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## Veteran's Law Symposium: Keynote Address Delivered November 8, 2013

Tim Kaine

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VETERAN'S LAW SYMPOSIUM: KEYNOTE ADDRESS  
DELIVERED NOVEMBER 8, 2013

Senator Tim Kaine<sup>1</sup>

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<sup>1</sup> Senator Kaine grew up working in his father's ironworking shop in Kansas City. He was educated at the University of Missouri and Harvard Law School and started his public service career by taking a year off from Harvard to work with Jesuit missionaries in Honduras in 1980 – 1981. After law school, he practiced law in Richmond for 17 years, specializing in the representation of people who had been denied housing due to their race or disability. He also began teaching part-time at the University of Richmond in 1987 and continues his involvement with the University to this day. Kaine was first elected to office in 1994, serving as a city councilmember and then Mayor of Richmond. He became Lieutenant Governor of Virginia in 2002 and was inaugurated as Virginia's 70th Governor in 2006. He was elected to the Senate in 2012 as a can-do optimist skilled in bringing people together across old lines of party, race or region. In the Senate, Kaine serves on the Armed Services, Budget and Foreign Relations Committees. His first legislation, the Troop Talent Act of 2013, established new standards to help active duty service members attain civilian credentials for military skills to assist their transition into the workforce – a bill inspired by conversations Kaine had with Virginians on the campaign trail. Senator Kaine is married to Anne Holton, who currently serves as Virginia Secretary of Education.

## INTRODUCTION

Thank you so much. Thank you. Well, I want to thank my friend Steve for his kind words and he is welcoming me back and the last time I was here was Monday, I teach a course on Monday mornings at the Jepson School and so I have been here this week already Steve, and it is good to be back here Friday to talk to this Veterans Law Symposium. The initial symposium on veterans law here at the law school and what an appropriate thing to do on an appropriate weekend as we get ready to celebrate Veteran's Day and I was honored to be asked to come and offer some thoughts. I want to talk about, just sort of current issues we are really grappling with, that are legal issues, in Congress, that might affect the practice that you would hope to do, that certainly affect the lives of our veterans and then I want to take some questions and answers.

But before I do, I will just say how much I not only enjoy being at University of Richmond, but even in this room. For seventeen years I was a civil rights attorney in Richmond and tried mostly housing discrimination cases and I ended up at one point, and I do not know whether it is still the record or not, but I won the largest civil rights jury verdict in the history of the United States, which was a red lining case against a major insurance company for not writing homeowners insurance policies in minority neighborhoods all across the United States. I did a moot court two weekends before I tried the case right here. We empaneled three different jury panels and we tried an abbreviated version of the case to them with a very vigorous defense done by one of my partners, and then we videotaped the jury deliberations to learn what we needed to do better. That would have been in the fall of 1998, probably late August or early September of 1998. And then when we tried the case a month later we won a one hundred million dollar jury verdict which got set aside on appeal, you know that is one of the challenges of being a lawyer but ended up settling at that time. We settled for twenty-six million dollars, it was a huge case, but I always feel good when I walk into this courtroom because I learned an awful lot from that moot court here. I have taught courses at the law school and at Jepson going back to 1987 off and on, and have a lot of great friends here, and Steve I thank you for the intro.

## VIRGINIA'S VETERANS

Raise your hand if you are a veteran. So, we have a great group of veterans, and then, keep your hands up if you are a veteran. Raise your hand also if you have family in the military or if you have served in any capacity:

Army, Guard, Active Guard Reserve. We have got a healthy number of folks here who are directly connected to our military mission. There is no state that is as connected to the nation's military mission as Virginia. You begin with this, that the map of our military history is a map of our Commonwealth: Yorktown, where the Revolutionary War ended; Appomattox; Spotsylvania; Manassas; Fredericksburg; The Crater; Cold Harbor; Petersburg; the Wilderness; so many battles of the Civil War here in Virginia; the Pentagon, where we were attacked on 9/11; the Bedford Boys, the group of soldiers from the tiny community of Bedford, Virginia, who were the core of folks who came ashore on D-Day and sadly suffered such great casualties; the Marine Corps' National Historical Museum is here in Virginia; the Army's museum is going to be built at Fort Belvoir; obviously the Pentagon, and Hampton Roads, the greatest concentration of naval power in the country.

