

**BECOMING A HARDER TARGET: UPDATING MILITARY
FIREARMS POLICIES TO COMBAT ACTIVE SHOOTERS**

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When the first shots rang out, my hand reached to my belt for something that wasn't there [a gun]. Something that could have put a stop to the bloodshed, could have made it merely an "ugly incident" instead of the horrific massacre that I will surely remember as the darkest twenty minutes of my life . . . Stripped of my God-given right to arm myself, the only defensive posture I had left was to lie prostrate on the ground, and wait to die. As the shooter kicked at the door, I remember telling myself, "oh well, this is it." It is beneath human dignity to experience the utter helplessness I felt that day. I cannot abide the thought that anyone should ever feel that again . . . I shall conclude by restating my warning. This will happen again and again until we learn the lesson that suppressing the bearing of arms doesn't prevent horrific crimes, it invites them.¹

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¹ *Read the Powerful Letter a Fort Hood Soldier Penned Asking for his 'God-Given Right' to Arm Himself on Base*, BLAZE (Apr. 8, 2014) [hereinafter 1LT Cook Letter], <http://www.theblaze.com/stories/2014/04/08/read-the-powerful-letter-a-fort-hood-solider-penned-asking-for-his-god-given-right-to-arm-himself-on-base/> (quoting First Lieutenant (1LT) Patrick Cook in Oliver Darcy). First Lieutenant (1LT) Patrick Cook narrowly survived the 2014 Fort Hood shooting. *Id.* He asked a fellow Soldier to read a letter at a Texas State Senate Hearing describing the shooting, and asking lawmakers to allow Soldiers to carry firearms, so they can defend themselves against attack. *Senate Comm. on Agriculture, Rural Affairs, and Homeland Security*, 83d Tex. Sen. (Apr. 9, 2014) (referring to the letter from 1LT Patrick Cook read by Christopher Coleman), <https://www.youtube.com/watch?v=8xOfa65JrcI>. First Lieutenant Cook describes how his life was saved when a fellow Soldier, Sergeant First Class (SFC) Daniel Ferguson,

I. Introduction

If you work in a military office, ask yourself this question: If a gunman came into your work area and began shooting people, how long would it take for a Law Enforcement Officer (LEO) to arrive and stop them? The answer for most servicemembers is far too long.² Since 2009, eight minutes is the fastest time that military LEOs have responded to and stopped an ongoing active shooter incident on a military installation.³ The slowest response time for military LEOs to stop an active shooter was sixty-nine minutes.⁴ The recent shooting deaths of four marines and one sailor at the Chattanooga, Tennessee Naval Reserve Center highlight the additional challenge of protecting servicemembers stationed outside of regular military installations where armed military police (MP) and security forces are located.⁵

barricaded a door when the shooting began. *Id.* After SFC Ferguson was seriously wounded, 1LT Cook described their efforts to keep SFC Ferguson alive: “I can still taste his blood in my mouth from when I and my comrades breathed into his lungs for twenty long minutes while we waited for a response from the authorities.” *Id.*

² See U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, A STUDY OF ACTIVE SHOOTER INCIDENTS IN THE UNITED STATES BETWEEN 2000 AND 2013, 11 (Sept. 16, 2013), <http://www.fbi.gov/news/stories/2014/September/fbi-releases-study-on-active-shooter-incidents/pdfs/a-study-of-active-shooter-incidents-in-the-u.s.-between-2000-and-2013> [hereinafter FBI Active Shooter Study]. The Federal Bureau of Investigation (FBI) study found that of the 160 active shootings since 2000, in only 28% of incidents did Law Enforcement Officers (LEOs) arrive on the scene in time to stop an active shooter from killing others. *Id.*

³ See *infra* Appendix A: Active Shootings on Military Bases Since 2009. United States government agencies define an active shooter as “an individual [with a firearm] actively engaged in killing or attempting to kill people in a confined and populated area.” FBI Active Shooter Study, *supra* note 2, at 5.

⁴ *Id.* It took LEOs who responded to the 2013 Washington Navy Yard shooting sixty-nine minutes from the time of the 911 call to the time they found and killed the shooter. WASHINGTON D.C. METROPOLITAN POLICE DEPARTMENT, AFTER ACTION REPORT, WASHINGTON NAVY YARD 63 (Jul. 2014), http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20AAR_Navy%20Yard_07-11-14.pdf [hereinafter Navy Yard AAR]. Nationwide, it typically takes LEOs more than eight minutes to arrive at the scene of a violent crime. U.S. DEP’T OF JUSTICE, CRIMINAL VICTIMIZATION IN THE UNITED STATES, 2007 STATISTICAL TABLES 107 (Feb. 2010), <http://www.bjs.gov/content/pub/pdf/cvus07.pdf> [hereinafter DOJ Response Time]. Data compiled by the Department of Justice (DoJ) from a comprehensive study of crime reporting data indicates that for crimes of violence, police arrive on the scene between eleven minutes and one hour, 38% of the time, within six to ten minutes 28% of the time, and within five minutes 25% of the time. *Id.*

⁵ *Minute-by-Minute Coverage of the Chattanooga Shooting that Killed Four Marines*, TIMES FREE PRESS (Jul. 16, 2015), <http://www.timesfreepress.com/news/local/story/2015>

The introductory quote at the beginning of this article was taken from a letter written by an Army Lieutenant who watched helplessly as a fellow soldier, Specialist (SPC) Ivan Lopez, murdered his fellow Soldiers with a handgun in a Battalion Headquarters building on Fort Hood in 2014.⁶ The attack was the second major active shooting on Fort Hood in five years.⁷ In the last six years, active shooters have killed thirty–seven servicemembers and civilians and wounded fifty–five others on military installations.⁸

Military personnel are vulnerable to active shooters primarily because of overly restrictive military firearms policies that prevent nearly all personnel from carrying firearms for unit or self–defense purposes.⁹ To remedy this vulnerability, military firearms policies should be revised to authorize Armed Security Officer (ASO) positions to be created in each military unit. Armed Security Officers will provide commanders immediate response capability and transform the Army to being proactive in addressing the active shooter threat rather than reactive, as the current arming posture dictates.¹⁰

Military leaders regulate who has access to firearms on military installations by issuing Department of Defense Directives (DoDDs), Army Regulations

[/jul/16/breaking-shots-fired-tennessee-riverpark-chattanooga/314944/](http://jul/16/breaking-shots-fired-tennessee-riverpark-chattanooga/314944/). Military personnel assigned to recruiting stations have historically been prohibited from carrying firearms. *Id.* DEP'T OF DEF., DIR. 5210.56, CARRYING OF FIREARMS AND THE USE OF FORCE BY DoD PERSONNEL ENGAGED IN SECURITY, LAW AND ORDER, OR COUNTERINTELLIGENCE ACTIVITIES 2 (Apr. 1, 2011) [hereinafter DoDD 5210.56]. The directive states, “Arming [Department of Defense] personnel with firearms shall be limited and controlled and essentially restricts firearms carry to only LEOs and personnel performing “security activities.” *Id.*

⁶ First Lieutenant Cook Letter, *supra* note 1.

⁷ See FBI Active Shooter Study, *supra* note 2.

⁸ *Id.*

⁹ See U.S. DEP'T OF ARMY, REG. 190-14, CARRYING OF FIREARMS AND USE OF FORCE FOR LAW ENFORCEMENT AND SECURITY DUTIES para. 2-2 (Mar. 12, 1993) [hereinafter AR 190-14] (examining the governing Department of Defense Directive (DoDD) on arming servicemembers for unit and self–defense); See also 1LT Cook Letter, *supra* note 1 (asserting that military firearms policies essentially make military installations gun–free zones because all servicemembers not assigned to law enforcement or security positions are denied the ability to carry firearms for self–defense, see *infra* Part V).

¹⁰ See *infra* Part VII. See also U.S. DEP'T OF ARMY, FIELD MANUAL 6-22, ARMY LEADERSHIP para. 6-43 (Aug. 2012) [hereinafter FM 6-22]. The Army Leadership Field Manual proposes that “[p]reparing for the realities of combat is a direct leader’s most important duty.” *Id.* The essence of Force Protection is to take “preventative measures . . . to mitigate hostile actions against Department of Defense (DoD) personnel.” DEP'T OF DEF., JOINT PUBLICATION 3-0, JOINT OPERATIONS para. III-30 (Aug. 11, 2011), http://www.dtic.mil/doctrine/new_pubs/jp3_0.pdf.

(ARs) and installation firearms regulations.¹¹ Department of Defense Directive 5210.56, *Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities*, is the governing directive on access to firearms in the military.¹² The directive requires that all access to firearms on military installations be limited and controlled.¹³ Service and installation regulations further restrict access to firearms such that only LEOs and a small number of security personnel can carry firearms for unit or self-defense.¹⁴

In the aftermath of shootings on military bases, servicemembers who have survived the incidents are calling for changes to military firearms policies to allow them to carry weapons for self-defense.¹⁵ Army leaders have historically responded to these requests by stating that military LEOs provide “adequate protection” from active shooters.¹⁶ The recent Chattanooga, Tennessee

¹¹ The Supreme Court has upheld the authority of military commanders to implement and enforce military regulations. See *Greer v. Spock*, 424 U.S. 828, 840 (1976). In *Greer*, political activists sought an injunction to bar the Fort Dix Installation Commander from enforcing a post regulation that prohibited political demonstrations. *Id.* The Supreme Court examined the inherent authority of military commanders to pass regulations and found that military installations are not a “public forum” for speech purposes and the government “has power to preserve the property under its control for the use to which it is lawfully dedicated.” *Id.* at 836.

¹² See AR 190-14, *supra* note 9.

¹³ *Id.*

¹⁴ *Id.* Army Regulation (AR) 190-14 significantly restricts the carry of firearms for all but LEOs and security personnel. *Id.* Army Regulation 190-11 directs “Senior Commanders” on military installations to establish Privately Owned Weapons (POWs) Regulations that strictly limit access to POWs. U.S. DEP’T OF ARMY, REG. 190-11, PHYSICAL SECURITY OF ARMS, AMMUNITION, AND EXPLOSIVES para. 1-10 (5 Sept. 2013) [hereinafter AR 190-11]. See *infra* Appendix B: Major Army Installation POW Regulation Comparison for references to installation firearms regulations.

¹⁵ Michelle Tan, *Soldiers Want OK to Carry Concealed Weapons on Base*, ARMY TIMES (Apr. 8, 2014), <http://www.armytimes.com/article/20140408/NEWS05/304080069/>; See 1LT Cook Letter, *supra* note 1.

¹⁶ *Authorization of Appropriations for Fiscal Year 2015 and the Future Years Defense Program: Hearing before the U.S. Senate Committee on Armed Services*, 113th Cong. 44 (2014) (statement of General Ray Odierno and Senator Lindsay Graham), <http://www.armed-services.senate.gov/imo/media/doc/14-32%20-%204-3-14.pdf> [hereinafter 2014 Senate Committee Meeting]. The Senate Armed Services Committee met on April 3, 2014 to discuss Department of Defense (DoD) appropriations but the conversation quickly turned into a discussion with the Secretary of the Army and the Army Chief of Staff (General Odierno) about the shooting at Fort Hood that occurred the previous day that left four dead and sixteen wounded. *Id.* General Odierno answered questions about the Army policy on soldier access to firearms, mental health policies, and whether soldiers should have access to concealed weapons. *Id.* In response to questions about Army leaders allowing soldiers to carry firearms for self-defense, General Odierno said, “[W]e have our military police and others that are armed, and I believe that is

shootings that left five servicemembers dead is pushing the Department of Defense (DoD) to reevaluate firearms policies.¹⁷ In the days following the shooting, the governors of six states directed specific National Guard personnel to begin carrying weapons for self-defense, or in some states for personnel to be relocated to facilities with armed personnel.¹⁸ Armed private citizens across the country have also entered the debate because, as one national news outlet highlighted, “gun-toting citizens are showing up at military recruiting centers around the country, saying they plan to protect recruiters.”¹⁹ Various

appropriate. . . . I believe that that allows us the level of protection necessary.” *Id.* at 44. Based on this response, Senator Lindsay Graham and General Odierno had the following dialogue:

[Senator GRAHAM]: I would just ask you to keep an open mind, because in a deployed environment everyone has a weapon. It’s a pretty stressful place in Iraq and Afghanistan, and I think people have been responsible in the military. I remember my last visit to Afghanistan that you could not be served chow unless you presented your weapon. I think the reason is you want everyone to have their weapon because of the insider threat; is that correct?

[General ODIERNO responding]: That’s correct, sir.

[Senator GRAHAM]: I think our military at home is very much a target of terrorism I just hope you’d revisit this policy, because I think our military members are very responsible with firearms and we need to really look at having more capacity, not less, to deal with insider threats.

Id. at 44.

¹⁷ See *Statement on Safety at Recruiting Centers*, DEP’T OF DEF. (Jul. 24, 2015), <http://www.defense.gov/News/NewsReleases/NewsReleaseView/Article/612808/statement-on-safety-at-recruiting-centers>. Eight days after the Chattanooga, Tennessee shooting a Pentagon spokesman announced that “Secretary of Defense Ash Carter is currently reviewing recommendations from the services for making our installations and facilities safer.” *Id.*

¹⁸ Barbra Starr & Theodore Schleifer, *Pentagon, Governors Boost Security for Military After Chattanooga Shooting*, CNN (Jul. 18, 2015), <http://www.cnn.com/2015/07/17/politics/chattanooga-shooting-military-protection/>. Texas Governor Greg Abbott ordered the arming of National Guard personnel at military facilities throughout the state and explained, “Arming the National Guard at these bases will not only serve as a deterrent to anyone wishing to do harm to our service men and women, but will enable them to protect those living and working on the base.” *Id.* Oklahoma Governor Mary Fallin authorized the arming of certain full-time personnel in military installations throughout the state and said, “It is painful enough when we lose members of our armed forces when they are sent in harm’s way, but it is unfathomable that they should be vulnerable for attack in our own communities.” *Id.*

¹⁹ Andrew Welsh-Huggins, *In a Switch, Civilians Guard Military*, US NEWS (Jul. 22, 2015), <http://www.usnews.com/news/us/articles/2015/07/22/after-tennessee-shootings->

Congressional leaders have become heavily involved in the debate by questioning DoD leaders on firearms policies, making public statements, and introducing legislation requiring the DoD to allow servicemembers to carry firearms for self-defense.²⁰ Senator Lindsey Graham, a Senate Armed Services Committee Member, has voiced strong support for updating DoD firearms policies to allow servicemembers to carry firearms for self-defense on military installations.²¹ In the week following the Chattanooga, Tennessee, shooting, a firestorm of legislation was introduced in Congress on the topic of firearms access for military personnel.²² Should active shootings continue to claim the lives of servicemembers, it is becoming very likely that Congress will pass legislation requiring the DoD to revise military firearms policies to arm servicemembers for self-defense.²³

Part I of this article examines the military firearms policy debate and the options military leaders have for addressing the active shooter threat. Part II recounts the tragic stories of the 2009 and 2014 Fort Hood shootings, the 2013 Washington Navy Yard shooting, and the 2015 Chattanooga Tennessee shootings. Part III presents lessons learned, but not yet implemented into the military from active shooter attacks. Part IV discusses how the active shooter threat is increasing, and how several planned active shooter attacks have been narrowly avoided. Also discussed is the fact that DoD firearms policies have remained largely unchanged for twenty-one years, despite the growing threat. Part V examines the over-reliance military leaders have on LEOs to stop active shooters, yet the reluctance military leaders have to allowing trained LEOs to carry firearms on DoD installations.²⁴ Part VI of this article examines how DoD

armed-citizens-guard-recruiters. One volunteer outside an Ohio Recruiting center wearing a handgun told reporters, "What the government won't do, we will do." *Id.*

²⁰ See also The Safe Military Bases Act, H.R. 3199, 113th Cong. § 1 (2013). Texas Congressional Representative Steve Stockman introduced The Safe Military Bases Act shortly after the 2013 Navy Yard shooting, to require the DoD to let servicemembers trained in the use of firearms carry handguns for self-defense. *Id.* In the week following the Chattanooga, Tennessee shooting, ten bills were introduced in the House of Representatives or the Senate on the topic of firearms access for military personnel. *Id.*

²¹ 2014 Senate Committee Meeting, *supra* note 16, at 44. Senator Lindsey Graham has voiced strong support for revising military firearms policies to arm servicemembers for self-defense. *Id.*

²² See, e.g., S.1819, 114th Cong. (2015-2016). In the week following the Chattanooga, Tennessee, shooting, ten bills were introduced in Congress on the topic of servicemember access to firearms. Senator Steve Daines introduced legislation requiring the DoD to allow servicemembers assigned as recruiters to carry a service issued sidearm for self-defense. *Id.*

²³ See *infra* Part VI(C). Congress can quickly make sweeping changes to military policies and programs through the annual National Defense Authorization Act.

²⁴ See Memorandum from Commander, Criminal Investigation Detachment Command to all Criminal Investigation Detachment Command personnel, subject: Policies Governing the Carry of Assigned Weapons and Credentials (25 Jun. 2014) [hereinafter CIDC

firearms policies have made military bases essentially gun-free zones which invite, rather than deter, active shooter attacks.²⁵

Part VII examines how current military firearms policies can be changed to allow servicemembers to carry firearms for unit and self-defense.²⁶ This section also explores an avenue currently available to Army commanders to authorize Soldiers in their command to carry firearms for unit security purposes.²⁷ The importance of military leaders overcoming fear and bias against guns to establish good firearms policy is also highlighted.²⁸ Part VIII examines the current status of military active shooter training and highlights the fact that Soldiers receive essentially no training in how to react to an active shooter.²⁹ To combat this shortfall, this article recommends that active shooter training be standardized across the military.³⁰ Finally, Part IX supports the primary

Firearms Memo]. The reluctance to let special agents freely carry their weapons is unfortunate because there have been “many incidents” where special agents may have been able to respond to active shootings on military installations but they were unarmed due to department firearms policies. *Id.*

²⁵ See John Lott, *Concealed Weapons Save Lives*, N.Y. DAILY NEWS (Jul. 25, 2012), <http://www.nydailynews.com/opinion/concealed-weapons-save-lives-article-1.1121161>.

The research of economist John Lott, formerly chief economist for the United States Sentencing Commission, is powerful in substantiating the fact that gun-free zones are almost exclusively the location of the most deadly active shootings in America. *Id.* Lott found, “With a single exception, every multiple-victim public shooting in the [United States] in which more than three people have been killed since at least 1950 has taken place where citizens are not allowed to carry their own firearms.” *Id.*

²⁶ These options include Congress acting to pass legislation requiring the change, DoDD 5210.56 being revised by the Secretary of Defense, or military commanders acting to arm servicemembers to perform security duty.

²⁷ See AR 190-14, *supra* note 9, para. 2-2.

