benefits discussed later. GO-1B, like GO-1A, takes into account the law and customs of the host state, as well as those of the United States, making it appropriate to consider both legal systems when determining how a soldier can acquire a pet as a souvenir.

A. *Property Law in the United States*

Under U.S. estray laws, soldiers are able to satisfy the first element of GO-1B's requirements for souvenirs, legal acquisition. To determine whether an animal qualifies under estray law, a two-pronged common law test is applied. The court must consider (1) “whether the animal is wandering” and (2) “whether the owner thereof is unknown to the person who takes it up as an estray.”<sup>65</sup> If the animal ever had an owner, the court does not consider how the animal escaped from its owner, whether it is through negligence or the act of a third person.<sup>66</sup> In order to gain property rights over a stray animal, a soldier must “[obtain] possession, custody, or control, [which] may be gained by taming, domesticating, or confining [the animal].”<sup>67</sup>

It is difficult to ascertain how a soldier would gain such control over an animal in Iraq. U.S. cases have suggested that “[h]arboring or keeping a dog means something more than a meal of mercy to a stray dog or the casual presence of a dog on someone's premises.” Harboring means to “afford lodging, to shelter or to give refuge to a dog”<sup>68</sup> and that “[s]poradic

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<sup>62</sup> See *Keith Morelli*, Marine's Iraq War Trophy Has Dog Breath and Growls, *The Suncoast News*, Sep. 22, 2008, available at <http://suncoastpinellas.tbo.com/content/2008/SEP/22/marines-iraq-war-trophy-has-dog-breath-and-growls/news/>.

<sup>63</sup> MULTINATIONAL CORPS., GENERAL ORDER NO. 1 para. 3(m)(4) (2009), available at [http://www.tac.usace.army.mil/deploymentcenter/tac\\_docs/GO-1.pdf](http://www.tac.usace.army.mil/deploymentcenter/tac_docs/GO-1.pdf) (last visited Mar. 21, 2010).

<sup>64</sup> GO-1B, *supra* note 16, para. 2(1)(3).

<sup>65</sup> 4 AM. JUR. 2D *Animals* § 46.

<sup>66</sup> *Id.*

<sup>67</sup> 4 AM. JUR. 2D *Animals* § 13.

<sup>68</sup> *Verrett v. Silver*, 244 N.W.2d 147, 149 (1976).

feeding of a stray animal does not create ownership responsibility for it.”<sup>69</sup> Essentially, according to U.S. judicial opinions, “[p]ossession cannot be fairly construed as anything short of the exercise of dominion and control over the dog.”<sup>70</sup> In order to assert control, it seems as though a soldier must unequivocally show, in some manner, that he or she intends to keep the animal as their pet and property. Previously, soldiers have done this by keeping the animal on their base, regularly feeding it, or providing health care.<sup>71</sup> Some soldiers have written home to their families or rescue agencies about their pets, expressing their desire to take it home with them from Iraq.<sup>72</sup> If a soldier is prepared and willing to become the “keeper” of a stray animal by assuming all legal liability<sup>73</sup> for being such, it is unlikely that U.S. law would deny their property rights to the animal.<sup>74</sup>

#### B. *Property Law in Iraq*

Similar to the United States, Iraqi civil law recognizes private ownership of property and soldiers should not have difficulty claiming strays as pets under the Iraqi Civil Code. Iraqi law considers animals moveable property because they “can be moved or converted without causing damage.”<sup>75</sup> In order to achieve possession over moveable property, similar to U.S. law, a soldier must assert “physical domination, directly or through an intermediary, of a thing which may be the subject of a pecuniary right.”<sup>76</sup> An animal can be acquired if it has no owner, and is therefore not the subject of a pecuniary right, by asserting possession over it. Similarly, if a stray animal formerly had an owner, “a movable becomes ownerless if its owner has abandoned it with the intent of giving up ownership.”<sup>77</sup> As long as a soldier demonstrates control over the animal with “physical acts of possession,”<sup>78</sup> they may obtain ownership rights.

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<sup>69</sup> *Rodriguez v. Cordasco*, 652 A.2d 1250, 1254 (N.J. Super. App.Div. 1995).

<sup>70</sup> *Falby v. Zarembski*, 602 A.2d 1, 19 (Conn. 1992) *quoted in* *Post v. Annand*, 798 F. Supp. 189, 192 (S.D.N.Y. 1992).

<sup>71</sup> *See generally* SPCA International, *supra* notes 34, 40, & 51.

<sup>72</sup> *See generally* Morelli, *supra* note 62.

<sup>73</sup> *See* discussion *infra* Part III.D.

<sup>74</sup> In fact, it seems like comments made by a military officer acknowledge that soldiers may have a right to their stray animals: “Ratchet is . . . [a] stray, befriended by a soldier. As such, we do not control him, nor can we ‘order’ him not to leave COP Meade [the base].” *Iraqi Puppy Missed Flight, Heading Home On Sunday*, WCCO (Oct. 15, 2008, 6:53 PM), <http://wcco.com/pets/ratchet.iraq.dog.2.841350.html>.

<sup>75</sup> Dan E. Stigall, *A Closer Look at Iraqi Property and Tort Law*, 68 LA. L. REV. 765, 771 (2008).

<sup>76</sup> *Id.* at 774–75.

<sup>77</sup> *Id.* at 783.