We are a state that is deeply connected by installation, physical presence, by history, but most importantly, by our people. There are 8.2 million Virginians; one in nine is a veteran. When someone told me that the first time, and they said, "you know, one in nine Virginians is a veteran," I remember being stunned by that. And I said, "wow, one in nine Virginian adults is a veteran?" And they interrupted me, "I did not say one in nine Virginia adults is a veteran. I said one in nine Virginians is a veteran, from birth age to 105, more than 900,000 veterans in the Commonwealth." There are some small states that have a higher proportion of veterans than Virginia does, I think West Virginia might and Vermont might, but in terms of a large state, we are the most veteran heavy. But then if you add to it active duty, with all of the installations we have, Hampton Roads, the Pentagon, etcetera, Guard, and Reserve, DOD civilians. We have more DOD civilians than any other state, and DOD civilians – the Marines call them "citizen marines" – our DOD civilians are often absolutely critical to the military mission. And then DOD contractors, the folks who are the welders down on the dock who are just finishing up the USS Ford cause its being christened tomorrow, I know they are probably still working on it today. So many of the shipbuilders in Hampton Roads are civilians and yet they directly support the war-fighting mission. If you add up all those categories of individuals and their families, because military families too are all part of the mission, now you are not talking one in nine, you are probably talking one in three. And we have that connection in a very powerful way. So, as we get ready to celebrate Veteran's Day, I think it is just important for us to understand this is who we are as a Commonwealth.

Everyone in the country cares deeply about our military and about veterans, everybody has equal pride in it, but in terms of just the intimacy of our

connection with this mission, I do not think any state can match what Virginia has. I feel that in an exciting way being in the Senate and serving on the Armed Services Committee. To be on Armed Services in the Senate is a wonderful posting; to be on armed services from Virginia is even more wonderful. Virginia has had a tremendous track record of Senators serving on armed services, for thirty-six years before I got there the Virginian on armed services was a decorated war veteran and Secretary of the Navy, John Warner first and then Jim Webb. Now I did not serve and I think I would have remembered if I had been Secretary of the Navy, so I start with a little bit of deficit compared to the folks who served thirty-six years before me. But as I mentioned, I have a son in the military; my oldest son is a Lieutenant in the Marine Corps. I was chatting about this with some folks outside; there are only three Senators now who have children in the military, Senator McCain, Senator Blumenthal of Connecticut, and me, and there is probably about the same the percentage over on the House side. It would be about 3 or 4 percent, that is the military in the post draft era. It was a common experience of American males of all races and classes, once the service was integrated in the aftermath of World War II. But in the days of the all-volunteer military only 1 percent of American adults serve in the military. It is increasingly an experience that an awful lot of folks do not have a direct connection with. I did not have a direct with it until my son decided to pursue that path, but it adds something to being on that committee, to have a child in the military and it makes these issues critically important.

This is a seminar today that is about veteran's law issues and I want to talk about three categories of issues and then I will open it up to take your questions or concerns. The first are some specific veteran's related issues that we are grappling with right now. In fact, I announced a second veterans-related bill this morning and I will be introducing this bill next week. I want to talk a little about issues specifically affecting that the ones I am working on, in particularly disability claims and VA backlogs. There has been a tremendous amount of information and spotlight cast on challenges in the VA meeting the needs of our veterans. Second, an issue that I am really tackling, is the veteran's unemployment rate. So I will talk about those two.

Second, I want to talk about the changing nature of our society and how that affects issues for military and veterans. A thorny issue we are dealing with right now in the armed services committee, that will be debated very heavily and publicly in the next couple of weeks, is how do we deal with an increasing epidemic of reported instances of sexual assault and sexual misconduct within the military. I say reported instances because I do not think

the epidemic of actual occurrences is going up. These issues have been occurring, and yet there has been a culture that has made it very difficult for people to report when they have been victimized by sexual assaults. We are trying to figure out a way to first enable people to report, and then bring down the occurrences.

And the last thing I will talk about is a big picture issue, which is that as a nation, we have got some hard thinking to do about fundamental questions of warfare. And I am working on issues such as the revision of the War Powers Act of 1973, and even discussions about when the current war will end. We are currently at war pursuant to an authorization for use of military force that was entered into by Congress on September 18, 2001, one week after September 11. That is an authorization that is still underway. Drone strikes, and other things that are happening are pursuant to that authorization. When will that war end? And so I will address each of those topics, then I would love to open it up and answer questions you have.

#### CURRENT CHALLENGES VETERANS FACE

First, the current challenges we are wrestling with about veterans. I am not on the Veterans Committee. I am on Armed Services, Foreign Relations, and Budget, and we deal with veteran's issues in each of them. There is a Veteran's Committee specifically, especially to oversee VA and VA related functions. I am not on that committee, but I do work closely with the committee. The current issues that we face with veterans are complex, and they are going to get more complex. If you think about Iraq and Afghanistan, and just think about what this generation of veterans has done, we have asked them to do something that has not been asked of a lot of veterans in earlier eras. Now veterans serving at any points of time have faced enormous hardships and challenges. But if you think about the length of this war, the longest war before this one was the Revolutionary War, which was about seven years long. The United States involvement in World War II, the most massive war we have been in, was four years. The Vietnam War was maybe eight or nine years, depending on how you decide when it started, but less than a decade. But we are now into year twelve of a war, and when I asked recently at an Armed Services hearing, "How long will this war go on under the current authorization?" administration officials said it could be as long as twenty-five or thirty years. I am going to loop back to that later.