²⁸ See Jacob Deakins, *Guns, Truth, Medicine, and the Constitution*, JOURNAL OF AMERICAN PHYS. AND SURG., 58 Vol. 13 (Summer, 2008). Physician Jacob Deakins wrote an insightful publication about how ignorant policy makers too often institute firearm policies based on “fearmongering” and bias rather than solid scientific evidence and a fair application of the Constitutional right to possess a firearm for self-defense. *Id.*

²⁹ See Jeff Schogol, *After Fort Hood Tragedy, Experts Recommend Changes to Active-Shooter Training*, ARMY TIMES (Apr. 3, 2014), <http://www.armytimes.com/article/20140403/NEWS/304030050/After-Fort-Hood-tragedy-experts-recommend-changes-active-shooter-training>. LEOs receive training in responding to active shooters and some installations conduct limited active shooter training, but there is no DoD-wide training for how to respond to an active shooter. *Id.* One security expert, John Curnuff, Director of Training for Advanced Law Enforcement Rapid Response Training at Texas State University, believes a major problem with the DoD response is that there is no standardized active shooter response program and departments “are all coming up with their own thing” when what is needed is an interdisciplinary approach. *Id.*

³⁰ *Id.* Experts have recommended that the DoD train servicemembers in how to respond to active shooters but DoD leaders have limited training to primarily LEOs and first responders. *Id.* Correcting this shortfall is critical because servicemembers are not being

proposal that DoD leaders should create an Armed Security Officer Program (ASOP) modeled after the Federal Flight Deck Officer Program, to arm select servicemembers to respond to active shooters.³¹ Implementing such a program is the best course of action to protect DoD employees from future active shooter attacks.

II. Active Shootings on Military Installations (2009–2015)

*Most of the people in our society are sheep. They are kind, gentle, productive creatures who can only hurt one another by accident Then there are the wolves . . . and the wolves feed on the sheep without mercy . . . there are evil men in this world and they are capable of evil deeds. The moment you forget that or pretend it is not so, you become a sheep. There is no safety in denial.*³²

The shootings at Fort Hood in 2009 and 2013, Washington Navy Yard in 2013, and Chattanooga, Tennessee, in 2015, have resulted in the death of thirty-three DoD personnel, the wounding of fifty-four others, and psychological and emotional trauma to hundreds of family members and first-responders.³³

trained regarding what to do if they hear gunfire. *Id.* A delay in responding can cost someone in close proximity to an active shooter their life. *Id.*

³¹ See *Federal Flight Deck Officers*, TRANS. SEC'Y ADMIN. (Jan. 2, 2015), <http://www.tsa.gov/about-tsa/federal-flight-deck-officers>. The Armed Security Officer Program (ASOP) or a unit security program could be modeled after the successful Federal Flight Deck Officer (FFDO) Program that has armed thousands of pilots and crew members across America to safeguard aircraft from terrorist attack. *Id.*

³² DAVE GROSSMAN & LOREN W. CHRISTENSEN, ON COMBAT 180 (2008).

³³ See Catherine Herridge, *New Move Underway to Award Purple Heart and its Benefits to Survivors of Fort Hood Massacre*, FOX NEWS (Feb. 6, 2015), <http://www.foxnews.com/politics/2015/01/06/new-move-underway-to-award-purple-heart-and-its-benefits-to-survivors-ft-hood/>. It is important to recognize that some survivors of military active shooting incidents experience greater Post Traumatic Stress Disorder (PTSD) and survivor guilt than non-military active shooting survivors because servicemembers are trained to defend themselves and were victimized. See 1LT Cook Letter, *supra* note 1. See also email from 1LT Patrick Cook, (Dec. 29, 2014) (on file with author). In email correspondence, 1LT Cook told me, "I can tell you with 100% certainty that I could have ended the shooting had I been armed, and I personally believe that the presence of guns in our building would have prevented it from ever taking place. Instead, it spanned three separate locations and killed three, four including the gunman himself. Sixteen were wounded, and a hundred or more including myself have to deal with PTSD now." *Id.* Congress appears to be more sympathetic than DoD leaders to the plight of survivors of the 2009 Fort Hood shooting. See Schogol, *supra* note 29. As part of the 2015 National Defense Authorization Act (NDAA), Congress voted to allow survivors of terrorism-motivated attacks like the 2009 Fort Hood shooting to be recognized by award of the

A. The Fort Hood Massacre (2009)

Former Major Nidal Hasan was an Army Psychiatrist with a lengthy record of poor duty performance.³⁴ In early 2009, while he was completing a psychiatry training program at Walter Reed National Military Medical Center, Hasan began communicating with Anwar al-Awlaki, a Muslim cleric openly hostile to the American war effort in Iraq.³⁵ Hasan began to embrace “violent Islamic extremis[t]” views, and fellow officers described him as a “ticking time bomb.”³⁶ After completing his psychiatry training, Hasan was stationed at Fort Hood, Texas, and given notice that he would deploy to Iraq.³⁷ Hasan, however, had other intentions and began planning an attack on his fellow Soldiers.³⁸ He told one friend just before the attack, “Muslims shouldn’t be in the U.S. military, because obviously Muslims shouldn’t kill Muslims.”³⁹

On July 31, 2009, Hasan visited a local gun store outside of Fort Hood and asked for “the most technologically advanced weapon on the market and the one with the highest standard magazine capacity.”⁴⁰ He purchased a Fabrique Nationale d’Herstal (FN) 5.7 millimeter handgun.⁴¹ Over the next few weeks he

Purple Heart and subsequent Veterans benefits despite “stiff resistance” by DoD leaders to the proposal. *Id.* See also Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 571 (2014).

³⁴ Senate Committee on Homeland Security and Governmental Affairs, S. REP. A TICKING TIME BOMB: COUNTERTERRORISM LESSONS FROM THE U.S. GOVERNMENT’S FAILURE TO PREVENT THE FORT HOOD ATTACK, 29 (2011), http://www.hsgac.senate.gov/imo/media/doc/Fort_Hood/Fort_HoodReport.pdf [hereinafter Ticking Time Bomb].

³⁵ *Id.* at 28. Major Hasan was described as “very lazy,” as a student that “failed to attend his classes properly,” and a man who had become a “religious fanatic.” *Id.* Investigation revealed that the FBI was aware of MAJ Hasan’s communications with Anwar al-Awlaki, but mistakenly concluded that he had no intentions of violence. David Johnson & Scott Shane, *U.S. Knew of Suspect’s Tie to Radical Cleric*, N.Y. TIMES (Nov. 9, 2009), http://www.nytimes.com/2009/11/10/us/10inquire.html?_r=0.

³⁶ Ticking Time Bomb, *supra* note 34, at 29.

³⁷ Julian Barnes & Andrew Zajac, *Fort Hood Shooting Suspect was to Deploy to Iraq Soon*, L.A. TIMES (Nov. 6, 2009), <http://articles.latimes.com/2009/nov/06/nation/na-fort-hood-profile6>.

³⁸ *Id.*

³⁹ Bob Drogin & Faye Fiore, *Retracing Steps of Suspected Fort Hood Shooter, Nidal Malik Hasan*, L.A. TIMES (Nov. 7, 2009), <http://articles.latimes.com/2009/nov/07/nation/na-fort-hood-hasan7>.

⁴⁰ Scott Huddleston, *Hasan Sought Gun With High Magazine Capacity*, MY SAN ANTONIO (Oct. 21, 2010, 10:54 AM), <http://blog.mysanantonio.com/military/2010/10/hasan-sought-gun-with-high-magazine-capacity/>.

⁴¹ *Id.*

also purchased sixteen twenty-round magazines and 3000 rounds of ammunition.⁴² He then began to train regularly at a local shooting range and became proficient at rapidly firing and reloading the weapon.⁴³

On the morning of November 5, 2009, Hasan entered the Fort Hood Soldier Readiness Processing Center (SRPC) and made his way to a briefing room.⁴⁴ Shortly after the briefing began, he jumped up and yelled, “Allahu Akbar” and began shooting the soldiers around him.⁴⁵ Eyewitnesses described Hasan’s rate of fire as “pretty much constant shooting . . . it sounded like an M16,” and “He reloaded so quickly, very efficiently.”⁴⁶ Hasan methodically walked through the SRPC, murdering and seriously wounding the soldiers around him.⁴⁷ Investigators determined that he fired 146 times in the SRPC.⁴⁸ Hasan then left the center and went outside and began shooting the Soldiers retreating from the building. He fired sixty-eight more times outside the SRPC before civilian police officers arrived at the scene and shot him.⁴⁹ When the shooting was over, Hasan had killed twelve soldiers and one civilian, and wounded thirty-two others in just ten minutes.⁵⁰

⁴² *Id.* To highlight the level of premeditation Hasan went to in planning the attack, the lead prosecutor on the case, Colonel Steve Hendricks, told panel members during closing argument at the court-martial that on the day of the attack, Hasan wrapped the loaded magazines in paper towels prior to placing them in his cargo pockets so they would not “bang together” and alert anyone of his impending attack. Jennifer Hlad, *Premeditation at Heart of Closing Remarks in Hasan Case*, STRIPES (Aug. 22, 2013), <http://www.stripes.com/news/premeditation-at-heart-of-closing-remarks-in-hasan-case-1.236719>.

⁴³ Scott Huddleston, *Hasan Sought Gun With High Magazine Capacity*, MY SAN ANTONIO (Oct. 21, 2010, 10:54 AM), <http://blog.mysanantonio.com/military/2010/10/hasan-sought-gun-with-high-magazine-capacity/>.

⁴⁴ U.S. DEP’T OF DEF., PROTECTING THE FORCE: LESSONS FROM FORT HOOD (Jan. 2010), http://www.defense.gov/pubs/pdfs/dod-protectingtheforce-web_security_hr_13jan10.pdf [hereinafter PROTECTING THE FORCE].

⁴⁵ *Fort Hood Shootings: The Meaning of Allahu Akbar*, TELEGRAPH (Nov. 6, 2009), <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/6516570/Fort-Hood-shootings-the-meaning-of-Allahu-Akbar.html>. Allahu Akbar is translated as “God is great.” *Id.*

⁴⁶ *Hasan Hearing Blog Tuesday Oct. 19, 2010*, KWTX (Oct. 19, 2010), <http://www.kwtx.com/news/misc/105303923.html>.

⁴⁷ Charley Keyes, *Fort Hood Witness Says He Feared There Were More Gunmen*, CNN (Oct. 20, 2010, 6:10 PM), [http://www.cnn.com/2010/CRIME/10/20/texas.fort.hood.shootings/index.html?hp\[t=T1](http://www.cnn.com/2010/CRIME/10/20/texas.fort.hood.shootings/index.html?hp[t=T1).

⁴⁸ *Id.*

⁴⁹ Ashley Powers, *Death Toll Rises to 13 in Fort Hood Shootings*, L.A. TIMES (Nov. 7, 2009), <http://articles.latimes.com/2009/nov/07/nation/na-fort-hood-shootings7>. Hasan was wounded by the responding LEOs. *Id.*

⁵⁰ *Id.* See also PROTECTING THE FORCE, *supra* note 44, at 1.

After the shooting, investigators determined that two Soldiers died and one civilian was wounded trying to disarm Hasan in the SRPC.⁵¹ Just after the shooting began, an Army Captain located near Hasan charged him in an effort to stop the attack, but he was shot and killed before he could reach him.⁵² Another man, a physician's assistant, realized that there was no way to escape the gunfire, so he picked up a chair and charged at Hasan.⁵³ He was also shot and killed.⁵⁴ A third attempt to stop Hasan failed when a Department of the Army (DA) civilian threw a folding table at Hasan, but Hasan spotted him and shot him.⁵⁵ These heroic, but unsuccessful, efforts illustrate that unarmed people have a high probability of dying or suffering serious injury if they actively resist an active shooter.

One soldier, who narrowly survived the attack after being shot seven times, told reporters that if personnel in the SRPC were allowed to carry firearms someone would have been able to stop Hasan instead of him "shoot[ing] the whole place up."⁵⁶ Military firearms policies, however, required that everyone in the SRPC be unarmed.⁵⁷ Hasan exploited this vulnerability to a tragic end.⁵⁸ In the aftermath of the shooting, critics of DoD firearms policies argued that

⁵¹ Gregg Zorya, *Witnesses Say Reservist was a Hero at Hood*, ARMY TIMES (Nov. 25, 2009), <http://archive.armytimes.com/article/20091125/NEWS/911250307/Witnesses-say-reservist-was-a-hero-at-Hood>; *See also Testimony Begins in the Fort Hood Shooting*, NPR (Oct. 13, 2010), <http://www.npr.org/templates/story/.story.php?storyId=130543304>.

⁵² Zoryya, *supra* note 51.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Wounded Fort Hood Soldier: Blood Just Everywhere*, CNN (Nov. 12, 2009), <http://www.cnn.com/2009/US/11/12/fort.hood.wounded.soldier/index.html>.

⁵⁶ Eric Pratt, *Arm the GI's and Stop Inviting Tragedy*, GUN OWNERS OF AMERICA (Nov. 10, 2014), <http://gunowners.org/news11102014.htm>. The soldier that survived, Sergeant Alonzo Lunsford, told reporters, "I think more guns is (sic) the answer If everybody has a gun, [the shooter] might hit one but he won't be able to shoot the whole place up." *Id.*

⁵⁷ DoDD 5210.56, *supra* note 5, at 2; AR 190-11, *supra* note 9, para. 1-10; *see infra* Appendix B. The only way someone could have been armed if they were following these regulations is if they were a LEO or a person performing security duties. As Part VII, *infra*, discusses, commanders can arm soldiers to perform security duties provided there is "a reasonable expectation that life or Department of the Army (DA) assets will be jeopardized if firearms are not carried." AR 190-14, *supra* note 9, para. 1-5.

⁵⁸ *See* Grossman, *supra* note 32, at 180. This is a potent reminder of the truth Lieutenant Colonel Retired Grossman declared, when he said, "[T]here are evil men in this world and they are capable of evil deeds. The moment you forget that or pretend it is not so, you become a sheep. There is no safety in denial." *Id.*

guns are “so feared that government regulation even tries to keep them out of the hands of trained Soldiers.”⁵⁹

B. The Washington Navy Yard Shooting (2013)

The next major military shooting incident occurred in 2013. The perpetrator was Aaron Alexis, a thirty-four year old Navy contractor with a lengthy record of misconduct, including two incidents of unlawfully discharging firearms.⁶⁰ After the shooting, investigators found that Alexis also had “early behaviors of potential mental instability.”⁶¹ This instability eventually resulted in his attack on his fellow DoD employees. Just days before his attack, Alexis typed the following message on one of his electronic devices: “An ultra-low frequency attack is what I’ve been subject to for the last three months, and to be perfectly honest, that is what has driven me to this.”⁶² The “this” he was referring to was his plan to purchase a gun and kill his coworkers.⁶³

Just prior to his attack, Alexis was working for a private company that had a contract to provide computer support to the Washington Navy Yard.⁶⁴ Alexis began working at the Navy Yard on September 9, 2013, just one week before his attack.⁶⁵ Four days into the job, Alexis’s supervisors counseled him for a “performance issue.”⁶⁶ The very next day, Alexis traveled to a gun store in

⁵⁹ *Editorial: End Clinton-era Military Base Gun Ban*, THE WASH. TIMES (Nov. 11, 2009), <http://www.washingtontimes.com/news/2009/nov/11/end-clinton-era-military-base-gun-ban/>.

⁶⁰ Frank Heinz, *Aaron Alexis’ History of Gun Incidents*, NBC NEWS (Apr. 3, 2014), <http://www.nbcdfw.com/news/local/Aaron-Alexis-Fort-Worth-Arrest-Report-223953911.html>. In 2004, Alexis was arrested for shooting the tires on another man’s vehicle during what Alexis described as an “anger-fueled blackout.” *Id.* In 2010, Alexis was arrested in Fort Worth, Texas for unlawfully discharging a weapon within city limits; however, Alexis reported that he accidentally fired the gun while handling it. *Id.* Alexis was not prosecuted for either offense. *Id.*

⁶¹ See DEP’T OF DEF., INT. REV. OF THE WASH. NAVY YARD SHOOTING 18 (Nov. 20, 2013), <http://www.defense.gov/pubs/DoD-Internal-Review-of-the-WNY-Shooting-20-Nov-2013.pdf> [hereinafter DoD Washington Navy Yard Review]. The indicators of instability cited were prior criminal behavior, anger management issues, and delinquent debts. *Id.*

⁶² Peter Hermann & Ann E. Marrimow, *Navy Yard Shooter Aaron Alexis Driven by Delusions*, WASH. POST (Sept. 25, 2013), http://www.washingtonpost.com/local/crime/fbi-police-detail-shooting-navy-yard-shooting/2013/09/25/ee321abe-2600-11e3-b3e9-d97fb087acd6_story.html.

⁶³ *Id.*

⁶⁴ See DoD Washington Navy Yard Review, *supra* note 61, at 1. In addition to being a Navy contract employee, Alexis was also a member of the Navy Individual Ready Reserve. *Id.* at 2.

⁶⁵ Hermann, *supra* note 62.

⁶⁶ *Id.* The precise nature of the issue was not reported. *Id.*

Lorton, Virginia and purchased a Remington 870 Express shotgun and two boxes of ammunition.⁶⁷ He also purchased a saw, which he used to modify the shotgun to make it more concealable.⁶⁸

Three days later, Alexis brought the shotgun onto the Navy base in a backpack in preparation for his attack.⁶⁹ He carried the backpack into Building 197, where he was working the previous week, and entered a bathroom on the fourth floor of the building.⁷⁰ He then assembled the shotgun and came out of the bathroom into the hallway and began shooting his coworkers.⁷¹ The first call to a 911 operator went out at 8:17 A.m.; just one minute after the shooting began.⁷² In the five minutes that followed, Alexis walked through several offices on the third and fourth floor of the building and shot and killed ten DoD civilian employees and contractors.⁷³

At 8:28 A.m, a mass email was sent out by leaders on the Navy base, instructing everyone to “shelter in place.”⁷⁴ Navy Captain Christopher Mercer was located in the building, not far from where the shooting began.⁷⁵ He and other employees in his section took refuge in his office by slamming the door and piling furniture behind it as a barricade.⁷⁶ According to Mercer, Alexis “set up camp right in front of my office He kept reloading and firing at cubicles I could see his shadow through the glass pane in my door . . . it was just so utterly violent.”⁷⁷

⁶⁷ Tom Jackman, *Inside Sharpshooters, The Newington Gun Store Where Aaron Alexis Bought His Shotgun*, WASH. POST (Sept. 18, 2013), <http://www.washingtonpost.com/blogs/local/wp/2013/09/18/inside-sharpshooters-the-newington-gun-store-where-aaron-alexis-bought-his-shotgun/>.

⁶⁸ Hermann, *supra* note 62.

⁶⁹ *What Happened Inside Building 197?*, WASH. POST (Sept. 25, 2013), <http://www.washingtonpost.com/wp-srv/special/local/navy-yard-shooting/scene-at-building-197/>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Navy Yard AAR, *supra* note 4, at 12.

⁷³ *Id.* at 14. Approximately 3000 employees work in Building 197. *Id.* at 56.

⁷⁴ *Id.* at 56.

⁷⁵ Aaron Davis, *Hiding Under His Desk In Building 197, Navy Captain Helped Police Teams Track Shooter*, WASH. POST (Sept. 18, 2013), http://www.washingtonpost.com/local/hiding-under-his-desk-in-building-197-navy-captain-helped-police-teams-track-shooter/2013/09/18/ccf71b84-204b-11e3-8459-657e0c72fec8_story.html.