<sup>78</sup> *Id.*

The only caveat to ownership under Iraqi law is that it includes an “understanding that everything ultimately belongs to God . . . [and] private property rights may be impinged upon when there is a compelling societal need.”<sup>79</sup> It is unlikely that a compelling societal need would arise requiring the Iraqi government to take control of stray animals, but if it did, soldiers would be required to return the animals if they had not yet left the country. Because Iraqi law allows soldiers to obtain stray animals as pets, GO-1B would not be in violation of Iraqi customs or traditions and therefore still retain its purpose of preserving host relations.

C. *Exportation of Domestic Animals from Iraq and Importation to the United States*

In order to satisfy the second element of GO-1B(1)(3) after property rights are established, the animal must be able to be legally imported to the United States and therefore, legally exported from Iraq to be considered a tourist souvenir.<sup>80</sup> Rescue agencies, such as Baghdad Pups, have not had any legal issues with exporting and importing soldier pets to the United States<sup>81</sup> and an individual soldier should have similar results. Iraq currently has no prohibition on exporting domestic animals.<sup>82</sup> Moreover, the Centers for Disease Control and Prevention (CDC) in the U.S provide a series of guidelines for importation of domestic animals that do not pose a substantial obstacle to removing souvenir animals from Iraq.<sup>83</sup> A certificate of health is not required, but on arrival, the CDC may complete an inspection of the animal to search for evidence of disease that is transmittable to humans.<sup>84</sup> Because Iraq has reports of rabies,<sup>85</sup> dogs should have a rabies vaccination at least thirty days in advance of their arrival and proof thereof.<sup>86</sup> If the dog does not have a rabies vaccine, a soldier can still import the pet so long as he or she agrees to quarantine it for at least thirty days after receiving the vaccine. Vaccination must occur within four days of arrival at its final U.S. destination and within ten days of entry into the United States.<sup>87</sup> The CDC recommends the same guidelines for cats, but does not require a rabies vac-

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<sup>79</sup> *Id.* at 771.

<sup>80</sup> GO-1B, *supra* note 16, para. (1)(3).

<sup>81</sup> SPCA International, *supra* note 34.

<sup>82</sup> COALITION PROVISIONAL AUTHORITY, ORDER NUMBER 54, *Restricted Exports*, 24 Feb. 2004, available at <http://www.iraqitic.com/documents/CPALaws/CPAOrder54.pdf> (last visited Oct. 15, 2010).

<sup>83</sup> Centers for Disease Control and Prevention, *Bringing an Animal into the U.S.*, <http://www.cdc.gov/animalimportation/dogs.html>; <http://www.cdc.gov/animalimportation/cats.html> (last updated Jan. 31, 2010).

<sup>84</sup> *Id.*

<sup>85</sup> *Unti*, *supra* note 17.

<sup>86</sup> Centers for Disease Control and Prevention, *supra* note 83.

<sup>87</sup> *Id.*

cine.<sup>88</sup> It is, of course, especially important that soldiers consider getting their pets vaccinated while in Iraq.<sup>89</sup> Upon arrival in the United States, symptomatic animals face nearly immediate euthanasia and the disease can spread quickly to humans.<sup>90</sup> However, vaccinated or not, a soldier's souvenir animal will face little if no obstacles when being imported to most states.<sup>91</sup>

#### D. *Liability for Souvenir Pets*

Having property rights also means having liability for that property. Part of gaining possession over an animal is that a soldier will gain liability over that animal if it bites another animal or person, causes allergies, damages property, or otherwise causes harm.<sup>92</sup> Under the theory of respondeat superior, which subjects employers to liability for employees who are acting within the scope of their employment,<sup>93</sup> it would seem that the DoD has a strong and valid objection to reversing GO-1B(2)(j) and allowing soldier owned pets, because the order prevents liability claims. However, U.S. case law<sup>94</sup> and the Federal Tort Claims Act, which waives the government's immunity only if it acted negligently or with "misfeasance or nonfeasance,"<sup>95</sup> establishes that the military would generally not be liable if a soldier pet caused harm. Furthermore, if the DoD does not reverse GO-1B(j), ignores the property rights of soldiers, and continues its lax enforcement of the order, it could actually be subjecting itself to a greater chance of liability under respondeat superior. In instances where high-ranking officers have

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<sup>88</sup> *Id.*

<sup>89</sup> It is beneficial that a soldier gets his or her pet vaccinated as soon as possible to safeguard themselves and the animal. There are veterinary clinics operated by the United States in Iraq, but most are prohibited from seeing soldier pets. KOPELMAN & ROTH, *supra* note 1, at 54.

<sup>90</sup> MMWR, *Rabies in a Dog Imported from Iraq*, Centers for Disease Control and Prevention (Oct. 3, 2008), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5739a3.htm>.

<sup>91</sup> Massachusetts and West Virginia have bans in effect for all pets originating from within Iraq or Afghanistan from entering or transit through their state, so soldiers cannot import their pets to these states. *See Military Mascots, supra* note 32.

<sup>92</sup> *See* 51 A.L.R.4th 446 (generally, the owner maintains liability for dog bites).

<sup>93</sup> *See* J.F. Rydstrom, Annotation, *Federal Tort Claims Act: When is a Member of the Armed Forces "Acting in Line of Duty" Within Meaning of 28 U.S.C.A. § 2671*, 1 A.L.R. FED. 563, 1a (1969) (stating that for military employees, the standard is "acting in line of duty").