##### A. Repeated Deployments of Veterans

But for issues of veterans, the challenge is that we have deployed veterans in this war repeated times. It is not uncommon to find veterans who

have been deployed three, four, or five times. We have not had wars like this where so many people have been deployed repeatedly so many times. What does that mean? Well it means that the likely effects of repeat service, of repeated deployments, have never really been measured. We did not have an experience base to judge it against. What does that mean with respect to the lifetime of medical need for somebody who has gone through repeated deployments? We have also pioneered battlefield medicine techniques, thank God, in some amazing ways. But a challenge of it is the amazing advances in battlefield medicine have saved a lot of lives that could never be saved before. And again there has not been a precedent for what it means for some of the folks whose lives have been saved with traumatic brain injuries, and some of the other multiple injuries. What will that mean in terms of the lifetime of needs that they will have that we obligated as a nation to meet? So some of what we are dealing with, the current challenges that our current veterans bring to the table, we do not have an experience base to make a projection and we certainly did not make a reasonable projection as to what it would be in 2001, or 2005, or 2008 and even today it is a little bit hard to know.

All we know is that we have made some promises but they have been promises where we were not exactly sure all we would have to do to meet them. Meet them we must but, there are some unusual challenges. Certainly mental health needs and some of the physical needs in the VA are first and foremost. And one of the items that has attracted a lot of attention, and needs to, is the huge backlogs at the VA in dealing with veterans claims. I will just touch upon this briefly, because it is the Veteran's Committee that deals with them, but just to kind of give you a sense of what we are trying to deal with. Also since disability law, VA disability law, is an important area where we have got to have good practitioners to help our veterans.

#### B. VA Backlog Issues

When we went into Iraq and Afghanistan, and we started to build up our armed services to do those ground missions we did not fundamentally make changes within the VA in terms of the record keeping functions in how the VA managed records. The VA was a paper record system essentially in the early 2000's and you will kind of groan at this but it was not until about 2008 that the VA decided that it needed to start building an electronic medical record system to deal with the claims backlogs. Both the sharing of electronic records but also even to deal with the disability claims. So you would think if you were in an organization and you were going see a dramatic uptick in customers, a dramatic uptick in the personnel your hiring, or something like that you would try to build a system, an electronic comput-

erized system to help you deal with it. But that did not start in earnest until about seven years into the current war on terror, and that has meant that the backlog issues have been significant.

There has been a second issue that has that has also increased backlog issues, which is a good issue that has had a tough consequence. Decisions have been made by the recent Secretaries of Defense and VA-Secretaries. They decided to take a whole category of claims disabilities from the Vietnam War era, Agent Orange exposure, and allow many more of those claims. It used to be that you had to jump through an awful lot of hoops to demonstrate a disability because of Agent Orange exposure in the Vietnam War era. But decisions, even just within the last five years, have been we need to make it easier for people to have a disability claim based on Agent Orange exposure. So, basically, at the very time when we were dealing with growth in Veterans' claims because of Iraq and Afghanistan, we opened up the claims process to about another half a million to a million Agent Orange claims as well. And that has led to a very significant backlog.

Now, what is happening, thank goodness, is the electronic records keeping system has now been built and beginning in the spring of this year was being implemented throughout the different regions of the VA. That is going to help us, and we already see some significant progress in starting to bring down backlogs, but its something that we have to do a good bit more of. My sense is, probably within a year or so of the implementation of these systems, into the spring of calendar year 2014, we will see the effects of them and we will start to see the system work a lot better.

This issue of using paper files rather than electronics is not just limited to disability claims. Many of the veterans of this current era have been veterans that are receiving educational benefits. I often deal with educational benefits claims where somebody got GI bill to go University of Richmond or community college in semester one. Somebody came up to me once and said, "I did great and got on the honor roll," and I said, "Well then, what is the problem." [He responded] "Well, semester two starts in two weeks and they approve you a semester at a time. After I got semester one done and I showed them my GPA and now I want semester two, they will not tell me whether they are going to approve me or not. I said, "Well why can they not tell you?" And the guy said, "Well when I called, the guy said," and I quote, "Yeah, I need to get this done. Your file is still sitting on my desk - I have to mail it to Buffalo" (this was someone in the Hampton Roads area). The notion of someone having to fill out a request for tuition assistance and it had to be mailed in a letter to Buffalo to get an answer, in the day of "why can you not just electronically enter and press send," and Buffalo can



have it in a millisecond. We are still dealing with a paper system that has to be transformed. It is enormously important, and I hope that some of you do go into this area of law where you will work with veterans. There are a lot of complex legal issues, but what we have to do on our side is have a system that, from kind of a process standpoint, works better.

### C. Unemployment Among Veterans

The issue that I am most involved with on veterans is on the employment side. We have a veterans unemployment rate now that is a couple points higher than the national average and some of it is because of medical needs, and so that means that the VA processes, funding, etcetera, have to be done well. But I am convinced that another reason for the veterans' unemployment rate is, when you really drill down into it, they are veterans of the Iraq and Afghan era who were enlisted having trouble. Officers generally have a little bit easier time; officers generally have college degrees these days, so they have a little bit easier time. But if you are an Iraq or Afghan war era vet and you were an enlisted, you go into a job market where the civilian hiring officers do not understand what it is that you do.