⁷⁶ *Id.*

⁷⁷ *Id.* Had Captain Mercer been armed, he would have had a chance to defend himself and his co-workers. *Id.* Instead, all he had was his Blackberry, which he used to email commanders about the location of the gunman. *Id.* Captain Mercer heard Alexis flee down an emergency stairwell and heard two shots, one of which killed a maintenance worker. *Id.* Alexis returned to the third floor minutes later and was shot by LEOs. *Id.*

Military LEOs did not arrive and enter the building until 8:27 A.m., ten minutes after the first 911 call.⁷⁸ Over the next sixty-nine minutes that followed, 117 LEOs entered the building to search for Alexis before he was finally located and shot outside of Captain Mercer's office.⁷⁹ One team of LEO responders rushed to the Navy Yard and arrived within five minutes of the call, only to discover that the access gate to the installation was locked according to base emergency protocols, and no one was present to let them onto the base.⁸⁰

In addition to coordination challenges in the response, the security personnel who worked in the building were ineffective in responding to the shooter. The security guard assigned to monitor the 160 cameras in the building locked himself in the control room and did not try to contact anyone after the shooting began.⁸¹ Alexis surprised and shot another security guard.⁸² These facts highlight that in this case, the contract security guards were easily overcome by the shooter.

After the incident, the Secretary of Defense (SecDef) ordered a review of the shooting, similar to the review conducted after the 2009 Fort Hood shooting.⁸³ Unfortunately, neither review contained any discussion about whether armed military personnel could have stopped the attacks earlier or the value of arming military personnel to deter future active shooters.⁸⁴

⁷⁸ Navy Yard AAR, *supra* note 4, at 11.

⁷⁹ *Id.* at 15.

⁸⁰ Navy Yard AAR, *supra* note 4, at 16.

⁸¹ Peter Hermann & Clarence Williams, *Confusion Marred Police Response to Navy Yard Shooting*, WASH. POST (Jul. 11, 2014), http://www.washingtonpost.com/local/crime/navy-yard-shooting-report-details-coordination-problems/2014/07/11/4fda6ce8-08e7-11e4-8a6a-19355c7e870a_story.html.

⁸² *Twelve Victims Killed, Eight Wounded in Shooting at D.C. Navy Yard, Suspected Gunman Killed*, NBC NEWS (Sept. 17, 2013), <http://www.nbcwashington.com/news/local/Confirmed-Shooter-at-Navy-Yard-One-Person-Shot-223897891.html>.

⁸³ Shaun Waltermann, *Hagel Orders Review of Security Procedures After Navy Yard Massacre*, WASH. TIMES (Sept. 18, 2013), <http://www.washingtontimes.com/news/2013/sep/18/hagel-orders-review-security-procedures-after-navy/>.

⁸⁴ The author was unable to locate any discussion in the DoD reviews of the shootings that considered these important questions. See, e.g., DoD Washington Navy Yard Review, *supra* note 61. Reviews discuss a multitude of force protection issues but fail to mention the topic of arming servicemembers within DoD facilities to shorten or deter future active shooter attacks. See, e.g., Waltermann, *supra* note 83. This would appear to be a rather obvious topic of discussion for DoD investigations of major active shootings but no consideration was given to the topic; See *Protecting the Force*, *supra* note 44.

After the Navy Yard shooting, gun control advocates cited the attack as another example of why additional gun control legislation is necessary.⁸⁵ The existing regulations in place on the Navy Yard at the time, however, prohibited Alexis from bringing the shotgun onto the base.⁸⁶ It is doubtful, therefore, that additional gun control legislation, short of completely prohibiting the sale of firearms, would have prevented the attack.

Approaching the problem from an entirely different perspective, Congressman Steve Stockman introduced legislation in Congress ten days after the shooting that would require the DoD to allow servicemembers trained in the use of firearms to carry weapons for self-defense.⁸⁷ While the legislation has not moved out of Congressional Committee review, it demonstrates a recognition that entirely prohibiting the carrying of firearms for self-defense is not the best solution for protecting personnel from active shooters.⁸⁸

C. The Second Fort Hood Shooting (2014)

Four years after MAJ Hasan shot forty-two Soldiers on Fort Hood, another active shooter terrorized the installation.⁸⁹ The perpetrator was Specialist (SPC)

⁸⁵ Denis J. O'Malley, *A Day after D.C. Shooting Newtown Activists Head to Washington*, NEWS TIMES (Sept. 16, 2013), <http://www.newstimes.com/local/article/A-day-after-D-C-shooting-Newtown-activists-head-4819135.php>.

⁸⁶ U.S. DEP'T OF NAVY, U.S. NAVY REGULATIONS, 1990, art. 1159 [hereinafter Navy Reg. 1159]. Navy Regulation 1159 prohibits the carry of any weapons on Navy installations if a person is not a LEO or has another authorized purpose to possess a weapon. *Id.* See also Tina Mehr & Adam Winkler, *The Standardless Second Amendment*, AMERICAN CONSTITUTIONAL SOCIETY FOR LAW AND POLICY 1 (Oct. 2010), https://www.acslaw.org/sites/default/files/Mehr_and_Winkler_Standardless_Second_Amendment.pdf. The authors observed that it is commonly recognized that there are over 20,000 gun control laws in the United States. *Id.*

⁸⁷ H.R. 3199, *supra* note 20. See *infra* Part VI.C for a discussion on the merits of H.R. 3199.

⁸⁸ Representative Steve Stockman, *Soldiers as Soft Targets*, USA TODAY (Apr. 8, 2014), <http://www.usatoday.com/story/opinion/2014/04/08/rep-steve-stockman-safe-military-bases-act-editorials-debates/7486225/>. Representative Stockman describes military firearms policies restricting servicemembers' ability to carry firearms on military installations as "a [twenty] year experiment that failed and places servicemembers in danger [R]ather than mak[ing] bases safer, stripping trained servicemembers of weapons has turned them into soft targets for mass killers." *Id.* See *infra* Part VI.A.

⁸⁹ *Fort Hood Shooter Snapped Over Denial of Request for Leave, Army Confirms*, FOX NEWS (Apr. 7, 2014), <http://www.foxnews.com/us/2014/04/07/fort-hood-shooter-snapped-over-denial-request-for-leave-army-confirms/>.

Ivan Lopez, a thirty-four year old truck driver with a history of behavioral and mental health issues.⁹⁰

In the months leading up to the shooting, Lopez received regular psychiatric treatment for depression, anxiety, and PTSD.⁹¹ Also, his mother and grandfather passed away just months before his attack.⁹² In March of 2014, just one month before the shooting, Lopez posted on his Facebook page that he was the victim of a robbery.⁹³ He said, “My spiritual peace has just gone. Full of Hate. Now I think I’ll be damned.”⁹⁴ Lopez also commented about Adam Lanza, the Newtown Elementary School shooter, and said, “[Lanza] pretends to be a victim of a mental illness . . . he sought . . . international attention [and] a minute of fame as a villain.”⁹⁵ About the same time, Lopez purchased a forty-five caliber handgun from the on-post Army and Air Force Exchange Service (AAFES) store.⁹⁶ This was the same gun he later used in his attack.⁹⁷

⁹⁰ *Fort Hood Shooting: What We Know About Ivan Lopez*, HUFFINGTON POST (Apr. 3, 2014, 1:19 PM), http://www.huffingtonpost.com/2014/04/03/who-is-ivan-lopez_n_5084315.html. Lieutenant General Mark Milley disclosed that SPC Lopez had mental health issues and was being treated. *Id.*

⁹¹ Meghan Keneally & Mia De Graff, *Fort Hood Officials Confirm Shooter Had a Psychiatric Disorder and Got In a Verbal Altercation Just Before Shooting 19 People on Army Base*, DAILY MAIL (Apr. 4, 2014), <http://www.dailymail.co.uk/news/article-2596105/PICTURED-The-gunman-treated-PTSD-opened-fire-Fort-Hood-injuring-16-killing-three-turning-gun-himself.html>. Department of Defense officials reported that while Lopez had deployed to Iraq, he “did not have any recorded combat experience.” *Id.* Lopez did, however, self-report that he had a Traumatic Brain Injury (TBI). *Id.*

⁹² Bryan Llenas, *Fort Hood Shooter’s Friends Think Mom’s Death May Have Played a Part in Rampage*, LATINO FOX NEWS (Apr. 3, 2014), <http://latino.foxnews.com/latino/news/2014/04/03/alleged-fort-hood-shooter-rampage-could-have-been-triggered-by-deaths-in-family/>.

⁹³ Ray Sanchez, *Fort Hood Gunman Vented on Facebook about Sandy Hook Shooter*, CNN (Apr. 5, 2014), <http://edition.cnn.com/2014/04/05/us/fort-hood-gunman-facebook/>.

⁹⁴ *Id.*

⁹⁵ *Id.* It is ironic that Lopez criticized Adam Lanza but then became an active shooter himself. The fact that Lopez posted comments about Lanza indicates that he was thinking about Lanza’s involvement in the Newtown Elementary School shooting that killed twenty children and six adults. *Id.*

⁹⁶ Chris McGuinness, *Shooting Report Could Spark Change to Fort Hood’s Gun Policy*, KDH NEWS (Jan. 25, 2015), http://kdhnews.com/military/shooting-report-could-spark-change-to-fort-hood-s-gun/article_1531a40c-a456-11e4-89ca-875214898bf3.html.

⁹⁷ Lisa Garza & Eileen O’Grady, *Verbal Altercation May Have Led to Fort Hood Rampage*, REUTERS (Apr. 4, 2014), <http://www.reuters.com/article/2014/04/04/us-usa-shooting-forthood-idUSBREA3129C20140404>.

On the afternoon of April 2, 2014, Lopez drove to his Battalion Headquarters to pick up his leave paperwork to “attend to family matters.”⁹⁸ He then discovered that his leave request had not been processed and he began arguing with soldiers in the office.⁹⁹ Witnesses described him as “irate” when he stormed out of the building.¹⁰⁰ Lopez then drove off post and retrieved the handgun he purchased the previous month.¹⁰¹ He then drove back on post and returned to the Battalion Headquarters building.¹⁰² Lopez entered the building and shot the two Non-Commissioned Officers (NCOs) he had just argued with minutes before.¹⁰³ He then proceeded to shoot eleven other Soldiers in the building before departing to attack other targets on the installation.¹⁰⁴

One of the survivors of the attack was 1LT Patrick Cook, who wrote the chilling description of the attack cited in the introductory quote to this article.¹⁰⁵ First Lieutenant Cook believes that he and fourteen other soldiers survived the attack because one mortally wounded soldier managed to hold a door closed to the office they were located in long enough for Lopez to move on to other targets.¹⁰⁶

After leaving the Battalion Headquarters, Lopez got into his car and drove to the unit motor pool. As he was driving, he saw two soldiers near the road and stopped to shoot at them.¹⁰⁷ He wounded one of them.¹⁰⁸ Lopez arrived at the motor pool office and shot three other soldiers he worked with.¹⁰⁹ One of the soldiers was killed in the act of trying to calm Lopez down.¹¹⁰

⁹⁸ Manny Fernandez & Alan Binder, *Army Releases Detailed Account of Base Rampage*, N.Y. TIMES (Apr. 7, 2014), <http://www.nytimes.com/2014/04/08/us/officials-give-account-of-fort-hood-shooting.html>.

⁹⁹ *Fort Hood Shooter Snapped over Denial of Request for Leave, Army Confirms*, FOX NEWS (Apr. 7, 2014), <http://www.foxnews.com/us/2014/04/07/fort-hood-shooter-snapped-over-denial-request-for-leave-army-confirms/>.

¹⁰⁰ Fernandez, *supra* note 98.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* Almost miraculously, only one of the eleven soldiers shot in the Headquarters Building, Sergeant First Class Daniel Ferguson, was mortally wounded. *Id.* Sergeant First Class Ferguson died barricading the door where 1LT Cook and fourteen other soldiers were taking shelter after the shooting began. 1LT Cook Letter, *supra* note 1.

¹⁰⁵ First Lieutenant Cook Letter, *supra* note 1.

¹⁰⁶ *Id.*

¹⁰⁷ Fernandez, *supra* note 98.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Peter Baker & Manny Fernandez, *Again, Obama Offers Comfort at Fort Hood After Soldiers are Killed*, N.Y. TIMES (Apr. 9, 2014), http://www.nytimes.com/2014/04/10/us/fort-hood-shooting.html?_r=2.

Lopez got back into his car and drove to the Medical Brigade Headquarters (MBH) building. As he drove down Motor Pool Road, he fired into a passing car, wounding the driver.¹¹¹ After arriving at the MBH building, Lopez shot one soldier who was standing outside the building.¹¹² He entered the building and shot two more soldiers, killing the soldier manning the front desk.¹¹³ Lopez then got in his car and drove to a parking lot near the Battalion Headquarters, where the shooting initially began.¹¹⁴ It was there that a female MP finally arrived on the scene and confronted him.¹¹⁵ The MP fired at Lopez, who then put his handgun to his head and killed himself.¹¹⁶ In just eight minutes, Lopez shot nineteen soldiers in three different buildings.¹¹⁷

This shooting highlights several important observations related to military firearms regulations. First, like the 2009 Fort Hood shooting and the 2013 Navy Yard shooting, each of the soldiers Lopez shot was restricted from carrying firearms for self-defense.¹¹⁸ First Lieutenant Cook's vivid explanation of how he reached for his gun when the shooting began highlights how vulnerable the soldiers in the Battalion Headquarters building were because no one had a firearm to stop Lopez.¹¹⁹ Instead, as 1LT Cook explained, "many more died because of the fatally misguided restrictions on the carrying of arms, which obviously the madman did not respect."¹²⁰

Second, the position endorsed by Army leaders that LEOs can provide "adequate protection" from active shooters was demonstrated to be incorrect.¹²¹ Lopez was able to shoot nineteen soldiers in multiple locations before LEOs responded. As 1LT Cook explained, the shooting could have been stopped if just one soldier in the Battalion Headquarters had been armed.¹²²

Third, depending on the circumstances, the DoD practice of instructing personnel to "shelter in place" during an active shooting can make

¹¹¹ Fernandez, *supra* note 98.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ William M. Welch, *Fort Hood Gunman Fired Thirty-Five Shots, Including From Car*, USA TODAY (Apr. 7, 2014), <http://www.usatoday.com/story/news/nation/2014/04/07/fort-hood/7433415/>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ DoDD 5210.56, *supra* note 12, at 2; AR 190-14, *supra* note 9, para. 2-2; AR 190-11, *supra* note 14, para. 1-10; *See infra* Appendix B.

¹¹⁹ *See* 1LT Cook email, *supra*, note 33 (referring to the PTSD 1LT Cook and others have experienced in the wake of the shooting).

¹²⁰ *Id.*

¹²¹ *See* 2014 Senate Committee Meeting, *supra* note 16, at 44.

¹²² 1LT Cook Email, *supra* note 33.

servicemembers stationary targets and easier to kill.¹²³ If military leaders are telling personnel to “shelter in place” during an active shooting, then servicemembers need to be provided firearms so they can protect themselves. If servicemembers are to be left unarmed, the message from military leaders during an active shooting should be to “hide out,” a term more likely to get servicemembers to take positions of concealment, rather than simply remaining stationary.¹²⁴ Finally, 1LT Cook’s words about feeling “utterly helpless” when the shooting began should prompt every military leader to pause and consider whether the military firearms policies governing their workspace are effective in protecting their servicemembers from active shooters, or if they are counterproductive.¹²⁵

D. The Chattanooga Tennessee Recruiting and Reserve Center Shooting (2015)

On July 16, 2015, a twenty-four year old man named Mohammad Abdulazeez attacked an Armed Forces Recruiting Center and a U.S. Navy Reserve Center in Chattanooga, Tennessee, with a rifle and a handgun.¹²⁶ The

¹²³ See Dana Fort, *Four Dead, Including the Shooter*, CNN (Apr. 3, 2014), <http://www.cnn.com/2014/04/02/us/fort-hood-shooting/>. During the shooting, personnel on Fort Hood were instructed to “shelter in place” during the incident. *Id.* During the Washington Navy Yard shooting, a mass email was sent to personnel on the installation instructing them to “shelter in place.” See *What Happened in Building 197?*, *supra* note 69. The standard steps to take during an active shooting are as follows: 1) Evacuate if possible; 2) Hide Out; or 3) If necessary, take action against the active shooter. U.S. DEP’T OF HOMELAND SECURITY, ACTIVE SHOOTER HOW TO RESPOND 4 (Oct. 2008), [hereinafter DHS Active Shooter Response]. The DoD phrase “shelter in place” appears to convey the same idea as “hide out,” but in reality, the two phrases have different meanings because to “hide out” implies an attempt to conceal oneself, but sheltering in place implies remaining in one area. Active shooters can easily kill a large number of people grouped in close proximity to one another, as the 2009 Fort Hood shooting and the 2013 Newtown Elementary School shooting demonstrated. See Keyes, *supra* note 47; See also MATTHEW LYSIAK, *NEWTOWN: AN AMERICAN TRAGEDY* 99 (2013).

¹²⁴ See Tan, *supra* note 15. Instructing servicemembers who are trained in handling firearms to hide out during an active shooter attack is a very unpopular idea. *Id.* That may be one reason why DoD leaders have not yet implemented active shooter training across the military. See *infra* Part VIII.

¹²⁵ See 1LT Cook Letter, *supra* note 1. Maintaining unit security is a fundamental principle of command responsibility, but it is difficult to identify any measurable steps military leaders are taking to protect servicemembers from future active shooter attacks. See U.S. DEP’T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 1-5 (6 Nov. 2014) [hereinafter AR 600-20].

¹²⁶ Caitlin Dickerson, *Chattanooga Shooting Victims: IDs of 4 Marines Become Known*, NEWS YAHOO (Jul. 17, 2015), <http://news.yahoo.com/details-emerge-about-chattanooga-shooting-victims-141434804.html>.

attack resulted in four marines and a sailor being killed. Another marine and a local police officer were also wounded in the attack.¹²⁷

Abdulazeez was born in Kuwait and immigrated with his Palestinian parents to the United States when he was six years old.¹²⁸ Abdulazeez's parents described themselves as living a strict conservative Muslim lifestyle.¹²⁹ Abdulazeez was raised in Hixon, Tennessee, just eight miles from the location of the Chattanooga shootings.¹³⁰ According to family members, Abdulazeez struggled to keep a job due to his being a manic depressive and having bipolar disorder.¹³¹ His family also reported that he had a considerable history of drug abuse.¹³²

Abdulazeez visited the country of Jordan on multiple occasions in the years before his attack and maintained a blog expressing his hard-line religious beliefs.¹³³ In the search to understand his motive for the killings, investigators discovered multiple writings belonging to Abdulazeez where he wrote about losing his job due to drug use and his desire to "become a martyr."¹³⁴

¹²⁷ Greg Botelho, *Chattanooga Shootings: Gunman Shot After he Rams Gate, Then Kills 5*, CNN (Jul. 22, 2015), <http://www.cnn.com/2015/07/22/us/chattanooga-shooting/>.

¹²⁸ *Four Marines Killed in Chattanooga: Gunman was Born in Kuwait, Naturalized U.S. Citizen*, FOX (Jul. 16, 2015), <http://www.q13fox.com/2015/07/16/4-marines-killed-in-rampage-at-chattanooga-tennessee-military-centers/>.

¹²⁹ *Marines' Killer Set off no Red Flags*, WASH. POST (Jul. 18, 2015), https://washingtonpost.com/world/national-security/gunman-in-marine-slayings-described-life-as-prison-days-before-rampage/2015/07/17/86d1f988-2c67-11e5-a250-42bd812efc09_story.html?story.hpid=z1.