<sup>94</sup> In *Chancellor v. U.S.*, 1 F.3d 438 (6th Cir. Ky. 1993), the plaintiff was bitten by a dog owned by a United States army sergeant on a military base. The court concluded that though the sergeant was acting within the scope of his employment, the Federal Tort Claims Act precluded the military's liability because there had been no negligence or other form of misfeasance on the part of the government. *See also* Post, *supra* note 70; *Lutz v. U.S.*, 685 F.2d 1178 (9th Cir. Mont. 1982); Falby, *supra* note 70.

<sup>95</sup> 28 U.S.C.S. § 1346(b) (LexisNexis 2006).

looked away or assisted soldiers and not enforced the policy, a plaintiff could establish negligence. To prevent this, strict enforcement of GO-1B(j) is required, but such enforcement would generate additional issues other than violating property rights. For example, as discussed in Section II(B), strict enforcement would inevitably lead to soldiers taking greater risks to protect animals that they have befriended. Further, as with most rules, it is nearly impossible to deter all people from disobeying and as some soldiers have already demonstrated, they believe the risk to themselves under Article 92 is better endured than the risk of death that their animal companions face.<sup>96</sup>

#### IV. PUBLIC POLICY CONCERNS

Domestic stray animals can be legally obtained as property and imported into the United States, thereby meeting the tourist souvenir requirements of GO-1B(2)(1)(3). Though GO-1B(2)(j) clearly conflicts with property law, the DoD has cited various public policy and safety concerns to justify the retention of its anti-pet provision. Among those reasons is that allowing animals would increase the occurrence of rabies<sup>97</sup> and that keeping an animal could decrease “good order and discipline” and affect “optimum force readiness.”<sup>98</sup> However, GO-1B(2)(j) is inconsistent with the overall purpose of the order—to maintain good order and host relations—<sup>99</sup>and conflicts with public policy regarding the welfare of soldier mentality. If the order was revised to allow pets, many of the consequences cited by the DoD could be prevented with proper management.

##### A. *Sustaining Good Order, Discipline, and Readiness*

At a time of war, good order, discipline, and readiness can literally have an effect on whether a soldier and his comrades will live or die. For this reason, among others, GO-1B and its predecessor, GO-1A, have included restrictions on alcohol and drugs, mind-altering substances that have a high risk of affecting soldier readiness.<sup>100</sup> Animals do not possess this same level of risk and in many reported cases, have provided benefits to soldiers when they received training from their owners to perform various tasks, including serving as therapy dogs and lookouts.<sup>101</sup> One dog, Socks, was given training by the previous units who took him in. When Sergeant

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<sup>96</sup> SPCA International, *supra* note 18.

<sup>97</sup> Air Combat Command, *Rabies a Threat to Deployed Mission*, Feb. 25, 2005, <http://www.acc.af.mil/news/story.asp?storyID=123014437>.

<sup>98</sup> GO-1B, *supra* note 16, para. 1.

<sup>99</sup> *Id.*

<sup>100</sup> GO-1A, *supra* note 21, para. 2(c) &(d); GO-1B, *supra* note 16, para. 2(c) & (d).

<sup>101</sup> *See* SPCA International, *supra* note 18.

Andrew Bankey received the dog from a departing unit, he quickly realized the dog was an asset. Socks diligently escorted Soldiers to the bathroom, located outside the base, waiting outside and listening for danger until the soldier exited.<sup>102</sup> Similarly, Band-Aid, a dog received as a gift from an Iraqi sheik, proved his worth as a therapy animal. His owner, mental health officer SSG Luke Henry, reported, “[o]ne soldier would walk a mile every day just to spend time with the ‘canine therapist’ because she made him feel so much better.”<sup>103</sup>

While there have been no reported ill effects on order, discipline, or readiness based on violations of GO-1B(2)(j), it is clear that the order and its prohibition sometimes cause, rather than prevent, these dangerous acts. In the case of Band-Aid, when SSG Henry became aware that his pet would not be allowed to return to the United States, he took the dog and went into hiding in an abandoned shack until Baghdad Pups was scheduled to pick the dog up.<sup>104</sup> Recognizing that Band-Aid’s fate, euthanasia under GO-1B(6), was worse than his own fate under Article 92, Henry took a risk to save his comrade’s life.<sup>105</sup> Despite facing harsh punishments for violating GO-1B(2)(j), many soldiers are willing to take the risk because “[o]nce a soldier has adopted an animal, ‘[t]hey get very desperate about getting them out.’”<sup>106</sup> Lieutenant Kopelman describes this desperation as an “unprogrammable mission,” where he was essentially willing to do anything possible to save Lava.<sup>107</sup> If GO-1B(2)(j) was eliminated and pets were allowed under certain circumstances, soldiers would not feel this sort of desperation and willingness to violate their responsibilities to protect their pets, because there would be a lessened risk that the animal would be killed or taken away.

#### B. *Preventing Health Risks*

Beyond the purported negative effect on good order, discipline, and readiness, Army Staff Sergeant Don Dees comments that “[T]he primary reason behind [the prohibition on pets] is [soldier] health.”<sup>108</sup> However, though a prohibition on pets outwardly seems to provide a method of preventing disease, it is a benefit easily achieved by other, more effective means. Furthermore, the effect of GO-1B on soldier health extends beyond

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<sup>102</sup> SPCA International, *supra* note 40.