So back in the day when there was a draft, you could go into a hiring officer and say, "I was a gunnery sergeant in the Marine Corps; I was an E-5 in the Navy; I was a, you know, air mechanic", and somebody in that business generally, if it was of any size, knew what it is that you did because males served in the draft era. Now, one percent of adults serve. So, a veteran will go into a hiring environment and say "here is, you know, my MOS; here is my bill; here is what I did", and the hiring officer will say, "We appreciate your service" and thank God that is sincere. We did not make the mistake that we sometimes made in the Vietnam era of letting political opposition of the war affect the ability of people to appreciate the service of the war fighters. Now, we really do appreciate it, but we do not understand. We do not understand what a military job applicant brings in terms of leadership training, or skill, because most people in the office do not have a connection with it. We do not understand what were the technical skills and technology or other areas that a person picked up along the way.

My first bill as a senator that I introduced in April is called the Troop Talent Act of 2013, and that was a bill designed to tackle this problem. To make sure that people in military service, while they are active, get credentialed for their skills that they pick up along the way. You are learning to use heavy equipment? Get a commercial drivers license and get it now. And then, put it in your personnel file, even if you are not going to leave the military for twenty years. Go ahead and get that. You are at the ordinance school down in Fort Lee and you learn how to weld? Get the American

Welding Society certificate right now, or the other metal-working certificates right now. I have talked to battlefield medics who do battlefield triage medical care and then they come back to the United States and they try to get into a nursing program, they get precisely zero credit for the work that they did on the battlefield. Not physician's assistants credits, not credits towards a nursing degree. They have to go back and start at square one like someone who is eighteen years old who has taken a high school biology class, when they actually have more real-world medical care experience than their instructors. I have talked to folks who maintained naval jets, the engines on naval jets, and they finished twenty years of that, and they try to get a job as a commercial aviation mechanic and they are told, "No, you have got to go back and start at square one. You do not get credit at all for the experience that you have."

So the Troop Talent Act, which is passed through the Armed Service committees in both houses, big bipartisan margins, and will be debated in the coming weeks on the floor of both bodies. It is designed to encourage credentialing so at the very moment you are getting the skill we should have a norm in the military that when you are getting the skill you are getting the credential at the very moment you get it rather than it thirty days before your career is over and now let us try and recreate everything you learned and write a resume that reflects it, go ahead and get the civilian credential at the time. That is the first bill I put in and I think it is going to pass in the next month or so.

The second bill, which I just announced today, will be introduced on a bipartisan basis is called the SERVE Act. This is trying to tackle the unemployment challenge but in a slightly different way. Veterans get education benefits both because of the original GI Bill, but also the GI Bill patroned by my predecessor Jim Web, there are educational benefits that are available to veterans. I want to make sure that the institutions providing educational training are accredited. On the college and university side if you get a Stafford Loan or a Pell Grant, those loans and grants can only go to institutions that have accreditation standards. You do not have fly by night institutions taking these federal monies and telling someone we can give you a great skill and then it turns out they are not good and the skill does not matter. And so what we will do within the Veterans and DOD educational benefit funding streams is also require that the institutions have valid accreditations that the institutions be required to give veterans information about their graduation rates, the employability track record of their graduates. So before the veteran says, yeah I am going to give you my hard earned educational benefit for this credential, the veteran ought to get information to see if there is a track record they can trust and something

I am very excited about the veteran's benefits have often been limited to community colleges, colleges or graduate programs, but not high quality career and technical education programs. So there are these wonderful career and technical education programs. There is a shipbuilding apprentice school at Newport's new shipyard; it is one of the best higher education programs of any kind in the United States that is not counted as sort of higher education under our definition because we have tended to discount career and technical education.

So the third thing the SERVE Act will do is enable, beginning with a pilot project in five states, veterans to use their educational benefits for high quality career and technical training. These are strategies that we can use to help get folks get better jobs. Those are issues that I am working on right now with veterans.

### SEXUAL ASSAULT AND MISCONDUCT IN THE MILITARY

Let me take a minute on sexual assault and sexual misconduct, and then say a word about the big picture issues of when we go to war. As more and more women have come into the military, and thank goodness that is the case. We now have made the decision to eliminate any flat gender prohibitions against service even in combat billets, and made all of the criteria for military billets just sort of gender neutral criteria, that most people can meet. But if a man or woman can meet it then they ought to be able to equally serve. We are seeing a whole new generation of women in military leadership and woman coming into the military. We have had a recurring and persistent problem in the military of sexual misconduct. Sexual misconduct is a broad category right? So it could be anything from hostile workplace, which is bad, annoying, maybe not illegal but bad, annoying and discouraging, to actual instances of rape and sexual predatory crimes. It covers a lot of ground, and there are different strategies for dealing with different kinds of sexual misconduct.