¹³⁰ *Minute-by-Minute Coverage of the Chattanooga Shooting that Killed Four Marines*, TIMES FREE PRESS (Jul. 16, 2015), <http://www.timesfreepress.com/news/local/story/2015/jul/16/breaking-shots-fired-tennessee-riverpark-chattanooga/314944/>.

¹³¹ Scott Zamost, *Chattanooga Shooting: New Details Emerge About the Gunman*, CNN (Jul. 20, 2015), <http://www.cnn.com/2015/07/20/us/tennessee-naval-reserve-shooting/>.

¹³² *Id.* According to family sources, the drugs included "party drugs" and marijuana. *Id.*

¹³³ Morgan Winsor, *Mohammad Youssuf Abdulazeez Radicalized in Jordan? Islamic Extremism Rising in Middle Eastern Kingdom*, IB TIMES (Jul. 17, 2015), <http://www.ibtimes.com/mohammad-youssuf-abdulazeez-radicalized-jordan-islamic-extremism-rising-middle-2013871>. News sources report that just three days before the attack, Abdulazeez posted the message "life is short and bitter" and Muslims "should not miss an opportunity to submit to Allah." Rich McKay, *Suspected Gunman Blogged About Islam Days Before Tennessee Shooting: Report*, REUTERS (Jul. 16, 2015), <http://www.reuters.com/article/2015/07/16/us-usa-shooting-tennessee-suspect-idUSKCN0PQ2RO20150716>.

¹³⁴ Brian Ross, *Chattanooga Shooter Researched Religious Justification for Violence: Official*, ABC NEWS (Jul. 20, 2015), <http://www.abcnews.go.com/us/chattanooga-shooting-fbi-recovers-gunmans-disturbing-diary/story?id=32558310>. Abdulazeez did online searches for guidance on committing violence that he may have believed would wipe away his sins in the afterlife. *Id.*

Investigators also determined that Abdulazeez was “displeased with the U.S. government, particularly its war on terrorism.”¹³⁵ Abdulazeez’s father was also investigated on two occasions for possible terrorism ties, and was temporarily on a terrorist watch list.¹³⁶

Despite evidence of exposure to radical Islamic viewpoints, and sympathy for them, the U.S. National Counterterrorism Center reported that Abdulazeez had no known connections with any terrorist groups and appeared to have acted on his own in carrying out the attack.¹³⁷ A text message from Abdulazeez to a friend just hours before the shooting provides insight into his motives for the attack. Abdulazeez texted a friend an Islamic verse that read, “Whosoever shows enmity to a friend of mine, then I have declared war against him.”¹³⁸ In any event, radical religious philosophy appears to have been a significant factor in motivating Abdulazeez to become an active shooter.

Sometime prior to the attack, Abdulazeez acquired four firearms, an AK–47 style rifle, a shotgun, a handgun, and another rifle.¹³⁹ He also purchased, and wore on the day of the attack, a load-bearing vest that enabled him to carry extra ammunition.¹⁴⁰ Abdulazeez was discovered to have frequented gun ranges to practice marksmanship, and just a month prior to the attack, he told coworkers that he practiced at a local gun range.¹⁴¹ Investigators also found surveillance

¹³⁵ Scott Zamost, *Chattanooga Shooting: New Details Emerge about the Gunman*, CNN (Jul. 20, 2015), <http://www.cnn.com/2015/07/20/us/tennessee-naval-reserve-shooting/>. Investigators discovered writings from Abdulazeez from 2013 showing that he agreed with the teachings of Anwar al-Awlaki, a known Al-Qaeda terrorist killed in a U.S. drone strike in 2014. See Barbara Starr, *Pentagon, Governors Boost Security for Military After Chattanooga Shooting*, CNN (Jul. 18, 2015), <http://www.cnn.com/2015/07/17/politics/chattanooga-shooting-military-protection/>.

¹³⁶ *Marines’ Killer Set off no Red Flags*, *supra* note 129. Abdulazeez’s father was investigated in 1994 and 2002. *Id.*

¹³⁷ Caitlin Dickerson, *Chattanooga Shooting Victims: IDs of 4 Become Known*, NEWS YAHOO (Jul. 17, 2015), <http://news.yahoo.com/details-emerge-about-chattanooga-shooting-victims-141434804.html>.

¹³⁸ Manny Fernandez, *In Chattanooga, a Young Man in a Downward Spiral*, N.Y. TIMES (Jul. 20, 2015), <https://nytimes.com/2015/07/21/us/chattanooga-gunman-wrote-of-suicide-and-martyrdom-official-says.html>.

¹³⁹ Greg Botelho, *Four Guns Seized After Chattanooga Shooting, Official Says*, CNN (Jul. 18, 2015), <http://www.cnn.com/2015/07/17/us/tennessee-naval-reserve-shooting/>. LEO officials told reporters that “some of the weapons were purchased legally and some of them may not have been.” *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Chattanooga Gunman Talked of Frequenting Gun Range*, CBS NEWS (Jul. 18, 2015), <http://www.cbsnews.com/news/Chattanooga-shooting-gunman-muhammad-yousseff-abdulazeez-gun-range/>.

video from a local Walmart showing Abdulazeez and two other men purchasing ammunition just five days prior to the attack.¹⁴²

On the morning of July 16, just before 10:51 A.m., Abdulazeez drove a rented silver Ford Mustang to the Armed Forces Career Center (Recruiting Station) located in a strip mall on Lee Highway in Chattanooga, Tennessee. He remained inside the car and took out an AK-47 style rifle and fired twenty-five to thirty rounds into the station, wounding one Marine Recruiter.¹⁴³ The remainder of the personnel in the office took shelter in a back office and barricaded the door.¹⁴⁴ The gunfire lasted approximately one minute according to witnesses.¹⁴⁵ Abdulazeez then fled the scene in his car and was pursued by local police to a Navy and Marine Corps Reserve Center, located seven miles away from the Recruiting Station.¹⁴⁶ Abdulazeez rammed his car through the security gate to gain entrance to the facility.¹⁴⁷ Abdulazeez approached the Reserve Center, carrying a rifle, handgun, and several magazines.¹⁴⁸ A Naval Officer assigned to the center, Lieutenant Commander Tim White, saw him approaching and secured a personally owned handgun in his possession and began firing at Abdulazeez.¹⁴⁹

It is unclear whether Lieutenant Commander White hit Abdulazeez, because his attack continued as he entered the Reserve Center, shooting Navy Specialist Second Class Randall Smith three times in the abdomen and the arm.¹⁵⁰

¹⁴² Matt Jaworowski, *Authorities Investigate Abdulazeez's Personal Life, Mental, Drug Issues*, WATE (July 20, 2015), <http://www.wate.com/2015/07/20/fbi-recovers-chattanooga-gunmans-disturbing-diary/>.

¹⁴³ *UPDATE: No Motive Known for Gunman Opening Fire on Marines*, WRCBTV (Jul. 17, 2015), <https://www.wrcbtv.com/story/29563843/officer-involved-shooting-at-us-naval-reserve>.

¹⁴⁴ Shelly Bradbury, *Minute by Minute: A Timeline of the Chattanooga Attack Revealed*, TIMES FREE PRESS (Jul. 23, 2015), <http://www.timesfreepress.com/news/local/story/2015/jul/23/minute-minute-timeline-abdulazeezs-attack/316028/>.

¹⁴⁵ *Id.*

¹⁴⁶ Drew Galloway, *Investigators Reveal New Details About Chattanooga Attack, Say Police Killed Abdulazeez*, WHNT (Jul. 17, 2015), <http://whnt.com/2015/07/17/investigators-reveal-new-details-about-chattanooga-attack/>.

¹⁴⁷ Meghan Keneally, *How the Chattanooga Shooting Unfolded*, ABC NEWS (July 17, 2015), <http://abcnews.go.com/US/chattanooga-shooting-unfolded/story?id=32516133>.

¹⁴⁸ Greg Botelho, *Chattanooga Shootings: Gunman Shot at After He Rams Gates, Then Kills Five*, CNN (Aug. 11, 2015), <http://www.cnn.com/2015/07/22/us/chattanooga-shooting/>.

¹⁴⁹ Andy Sher, *Navy: Officer Has Not Been Charged for Firing Personal Weapon at Chattanooga Gunman*, TIMES FREE PRESS (Aug. 3, 2015), <http://www.timesfreepress.com/news/local/story/2015/aug/03/navy-officer-has-not-been-charged-firing-personal-weapon-chattanooga-gunman/317947/>.

¹⁵⁰ Melissa Chan, *Sailor Randall Smith Dies from Injuries in Chattanooga Shooting: Family*, N.Y. DAILY NEWS (July 19, 2015), <http://www.nydailynews.com/news/>

Abdulazeez then moved through the Reserve Center firing his rifle at anyone he saw and exited the back of the building into a fenced motor pool area where several servicemembers were located. Investigators recovered approximately 100 shell casings in and around the Reserve Center.¹⁵¹ After reaching the motor pool area, Abdulazeez spotted several personnel and shot and killed four marines.¹⁵² Lieutenant Commander White and another unidentified servicemember then opened fire on Abdulazeez with personally owned weapons to “provide cover” for other marines climbing over a fence to escape from the facility.¹⁵³ This resistance forced Abdulazeez to reenter the Reserve Center, where awaiting Chattanooga Police officers shot him several times, killing him.¹⁵⁴

Similar to other active shooter incidents discussed above, the attack at the Reserve Center occurred quickly, lasting only three to five minutes from the time Abdulazeez arrived to the time he shot the five personnel.¹⁵⁵ Police officers were on the scene within five minutes of Abdulazeez arriving at the Reserve Center, but that was because they were already pursuing Abdulazeez from the scene of the first shooting.¹⁵⁶ Had officers not already been pursuing Abdulazeez it could have taken much longer before they arrived on the scene, giving Abdulazeez time to shoot additional servicemembers.¹⁵⁷

Both the Recruiting Station and the Reserve Center were located in civilian locations, off military installations. As a result, no regularly armed military personnel or security guards were available to respond to the active shooter.¹⁵⁸

national/randall-smith-5th-victim-chattanooga-shooting-dies-article-1.2296310. Specialist Randall Smith died of his wounds two days later on July 18, 2015. *Id.*

¹⁵¹ Bradbury, *supra* note 144.

¹⁵² Botelho, *supra* note 148.

¹⁵³ *FBI Explains how Chattanooga Shooting Played out, how Mohammad Abdulazeez was Killed*, TIMES FREE PRESS (July 22, 2015), <http://www.timesfreepress.com/news/local/story/2015/jul/22/live-updates-press-conference-chattanooga-shootings/315906/>.

¹⁵⁴ Botelho, *supra* note 148.

¹⁵⁵ Bradbury, *supra* note 144.

¹⁵⁶ See Drew Galloway, *Investigators Reveal New Details About Chattanooga Attack, Say Police Killed Abdulazeez*, WHNT (July 17, 2015), [investigators-reveal-new-details-about-chattanooga-attack](http://www.whnt.com/news/investigators-reveal-new-details-about-chattanooga-attack).

¹⁵⁷ See David Larter, *Sources: Navy Officer, Marine Fought to Take Out Chattanooga Gunman*, NAVY TIMES (Jul. 24, 2015), <http://www.navytimes.com/story/military/2015/07/21/sources-navy-officer-marine-shot-chattanooga-gunman/30426817/>. An FBI spokesman told reporters that local police officers were “close behind” Abdulazeez when he arrived at the Naval Reserve Center. *Id.*

¹⁵⁸ See Greg Richter, *Ex-Navy Seal: Chattanooga Marines Could be Alive if Armed*, NEWS MAX (Jul. 16, 2015), <http://www.newsmax.com/Newsmax-Tv/Chattanooga-Marines-Carl-Higbie-armed/2015/07/16/id/657562/>. Carl Higbie, a former Marine and Navy Seal told reporters that policies prohibiting Marines and other servicemembers from carrying firearms are a “product of bureaucracy in administration.” *Id.*

The exception was Lieutenant Commander White and another unidentified servicemember who possessed and used personally owned weapons (POWs), in this case handguns, to engage Abdulazeez outside the center.¹⁵⁹ An FBI spokesman told reporters that a separate investigation would look into why servicemembers were in possession of POWs when they were prohibited in the Reserve Center.¹⁶⁰ In response to questions by reporters, Marine Corps Major General Paul Brier did not get into specifics about the two servicemembers who had POWs, but he told reporters, “I can tell you that our Marines reacted the way you would expect.”¹⁶¹

While Lieutenant Commander White and the other servicemember with a POW were not authorized to possess their POWs in the Reserve Center, it appears that by firing their weapons at Abdulazeez, they delayed his advance and provided extra time for Marines who fled the building to escape over the back fence of the Reserve Center.¹⁶² Their actions in possessing weapons and returning fire may have saved the lives of other servicemembers by influencing Abdulazeez to return to the Reserve Center where waiting police officers shot and killed him.¹⁶³ Lieutenant Commander White and the other servicemember who possessed a POW in the Reserve Center violated DoDD 5210.56 and could have faced criminal prosecution for possessing the weapons in violation of the service regulations implementing the Directive.¹⁶⁴ Had Lieutenant Commander White and the other servicemember been formally armed and trained to respond to an active shooter attack, the internal response to Abdulazeez’s attack would likely have been more effective.¹⁶⁵

¹⁵⁹ Andy Sher, *Navy: Officer Has Not Been Charged For Firing Personal Weapon at Chattanooga Gunman*, TIMES FREE PRESS (Aug. 3, 2015), <http://www.timesfreepress.com/news/local/story/2015/aug/03/navy-officer-has-not-been-charged-firing-personal-weapon-chattanooga-gunman/317947/>. See also Associated Press & Staff, *FBI Explains How Chattanooga Shooting Played Out, How Mohammad Abdulazeez was Killed*, TIMES FREE PRESS (Jul. 22, 2015), <http://www.timesfreepress.com/news/local/story/2015/jul/22/live-updates-press-conference-chattanooga-shootings/315906/>.

¹⁶⁰ See Associated Press, *supra* note 159.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ See *id.* Investigators have not yet determined if Lieutenant Commander White, or the other servicemember who had a POW, hit Abdulazeez with any return fire. *Id.*

¹⁶⁴ Michelle Jesse, *Here’s an Update on Chattanooga Hero That Will Make You Cheer*, ALLEN B. WEST (Aug. 7, 2015), <http://allenbwest.com/2015/08/heres-an-update-on-that-chattanooga-hero-that-will-make-you-cheer/>. There were initial media reports that Lieutenant Commander White would face criminal charges for possessing a POW in the center; however, subsequent reports stated that Lieutenant Commander White would not face criminal charges. *Id.*

¹⁶⁵ The author was unable to find any evidence that Lieutenant Commander White or the other servicemembers being armed compromised the security of the Reserve Center in any way, but there is evidence that being armed may have slowed Abdulazeez down and helped bring about his death. See Associated Press, *supra* note 160. Training and arming

III. Lessons Learned From the Shootings and a Call to Action

One of the chilling observations from the shootings discussed above is that the shooters encountered very little difficulty in bringing a firearm onto the military installations before their attacks.¹⁶⁶ Gaining access to a military installation is relatively easy for non-DoD members, and is virtually automatic for DoD Identification Card (ID) holders.¹⁶⁷ Based on this reality, future active shooters in possession of a DoD ID card will likely have little difficulty in bringing firearms onto military bases prior to a planned attack because only very small numbers of personnel are searched before they enter a military base.¹⁶⁸ Under current DoD arming policies, satellite recruiting offices and small Reserve Centers, like those in Chattanooga, will continue to be uniquely vulnerable to active shooter attacks until DoD weapons policies are updated. These facts lend powerful support to the argument that military leaders need to

servicemembers to respond to active shooters is the major point of the Armed Security Officer Program highlighted *infra* part IV.

¹⁶⁶ See *infra* Appendix A. In each of the shootings, the shooter brought a non-registered weapon onto the installation prior to the attack. *Id.* By doing so, the shooters violated federal statute and service or installation regulations. See 18 U.S.C. § 930 (2014); See also *infra* Appendix B. It logically follows that if a servicemember has planned and prepared to murder his fellow servicemembers and takes action to bring a weapon onto the installation for that purpose, the shooter is likely not concerned about violating punitive firearms regulations. The author was unable to find any information indicating that MAJ Hasan, SPC Lopez, or Aaron Alexis ever considered that they were violating installation firearms regulations when they brought unregistered weapons onto the military installations prior to their attacks. See *infra* Parts V and VI of this article for discussion of how military firearms policies are keeping guns out of the hands of the servicemembers that need them most for unit and self-defense.

¹⁶⁷ Manny Fernandez & Serge Kovalski, *Soldier's Attack at Base Echoed Rampage in 2009*, N.Y. TIMES (Apr. 3, 2014), http://www.nytimes.com/2014/04/04/us/fort-hood-security-problems.html?_r=0. In the wake of the 2014 Fort Hood shooting, Lieutenant General Mark Milley told reporters, "Fort Hood is a big installation. We've got a population well over 100,000 here. It would not be realistic to do a pat-down search on every single Soldier and employee on Fort Hood for a weapon on a daily basis." *Id.*

¹⁶⁸ *Id.* It is also important to realize that America is a heavily armed nation, with an estimated 310 million firearms. See WILLIAM J. KROUSE, CONG. RESEARCH SERV., RL32842, GUN CONTROL LEGISLATION 8 (2012). "[T]he estimated total number of firearms available to civilians in the United States had [by 2009] increased to approximately 310 million: 114 million handguns, 110 million rifles, and eighty-six million shotguns." *Id.* Just a few of these weapons falling into the hands of terrorists or persons intent on hurting others can have a devastating impact if the shooter cannot be quickly stopped. See *infra* Appendix A.

arm servicemembers within individual units to provide immediate response capability against the active shooter threat.¹⁶⁹

After the 2014 Fort Hood shooting, President Obama attended a memorial service at Fort Hood to comfort the victims and outline his strategy to prevent future attacks.¹⁷⁰ He said,

[P]art of what makes this so painful is that we've been here before. Once more Soldiers who survived foreign war zones were struck down here at home, where they're supposed to be safe As a military we must continue to do everything in our power to secure our facilities and spare others this pain.¹⁷¹

The reality is that until DoD leaders accept that “securing our facilities” includes arming servicemembers in military units with firearms, active shootings will continue to occur. As 1LT Cook warned after the 2014 Fort Hood attack, “This will happen again, and again until we learn the lesson that suppressing the bearing of arms doesn't prevent horrific crimes, it invites them.”¹⁷² Sadly, the shootings in Chattanooga, Tennessee, appear to confirm this assertion. Had Hasan, Elder, Alexis, Lopez, or Abdulazeez known that there were armed servicemembers in the military offices they planned to attack, it may have deterred them from attacking those locations.¹⁷³

IV. The Growing Threat of Active Shooters in the United States

The frequency of active shooter incidents in the United States is rising. The Department of Justice (DoJ) estimates that there were 160 active shooter incidents in the United States from 2000 to 2013.¹⁷⁴ From 2000 to 2006, the number of active shooter incidents nationwide averaged 6.4 incidents per year, but between 2007 and 2013, the number of incidents per year rose to 16.4, a 56% increase.¹⁷⁵ Active shooter incidents on military bases are also becoming

¹⁶⁹ See *infra* Part VII.

¹⁷⁰ Baker, *supra* note 100.

¹⁷¹ *Id.*

¹⁷² 1LT Cook Letter, *supra* note 1.