<sup>103</sup> SPCA International, *supra* note 18.

<sup>104</sup> *Id.*

<sup>105</sup> Uniform Code of Military Justice § 892. art. 92., 10 U.S.C. § 892 (2008).

<sup>106</sup> Dru Sefton, *Despite Military Rules, Pets Make it to States*, NEWHOUSE NEWS SERVICE, 2005, available at <http://www.mirescue.com/board/index.php?showtopic=2250&mode=threaded> (last visited Sept. 21, 2010).

<sup>107</sup> KOPELMAN & ROTH, *supra* note 1, at 40.

<sup>108</sup> Sefton, *supra* note 106.

transmittable disease and has the potential to create mental health consequences.

### 1. Rabies

A great deal of opposition to allowing soldier pets originates with fears about the transmission of rabies to humans. The occurrence of rabies in Iraq is actually substantially lower than in the United States. The World Health Organization (WHO) reports that “[b]etween 1989 and 2000 . . . there were just 27 positive cases of rabies in dogs and just one case in another domestic animal”<sup>109</sup> in Iraq. HSUS also reports “[o]ne military deployment web site indicates that there were 31 reported cases in Iraq in 1996, and an unverifiable news account from late 2004 suggested that there had been as many as 61 cases in Al Anbar province before the American invasion of Iraq.”<sup>110</sup> In the United States, WHO reports that between 1989 and 2006, there were 79 cases of rabies in domestic dogs and 468 cases in other domestic animals.<sup>111</sup>

By 2007, the United States had essentially vaccinated enough dogs to eliminate canine rabies altogether.<sup>112</sup> In Iraq, the DoD currently directs contractors to kill stray animals on sight as a means of preventing rabies.<sup>113</sup> Research has shown that this is not effective. It is impossible to eliminate rabies by culling animals, unless contractors culled all animals in Iraq to the point of extinction. In a recent study conducted in November 2004, five public health specialists studying rabies in Indonesia asserted that “massive culling of the dog population, without an intensive vaccination campaign of the survivors, will not arrest an outbreak.”<sup>114</sup> WHO confirms this, stating, “[d]og destruction alone is not effective in rabies control . . . [and] [t]here is no evidence that removal of dogs alone has ever had a significant impact on dog population densities or the spread of rabies.”<sup>115</sup> HSUS accurately comments that the “DoD should [direct] the money spent on contractors for killing dogs and cats toward the purchase, shipment and distribution of rabies

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<sup>109</sup> Unti, *supra* note 17; *see also* WORLD HEALTH ORG., *Global Health Atlas*, <http://apps.who.int/globalatlas/dataQuery/>.

<sup>110</sup> Unti, *supra* note 17.

<sup>111</sup> WORLD HEALTH ORG., *supra* note 109.

<sup>112</sup> Maggie Fox, *United States Free of Canine Rabies Virus*, REUTERS, Sep. 7, 2007, <http://www.reuters.com/article/domesticNews/idUSN0741162020070907>.

<sup>113</sup> *See* Unti, *supra* note 17.

<sup>114</sup> Caecilia Windyaningsih, et al., *The Rabies Epidemic on Flores Island, Indonesia (1998-2003)*, 87 J. MED. ASS'N THAIL 1389, 1389 n.11 (2004), *available at* [http://www.mat.or.th/journal/files/Vol87\\_No11\\_1389.pdf](http://www.mat.or.th/journal/files/Vol87_No11_1389.pdf).

<sup>115</sup> World Health Organization [WHO], *Dog Rabies Control*, <http://www.who.int/rabies/animal/dogs/en/index.html> (last visited Sept. 19, 2010).

vaccine—a much more promising prophylactic against any risk that animals may pose to Americans and Iraqis alike.”<sup>116</sup>

Despite HSUS volunteering financial and staff support for a rabies vaccine program in Iraq, vaccination would inevitably create additional burdens on military resources.<sup>117</sup> Supplies of vaccine would have to be located and shipped, staff would need to be trained to administer the vaccine, and facilities would need to be established. WHO has recommended oral vaccination (“OVD”) for countries with a large amount of domestic stray animals because it is not only comparable in cost, but “[promises] a significant increase in the dog vaccination coverage . . . both when applied exclusively or in combination with parenteral vaccination.”<sup>118</sup> Furthermore, OVD could be distributed by central bait stations or to dogs as they are encountered, eliminating the need for specific staff and facilities.<sup>119</sup> WHO estimates that over fifty percent, ideally seventy percent, of domestic animals would need to be vaccinated to break the transmission cycle of the disease.<sup>120</sup> As evidenced by the elimination of canine rabies in the United States, this is an attainable goal so long as a proper vaccination program is established and continually monitored.

Culling the dog population is not a long term or cost effective solution. For U.S. soldiers, this program also means that the likelihood of his or her pet’s destruction is high. Though the DoD cites rabies as the most important reason for prohibiting pets, it is clear that their current policy on rabies control is misguided. If the U.S.’ purpose in Iraq is to assist its citizens through a transitional period and eventually reconstruction, surely it makes sense to ensure their continued health by implementing an appropriate vaccination program to combat rabies rather than spending funds on a program deemed ineffective by WHO.<sup>121</sup>

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<sup>116</sup> Unti, *supra* note 17.