But we are in the middle of a very significant debate right now about how we deal with instances of sexual misconduct and particularly sexual assault within the Uniform Code of Military Justice. There is a bill that is on the floor of the Senate that came through Armed Services, where because of the reporting of these horrific instances, we have proposed about two dozen changes to all manners of procedures within the military to try to get at this problem. The recruiting of people, the training of enlisteds and the training of officers, the circumstances and procedures under which cases are investigated, prosecuted, and punished. What can happen on appeal? Can verdicts be overturned on appeal? How do we protect victims,

including their confidentiality, if they want to report, but maintain some confidence? How do we protect witnesses from being harassed or intimidated if they are asked to report on what they saw? How do we protect whistleblowers who want to come out and explain that something is happening that should not happen? And so we have put in place, in a bill, a whole series of proposals that are going to be debated over the course of the next couple of weeks.

There is one that is not in the bill that is also very controversial and could be debated, which is should we remove from the military chain of command completely, the decisions about whether to investigate and prosecute crimes of sexual assault. And this was a proposal that was put onto the table by a very able advocate on this topic, Senator Kirsten Gillibrand from New York, has really brought a lot of attention to this issue. She is the chairwoman of the Personnel Subcommittee in Arms Services in the Senate. I am on that committee and I have attended every hearing that the United States Senate has ever had on this topic. Now, that is kind of sad to say because they never were willing to have hearings about it in the Senate until this year. Well, we have had a number of hearings about it, and I go to them all and I hear these horrific stories. Then I talk to people in Virginia who have been victims and thank God, so often they are heroic survivors, victims of horrific crimes, and then heroic survivors of those crimes.

The challenge with the current Gillibrand proposal, which I voted against in the committee, was it removes not just crimes of sexual assault, but it removes all crimes that would be sort of civilian crimes punishable by a year if they were civilian from the military chain of command: barracks steps, assaults, fighting, arson, perjury, fraud against the United States, passing bad checks. The current proposal takes out from the military chain of command prosecutorial decisions about everything, even though there has not been evidence that we are doing a bad job on everything. To the extent we are doing a bad job, I think we are doing a bad job; it has been on these crimes of sexual assault. The current proposal, in my view, is too broad, but it raises a very fundamental issue about whether the chain of command is the right way to deal with these particular kinds of crimes. And so we are going to be having a significant discussion about that over the course of the next couple of weeks.

#### CONSTITUTIONAL WAR POWERS OF CONGRESS AND THE PRESIDENT

The last thing I will say, then open it up for some questions, is next to the veteran's unemployment rate, the area that I have probably spent the most time on in the Senate is a very lawyerly area. And that area is the constitu-

tional war powers of Congress and the President. Let me just say a word about that because this is really veteran's law, but everybody here who is interested in veteran's issues I know is interested in this. The Constitution set up a pretty clear dichotomy with a slight grey area in it, and that grey area has been very grey for 226 years. The President is the Commander in Chief, Article II. Per Article I, Congress has the power to declare war. It is pretty clear, if you go back and read the debates of the framers of the Constitution, what they intended was that we should not initiate military action absent a vote of Congress. They pretty clearly intended that. So whether, and under what circumstances to start was to be a congressional determination. Once started, how to execute was for the commander. So the President should not initiate unilaterally, and Congress should not try to tinker and micromanage the function of the commander in chief. That is what Congress intended. That is what the framers intended.

The framers intended one other thing: the framers intended that there might be circumstances, emergency circumstances, defending ourselves or our assets from attack where the President would need to act as the commander in chief prior to congressional approval. But even in those instances, there should be a congressional approval. I had to act, you know, we were being attacked at the Pentagon, attacked at Pearl Harbor, we needed to act but, within a reasonable period of time I got to go and tell Congress: here is what we are going to do and Congress has to ratify and affirm that we are going to be initiating military hostilities. While the Framers had a pretty clear understanding of that, our history has been anything but clear. Congress has declared war only five times in the history of the United States. Presidents have initiated military action without the prior approval of the President more than 125 times. Now, in many of those 125 times, Congress kind of, maybe came back and sort of ratified by either doing some authorization or a budgetary allocation or something. But, there a number of instances where Congress never took any step to ratify military action. In the most recent of which was the President's decision, President Obama's decision, to put the United States into a NATO mission in a military circumstance in Libya. The President had a rationale that had it been asserted to me as a member of the Senate, I probably would have voted in support of. But the President never took it to Congress, arguing two different arguments: it was part of a NATO thing, so it did not have to be brought to Congress or it was a humanitarian mission, because it was to stop the slaughter of innocents by Gaddafi, and we can do humanitarian missions without the approval of Congress. Now, I am in support of the President, but, humanitarian mission is like tsunami relief, it is not getting in the middle of a civil war. So, it was clear to me that that asserted rationale about Libya was just wrong. So, I have become sort of obsessed on this topic: the