¹⁷³ See *infra* Section VI. Numerous studies have verified the fact that active shooting events have historically occurred almost exclusively in areas where firearms are prohibited. *Id.* Having armed personnel in a given area is a potent deterrent to active shooters. *Id.*

¹⁷⁴ FBI Active Shooter Study, *supra* note 2, at 9.

¹⁷⁵ *Id.* The FBI active shooter study reports the number of active shootings but does not examine the basis for the significant statistical increase in the rate of active shootings between the two time periods. *Id.* It is noteworthy that while the number of active shooter incidents has been increasing nationwide, the overall violent crime rate in the

more frequent. There has been an average of one active shooter incident per year for the last five years on military installations.¹⁷⁶

In addition to the number of completed active shooter incidents on military bases, a number of planned attacks have also been narrowly avoided.¹⁷⁷ In 2007, for example, five Islamic extremists were caught attempting to purchase weapons for an attack on Fort Dix, New Jersey.¹⁷⁸ Their plan was to “kill as many soldiers as possible.”¹⁷⁹ A similar attack was also prevented in 2008 when seven men were arrested and charged in a plot to attack the marine base in Quantico, Virginia.¹⁸⁰

The threat toward military family members is also growing.¹⁸¹ In 2014, the Army issued a warning to Soldiers to “be vigilant” because Islamic State militants had “called on their supporters to scour social media for addresses of [soldiers’] family members—and to show up [at their homes] and slaughter them.”¹⁸² The increase in the rate of active shootings, combined with the number of attacks that have been narrowly avoided, is a potent reminder that DoD policies need to evolve to meet the growing threat.¹⁸³

United States has been falling for several decades to reach “the lowest homicide death toll since the mid-1950s.” *FBI: Violent Crime Rates in the U.S. Drop, Approach Historic Lows*, NBC NEWS (Jun. 11, 2012), http://usnews.nbcnews.com/_news/2012/06/11/12170947-fbi-violent-crime-rates-in-the-us-drop-approach-historic-lows?lite. It is also noteworthy that as violent crime and property crime rates have been falling nationwide, the number of firearms sold in the United States has increased to record levels. *Id.* In 2013, there were 21,093,273 firearm background checks performed, a record number. Awr Hawkins, *FBI Report Confirms Crime Fell While Gun Purchases Soared in 2013*, BREITBART (Nov. 10, 2014), <http://www.breitbart.com/Big-Government/2014/11/10/FBI-Report-Confirms-Crime-Fell-While-Gun-Purchases-Soared-In-2013>. These facts lend support to the conclusion put forth by a leading researcher on firearms that as a general rule, more guns equals less crime. *See* JOHN R. LOTT, *MORE GUNS LESS CRIME* 194 (2d ed. 1998).

¹⁷⁶ *See infra* Appendix A.

¹⁷⁷ Ticking Time Bomb, *supra* note 34. The rise of “violent Islamic extremism” has been cited as a significant growing threat in America. *Id.*

¹⁷⁸ Dale Russakoff & Dan Eggen, *Six Charged in Plot to Attack Fort Dix*, WASH. POST (May 9, 2007), <http://www.washingtonpost.com/wpyn/content/article/2007/05/08/AR2007050800465.html?hpid=moreheadlines> (last visited February 10, 2015).

¹⁷⁹ *Id.*

¹⁸⁰ Ticking Time Bomb, *supra* note 34, at 20.

¹⁸¹ U.S. DEP’T OF ARMY, ARMY THREAT INTEGRATION CENTER (ARTIC) SPECIAL ASSESSMENT: ISIL THREATS AGAINST THE HOMELAND (Sept. 29, 2014), <https://publicintelligence.net/artic-isil-threats-homeland/>.

¹⁸² *Id.*

¹⁸³ THE WHITE HOUSE, U.S. NATIONAL STRATEGY FOR COUNTERTERRORISM 8 (June, 2011). “The most solemn responsibility of the President and the United States Government is to protect the American people, both at home and abroad.” *Id.* Revising

Sadly, leaders have disregarded the greatest asset in the Army able to confront an active shooter: the armed servicemember.¹⁸⁴ Soldiers who have survived active shootings have great difficulty understanding why military leaders will not trust them to carry firearms for self-defense domestically like they were trusted to carry firearms while deployed overseas.¹⁸⁵ It is telling to consider that in the last ten years more soldiers have been killed by fellow soldier active shooters in the United States than by active shooters on military installations in combat zones during the same time period.¹⁸⁶ A foreign land may be referred to as a combat zone but to the ninety-two servicemembers and civilians shot or killed by active shooters in the United States in the last six years, the experience was just as deadly as combat. It is time for

counterproductive firearms policies to protect America's military personnel from active shooters will reinforce the National Counter Terrorism strategy and let servicemembers know that DoD leaders are genuinely concerned for their welfare. *See also* FM 6-22, *supra* note 10, para. 2-10.

¹⁸⁴ The author has been unable to locate discussion of the possibility of arming non-LEO servicemembers to respond to the active shooter threat in any DoD publications.

¹⁸⁵ *See* Tan, *supra* note 15. As one Soldier who survived the 2014 Fort Hood attack said,

When you're deployed, you have your weapon issued to you, and it's mandatory that you carry it. When you come back home and you come onto post . . . the only people who are going to have weapons are military police . . . and those who don't care about the law It's ridiculous. All they do is put a Band-Aid on it, check the block The briefing told us to shut the door, turn off the light and hide behind a desk. And do what? Pray that someone with a gun comes to save me?

Id. Staff Sergeant (SSG) Jacob Wiley made this statement during an interview after the 2014 Fort Hood shooting. *Id.* The domestic posture of being unarmed and untrained in how to confront active shooters stands in stark contrast to the training and arming soldiers receive prior to deploying to a combat zone overseas, where they are expected to defend themselves. *See* Headquarters, Combined Joint Task Force-1, Gen. Order No. 1, para. 5 (May 21, 2011) [hereinafter CJTF-1 Gen. Order No. 1].

¹⁸⁶ *See U.S. Soldier Charged with Murder in Iraq Shooting Deaths*, CNN (May 11, 2009), <http://www.cnn.com/2009/WORLD/meast/05/12/iraq.soldiers.killed/>. The author searched for reported active shooter incidents that occurred in the Iraq or Afghanistan combat zones on a U.S. controlled installation from 2004 to 2014 and only found one incident where an American soldier shot and killed more than three fellow Soldiers. *Id.* That incident was the 2009 Camp Liberty, Iraq shooting. *Id.* During the attack, Sergeant John Russell shot and killed five soldiers at a mental health clinic. *Id.* The practice at the clinic was for soldiers to check their firearms into a locked room upon arrival which resulted in soldiers not having their weapons when Russell attacked. Elliot Smith, *Military Mental Health Crisis Exposed with Camp Liberty Killings*, BLOOMBERG (Aug. 1, 2012), <http://www.bloomberg.com/news/2012-08-01/military-mental-health-crisis-exposed-with-camp-liberty-killings.html>. *See infra* Appendix A illustrating military active shooters in the United States since 2009.

servicemembers in the United States to be given the means to defend themselves here at home, just as they could while they were deployed overseas.¹⁸⁷

Department of Defense leaders appear to have decided that servicemembers in the United States do not face *enough* of a threat to justify arming anyone but LEOs for protection.¹⁸⁸ This appears to be a mistaken assumption, considering the significant number of casualties on military installations in the last five years from active shooters. If ninety-two shooting casualties are not enough to bring about a change in DoD firearms policy, it is rather alarming to consider how many servicemembers must die at the hands of active shooters before firearms policies are updated.

In addition to the growing threat by violent Islamic extremists, there are several other factors that may drive a significant increase in the number of future active shooter casualties on military installations. First, a large number of servicemembers have Post Traumatic Stress Disorder (PTSD) stemming from overseas deployments, and PTSD is associated with an increase in violent behavior.¹⁸⁹ Second, young people in America who will become the servicemembers of tomorrow are watching more violence than ever before in the media.¹⁹⁰ Watching violence is associated with an increase in violent

¹⁸⁷ See Herridge, *supra* note 30. The fact that Congress passed legislation to allow survivors of the 2009 Fort Hood attack to receive the Purple Heart demonstrates that Congress acknowledges that survivors of active shooter attacks that are motivated by terrorism deserve the same recognition as servicemembers who were wounded in a foreign combat zone. See *id.* The firsthand accounts of soldiers who have survived military active shooters are a chilling reminder that the terror and death of a combat zone are realized when just one active shooter begins firing. See 1LT Cook Letter, *supra* note 1. One survivor of the 2009 Fort Hood shooting said, “I could hear people screaming, brass hitting the ground. I could smell the smoke I could see all the blood, the crumpled uniforms . . . shell casings. It was just carnage.” Lieutenant Colonel Retired Randy Royer’s testimony in *United States v. Hasan*, Fort Hood, TX, Aug. 28, 2013, (pending final action). Lieutenant Colonel (Ret.) Royer was shot in the leg and the forearm by Major Hasan on November 5, 2009. Due to his injuries from the shooting, he required a cane to walk to the witness stand to testify at the trial. Eric M. Johnson & Lisa Maria Garcia, *Hell Broke Loose Witness Says of 2009 Fort Hood Massacre*, REUTERS (Aug. 12, 2013), <http://www.reuters.com/article/2013/08/12/us-usa-crime-forthood-idUSBRE97B0S820130812>.

¹⁸⁸ See DoDD 5210.56, *supra* note 12, at 2. See 2014 Senate Committee Meeting, *supra* note 15, at 44.

¹⁸⁹ Sonya Norman, *Research Findings on PTSD and Violence*, U.S. DEP’T. OF VETERANS AFFAIRS (last visited Dec. 12, 2014), http://www.ptsd.va.gov/professional/co-occurring/research_on_ptsd_and_violence.asp. See also K.B. Jordan, *Problems in Families of Male Vietnam Veterans with Posttraumatic Stress Disorder*, J. CONS. & CLIN. PSYC. 60, 916-26 (1992).

¹⁹⁰ Eugene Beresin, *The Impact of Media Violence on Children and Adolescents: Opportunities for Clinical Interventions*, THE AMERICAN ACADEMY OF CHILD &

behavior.¹⁹¹ Finally, increases in magazine capacity and improvements in weapon design and accessories are enabling the production of more deadly firearms.¹⁹² As the threat potential increases, military leaders need to implement greater threat reduction measures to protect the force. Unfortunately, as the next section highlights, military leaders are relying too heavily on a small number of responders to confront the growing active shooter threat.

V. Policy Failures: Overreliance on Law Enforcement Officers

All DoD firearms regulations are founded on the premise that military installations are secure when only LEOs and security personnel carry firearms.¹⁹³ This section highlights the flawed nature of this assumption and the problems inherent with exclusive reliance on LEOs to stop active shooters.

A. The High Cost of Waiting for a Law Enforcement Officer Response

At any given time on a military installation, there are only a few armed personnel capable of stopping an active shooter.¹⁹⁴ These are on-duty LEOs and armed security personnel.¹⁹⁵ Department of Defense leaders rely on these personnel exclusively to protect the force from active shooters.¹⁹⁶ The active shooter attacks reviewed in Part II, however, painfully demonstrate that LEOs normally require a significant amount of time to respond to an active shooter

ADOLESCENT PSYCHIATRY, https://www.aacap.org/aacap/Medical_Students_and_Residents/Mentorship_Matters/DevelopMentor/The_Impact_of_Media_Violence_on_Children_and_Adolescents_Opportunities_for_Clinical_Interventions.aspx (last visited Aug. 29, 2015). The average American child, for example, will view an estimated 16,000 murders on television before turning age eighteen. *Id.*

¹⁹¹ See Barbra J. Wilson, *Media and Children's Aggression, Fear and Altruism*, FUTURE OF CHILDREN (Spring 2008), <http://futureofchildren.org/publications/journals/article/index.xml?journalid=32&articleid=58§ionid=270>.

¹⁹² See Brad Plumer, *Study: The U.S. Has Had One Mass Shooting Per Month Since 2009*, WASH. POST (Feb. 2, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/02/02/study-the-u-s-has-had-one-mass-shooting-per-month-since-2009/>.

¹⁹³ See DoDD 5210.56, *supra* note 12, at 2. See *infra* Part VI for examination of the data showing that areas where only LEOs and security personnel are allowed to carry firearms coincide with the greatest number of active shooting incidents.

¹⁹⁴ See DoDD 5210.56, *supra* note 12, at 2; See also AR 190-14, *supra* note 9, para. 2-2; See also *infra* Appendix B.

¹⁹⁵ See AR 190-14, *supra* note 9, para. 2-2; See also *supra* Part II highlighting the LEO response to three prior military active shootings.

¹⁹⁶ See 2014 Senate Committee Meeting, *supra* note 16, at 44.

attack.¹⁹⁷ During this crucial “LEO response window,” ninety-two DoD employees or civilians have been wounded or killed.¹⁹⁸ Seven people were shot in the estimated seven minutes it took LEOs to respond and stop Mr. Abdulazeez in Chattanooga, Tennessee, earlier this year.¹⁹⁹ During the 2014 Fort Hood attack, SPC Lopez shot nineteen people between the time of the 911 call and the military LEOs’ response, eight minutes later.²⁰⁰ During the Washington Navy Yard shooting, Alexis shot ten people between the time authorities were alerted and when LEOs actually engaged Alexis, sixty-nine minutes later.²⁰¹ Most notoriously, in 2009, MAJ Hasan shot forty-two Soldiers and civilians before LEOs could respond and stop him, ten minutes after the shooting began.²⁰² These lengthy response times demonstrate that DoD policies relying on LEOs to stop active shooters are not an effective solution to the active shooter threat.²⁰³ Military leaders must begin to trust more than just LEOs with firearms if active shooter attacks are to be deterred and lives are to be saved.²⁰⁴

B. Reluctance of Army Leaders to Allow LEOs to Carry Firearms

A significant challenge to the DoD’s approach to relying on LEOs to protect servicemembers from active shooters is the fact that military firearms policies even restrict a large number of LEOs from carrying firearms on military installations.²⁰⁵ For example, only on-duty MP officers assigned to patrolling

¹⁹⁷ See *infra* Appendix A. The response times for the shootings highlighted speak for themselves. When a gunman is actively shooting people, every second of delay is another moment a life could be lost.

¹⁹⁸ *Id.*

¹⁹⁹ Bradbury, *supra* note 144.

²⁰⁰ Rebecca Kaplan, *Experts: Societies’ Problems Don’t Stop at Military Bases’ Gates*, CBS NEWS (Apr. 3, 2014), <http://www.cbsnews.com/news/expert-societys-problems-dont-stop-at-military-bases-gates/> (last visited Oct. 23, 2015).

²⁰¹ Navy Yard AAR, *supra* note 4, at 61.

²⁰² Powers, *supra* note 49; See also *Timeline: Fort Hood Shootings*, BBC NEWS (Nov. 12, 2009), <http://news.bbc.co.uk/2/hi/americas/8346315.stm>.

²⁰³ Exclusively relying on LEOs as the only armed responders will ultimately stop active shooters, but as military active shootings demonstrate, a large number of casualties will occur before LEOs can respond. See *infra* Appendix A.

²⁰⁴ See *infra* Part VII. There is a large number of personnel within the DoD with significant firearms experience that could be utilized to help protect the force from active shooters. See 2014 Senate Committee Meeting, *supra* note 16, at 44. This group ranges from Special Operations personnel to personnel with extensive civilian marksmanship experience. *Id.* Screening and arming personnel within this group would provide a valuable deterrent against would-be attackers. See Hawkins, *supra* note 175; John R. Lott, Jr., *The Cruelty Of Gun Free-Zones*, NATIONAL REVIEW (Jan. 31, 2014), <http://www.nationalreview.com/article/370014/cruelty-gun-free-zones-john-r-lott-jr>.

²⁰⁵ See AR 190-14, *supra* note 10, para. 1-5 and para. 2-2.

duties are allowed to carry firearms on military installations for self-defense.²⁰⁶ After their shift is over, the MPs sign their weapons back into the unit arms room.²⁰⁷ The result of this practice is that the MPs are then unable to respond to an active shooting incident the rest of the time they are on the military installation. Meanwhile, MP commissioned officers are not allowed to carry firearms on military installations unless there is a situation that justifies them to be armed.²⁰⁸ State and local police officers are also normally not allowed to carry firearms on military installations unless they are responding to an active call for assistance on the installation.²⁰⁹ The end result is that off-duty MPs and local civilian and state LEOs that happen to be on a military installation for a non-emergency purpose are unable to respond to an active shooting.

Retired military LEOs also face considerable challenges in obtaining DoD authorization to carry firearms both on and off a military installation. For example, Congress passed the Law Enforcement Safety Officers Act (LEOSA) in 2004, allowing both active and retired LEOs to carry firearms while off-duty in any state in the nation, but the DoD did not begin implementing the legislation until 2014.²¹⁰ It ultimately took a retired Criminal Investigation Command (CID) Special Agent filing suit in federal court to force the DoD to comply with LEOSA.²¹¹ These examples illustrate the entrenched reluctance DoD policymakers have to allowing trained LEOs carry firearms. The impact of these policy restrictions is that many LEOs are walking around on military installations unarmed and unable to respond to an active shooting. As one leader in the firearms industry said, “The only thing that stops a bad guy with a gun is a good guy with a gun.”²¹² A law enforcement officer without a gun is of little value in an active shooter situation.

In June 2014, following the second active shooter attack at Fort Hood, the Army Criminal Investigation Detachment Command (CIDC) acknowledged that special agent firearms policies were counterproductive to protecting soldiers

²⁰⁶ See Christopher Bean, *Fort Hood FAQ*, SLATE (Nov. 6, 2009), http://www.slate.com/articles/news_and_politics/explainer/2009/11/fort_hood_faq.html. The policy of only allowing MPs to carry firearms for self-defense stems from the erroneous belief of senior DoD leaders that MPs can adequately protect servicemembers from active shooters. See 2014 Senate Committee Meeting, *supra* note 16, at 44.

²⁰⁷ Email from MP Officer, to author (Apr. 17, 2014) (on file with author).

²⁰⁸ *Id.*

²⁰⁹ Bean, *supra* note 153; See also *infra* Appendix B.

²¹⁰ See DEP'T OF DEF. INSTR. 5525.12, IMPLEMENTATION OF THE AMENDED LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004 (LEOSA) para. 1 (Feb. 15, 2014), [hereinafter DoDI 5525.12].

²¹¹ *Gibbon v. Hagel*, No. EDCV13-02144, 2013 U.S. Cen. Dist. CA, (Nov. 21, 2013).

²¹² Wayne Lapierre, *NRA Press Conference*, NRA (Dec. 21, 2012), http://home.nra.org/pdf/Transcript._PDF.pdf. Wayne Lapierre is the Executive Vice President of the National Rifle Association.

from active shooters.²¹³ In a memorandum to Special Agents, the command acknowledged, “There have been . . . [m]ultiple incidents . . . across the Army where Special Agents were . . . without their assigned weapon . . . [and they] could have potentially protected [innocent bystanders] if armed with their weapon[s].”²¹⁴

Military firearms policies also significantly restrict the ability of state and local LEOs who serve in the Army Reserve and the Army National Guard from carrying firearms on military installations.²¹⁵ A large number of military LEOs serve in the Reserve Component (RC) and perform monthly training on military installations.²¹⁶ Installation Privately Owned Weapon (POW) policies on active duty Army bases curtail the ability of RC LEOs from reporting for drill duty with their service weapons on their person or in their vehicles.²¹⁷ The impact of these restrictions is that RC LEOs must travel to and from drill duty without their LEO weapons.²¹⁸ Without their firearms, these LEOs are unable to properly respond to a crime in progress or other emergencies both on and off the installation.²¹⁹ These outdated firearms policies impose significant restrictions on qualified LEOs. It is time to fully empower LEOs to protect military installations from active shooters.²²⁰

²¹³ Criminal Investigation Detachment Command (CID) Firearms Memo, *supra* note 24, para. 3. In the same memorandum some modifications were made to firearms carry policies while CID agents are on approved leave. *Id.*

²¹⁴ *Id.*

²¹⁵ See *infra* Appendix B for an examination of firearms policies on the five largest Army bases in the United States.