<sup>117</sup> See Pacelle, *supra* note 30.

<sup>118</sup> WHO, *Guidance for Research on Oral Rabies Vaccines and Field Application of Oral Vaccination of Dogs Against Rabies* 4 (2007), available at <http://www.who.int/rabies/guidelines%20for%20oral%20vaccination%20of%20dogs%20against%20rabies.pdf> (last visited Sept. 19, 2010).

<sup>119</sup> *Id.*

<sup>120</sup> WHO, *Oral Immunization of Wild Carnivores*, <http://www.who.int/rabies/animal/en/index.html> (last visited Sept. 19, 2010); see also WHO, *supra* note 109 (stating that mass canine vaccination campaigns of seventy percent or higher have been most effective in controlling rabies).

<sup>121</sup> See WHO, *supra* note 109 (stating that rabies control activities should be incorporated into general health services in order to align the programs and improve logistical use of human, material, and financial resources).



## 2. Post Traumatic Stress Disorder

In 2009, Americans spent over forty-five billion dollars on their pets, slightly less than double of what they spent ten years earlier.<sup>122</sup> It is not an exaggeration to say that American society has grown very attached to its animal companions. In Iraq, soldiers have demonstrated that this attachment does not dissipate.<sup>123</sup> Every single soldier that has removed a pet from Iraq and publicized their story has reported that the animal helped them psychologically survive the stresses of war.<sup>124</sup> About one in every eight soldiers who return from deployment experience symptoms of Post Traumatic Stress Disorder (PTSD), which may consist of flashbacks, nightmares, hypervigilance, irritability, and difficulty sleeping, amongst other symptoms.<sup>125</sup> PTSD significantly reduces the ability of soldiers to return to a normal civilian lifestyle.<sup>126</sup> According to the DoD, soldiers are four times more likely to report experiencing problems with interpersonal relationships after returning to the United States than before they deployed.<sup>127</sup> In 2007, the DoD reported that suicide rates for soldiers who served in the “War on Terror” aged between twenty and twenty-four had suicide rates two to four times higher than civilians of the same age.<sup>128</sup> Though many variables may affect whether or not a soldier develops PTSD, the effect of GO-1B(2)(j) on a soldier’s mental state both during their deployment in Iraq and afterward is astounding.

First, the provision may affect a soldier’s mental state if they experience a loss of the animal they have adopted, whether it is through an indiscriminate killing or an inability to remove the animal from Iraq. Because traumatic events cause PTSD, the loss of a pet may trigger its onset.<sup>129</sup> For example, Lieutenant Kopelman mentions a soldier who was so enamored with a puppy he found that he frequently told his family about all the plans he had for the dog once he brought him back to the United States. His family sent food and toys, and “his nephew’s school prayed daily for the pup-

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<sup>122</sup> *Industry Statistics & Trends: Pet Ownership*, American Pet Prod. Ass’n, [http://americanpetproducts.org/press\\_industrytrends.asp](http://americanpetproducts.org/press_industrytrends.asp) (last visited Sept. 19, 2010).

<sup>123</sup> See KOPELMAN & ROTH, *supra* note 1, at 16–17 (Kopelman describes how he and the other soldiers unsuccessfully attempted to avoid becoming attached to Lava).

<sup>124</sup> See generally SPCA International, *supra* notes 18, 34, & 46.

<sup>125</sup> *1 in 8 Returning Soldiers Suffers from PTSD*, ASSOCIATED PRESS, June 30, 2004, available at <http://www.msnbc.msn.com/id/5334479/> (last visited Mar. 21, 2010). MJ Friedman has argued this number is conservative. See *Am J Psychiatry*. 2006;163(4):586–593.

<sup>126</sup> ASSOCIATED PRESS, *supra* note 125.

<sup>127</sup> JAY KOPELMAN, *FROM BAGHDAD TO AMERICA: LIFE LESSONS FROM A DOG NAMED LAVA* 39 (Skyhorse Publishing 2008).

<sup>128</sup> *Id.*

<sup>129</sup> *Post-Traumatic Stress Disorder*, MAYO CLINIC (Apr. 10, 2009), <http://www.mayoclinic.com/health/post-traumatic-stress-disorder/DS00246> (stating that PTSD may be caused by experiencing or witnessing an event that causes intense fear, helplessness or horror).

py's safe return."<sup>130</sup> Unlike Lava, this soldier's puppy did not return home.<sup>131</sup> Though the current mental status of the soldier is unknown, it is easy to ascertain how this trauma may lead to psychological distress and PTSD. Furthermore, some soldiers directly witness the attempted killing or death of their adopted animal.<sup>132</sup>

Sometimes even the thought of losing a pet can trigger anxiety or stress that leads to PTSD. This frequently occurs amongst soldiers with pets, because they worry about whether their animal will survive in Iraq due to the volatile enforcement of GO-1B(2)(j). Soldiers wonder, amongst other things, if their pet will be confiscated and euthanized or killed during transport to a rescue agency. Lieutenant Kopelman demonstrates this behavior consistently, commenting that he worries about who will care for Lava, what would happen if he fell into the wrong hands, and how he would die. Kopelman "spend[s] all day and night waiting to hear anything" about Lava once he has given the dog to a journalist friend that is arranging for transport to meet a Military Mascots volunteer.<sup>133</sup> This situation could easily be remedied with a revision of GO-1B(2)(j) that would allow pets to be kept and cared for on base and also allows for open transport and transfer of the animal.<sup>134</sup>