current statutory laws is from 1973, The War Powers Resolution that was passed during Vietnam in a very divided time. Congress did not like the fact that President Nixon had taken the Vietnam War and moved into Laos and Cambodia without congressional approval; and, so Congress passed a provision to try to restrict presidential powers to initiate action without Congress. President Nixon vetoed it; Congress overrode the veto. No President since has acknowledged that the War Powers Resolution of 1973 is constitutional. The courts have pretty much said at least some pieces of it are unconstitutional. We end up with a clear constitutional understanding by the Framers, but a very murky and muddy history in terms of the relationship between Congress and the United States. I am working with Senator McCain to redraft the War Powers Resolution of 1973, based on work that is actually been done by the Miller Center at the University of Virginia. They convened a wonderfully bipartisan panel in 2007 and 2008 and offered a statute to try to respect the constitutional division of powers, but establish a consultative norm between the President and Congress before we initiate military hostilities. And, it has been a fascinating process, and we were right at work on this when Syria used chemical weapons against its own civilians in violation of the 1920s era chemical weapons convention.

Syria used chemical weapons against its own civilians in violation of the 1920s era Chemical Weapons Convention. Um. The president, who had been reluctant to put U.S. military assets into Syria, then said, “we need to act militarily.” I weighed in with the president, as did others, and said you should bring this to Congress, you should not act unilaterally, as you did in Libya, you need to treat this differently. The president did make the decision to bring it to Congress. Brought it to Congress, brought it to the Foreign Relations Committee. We cast a vote on it. It was a narrow vote; it was a controversial question: should we engage in military action against Syria to enforce this prohibition against chemical weapons? I voted for it. One of the hardest votes, or probably the hardest vote I have ever cast. Voting for military force ought to be the hardest vote you ever cast, and you know when you got a kid in the military it makes it even a little more, you really grapple with a decision like that. But I do feel like that norm about no use of chemical weapons is such an important one. That when that is crossed if there is not a consequence then we are going to reap the whirlwind and there will be much more significant challenges. But, we have used that example, Senator McCain and I, and kind of watched how it developed: the president coming to Congress and then because the President did come to Congress, it created the space for a diplomatic solution to emerge, at least with respect to the chemical weapons, and I think that was salutatory. We are wrestling with that right now.

The second war issue that is a very important one is, that I started with, and then I will open it up for questions, is the current war that we are in. And, when will it end? Congress, after 9/11, passed an authorization for use of military force. I will paraphrase, but I am very close to accurate. It was a very short authorization: it gave the President the ability to wage war, and initiate military action against those who were responsible for the attacks of 9/11 or their affiliates. Or their affiliates. It is that phrase that is, that, when a drone strike happens in Yemen, or Pakistan, or in Africa, it is drone strike is justified by them or their affiliates. Because any group that is affiliated with Al Qaeda, the architect behind the attack on September 11, 2001, is, by the interpretations of both the Bush and Obama administration, within the ambit, the legal ambit, of or their affiliates.

We had a hearing recently where we challenged, to try to really get at this question, Obama administration officials, and some Bush administration officials who came, their interpretation of this authorization. We asked the question, when will this war be over, and one of the witnesses said maybe not for twenty-five or thirty years. I asked the question, let me posit this, somebody is born in 2025 and when they are age 15 in 2040 they join an organization that started that year, that is a loose affiliate of Al Qaeda, that is engaged in potential terrorism against the government of Indonesia. They have no interest in taking steps against the United States. Is that an “or their affiliate” that is within the ambit of this authorization? The witness said, “Absolutely, clearly it is.” What Congress did, of course at a time of attack and war and we have to respond it was pass a completely open ended declaration of war without any geographic scope, without any temporal duration, and no finishing point. I happen to believe that that is a huge problem and that as we especially contemplate the finishing of our combat operations in Afghanistan at the end of 2014 we need to go back into that authorization, I believe, and either let it expire and decide what the next chapter is or dramatically limit it. Much of the controversies about things like NSA programs et cetera, ultimately flow back to a decision to authorize a war without a temporal limitation or a geographic scope. I think it is really important that we go back and do it.

So I have put a lot on the table, obviously, not just about veteran’s issues, but also about issues for the active service and issues, big picture policy and legal questions, for the nation as we grapple with some fundamental issues about how war is declared and initiated. You can tell I am into these issues. They are important, they are challenging, they are hard to solve. But I am glad that the University of Richmond has decided to cast a spotlight on some of important these issues and encourage lawyers, especially lawyers

working with veterans, to tackle and help them in the challenges they have.

### QUESTION AND ANSWER SESSION

With that I would love to open it up and maybe for about ten minutes to answer some questions. Thank you a lot. Please, if you would introduce yourself when you ask a question that would be great.