²¹⁶ See U.S. ARMY RESERVE, <http://www.usar.army.mil/Commands.aspx> (last visited Dec. 16, 2015). There are a total of three Army Reserve Component (RC) Military Police (MP) Commands, eight RC MP Brigades, and five independent RC MP Battalions. *Id.* A number of these units operate on Active Duty Army installations. *Id.* Local and state civilian LEOs also serve in the RC in other than RC MP units. *Id.*

²¹⁷ See *infra* Appendix B.

²¹⁸ *Id.*

²¹⁹ *Id.* When installation regulations restrict a LEO from storing their service weapons in their vehicle they must leave their service weapons at home or attempt to attempt to store them in the unit arms room. *Id.* This course of action is frequently a significant challenge because storing a non-military issued firearm in a unit arms room is burdensome. See *infra* Appendix B. The commander of the unit must give approval, and unit arms room personnel must be available and willing to store and retrieve the weapon. *Id.*

²²⁰ See *infra* Part V.B. Army MP Officers, and retired officers, have not yet been issued Law Enforcement Officer Safety Act (LEOSA) credentials so they can carry concealed firearms under the act. Email from an MP Officer, to author (Nov. 17, 2014) (on file with author). The Air Force, however, has begun issuing LEOSA credentials to Security Forces so they can carry firearms nationwide under LEOSA. See Director, Security Forces, U.S. Air Force, Brigadier General Allen Jameson (Nov. 27, 2014), <https://www.facebook.com/video.php?v.=1033764979983148&fref=nf>.

VI. The Danger of Military Installations as Gun-Free Zones

*Are we at last brought to such humiliating and debasing degradation, that we cannot be trusted with arms for our defense? . . . [I]n whose hands can they be trusted with more propriety, or equal safety to us, as in our own hands?*²²¹

Military installations have become essentially “gun-free zones” (GFZs) which invite, rather than deter, active shooters.²²² The term “gun-free zone” was developed after Congress passed legislation in 1990 that prohibited the possession of a firearm within 1000 feet of a school.²²³ Since then, the term “gun-free zone” has been applied to any area where only LEOs are allowed to carry firearms.²²⁴ DoD installations basically fit this description because only LEOs and a few security personnel are allowed to carry firearms for self-defense.²²⁵ As Part II highlighted, military firearms policies prohibiting the carry of weapons did not stop MAJ Hasan, SPC Lopez, or Mr. Alexis from bringing a gun onto a military base and killing others. Policies that can be, and are, ignored by criminals deprive law abiding citizens of the ability to protect themselves are ineffective and must be revised.²²⁶

A. Gun-Free Zones (GFZ) Invite Attack

*With a single exception, every multiple-victim public shooting in the [United States] in which more than three people have been killed since at least 1950 has taken place where citizens are not allowed to carry their own firearms.*²²⁷

²²¹ Patrick Henry, *The American Revolution*, MADISON BRIGADE (last visited Oct. 29, 2014), http://www.madisonbrigade.com/p_henry.htm. Patrick Henry is regarded as one of the great orators of the American Revolution and is widely known for his famous speech, “Give me liberty, or give me death.” *Id.*

²²² See Glenn H. Reynolds, *Column: Gun Free Zones Provide False Sense of Security*, USA TODAY (Dec. 14, 2012), <http://www.usatoday.com/story/opinion/2012/12/14/connecticut-school-shooting-gun-control/1770345/>. See also *infra* Appendix A.

²²³ Crime Control Act of 1990, 101st Cong. (Nov. 29, 1990).

²²⁴ See Reynolds, *supra* note 222.

²²⁵ See DoDD 5210.56, *supra* note 12, at 2; AR 190-14, *supra* note 5, para. 2-2; AR 190-11, *supra* note 14, para. 1-10; See *infra* Annex A.

²²⁶ ILT Letter, *supra* note 1. See *supra* note 9, and accompanying text.

²²⁷ Lott, *supra* note 25. John Lott was a former chief economist for the United States Sentencing Commission. *Id.*

According to the FBI, all of the most deadly active shooting incidents in the United States have occurred in GFZs.²²⁸ Private research has confirmed the same finding: virtually all active shooter incidents occur in GFZs.²²⁹ Gun-free zones have been called a “magnet[] for mass shooters” because people in these areas are defenseless against an armed attack.²³⁰ Experts on firearms violence have warned that GFZs do not protect people, but instead identify the area as a target-rich environment for killers.²³¹ According to one expert,

Policies making areas “gun-free” provide a sense of safety to those who engage in magical thinking, but in practice, of course, killers aren’t stopped by gun-free zones. As always, it’s the honest people—the very ones you want to be armed—who tend to obey the law Gun-free zones are premised on a lie: that murderers will follow rules, and that people like my student [a concealed carry permit holder] are a greater danger to those around them than crazed killers. That’s an insult to honest people. Sometimes, it’s a deadly one.²³²

There is a growing body of evidence showing that some of the most deadly active shooters specifically planned their attacks where there was a higher probability that their victims would be unarmed, and where their attack would get the greatest amount of media coverage.²³³ If future active shooters use

²²⁸ Federal Bureau of Investigation Active Shooter Study, *supra* note 2, at 7. As of October 2015, the two most deadly active shooter attacks in America have occurred in schools: Sandy Hook Elementary School (twenty-seven killed and two wounded) and Virginia Polytechnic Institute (thirty-two killed and seventeen wounded). *Id.* The 2009 Fort Hood Shooting is the third most deadly attack in American history (thirteen killed and thirty-two wounded), followed by the 2012 Aurora, Colorado Movie Theater Shooting (twelve killed and fifty-eight wounded). *Id.*

²²⁹ See Lott, *supra* note 204; See also CRIME RESEARCH PREVENTION CENTER, THE MYTHS ABOUT MASS PUBLIC SHOOTINGS: ANALYSIS 10 (Oct. 9, 2014), <http://crimepreventionresearchcenter.org/wp-content/uploads/2014/10/CPRC-Mass-Shooting-Analysis-Bloomberg2.pdf>. A detailed study of active shootings since 2009 revealed that 92% of mass public shootings occurred inside a gun-free zone. *Id.*

²³⁰ Lott, *The Cruelty of Gun Free-Zones*, *supra* note 229.

²³¹ *Id.*

²³² Reynolds, *supra* note 222. Policymakers who support gun-free zones are similar to the “sheep” LTC (Ret.) Grossman described in his book *On Killing*. GROSSMAN, *supra* note 33, at 180. These policy makers failed to remember that “there are the wolves . . . and the wolves feed on the sheep without mercy The moment you forget that or pretend it is not so, you become a sheep. There is no safety in denial.” *Id.*

²³³ Lott, *supra* note 229. James Holmes, the Aurora, Colorado, Movie Theater shooter, for example, selected for attack the only theater in his geographical area posting signs that banned concealed weapons over theaters that were closer to his apartment or that had larger auditoriums. *Id.* Adam Lanza, who perpetrated the Sandy Hook Elementary school shooting that killed twenty children and six adults spent two years planning and

similar criteria in planning an attack, a military base or a recruiting office are an alluring target.²³⁴

While the active shooter attacks on military installations have been tragic, the DoD has been fortunate that each active shooting thus far has involved only one gunman.²³⁵ It is sobering to consider, for example, how many soldiers *could* have died if the six men who planned to attack Fort Dix and “kill as many soldiers as possible” had succeeded.²³⁶ Major Hasan, for example, killed thirteen and wounded thirty-two others in the span of just ten minutes.²³⁷ Had another shooter accompanied him, the casualty figures could have been much higher. When it comes to future attacks, DoD leaders need to prepare for the worst and implement programs and policies that prepare for attacks that may involve more than one gunman.

preparing for his attack. *Id.* Lanza went so far as to create a seven-by-four foot spreadsheet where he studied historical active shooter attacks and listed the weapons used in the attack, the number of people killed, and even how much media coverage each shooting received. *Id.* Police officers likened “his careful study to a doctoral dissertation.” *Id.* See also CRIME RESEARCH PREVENTION CENTER, *supra* note 229, at 10.²³⁴ See *infra* Appendix A (illustrating that media coverage of the three major active shootings listed was significant). Historically, schools have been the location of the most deadly active shooting incidents. See Lott, *supra* note 175. An active shooter incident in a DoD school on a military installation would likely generate intense media and political attention for a terrorism-motivated attacker. See Mushtaq Yusufzai, *Death ‘All around Me’: Victims Relive Pakistan School Massacre*, NBC NEWS (Dec. 16, 2014), <http://www.nbcnews.com/storyline/pakistan-school-massacre/death-all-around-me-victims-relive-pakistan-school-massacre-n269011>. The 2014 killing of 132 Pakistani children and ten teachers in a Peshawar Army school by Taliban militants is a chilling example of an attack generating intense media interest. During the attack, terrorists targeted the children of Pakistani military personnel after they were unable to defeat the Soldiers on the battlefield. *Id.* Pakistani officials have taken action in the aftermath of the attack to arm teachers and other school officials to deter future active shooter attacks. *Peshawar Massacre: Pakistan Replies With ‘Weaponizing’ Teaching*, BBC NEWS (Jan. 26, 2015), <http://www.bbc.com/news/world-asia-30947615>.

²³⁵ See *infra* Appendix A. The Pakistani school shooting (142 killed) and the Kenya Westgate Mall shooting (sixty-seven killed) are sobering examples of the dramatic increase in the number of casualties that can occur when more than one active shooter is involved. See Yusufzai, *supra* note 234, and accompanying text. See Russakoff, *supra* note 178, and accompanying text.

²³⁶ *Id.* An organized attack on a United States military installation, similar to the 2013 Westgate Mall shooting in Kenya which killed at least sixty-seven people, could result in potentially hundreds of casualties. See *NYPD Report: Just Four Al-Shabab Gunmen With AK-47s Staged Kenya Westgate Mall Attack*, CBS NEWS (Dec. 13, 2013), <http://www.cbsnews.com/news/nypd-4-al-shabab-gunmen-ak-47s-kenya-westgate-mall-attack/>.

²³⁷ Keyes, *supra* note 47.

B. Prohibiting All Privately Owned Weapons for Self-Defense

Military firearms policies restrict servicemembers from carrying both Government Owned Weapons (GOWs) and Privately Owned Weapons (POWs) for self-defense on military installations.²³⁸ These restrictions apply regardless of whether a servicemember has a state-issued concealed weapons permit (CWP) or not.²³⁹ Access to POWs on military installations is strictly controlled by punitive regulations governing POW use, storage, and transportation.²⁴⁰ Servicemembers and family members living in on-base housing are restricted from using a POW for self-defense because POWs must be stored in a separate locked container from the ammunition, and installation regulations do not allow discharging a firearm for self-defense purposes.²⁴¹

In 2008, the United States Supreme Court examined a case involving a firearm storage requirement imposed on residents of the District of Columbia mandating all firearms be kept in an “inoperable” condition.²⁴² The Court ruled that the legislation was unconstitutional under the Second Amendment because it prevented residents from having ready access to a firearm for self-defense.²⁴³

²³⁸ A combination of federal statutory authority, DoDDs, ARs, and local installation regulations prohibit servicemembers from carrying POWs on military installations. *See generally* AR 190-14, *supra* note 9. Federal statute prohibits the “knowing[] possess[ion] of firearms in federal facilities.” 18 U.S.C. § 930 (2014). Department of Defense Directive 5210.56 directs that access to firearms will be “limited and controlled.” DoDD 5210.56, *supra* note 5, at 2.

²³⁹ AR 190-11, *supra* note 9, para. 1-10. Army installation commanders have enacted general regulations that prohibit the carry of POWs for self-defense. *See infra* Appendix B. One example is Fort Campbell Regulation 190-1 which states, “Civilian firearm Conceal Carry Permits (CCP) are not authorized/approved on the Fort Campbell Installation.” ! U.S. DEP’T. OF ARMY, FT. CAMPBELL REG. 190-1, FORT CAMPBELL’S PHYSICAL SECURITY PROGRAM para. 2.9.1 (1 Jul. 2008) [hereinafter CAM 190-1].

²⁴⁰ *See infra* Appendix B for an example of POW Regulations for the five largest Army bases.

²⁴¹ *Id.*

²⁴² *United States v. Heller*, 554 U.S. 570, 591 (2008).

²⁴³ *Id.* The Court examined the question of whether the District of Columbia could prohibit residents from obtaining a permit to possess a handgun in their home for self-defense purposes and requiring that the firearm be kept inoperable. *Id.* at 591. The Court ruled that the Second Amendment protects “the individual right to possess and carry weapons in case of confrontation.” *Id.* The Court also held that “[t]he District of Columbia’s requirement . . . that firearms in the home be rendered and kept inoperable at all times makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional under the Second Amendment.” *Id.* at 630. The author was unable to locate any cases where military POW regulations have been challenged under *Heller*. The language in *Heller* suggests that a viable challenge may exist when regulations having the effect of law require that a handgun intended for self-defense purposes be stored in an inoperable condition. *Id.*

Military firearms storage policies, while intending to make military installations safer, restrict responsible gun owners living on the installation from using a firearm for self-defense or defense of their family.²⁴⁴ These restrictions are rather alarming, considering the fact that “some of America’s military towns have crime levels that place them among the country’s most dangerous neighborhoods.”²⁴⁵ For example, Schofield Barracks, Hawaii, had a property crime rate in 2009 “more than twenty times that of the national average” and Fayetteville, North Carolina, the area around Fort Bragg, has the fifth highest property crime rate in the nation, the sixth highest crime rate in burglaries, and the eight highest crime rate in larcenies.²⁴⁶

C. Legislation Allowing the Carry of POWs on Military Installations

In an effort to protect servicemembers from future active shooter attacks, in the days following the 2013 Washington Navy Yard shooting and the recent Chattanooga, Tennessee, shooting, Congressional representatives have introduced eleven bills on the topic of servicemember access to firearms for self-defense.²⁴⁷ To explore the potential impact of legislation on the military, the bill introduced by Texas Congressman Steve Stockman is highlighted because it would rescind all “law[s], rule[s] [and] regulations . . . that prohibit military personnel trained in firearms from carrying officially issued or personally owned firearms on military bases.”²⁴⁸ This revolutionary bill, or a similar one, if passed, would clear the way for any servicemember “trained in firearms” to carry a handgun for self-defense on a military installation.²⁴⁹

²⁴⁴ See *id.* at 630. Safely storing firearms is an essential component of responsible gun ownership. See *NRA Gun Safety Rules*, NRA, <http://training.nra.org/nra-gun-safety-rules.aspx> (last visited Oct. 23, 2015). While storing firearms safely is essential, overly restricting access to firearms when they are needed for self-defense is unconstitutional. See *Heller*, 554 U.S. at 630. Military firearms policies, rather than requiring that firearms and ammunition be stored in separate locked containers, could be revised to require that firearms and ammunition be stored in a single locked container. This would allow the owner to keep the firearm secure but at the same time have ammunition readily available for self-defense purposes.

²⁴⁵ Bruce Watson, *High Crimes, Military Towns are Among the Country’s Most Dangerous*, DAILY FINANCE (Nov. 16, 2009), <http://www.dailyfinance.com/2009/11/16/most-dangerous-military-towns/>.

²⁴⁶ *Id.* See also Greg Barnes, *Fayetteville Crime Rate Ranks Near Worst in US*, ABC NEWS (Jun. 24, 2013), <http://abc11.com/archive/9150922/>.

²⁴⁷ See H.R. 3199, *supra* note 20 and accompanying text. Each of the ten currently pending bills will require Congressional action over the next few months which will continue to highlight the issue of servicemember access to firearms.

²⁴⁸ H.R. 3199, *supra* note 20.

²⁴⁹ *Id.* Servicemembers are currently prohibited from carrying POWs for self-defense on military installations. See AR 190-11, *supra* note 9, para. 1-10; See *infra*, Appendix B. The language in the legislation does not address whether servicemembers could carry

While passing House Resolution 3199 offers significant benefits that may protect servicemembers from active shooters, the legislation also has the potential to backfire if firearms are placed into the wrong hands. Consider, for example, the fact that the majority of soldiers (servicemembers in the other branches of the military are likely similarly situated) in the Army do not receive any training on the use of a handgun.²⁵⁰ Second, a large number of junior soldiers in the Army lack the maturity to responsibly carry a handgun.²⁵¹ While H.R. 3199 takes a step in the right direction by arming more servicemembers to combat the active shooter threat, putting firearms in the hands of immature servicemembers could have the undesired consequence of increasing firearms violence on military installations.²⁵² A much more prudent course of action is to carefully select who is authorized to carry a firearm by implementing an Armed Security Officer Program (ASOP) as described in Part IX. Empowering commanders to oversee the selection and training of a small number of servicemembers or DoD civilian employees in their unit to carry firearms for unit protection is a more cautious and controllable solution. Properly implemented, an ASOP would provide commanders with an armed asset to combat the active shooter threat, yet carefully control who has access to firearms.²⁵³

firearms openly or in a concealed manner. H.R. 3199, *supra* note 20. Currently, Army Regulation allows only LEOs or personnel performing security duties to carry concealed firearms “if carrying firearms openly would compromise the mission.” AR 190-14, *supra* note 9, para. 2-8.

²⁵⁰ See U.S. DEP’T OF ARMY STP, 21-1- SMCT, SOLDIER’S MANUAL OF COMMON TASKS para. 3-1 (Apr. 14, 2014) [hereinafter SMCT]. Paragraph 3-1 outlines the task to engage a hostile threat with the M16/M4 rifle. *Id.* Soldiers receive this training during Initial Entry Training (IET) and annual weapons qualification. *Id.* Normally only officers, MPs, and Special Forces personnel receive any training on the use of a handgun. *Discovering the Weapons Used in Basic*, MILITARY.COM (last visited Jan. 9, 2015), <http://www.military.com/join-armed-forces/discovering-the-weapons-used-in-basic.html>. It would be inappropriate, therefore, to infer that because servicemembers have some training in firearms they are competent to carry and use a handgun.

²⁵¹ See Martha Raddatz & Kirit Radia, *U.S. Army Stressed after Nearly a Decade of War*, ABC NEWS (Jul. 29, 2010), <http://abcnews.go.com/Politics/army-stressed-decade-war/story?id=11277253>. Study has shown that junior soldiers are prone to significantly higher rates of suicide and misconduct than more mature soldiers. *Id.*

²⁵² *Id.* The heart of the issue with crafting successful firearms policies is keeping guns out of the hands of untrained and unreliable people. See *infra* Part IX.