In addition to trauma experienced in this manner, GO-1B(2)(j) denies soldiers a method of healing from stresses they experience while deployed. Medical research supports that keeping a pet is actually an asset to mental health, specifically for the treatment of PTSD.<sup>135</sup> Soldiers have observed that their animal companions have helped their psychological well-being, noting that taking care of the animal gave them something positive to concentrate on,<sup>136</sup> someone to confide in,<sup>137</sup> and a sense of accomplishment.<sup>138</sup> The Pentagon has spent a substantial amount of money attempting to combat PTSD before soldiers return to the United States, including one hundred and twenty million dollars to implement a "Positive Psychology" program that focuses on "understanding positive emotions [which] entails . .

<sup>130</sup> KOPELMAN & ROTH, *supra* note 1, at 113.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 83 (A friend of Lieutenant Kopelman's who has been feeding stray puppies in a sewer finds that they have been covered alive with dirt).

<sup>133</sup> *Id.* at 90.

<sup>134</sup> This would also encourage obtaining and make available rabies vaccines.

<sup>135</sup> Christine Cadena, *Animals in Therapy: Promoting Recovery from PTSD, Sexual Assault*, ASSOCIATED CONTENT, Dec. 19, 2007, available at [http://www.associatedcontent.com/article/479153/animals\\_in\\_therapy\\_promoting\\_recovery.html?cat=53](http://www.associatedcontent.com/article/479153/animals_in_therapy_promoting_recovery.html?cat=53).

<sup>136</sup> KOPELMAN & ROTH, *supra* note 1, at 82; Mike Celizic, *Marine Bends Rules to Save Dog Found in Iraq*, TODAYSHOW.COM, Nov. 2, 2009, [http://today.msnbc.msn.com/id/33585208/ns/today-today\\_pets\\_and\\_animals](http://today.msnbc.msn.com/id/33585208/ns/today-today_pets_and_animals) ("It was an escape from the drudgery, the mundane life out there, the bad things you see at times.").

<sup>137</sup> KOPELMAN & ROTH, *supra* note 1, at 50.

<sup>138</sup> *Id.* at 173.

. happiness in the present, and hope for the future.”<sup>139</sup> Research and examples have shown that animal therapy can generate this same “positive” energy.<sup>140</sup> In fact, the DoD began conducting research on animal facilitative therapy to treat PTSD in 2008.<sup>141</sup> Several organizations train “Psychiatric Service Dogs” at a cost ranging from four to twenty thousand dollars for use with veterans who have PTSD.<sup>142</sup> However, ordinary pets can have the same effect as a well-trained Psychiatric Service Dog.<sup>143</sup> Additionally, an ordinary pet is easily obtainable, cost-effective,<sup>144</sup> and does not require a soldier to seek out psychiatric assistance. Because many soldiers do not seek treatment for PTSD due to fear of job loss or embarrassment,<sup>145</sup> this opportunity to heal is very important.

Additionally, an animal companion obtained in Iraq may make the transition back to civilian life easier, which also prevents PTSD from developing. Having an animal that has experienced the same things a soldier has not only allows them to confide in their pet, but also forces them to reenter society. For example, walking is necessary for dogs. This encourages soldiers to regularly leave their homes and likely interact with other pet owners or ordinary civilians they may encounter.<sup>146</sup>

Furthermore, for most pets that come from Iraq, an adjustment period is necessary. This is similar to the experience many soldiers will

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<sup>139</sup> Belleruth Naparstek, *More Troops, More Rotations, More PTSD: Will Positive Psychology Save Our Soldiers?*, THE HUFFINGTON POST, Dec. 1, 2009, [http://www.huffingtonpost.com/belleruth-naparstek/more-troops-more-rotation\\_b\\_375068.html](http://www.huffingtonpost.com/belleruth-naparstek/more-troops-more-rotation_b_375068.html); University of Pennsylvania, POSITIVE PSYCHIATRY, <http://www.ppc.sas.upenn.edu/> (last visited Sept. 1, 2010).

<sup>140</sup> See Todd Plitt, *Dogs get Nod in Study to Help Vets with Post Traumatic Stress Disorder*, USA TODAY, Sep. 04, 2009, available at <http://content.usatoday.com/communities/pawprintpost/post/2009/09/dogs-get-nod-in-study-to-help-vets-with-post-traumatic-stress-disorder/1> (“In a small study, Eighty-two percent have reported fewer PTSD symptoms since they have had the dogs, and 40% said they were using fewer medications.”).

<sup>141</sup> Gerry J. Gilmore, *Warrior Care: Pentagon Examines New Treatments for Warriors’ Psychological Care*, *American Forces Press Service*, Nov. 6, 2008, <http://www.defense.gov/news/newsarticle.aspx?id=51818> (last visited Sept. 19, 2010).

<sup>142</sup> See Joan Shim, *Dogs Chase Nightmares of War Away*, LIFE WIRE, <http://www.cnn.com/2008/LIVING/personal/01/29/dogs.veterans/index.html> (last visited Mar. 21, 2010).