Question: Hi I am Paul Berry. I am the co chair of the Virginia Bar Association's Veterans' Issues Task Force and I will be speaking at the next panel. One of the things that we try to do is help veterans and service members with their legal issues, either on a pro bono or reduced fee basis, myself along with Heather Lockerman who handles our non-domestic relations cases. One of the challenges we are seeing is that a lot of service members who leave active duty or who have been activated, either because they were activated by the National Guard or the Reserves, when they leave service they do not have that support structure there and they get into a lot of legal issues. Currently, right now under Title X, they only have access to their JAG officers and their legal assistance officers for thirty days after they leave active duty. We are seeing about a quarter to a third of the requests we receive for legal assistance from service members who are outside that thirty days but within a year. Would it be possible to amend Title X to say legal assistance officers and JAG officers will be available to those recently separated service members for maybe up to a year to assist them with their legal issues as they transition out of the service and as they get their feet on the ground in civilian life?

Answer: I just want to make sure, this is a particular issue with folks who are separating not from active service but from the guard and the reserve?

Question: Also active service as well. The active duty service members, so Title X for active duty and when National Guard and Reserves are activated they fall under Title X. It is all of the components: active, National Guard, reserves.

Answer: So extending their ability to utilize the legal support structure for more than thirty days, possibly for a year because some of these legal issues you do not know what they are immediately. They come up a little bit later. So that is a great question. I was not aware of that limitation and how it would affect those recently separated. I do not know what the obstacles might be. But I will tell you what I have got a staffer here. My state director, John Knapp, is here in the room; he runs all of my state operations. He is a 24-year army guard member. He is now no longer active in the Vir-



ginia Guard, but John and I will try and grapple with that with my staff and we may want to contact you and dig into that a little more to see if we can be helpful on that one. Great. Thank you.

Question: Thank you sir for coming. Captain Greg Collins. I am a second year law student and I am an active duty Marine Corps captain. My question goes to we know that in the next few years that there will be a significant drawdown in the military. For example the Marine Corps is going to go from 202,000 to 150,000 mark. What do you see the DOD doing to identify the fact that we are going to have a significant influx of new veterans? And what programs have you seen them implement to help transition those active duty service members to veterans?

Answer: That is a great question. We will drawdown, partly because Iraq and Afghan wars are not full theater operations, but also because of budgetary challenges. One of the biggest issues we talk about in these committees is budgetary dysfunction in Congress, which has made it very difficult for DOD to plan. But they have to kind of do worst case planning, so part of it both the drawdown and budgetary challenges, is that they are all preparing to reduce force strength. We had a hearing about the reduce force strength in the Marines just yesterday. I was talking to General Amos about it. Some of what you see the military doing is embracing these issues that we are describing today, especially around employment. It sounds obvious that what you would want to do is help active duty folks get civilian credentials for every military skill they received so they can more easily transition into civilian life. But what I discovered, as I started to dig into it, is that to the contrary there was almost a culture within the military that where wait why would I want to give you civilian credentials that you could more easily leave and not sign up? That would waste the value of the training that we have done for you. So the military culture had actually been against giving people the kind of civilian credentials while they were there. So while I have been exploring this credential issue with military leaders at the Pentagon I do sense a changing attitude about it. The attitude is you are right we might be making it easier for people getting traction and leave but we are going to be shrinking in size anyway. We want them to be successful. And second, we are always going to be recruiting even if we are recruiting fewer in numbers, and what a great recruiting tool it is to look somebody in the eye and say: guess what the technology training you are going to get; you are going to get Cisco systems administer certified. The heavy equipment, you are going to get the commercial driver's license. I think it is a fantastic recruiting tool to be able to offer this kind of a credentialing norm within the military. So, I certainly see efforts now to change the culture about career planning. The army has a great program that they call Soldier for Life

that they are setting up within the army and the idea is, we will have a placement office that is going to help you through the rest of your civilian career. You are always going to be a soldier even when you leave. You see a lot more career thinking like that. Even folks after they depart are still part of us and we want to have assets that they can use to have successful careers.

The second issue that we are really going to have to think about long-term and appropriately budget for is the medical needs. The VA system is one, but then there is also the whole issue of military retirement and military health benefits, et cetera. Because of all of the budgetary issues we are wrestling with, we have to look at everything and see if we can find deficiencies and savings. But, all of the benefits on the military side are different than other line items in the budget because they are, sort of, earned benefits. They are benefits that were promised and earned. Some things you can change more easily. You have to be very careful not to change what people have reasonably come to expect through their service to the country.

Question: Senator, I am Don Carter. I am a retired navy commander, naval flight officer. I have a PhD from the Institute of Public Policy from George Mason University. In public policy, my area of focus has been business process improvement. Title X of the United States Code of Military Justice is very comprehensive. At the same time, it is very explicit. It has been amended forever as the circumstance arose. My question is, and it is more of a sense of my own, is that there is nothing wrong with the Code of Military Justice as it is written. The fault is in the process, the implementation, and the enforcement. The leaders who are failing do not have, if there is a problem with the Code of Military Justice, it is the absence of sufficient accountability for the decision makers. I think it would be terribly wrong to take the decision-making process away from the military leaders because of a few frankly bad leaders. I know where the impetus is in the Senate, but is there any effort, could there be an effort to make for greater accountability in those specific levels of leaderships.