²⁵³ See *infra* Part IX. An ASOP allows DoD leaders to prudently manage each of the challenges discussed above in arming servicemembers, yet ensure that firearms are not put into the wrong hands. *Id.*

VII. Updating Firearms Policies to Address the Modern Threat

While the number of active shooter attacks on military installations has increased in recent years, Army and DoD firearms policies have not been updated for more than twenty years.²⁵⁴ Department of Defense Directive 5210.56, the governing DoD firearms directive, was issued in 1992 and remains unchanged.²⁵⁵ The Army implemented the 1992 directive as AR 190-14 in 1993.²⁵⁶ It has also remained unchanged despite increased active shooter attacks. As the attacks discussed in Part II demonstrate, DoD firearms policies are not protecting the force from active shooters. The time has come for DoD leaders to update firearms policies to cope with the modern threat.

A. Avenues to Update Military Firearms Policies

Three legal avenues are available to authorize servicemembers or DoD civilian employees to carry firearms for unit and self-defense. First, Congress could enact legislation requiring the DoD to let personnel carry firearms for self-defense.²⁵⁷ Second, the SecDef could revise DoDDs to authorize military personnel to carry firearms for unit and self-defense.²⁵⁸ Or third, military commanders could begin to revise or implement service regulations in a manner where servicemembers have greater access to firearms for force protection.

As an illustration of the third strategy, AR 190-14 allows Army commanders to arm soldiers in their command for “security duties” when “there is a reasonable expectation that life or Department of the Army assets will be jeopardized if firearms are not carried.”²⁵⁹ In essence, if a commander determines that the personnel in his unit face a greater threat from an active shooter attack if none of his Soldiers is armed, then he could authorize soldiers

²⁵⁴ See DoDD 5210.56, *supra* note 12, at 1; See AR 190-14, *supra* note 9, title page. See also Oliver Darcy, *This is Why Most Military Personnel Aren't Armed on Military Bases—And It's Not Clinton's Fault*, THE BLAZE (Sept. 13, 2013), <http://www.theblaze.com/stories/2013/09/17/this-is-why-most-military-personnel-are-disarmed-on-military-bases-and-its-not-clintons-fault/>. Army Regulation 190-14 was published in 1993. See AR 190-14 *supra* note 14.

²⁵⁵ See DoDD 5210.56, *supra* note 5, at 3 (25 Feb. 1992). This version indicated that DoD policy was to “limit and control the carrying of firearms by DoD military and civilian personnel.” *Id.* In 2001, the 1992 version of the directive was cancelled and reissued without changing the policy to “limit and control” access to firearms. *Id.* at 2.

²⁵⁶ See AR 190-14, *supra* note 9, title page. See Darcy, *supra* note 252.

²⁵⁷ See H.R. 3199, *supra* note 20.

²⁵⁸ 10 U.S.C. § 113 (2014). The Secretary of Defense, by statute, has “authority, direction and control over the Department of Defense.” *Id.*

²⁵⁹ AR 190-14, *supra* note 9, para. 1-5.

in his command to carry firearms for unit defense under AR 190–14.²⁶⁰ Arming soldiers under this authority is an available option because it is a command driven initiative and no Congressional or Secretary of Defense authorization is required.²⁶¹

Based on the growing active shooter threat discussed in Part IV, combined with the fact that ninety-two people have been shot by active shooters on military installations in the last six years, there is a strong argument that the requirements of AR 190–14 have been satisfied and Army commanders could arm unit personnel to perform security duties.

B. The Challenge of Arming Soldiers for Self-Defense

Continuing the example discussed above, arming Soldiers to perform unit security duties is relatively straightforward under AR 190–14. Provided a commander believes that there is a reasonable expectation that unit personnel or assets will be jeopardized if personnel are not armed, Soldiers can be authorized to carry weapons for security duties.²⁶² When it comes to arming Soldiers for self-defense or “personal protection,” however, AR 190–14 imposes an exacting set of requirements.²⁶³ Army Regulation 190–14 states,

[Department of the Army] military and civilian personnel may be authorized to carry firearms for personal protection when the responsible intelligence center identifies a credible and specific threat against DA personnel in that regional area. Firearms will not be issued indiscriminately for that purpose. Before individuals are authorized to carry a firearm for personal protection under this regulation, the authorizing official must evaluate—

- (1) The probability of the threat in a particular location.
- (2) The adequacy of support by DA or DOD protective personnel.
- (3) The adequacy of protection by U.S. or host nation authorities.

²⁶⁰ Individual installation firearms regulations may also impose additional regulatory requirements before servicemembers could be armed for security duties or self-defense.

²⁶¹ Absent explicit authorization from a senior commander, many commanders would likely be very risk averse in approving the carry of firearms for unit defense even if they concluded that unit personnel would be placed in jeopardy if no personnel were armed. This reluctance to arm servicemembers is the byproduct of a culture that has insisted that access to firearms be “limited and controlled.” See DoDD 5210.56, *supra* note 14, at 2.

²⁶² AR 190-14, *supra* note 9, para. 1-5.

²⁶³ *Id.* para. 2-1, 2-2.

(4) The effectiveness of other means to avoid personal attacks.²⁶⁴

Army Regulation 190–14 created this four–part test by apparently borrowing the language of DoDD 5210.56, para. 1(b)(2)(e).²⁶⁵ The borrowed language, however, concerns arming DoD personnel stationed overseas, not in the United States. The drafters of AR 190–14 imposed a more stringent requirement for arming Soldiers in the United States for self–defense than what the DoD requires. Not only is this four–part analysis very difficult to satisfy, but it requires commanders to consider relying on non–DoD personnel (U.S. or host nation authorities) for security before they can arm their own soldiers for self–defense.²⁶⁶

Requiring commanders and servicemembers to rely on outside organizations for security could be considered a “fatally misguided restriction” because ensuring unit security is an essential element of command responsibility.²⁶⁷ Firearms policies that restrict a commander from allowing a servicemember to carry a firearm for unit or self–defense appear to compromise a commander’s authority “[t]o promote and safeguard the morale, the physical well–being, and the general welfare of the officers and enlisted persons under their command or charge.”²⁶⁸

This sense of vulnerability is likely the reason why Lieutenant Commander White, the Officer in Charge of the Chattanooga, Tennessee, Reserve Center violated DoD policy and brought a POW to work so he could defend the personnel under his command from an attack.²⁶⁹ It is also poignant that two

²⁶⁴ *Id.*

²⁶⁵ *See* DoDD 5210.56, *supra* note 12, at 2.

²⁶⁶ *See* AR 190-14, *supra* note 9, para. 2-2. Finding a responsible intelligence center that will identify a “credible and specific threat” in a regional area is very difficult, if not impossible. *See* Email from a judge advocate to author (Dec. 10, 2014) (on file with the author). One illustration of how difficult it is for a soldier to obtain approval to carry a firearm for self–defense occurred in 2013 on a major Army installation. The soldier was a military judge. A high publicity court–martial was underway and the military judge overseeing the trial received several death threats. *Id.* The threats caused the judge enough concern that the judge requested authorization to carry a firearm for self–defense on the military installation. The request was essentially denied when reviewing officials asked the judge to provide additional justification that included submitting to a criminal background check and a credit score examination before they would process the judge’s request. *Id.*

²⁶⁷ *See* 1LT Cook Letter, *supra* note 1; AR 600-20, *supra* note 125, para. 1-5.

²⁶⁸ *Id.*

²⁶⁹ *See* Larter, *supra* note 157. The fact that LCDR White and another servicemember in the office were willing to put their military careers at risk by possessing POWs in

state governors have ordered certain National Guard personnel under their command to carry firearms for self-defense in spite of DoD policy to the contrary.²⁷⁰ Preserving the authority of commanders to safeguard their servicemembers is a vital reason why an Armed Security Officer Program (ASOP) is needed to empower commanders and safeguard servicemembers.

Based on the growing threat from active shooters, AR 190–14 should be updated to give commanders greater discretion to arm unit personnel to perform security duties. Due to the inherent risk many commanders face in taking action without explicit authorization, AR 190–14 should be updated to recognize that the threat from active shooters is great enough that a commander can authorize unit personnel to carry firearms for unit defense. Army Regulation 190–14 should also be updated to make it easier for commanders to arm specially trained Soldiers in their command for self-defense when warranted by the circumstances.²⁷¹

C. Risk Management and Overcoming Bias in Firearms Policy Decisions

*The medical and public health case against the right to self-defense with firearms . . . is primarily based on fear, buttressed by repetition of unfounded assertions or biased statistics.*²⁷²

violation of DoD policy reveals the vulnerability servicemembers feel as a result of current DoD firearms policies.

²⁷⁰ See Star, *supra* note 18. The governors of Texas and Oklahoma have spoken plainly on the importance of arming National Guard personnel for self-defense. *Id.* National Guard personnel in a Title 32 status are considered part of the militia of the United States and fall under the dual control of federal and state authority. 10 U.S.C. § 311 (2014). State governors exercise primary command authority over National Guard personnel. *Id.*

²⁷¹ See U.S. DEP'T OF DEF., CJCSI 3121.01B, STANDING RULES OF ENGAGEMENT/STANDING RULES FOR THE USE OF FORCE para. 3.a, (Jun. 13, 2005) [hereinafter CJCSI]. The governing policy concerning individual self-defense in the United States is contained in the Standing Rules for the Use of Force (SRUF) which direct, "Unless otherwise directed by a unit commander as detailed below, military members may exercise individual self-defense in response to a hostile act or demonstrated hostile intent." *Id.* While the SRUF may allow for self-defense, the right is virtually meaningless without the means to exercise the right (access to a firearm). See Timothy Hsiao, *Bearing Arms in Self Defense: A Natural Law Perspective*, JOURNAL ON FIREARMS AND PUBLIC POLICY 114 (Fall 2013). When it comes to the right of self-defense on military installations, self-defense appears to have become a "mere ornament with no real value" because servicemembers are completely restricted from carrying firearms for self-defense. *Id.*

²⁷² Deakins, *supra* note 28, at 60.

Arming servicemembers for unit or self-defense will require convincing military leaders that responsible servicemembers can carry firearms without injuring innocent people or engaging in conduct that discredits the military.²⁷³ Leaders may also have concerns about firearm storage, compliance with local laws, and the cost of training and arming personnel. Fortunately, established firearms storage policies are available to use as a resource, along with readily available training ranges and ammunition.²⁷⁴ Storing firearms in a manner that is secure, yet readily available will require storing weapons outside of traditional arms rooms. Arms rooms are normally labor-intensive when issuing and receiving firearms from personnel, making them ineffective for this purpose. This is a novel idea for non-LEO personnel stationed in the United States; however, while deployed, servicemembers commonly implement alternative firearms storage protocols.²⁷⁵ Army Criminal Investigation Detachment Command firearms policies also provide useful guidance for properly securing weapons while still having them readily available.²⁷⁶

The methods to ensure that servicemembers selected as Armed Security Officers will safely handle firearms should be three fold: 1) proper screening of personnel; 2) proper training; and 3) responsible leadership.²⁷⁷ Military Police and CID special agents carry firearms safely every day because these principles guide all their operations.²⁷⁸ If these same methods are employed within an Armed Security Officers Program, the residual risk of arming servicemembers for unit security duty and self-defense will be reduced to an acceptable level.²⁷⁹

Before real progress can be made to arm servicemembers for unit or self-defense, military leaders need to overcome bias and fear that firearms will hurt

²⁷³ 2014 Senate Committee Meeting, *supra* note 16, at 44. Senator Graham said it this way: “I think our military members are very responsible with firearms and we need to really look at having more capacity, not less, to deal with insider threats.” *Id.*

²⁷⁴ See CJTF-1 Gen. Order No. 1, *supra* note 185, para. 5.

²⁷⁵ See *Id.* Soldiers deployed to Afghanistan in the footprint of CJTF-1 in 2011, for example, could secure their weapons “behind two locked doors (e.g. a locked wall locker inside a locked room).” *Id.*

²⁷⁶ U.S. DEP’T OF ARMY, CID REG. 195-1, U.S. ARMY CRIMINAL INVESTIGATION COMMAND REGULATION OPERATIONAL PROCEDURES para. 3.13 (4 Mar. 2014) [hereinafter CIDR 195-1]. For example, Agents can, under certain circumstances, secure firearms in their office or their vehicle when necessary. *Id.*

²⁷⁷ See AR 190-14, *supra* note 9, para. 1-4 and 2-5.

²⁷⁸ *Id.*

²⁷⁹ Incorporating these principles in the Risk Assessment of an ASOP as discussed in Part IX can bring the residual risk to an acceptable level. See U.S. DEP’T OF ARMY, APD 5-19 C1, RISK MANAGEMENT App. A (Sept. 8, 2014), http://armypubs.army.mil/doctrine/dr_pubs/dr_a/pdf/atp5_19.pdf. *Infra* Part VIII reviews in detail the ASOP proposal and the many benefits military units will derive from having ASOs available.

more people than they help.²⁸⁰ When leaders step back and make firearm policy decisions in light of sound research data and sound force protection principles, instead of fear and bias, the balance weighs heavily in favor of arming responsible servicemembers to help protect military units from active shooters.²⁸¹

VIII. Active Shooter Training for All DoD Personnel

From the moment military members enter the service, they are taught that training saves lives.²⁸² Military members train on a multitude of different tasks deemed essential by leaders, but when it comes to the topic of what to do in an active shooter situation, there is no standard military training.²⁸³ Everyone knows what to do when a fire alarm goes off, but when it comes to an active shooter situation, most people do not know what to do.²⁸⁴ A few Army installations have tried to fill this void by conducting annual active shooter training, but installation leaders have normally only included LEOs and other first responders in the training.²⁸⁵ In the rare instances of non-LEO Soldiers receiving active shooter training, it is normally comprised of only a briefing, rather than an exercise like a fire drill, or a battle drill where an active response

²⁸⁰ See Lott *supra* note 25; See generally Lott, *supra* notes 175, 229, and accompanying text, and *supra* Part VI to examine the significant public health and statistical research supporting the carry of firearms by law-abiding citizens.

²⁸¹ See Deakins, *supra* note 28, at 58. Fearmongering is illogically inflating fears and using bias to drive policy. *Id.* Gun-control advocates frequently promote the fear that if people are given access to firearms, crime rates will skyrocket and society will plunge into chaos. See Larry Bell, *Disarming the Myths Promoted by the Gun Control Lobby*, FORBES (Feb. 21, 2012), <http://www.forbes.com/sites/larrybell/2012/02/21/disarming-the-myths-promoted-by-the-gun-control-lobby/>. The reality is that when responsible people carry firearms, crime rates fall and people are empowered to defend themselves against attack. *Id.* Sadly, these facts are almost never reported because mainstream media sources have a distinct bias against firearms. JOHN LOTT, *THE BIAS AGAINST GUNS: WHY ALMOST EVERYTHING YOU'VE HEARD ABOUT GUN CONTROL IS WRONG* 23 (2003).

²⁸² See FM 6-22, *supra* note 10, para. 4-50. "The Army wins because it fights hard and with purpose. It fights hard because it trains hard. Tough training is the path to winning at the lowest cost in human sacrifice." *Id.*

²⁸³ See Schogol, *supra* note 29. Army *OneSource* has a brochure on Active Shootings and what steps a Soldier should take when confronted by an active shooter. ARMY ONESOURCE ANTITERRORISM ACTIVE SHOOTER COMMUNITY RESPONSE, <http://www.myarmyonesource.com/cmsresources/Army%20OneSource/Media/PDFs/Family%20Programs%20and%20Services/iWatch%20Program/ActiveShooterBrochureHQ.pdf> (last visited Oct. 23, 2015).

²⁸⁴ *Id.*

²⁸⁵ Wallace McBride, *Fort Jackson Offers Active Shooter Response Training*, ARMY.MIL (Apr. 11, 2014), http://www.army.mil/article/123906/Fort_Jackson_offers_active_shooter_response_training/. See Tan, *supra* note 15.

is rehearsed.²⁸⁶ In the aftermath of the 2014 Fort Hood shooting, one soldier commented about the active shooter training his unit received by saying, “It’s ridiculous All they do is put a Band-Aid on it, [and] check the block.”²⁸⁷

According to one security expert, the problem with military active shooter training is that soldiers are not trained to “leave the area immediately if they hear gunshots rather than waiting to investigate.”²⁸⁸ Evacuating the area is recognized as the first step that an unarmed person should take to survive an active shooter situation.²⁸⁹ Should leaving the area not be possible, the second step experts recommend is to “hide out” from the shooter.²⁹⁰ If hiding out is not possible, the final option is to try to take action to stop the shooter.²⁹¹ The three men who attempted to stop MAJ Hasan, and were shot in the process are a potent reminder that extreme danger exists when unarmed personnel try to stop an active shooter.²⁹² When one cannot escape or hide, however, fighting back is the last option for survival.

Regardless of whether military firearms policies change to allow non-LEO personnel to carry firearms to respond to active shooters, everyone in the DoD should receive practical scenario-based training similar to fire alarm drills in how to react to an active shooter. Until this training becomes a reality, unnecessary casualties will occur in every active shooting.²⁹³

²⁸⁶ See Tan, *supra* note 15.

²⁸⁷ *Id.*

²⁸⁸ Schogol, *supra* note 29. Chris Grollneck, a security expert with Countermeasure Consulting Group reports that too often, instead of running away, people freeze when they hear gunfire. *Id.*

²⁸⁹ See *id.*; DHS Active Shooter Response, *supra* note 123, at 3.

²⁹⁰ DHS Active Shooter Response, *supra* note 123, at 3.

²⁹¹ *Id.* at 3. The author has been unable to locate any U.S. government publication where the step of “take action” includes a person using a firearm to engage the active shooter. This is the step that immediately comes to mind for Soldiers, but is prevented by military firearms policies. 1LT Cook Letter, *supra* note 1.

²⁹² See generally Zorya, *supra* note 51, and *Wounded Fort Hood Soldier*, *supra* note 55.

²⁹³ See FM 6-22, *supra* note 10, para. 6-43. Inasmuch as “[p]reparing for the realities of combat is a direct leader’s most important duty,” failing to prepare servicemembers to respond to deadly threats, like active shooters, a domestic form of combat, is failing to provide critical leadership. *Id.*

IX. Implementing an Armed Security Officer Program (ASOP)

*The only thing that stops a bad guy with a gun is a good guy with a gun. Would you rather have your 911 call bring a good guy with a gun from a mile away . . . or a minute away?*²⁹⁴

The Armed Security Officer Program is a suggested program that DoD or Army leaders could utilize to create organized, immediate response capability to combat active shooters. The ASOP would be composed of specially selected and screened personnel that are trained to respond to active shooters. Much like any additional duty to which servicemembers are frequently assigned, a commander would screen unit personnel and assign a predetermined number of servicemembers or DA civilians to serve as Armed Security Officers (ASOs).²⁹⁵

Commanders would use background investigations, criminal records screening, and psychological evaluations to ensure that only mature and responsible servicemembers are selected as ASOs. After screening, ASOs would receive training from experts on active shootings and LEOs about how to respond to an active shooter and other threats to unit personnel. Armed Security Officers would then be armed and perform their normally assigned duties, but have the powerful advantage of being equipped to rapidly respond to an active shooter event or other threats to unit personnel.²⁹⁶

Armed Security Officers would provide commanders two important benefits to help mitigate the active shooter threat. First, they would dramatically cut the response time from when an active shooter incident begins, to when a responder with a gun arrives on the scene to engage the shooter.²⁹⁷ Second, they would provide a powerful deterrent to potential active shooters and other criminals

²⁹⁴ Lapierre, *supra* note 158.

²⁹⁵ See *supra* Part IX. One of the significant advantages of the ASOP is that the program fits within the regulatory framework of DoDD 5210.56 and AR 190-14 in recognizing that Soldiers performing security duties can be armed. AR 190-14 *supra* note 9.