<sup>143</sup> Jennifer Viegas, *Cat Ownership Keeps the Doctor Away*, THE DAILY CAT, [http://www.thedailycat.com/Health/cats\\_human\\_health/](http://www.thedailycat.com/Health/cats_human_health/) (indicating that based on two separate studies “cats and other pets may enhance our social interactions with other people while providing their own emotional support and companionship” and “[i]hose who acquired pets had more stable blood pressure and heart rates than those without.”).

<sup>144</sup> Especially when found as a stray.

<sup>145</sup> Gilmore, *supra* note 141. See also KOPELMAN, *supra* note 1, at 141 (Kopelman describes his struggles with attending therapy).

<sup>146</sup> KOPELMAN & ROTH, *supra* note 1, at 176 (“We climb mountains and roam the beach and sit in outdoor cafes on the waterfront.”).

have.<sup>147</sup> Kopelman describes how hearing loud noises like “the UPS truck lumbering down [the] street” are as terrifying to Lava as they are to him, because “the posh yards of La Jolla, California were as filled with danger and uncertainty as those fields of rubble in Fallujah.”<sup>148</sup> It is clear that in a variety of ways, the pets that soldiers claim during their time in Iraq have a profound effect on their mental health.<sup>149</sup> If GO-1B(2)(j) was revised to allow pets, soldiers would have the ability to use the stray animals they have adopted to combat PTSD, ultimately reducing treatment costs charged to the government and preserving the mental health of American soldiers.

C. *Maintaining Good U.S. Relations with Iraq*

Though GO-1B lists one of its purposes as preserving relations between the United States and its host nation by “prohibit[ing] or restrict[ing] certain activities which are generally permissible in western societies,” it seems as though GO-1B(2)(j) and the DoD policy on animal control conflict with this. Keeping pets is generally permissible in the U.S. GO-1B(2)(j) suggests that it is impermissible to keep animals in Iraq by linking the provision with GO-1B’s other provisions, such as consuming alcohol and possessing pornography, which are frowned upon in Iraqi culture.<sup>150</sup> However, though many Iraqis cannot afford pets, it is certainly not prohibited to have one, because pets can be a valuable tool.<sup>151</sup>

Furthermore, the act of arbitrarily killing stray animals is not consistent with Islamic law, which “requires a high degree of respect for . . . animal life.”<sup>152</sup> The Qur’an contains passages which “[describe] animals as constituting communities similar to human communities” and “it also requires man to treat . . . animals with respect and not kill [them] wantonly”<sup>153</sup>

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<sup>147</sup> *Id.* at 177 (commenting that “we keep each other company as things straighten out”). See also KOPELMAN, *supra* note 1, at 95 (describing how both he and Lava need to be kept busy to focus on the future). Further, in some cases, companion animals that have been to Iraq have developed PTSD symptoms. See Dan Elliot, *K-9 PTSD? Some vets say dogs stressed by war, too*, ASSOCIATED PRESS (Aug. 3, 2010, 4:32 PM), [http://news.yahoo.com/s/ap/20100803/ap\\_on\\_re\\_us/us\\_ptsd\\_military\\_dogs](http://news.yahoo.com/s/ap/20100803/ap_on_re_us/us_ptsd_military_dogs).

<sup>148</sup> KOPELMAN, *supra* note 1, at 35.

<sup>149</sup> Kopelman aptly describes the continuum of this effect: “Lava saved [him] and his fellow Maries more completely than any human being could have during those dark days [and] on many days he continues to save him from himself.” KOPELMAN, *supra* note 1, at 15.

<sup>150</sup> Iraq’s New Censor, ON THE MEDIA, Aug. 21, 2009, <http://www.onthemedial.org/transcripts/2009/08/21/04>.

<sup>151</sup> It is important to note that animals are generally permissible if they serve a purpose, such as providing security. Many Muslims will not keep a dog in their house or allow its saliva to touch them. See generally Islamic Concern, *Dogs in Islam*, <http://www.islamicconcern.com/dogs.asp> (last visited Sept. 19, 2010).

<sup>152</sup> Geoffrey E. Roughton, Note, *The Ancient and the Modern: Environmental Law and Governance in Islam*, 32 COLUM. J. ENVTL. L. 99, 108 (2007).

<sup>153</sup> *Id.* at 109–10.

As evidenced by the dog Band-Aid, receiving a dog as a gift is thought of highly. In fact, SSG Henry's superiors did not allow him to turn the gift down, even though it violated policy because "it would have been rude and impolitic to have refused."<sup>154</sup> Yet, the U.S. military indiscriminately shoots stray cats and dogs<sup>155</sup> and buries them alive in holes.<sup>156</sup> If nothing else, the DoD must revise its animal control program in order to respect the culture of Iraq and minimize poor relations between the two countries.