Answer: That is a fantastic question, and as we have grappled with this issue of sexual misconduct, and of course the UCMJ deals with all kinds of areas and there is sometimes accountability challenges in other areas too, but the one that we have been really grappling with is sexual misconduct. Those of us in the committee who voted against the Gillibrand proposal did so partly for that reason. Rather than makes folks less accountable by removing a decision from the chain of command, we think the problem is we have to hold people more accountable, and if you remove these about prosecutions from the chain of command, you might be stripping away an accountability that needs to be emphasized. Within the current proposal that is

going to be voted on there are about twenty-five improvements, including some accountability improvements, even in terms of how officers are evaluated for a promotion making: do you have the kind of workplace when men and women can both serve without being disrespected or treated badly because of their gender. You can make that a condition of promotion that people demonstrate that they are a good leader in that way, and that has not been so formally the case up to now. So, there are a series of improvements that are not, sort of, wholesale revisions of the UCMJ, but try to emphasize the accountability structure within.

The second challenge, I will say myself the other problem I had with the proposal, is the breath of it. I mentioned taking barracks thefts and everything else out of the UCMJ too, I thought it would have a whole lot of negative consequences and one of the consequences might be that it really dilutes the focus on what is really in fact the challenge we are trying to solve, which is getting rid of sexual assaults and sexual misconduct. It may well be that we can harmonize these different strands, we all acknowledge there is a problem what is the right way to solve the problem, if we can harmonize these different approaches over the coming weeks. But, like you, the whole notion of a chain of command that is accountable and held accountable and has the tools to deal with the problem and we hold them accountable for using the tools. That is really, that will ultimately be the solution for this. And just as the military solved the challenge of integration and just as the military is doing a good job of solving the end of "Don't Ask, Don't Tell" and just as the military is going to do a good job of ending gender specific requirements for different service billets, we count on the chain of command to solve all those issues. It has got to be accountability of military leadership to solve issues of sexual misconduct. So, we will see how far we get on this.

Question: Thank you for coming today sir. I am a first year law student. I just transitioned to civilian life after about nine years of serving as a Captain in the Marine Corps. You made the comment that we have been at war for twelve years. And I certainly can attest the force of stress. There are folks that have been deployed multiple times, as you have said. The stress on our families and us is very real, as is PTSD, of course, folks have become more aware of it. But with the force drawing down and more veterans being thrown into the real world, there is going to be greater numbers of veterans with PTSD. Could you just comment on a sense of whether or not Congress really understands how many folks are out there with PTSD and how big of a problem it really is? And also, can you comment on any initiatives, perhaps, that Congress is looking at to provide maybe more funding for veterans to get help with PTSD to transition to civilian life?

Answer: I can. I can offer some basic thoughts and there is a lot more than I am going to be able to describe sitting here. Most of this work would be done in the Veteran's Committee, that as I said I do not sit on, but I will say this. I think Congress is very aware that what we have seen in PTSD is the tip of an iceberg and we do not see the size of the iceberg. And I think Congress was not aware on September 18th, 2001, when the authorization for military force was used to commence operations in Afghanistan. Congress had no idea it would be thirteen years. They thought it would maybe be brief. They had no idea we would be doing these repeated deployments. So there was no projection or prediction about what this twelve years of war would mean in terms of either physical injuries and recoup from physical injuries, PTSD, or other issues. I would say in recent years Congress has begun to say we see just the tip of the problem and it is a much bigger problem. So there are a series of initiatives that are now going on largely in the research area and research grants to institutions to really help us get our arms around it. It is not precisely about PTSD, but just to give you an example: the traumatic brain injuries in this war so different from previous wars in terms of their complexity and magnitude. The VA in Richmond is one of the poly-trauma centers that is really skilled at that. But VCU recently received a sizeable multi-year grant to work together with the VA and other hospitals and also, interestingly enough, with the NFL, to do a little bit of exploration of head injuries and TBI and what that means over the course of folk's lives. And this is a sizeable grant to really try to pull together research and do new research on TBI and what it means over the course of folk's lives. And there are similar grants that are being done. The Virginia Tech Carilion Medical School in Roanoke, which is heavily focused on medical research, is doing a lot of work in the PTSD area. So I would say we do not know the scope of the problem and the size, but in recent years Congress has begun to understand that it is much bigger than anything we would have projected and we are trying to sort of flood the zone with at least some research work right now to enable us to fully grapple with and then design the right strategies for dealing with it.

#### CONCLUSION

Listen, great questions and thank you for the opportunity to come in with you today. I wish you the best. I am easy to find either in Washington or in the six statewide offices I have. The largest statewide office is here in Richmond and it is down in the SunTrust building near Capitol Square. We have very talented people that work on individual veterans type issues, but also great people that want to work on policy. So whether it is policy or a constituent services matter, if we can be helpful to folks here at the law

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school or those of you either who are veterans or own your own law practice please feel free to reach out. John Knapp here is my state director that I mentioned earlier, and he mans the fort with team in our Richmond office. Thanks so much for having me today.