D. *Promoting a Positive Global Image*

Dogs and cats removed from Iraq have frequently been topics of media reports, books, and documentaries.<sup>157</sup> More often than not, these stories have cast GO-1B(2)(j) and its predecessor, GO-1A, in a negative light, whether it be due to the death of the animal or the hardships that soldiers have had to overcome to bring their pets back to the United States. When the DoD denies a soldier the right to remove a pet from Iraq, the media firestorm that typically follows surely does not have a positive effect on the U.S.' global image. Perhaps the best example of this is the story of Ratchet, a dog rescued from a burning trash pile by Sergeant Gwen Beberg in 2008. When Baghdad Pups tried to remove Ratchet, a U.S. commander intercepted the convoy carrying him.<sup>158</sup> Ratchet ended up inside a meat freezer, but survived.<sup>159</sup> One of Beberg's friends posted a blog about Ratchet and soon thereafter, the story went viral and Ratchet became "[t]he most famous dog in the world."<sup>160</sup> More than 65,000 people worldwide signed an online petition<sup>161</sup> asking the Army to allow the puppy to come back to the United States and Beberg's congressman and senators wrote to the Army urging it

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<sup>154</sup> SPCA International, *supra* note 18; *See also* Laurel Walker, *Cat Wanders its Way into Hearts from Baghdad to Waukesha*, MILWAUKEE JOURNAL SENTINAL, Aug. 15, 2009, at B1, available at <http://www.jsonline.com/news/waukesha/53264092.html> (cat given as a gift by an Iraqi employee).

<sup>155</sup> SPCA International, *supra* note 34.

<sup>156</sup> KOPELMAN & ROTH, *supra* note 1, at 83.

<sup>157</sup> *See* Celizic, *supra* note 136 (noting that Major Dennis wrote the book, "Nubs: The True Story of a Mutt, a Marine & a Miracle"); *See also* NO DOG LEFT BEHIND, (Military Channel broadcast 2009), synopsis available at <http://military.discovery.com/tv/no-dogs-left-behind/about-the-show.html> (last visited Aug. 17, 2010) (a documentary about soldier pets).

<sup>158</sup> Army Blocks Soldier From Taking Puppy From Iraq, WCCO, Oct. 13, 2008, <http://wcco.com/pets/puppy.iraq.soldier.2.839104.html> (last visited Mar. 21, 2010).

<sup>159</sup> *Id.*

<sup>160</sup> Mary Jane Smetanka, *No Place Like (a New) Home for Ratchet*, STAR TRIBUNE, Oct. 23, 2008, available at <http://www.startribune.com/local/32489589.html>.

<sup>161</sup> The Petition Site, Clemency for Ratchet, <http://www.thepetitionsite.com/2/clemency-for-ratchet> (last visited Sept. 19, 2010).

to review the case.<sup>162</sup> Ratchet became an international sensation, sparking news stories in various countries, including London<sup>163</sup> and Australia.<sup>164</sup>

Even after the Army agreed to let Ratchet leave Iraq,<sup>165</sup> the media continued its outpouring of support for the puppy by closely following his journey to the United States.<sup>166</sup> The situation for Lieutenant Kopelman's dog Lava was similar, with a barrage of reporters greeting the dog as soon as it landed.<sup>167</sup> Multi-National Force spokesman Rear Admiral Patrick Driscoll acknowledges that the stories of soldier pets have "grabbed the attention of a lot of Iraqis and a lot of Americans," but still the DoD has refused to revise its animal policy. In order to maintain global support for the continuing mission in Iraq, it is important that the United States has a positive image. Amongst other negative stories emerging from Iraq, it is clear that media proliferation of stories like Ratchet and Lava's do not contribute to a positive portrayal of the U.S. military. Unquestionably, if the DoD revises GO-1B(2)(j) to allow soldier pets, not only would it likely create a torrent of positive media, but it would also lessen the negative impact of stories about pets who do not make it back to the United States.

#### V. CONCLUSION

The DoD should revise GO-1B(2)(j) to reflect that soldiers may care for and adopt domestic animals as pets or mascots, because the provision, as it is currently written, conflicts with property law, and is inconsistent with the overall purpose of the order and public policy. Though the DoD cites valid health and safety risks as a reason for upholding the order, the fact remains that these risks can be avoided without prohibiting soldiers from adopting stray domestic animals. The DoD can simply revise GO-1B(2)(j) to allow pets with vaccinations on base and provide open access to the required vaccinations. Furthermore, if GO-1B(2)(j) was revised to allow the adoption of stray domestic animals, the U.S. government would receive a multitude of benefits, ranging from lessened soldier PTSD to a more positive global image. It is clear that stricter enforcement of GO-1B(2)(j) alone will not solve the health and safety risks that the DoD cites, and will likely

<sup>162</sup> *Beberg's Congressman is Keith Ellison and her Senators are Amy Klobuchar and Norm Coleman*. See *Iraqi Puppy Missed Flight, Heading Home On Sunday*, *supra* note 74.

<sup>163</sup> See Deborah Haynes, *Black Dog Down: US Soldier in Fight to Take Home War Zone Pet*, *TIMES* (London), Oct. 15, 2008, available at <http://www.timesonline.co.uk/tol/news/world/iraq/article4944728.ece>.

<sup>164</sup> See *10,000 Sign Up for Operation Ratchet*, *DAILY TELEGRAPH* (Australia), Oct. 15, 2008, available at <http://www.news.com.au/adelaidenow/story/0,22606,244990855012776,0.html>.

<sup>165</sup> But not before they caused the puppy to miss its flight. *Iraqi Puppy Missed Flight, Heading Home On Sunday*, *supra* note 74.

<sup>166</sup> *Id.*

<sup>167</sup> KOPELMAN & ROTH, *supra* note 1, at 170–71.

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only generate riskier soldier behavior. As Sergeant Watson wrote, “[w]e just can’t leave our buddy behind.”<sup>168</sup>

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<sup>168</sup> SPCA International, *supra* note 34.