²⁹⁶ See *supra* Part II. As studies of the 2009 and 2014 Fort Hood shootings and the 2013 Navy Yard shooting indicate, there were opportunities for servicemembers, had they been armed, to intervene and likely end the shootings much earlier than the LEO response. *Id.* When it comes to active shootings, there is simply no substitute for having trained and armed responders on scene as quickly as possible.

²⁹⁷ See *infra* Appendix A; see also Schogol, *supra* note 29. Department of Defense LEOs responded to the 2009 and 2014 Fort Hood shootings faster (ten minutes and eight minutes, respectively) than the average national response time for active shootings (fourteen minutes), but the shooter still had enough time to kill or wound a large number of people. See *infra* Appendix A; Schogol, *supra* note 26.

because overwhelming evidence shows that when people in a given area are known to have firearms, would-be attackers are far less likely to attack them.²⁹⁸

One important consideration impacting the visibility of ASOs is whether they would carry firearms in an open carry or a concealed carry fashion.²⁹⁹ Servicemembers carrying firearms in an open carry fashion would carry their weapon similar to a uniformed police officer, in a holster on their belt. Servicemembers carrying their weapon in a concealed carry fashion would carry their weapon in a holster underneath their clothing, similar to how CID special agents carry their weapons. Each type of carry configuration involves different policy considerations.

The armed Federal Flight Deck Officer (FFDO) program provides a valuable template for how a military ASOP could work.³⁰⁰ The FFDO program was implemented after the September 11, 2001 attacks, to provide additional protection against aircraft being hijacked.³⁰¹ The FFDO program allows flight crew members to volunteer and be carefully screened, trained, and armed to

²⁹⁸ See Lott, *supra* note 175, at 50. Lott conducted a massive study of the FBI's yearly crime data for all 3054 U.S. counties over eighteen years (1977–1992) and found that violent crime rates dramatically fall when law abiding citizens are allowed to carry concealed weapons. *Id.* Lott also found “[w]ith a single exception, every multiple-victim public shooting in the United States in which more than three people have been killed since at least 1950 has taken place where citizens are not allowed to carry their own firearms.” Lott, *supra* note 25. Several researchers have analyzed Lott’s findings and confirmed the premise that the carry of concealed weapons results in lower violent crime rates. Florenz Plassmann & John Whitley, *Confirming More Guns, Less Crime*, 55 STAN. L. REV. 4, 1313 (2003). It is also very significant that since 1991, twenty-four states have recognized the deterrent value Concealed Weapons Permit (CWP) holders bring to the table and have passed “shall-issue” legislation to allow law abiding citizens to carry concealed weapons. *Right to Carry 2012*, NRA ILA (Feb. 28, 2012), <https://www.nra.org/articles/20120228/right-to-carry-2012>.

²⁹⁹ See generally AR 190–14, *supra* note 9, para. 2-8. According to the regulation, “[m]ilitary or civilian personnel may carry concealed firearms while performing law enforcement or security duties if carrying firearms openly would not compromise the mission.” *Id.* It is also noteworthy that the Army uniform regulation does not prohibit the carry of firearms while in uniform in an open or a concealed carry fashion. U.S. DEP’T OF ARMY, REG. 670–1, WEAR AND APPEARANCE OF ARMY UNIFORMS AND INSIGNIA (Sept. 15, 2014) [hereinafter AR 670–1]. Installation firearm regulations may contain restrictions on the carry of Government Owned Weapons (GOWs), depending on the installation. See *infra* Appendix B. The carry of POWs is restricted by both Army regulations and installation regulations. AR 190–14, *supra* note 9, para. 2-6; Appendix B.

³⁰⁰ *Federal Flight Deck Officer*, TRANSP. SECURITY ADMIN. (Jan. 2, 2015), <http://www.tsa.gov/about-tsa/federal-flight-deck-officers>.

³⁰¹ *Id.*

carry a firearm in the cockpit to protect the crew of the aircraft from attack.³⁰² FFDO applicants are screened by the Transportation Safety Administration (TSA) and receive training at the Federal Law Enforcement Training Center (FLTC) in Glynco, Georgia.³⁰³ Since 2003, thousands of FFDOs have been trained and each month, Federal Flight Deck Officers (FFDO) provide protection for over 100,000 domestic flights at a cost of only 2.5% of the cost of the Federal Air Marshall Service (FAMS).³⁰⁴ The TSA acknowledges that the FFDO program provides a critical “counterterrorism” layer of security to the public.³⁰⁵

A military ASOP could shadow the FFDO program in utilizing personnel that are organic to the force structure. Similar to the FFDO, the cost of an ASOP would be a fraction of the cost of dramatically increasing the number of LEOs within the military.³⁰⁶ Personnel serving as ASOs would have unique advantages over LEOs in responding to active shooter incidents because they would be located in the building of the incident, and know the building layout. Large buildings, like Building 197 where the Washington Navy Yard shooting occurred, present a complex challenge for responding LEOs who are unfamiliar with the building.³⁰⁷ The size, layout, and number of employees in large buildings can make the LEOs response very lengthy or cumbersome, even if there are a large numbers of responding LEOs.³⁰⁸ Armed Security Officers organic to a unit would solve this problem because they would be located within the building and have defined areas they are responsible for protecting.

³⁰² *Id.*

³⁰³ *Fact Sheet on the Federal Flight Deck Officer Program: A Model of Effectiveness and Efficiency in a Government/Industry Partnership*, ALPA.ORG. (Apr. 2013), http://www.alpa.org/portals/alpa/deptpages/gov.taffairs/issues/FactsheetFFDO_4-2013.pdf [hereinafter *Fact Sheet FFDO Program*].

³⁰⁴ *Id.* The Federal Flight Deck Officer (FFDO) budget has remained static at twenty-five million dollars compared to the Federal Air Marshall Service (FAMS) cost of one billion dollars annually. *Id.* The overall cost to have an FFDO on board each flight is only seventeen dollars compared to \$3000 for a FAMS officer.

³⁰⁵ *Layers of Security*, TRAN. SEC’Y ADMIN. (Jul. 23, 2014), <http://www.tsa.gov/about-tsa/layers-security>.

³⁰⁶ *Fact Sheet FFDO Program*, *supra* note 303. Significantly increasing the number of military LEOs may be able to decrease LEO response times to active shootings, but the cost would be much greater than implementing an ASOP. *Id.*

³⁰⁷ Navy Yard AAR, *supra* note 4, at 16. Gaining access to Building 197 where the Washington Navy Yard shooting occurred was a challenge for several LEOs who responded to the shooting. *Id.*

³⁰⁸ *Id.* at 16. During the Washington Navy Yard shooting, for example, it took LEOs sixty-nine minutes to find and shoot the attacker despite 117 officers entering the building to look for the shooter. *Id.*

In addition to knowing the building layout, ASOs will be familiar with unit personnel. Armed Security Officers will be in a position to keep an eye on unit personnel who may be showing signs of stress or troubling behavior.³⁰⁹ Consider, for example, if ASOs had been present in the Battalion Headquarters building Specialist Lopez attacked. After Lopez became irate and stormed out of the building, unit personnel could have asked for an ASO to respond as a preventive measure. In the event that Lopez returned and attacked unit personnel, an armed responder would have been immediately available. On a similar note, had ASOs been located in the Soldier Readiness Clinic MAJ Hasan attacked, or Building 197 where Mr. Alexis attacked, many lives could have been spared. As previously discussed, if Lieutenant Commander White or other personnel in the Chattanooga, Tennessee, Reserve Center been formally trained and had rehearsed how to react to an active shooter attack, they may have been able to stop Mr. Abdulazeez before he killed five Marines.³¹⁰

It is noteworthy that of the six active shooter incidents that have occurred on military installations since 2009, five were perpetrated by personnel with a history of mental health treatment.³¹¹ Commanders have, by function of being in command, access to medical information relating to a servicemember's fitness for duty.³¹² Having access to this important information, commanders are in a position to locate ASOs to be responsive to potential threats from servicemembers receiving mental health counseling that may be showing signs of stress or instability. To summarize, preparing servicemembers to survive hostile threats should be a military leader's highest priority.³¹³ The presence of

³⁰⁹ See Fernandez, *supra* note 98.

³¹⁰ See *Honor our Servicemembers who Used Their Personal Firearms to Fight Back Against the Terrorist Attacker in Chattanooga*, PETITIONS WHITE HOUSE (Jul. 29, 2015), www.petitions.whitehouse.gov. Following the shooting at Chattanooga, a petition was filed with the White House to "honor our brave men by presenting medals for bravery to LCDR White and all of the servicemembers, including the fallen, who saved lives by returning fire." *Id.* The petition received 25,713 signatures but fell short of the 100,000 needed to be officially reviewed by the White House. *Id.*

³¹¹ See *infra* Appendix A.

³¹² See DEP'T OF DEF. REGULATION 6025.18-R, DOD HEALTH INFORMATION PRIVACY REGULATION para. C7.11.1.3.1 (Jan.24, 2013). An exception exists in the Health Insurance Portability and Accountability Act (HIPAA) that allows commanders to talk to physicians to obtain health information relating to a servicemembers's fitness for duty. *Id.* Servicemembers who are being treated for Post-Traumatic Stress Disorder, such as SPC Lopez prior to the shooting, who then have incidents where they become unreasonably irate are at greater risk of becoming violent than other servicemembers. See Norman, *supra* note 189. See also *Fort Hood Shooting*, *supra* note 90.

³¹³ See FM 6-22, *supra* note 10, para. 6-43. "[P]reparing for the realities of combat is a direct leader's most important duty." *Id.* NATIONAL STRATEGY FOR COUNTERTERRORISM, *supra* note 183, at 8. "The most solemn responsibility of the President and the United States Government is to protect the American people, both at home and abroad." *Id.*

ASOs located within military units will give commanders a powerful tool to confront the active shooter threat.

X. Conclusion

Current DoD firearms policies are ineffective in protecting servicemembers from active shooter attacks because they prohibit nearly all servicemembers on military installations from the ability to carry firearms for unit or self-defense. The fact that active shooters on military installations have killed or wounded ninety-two DoD and civilian personnel since 2009 is strong evidence supporting this conclusion.³¹⁴

Military firearms policies should be revised to place firearms in the hands of carefully screened and trained servicemembers so they can immediately confront active shooters.³¹⁵ Implementing an ASOP will allow military commanders to respond to the active shooter threat with a carefully managed program using DoD assets organic to their unit. The recent Chattanooga, Tennessee, shootings vividly demonstrate the significant vulnerability to active shooter attacks faced by servicemembers stationed in isolated offices. Arming servicemembers in these locations will give them the ability to fight back if attacked, and will send the message to potential attackers that military personnel are no longer defenseless.

In addition to updating firearms carry policies, a serious need exists in the DoD for servicemembers and all DoD employees to be trained in responding to an active shooter.³¹⁶ Currently, there is no practical and realistic DoD or Army-led training on this essential skill that can determine whether someone lives or

³¹⁴ See *supra* Part II; *infra* Appendix A. This article has primarily examined the numbers of DoD employees shot by active shooters since 2009. What this article did not examine, but warrants further study, is the psychological impact of these active shootings on first responders, family members, care providers, and others who were impacted by the shootings. Medical costs could be quantified but the intangible impact on these personnel will last a lifetime. See 1LT Cook Letter, *supra* note 1; Email from 1LT Patrick Cook, *supra* note 119.

³¹⁵ The ideal course of action to achieve this end is for the SecDef to revise DoDD 5210.56 to implement an ASOP across the military. Absent this course of action, there is a basis in law and regulation for commanders to arm soldiers within their units to perform security duties to protect soldiers within their unit. See *supra* Part VII.B.

³¹⁶ One convenient forum to begin training DoD personnel in how to respond to an active shooter situation would be to include the training in the mandatory online Anti-Terrorism Awareness Course. See *Level I Antiterrorism Awareness Training*, JKO, <http://jko.jten.mil/courses/at11/launch.html> (last visited Oct. 23, 2015). That said, live exercises similar to fire drills should be included to better prepare DoD personnel for the life and death reality of confronting an active shooter.

dies during an active shooting.³¹⁷ The chilling prediction of 1LT Cook, the Soldier who narrowly survived the 2014 Fort Hood shooting when soldiers all around him were killed, is a potent reminder that servicemembers are, and will continue to be, highly vulnerable to active shooter attacks until military firearms policies are updated.

I knew this was going to happen. I had been saying for five years that Fort Hood was a tinderbox of another massacre waiting to happen. It had to happen, because our leaders failed to learn the obvious lesson of five years ago. Worse yet, I know it will happen again. More will die, more will be wounded, and more families will be torn apart, needlessly. It happened again, and will happen again, because Fort Hood is a gun-free zone.”³¹⁸

The ultimate result of revising military firearms policies and implementing an ASOP is that the Army will transform from being a reactive organization to becoming proactive in countering the active shooter threat.

³¹⁷ See *supra* Part VIII. One potent illustration provided by one security expert is that too often people freeze when they hear gunfire instead of running from the threat. See Shogol, *supra* note 29.

³¹⁸ 1LT Cook Letter, *supra* note 1.

Appendix A:

Active Shootings on Military Bases Since 2009

Incident	Date	Description	Dead or Wounded	Time to LEO Response	Other Factors
Abdulazez Chattanooga Reserve Center Shooting	7/16/2015	Shooter had a history of depression/bipolar disorder ³¹⁹ and exposure to Islamic extremism ³²⁰	5 killed, 2 wounded (shooter killed by LE) ³²¹	Estimated 10 minutes from the 911 call to LE stopping the shooter ³²²	Military Police were stationed at the targeted locations
SPC Lopez Fort Hood Shooting	4/2/2014	Shooter had a history of mental health treatment and became irate following the denial of a request for leave ³²³	3 killed, 16 wounded (shooter killed by self-inflicted gunshot) ³²⁴	8 minutes from the 911 call to an armed LE response ³²⁵	Shooter shot Soldiers in three different buildings ³²⁶ Several Soldiers were injured jumping out of windows to escape ³²⁷

³¹⁹ Scott Zamost, *Chattanooga Shooting: New Details Emerge about the Gunman*, CNN (Jul. 20, 2015), <http://www.cnn.com/2015/07/20/us/tennessee-naval-reserve-shooting/>.

³²⁰ Morgan Winsor, *Mohammad Youssuf Abdulazez Radicalized in Jordan? Islamic Extremism Rising in Middle Eastern Kingdom*, IB Times (Jul. 17, 2015), <http://www.ibtimes.com/mohammad-youssuf-abdulazez-radicalized-jordan-islamic-extremism-rising-middle-2013871>.

³²¹ Barbra Starr & Theodore Schleifer, *Pentagon, Governors Boost Security For Military After Chattanooga Shooting*, CNN (Jul. 18, 2015), <http://www.cnn.com/2015/07/17/politics/chattanooga-shooting-military-protection/>.

³²² Bradbury, *supra* note 144.

³²³ *Fort Hood Shooter Snapped Over Denial of Request for Leave*, FOX NEWS (Apr. 7, 2014), <http://www.foxnews.com/us/2014/04/07/fort-hood-shooter-snapped-over-denial-request-for-leave-army-confirms/>.

³²⁴ *Id.*

³²⁵ Kaplan, *supra* note 200.

³²⁶ Fernandez, *supra* note 98.

³²⁷ *Id.* The video link within the online story reports that several Soldiers were injured by “lacerations from jumping through glass windows sustained [while] trying to escape the gunman.” *Id.*

Aaron Alexis Washington Navy Yard Shooting	9/16/2013	A Navy contractor attacked coworkers based on delusional thoughts of mind control ³²⁸	12 killed, 4 wounded (shooter killed by LE) ³²⁹	69 minutes before shooter killed by LEO ³³⁰	Security guard manning cameras failed to participate and shooter overcame another security guard. ³³¹
Sgt. Eusebio Lopez Quantico Shooting	3/23/2013	Sgt. Lopez, previously treated for mTBI and PTSD, shot and killed two fellow Marines at the Quantico Marine Corps Base ³³²	2 killed (shooter killed by self–inflicted gunshot) ³³³	5 minutes but the two Marines and shooter were already dead ³³⁴	
SPC Ricky Elder Fort Bragg Shooting	7/2/2012	SPC Elder, a Soldier with a history of mental health illness and violent behavior, shot and killed his Battalion Commander during a unit safety briefing ³³⁵	2 Killed, 1 wounded (shooter killed by self–inflicted gunshot) ³³⁶		SPC Elder was pending a Court–Martial for the theft of a \$1700 toolkit ³³⁷

³²⁸ Hermann, *supra* note 62.

³²⁹ Navy Yard AAR, *supra* note 4, at 12.

³³⁰ *Id.* at 12.

³³¹ See Hermann, *supra* note 62.

³³² Alyssa Newcomb, *Quantico Marine Base Shooting Victims, Gunman Identified*, ABC NEWS (Mar. 24, 2013), <http://abcnews.go.com/US/quantico-marine-base-shooting-victims-gunman-identified/story?id=18802277>; Hope H. Seck, *Investigation into Quantico murder–suicide reveals barracks security failures*, MARINE CORPS TIMES (Nov. 25, 2013), <http://archive.marinecorpstimes.com/article/20131125/NEWS/311250019/Investigation-into-Quantico-murder-suicide-reveals-barracks-security-failures>.

³³³ Newcomb, *supra* note 275.

³³⁴ *Id.*

³³⁵ Drew Brooks, *Fort Bragg Soldier who Shot Commander Dies of Self Inflicted Wounds*, CBSNEWS (Jul. 2, 2012), <http://www.cbsnews.com/news/spc-ricky-g-elder-fort-bragg-soldier-who-shot-commander-dies-of-self-inflicted-wounds/>; Drew Brooks, *Nine–Soldier Crime Ring Linked to Death of Lt. Col. Roy Tinsdale*, *FAY. OBSERVER* (Feb. 10,

MAJ Hasan Fort Hood Shooting ³³⁸	11/05/2009	MAJ Hasan acted on terrorist ideology to plan and execute an attack on a Soldier Readiness Center ³³⁹	13 killed, 32 wounded or injured (shooter wounded by LE) ³⁴⁰	10 minutes after 911 was call a LE officer off-post responded and shot MAJ Hasan. ³⁴¹	Socially isolated, vocally opposed to the wars in Iraq and Afghanistan, contact with terrorists ³⁴²
Total			37 killed, 55 wounded		

2014), http://www.fayobserver.com/news/crime_courts/nine-soldier-crime-ring-linked-to-death-of-lt-col/article_c1c4b459-34d4-587d-906d-46061ed31f31.html.

³³⁶ Brooks, *supra* note 336.

³³⁷ Drew Brooks, *Nine-Soldier Crime Ring Linked to Death of Lt. Col. Roy Tinsdale*, FAY. OBSERVER (Feb. 10, 2014), http://www.fayobserver.com/news/crime_courts/nine-soldier-crime-ring-linked-to-death-of-lt-col/article_c1c4b459-34d4-587d-906d-46061ed31f31.html.

³³⁸ Protecting the Force, *supra* note 44, at 1.

³³⁹ Ticking Time Bomb, *supra* note 34, at 29.

³⁴⁰ *Id.*

³⁴¹ Keyes, *supra* note 47.

³⁴² Internal Review, *supra* note 6,1 at 15.

Appendix B:

Major Army Installation POW Regulation Comparison

LOCATION	Punitive Reg.	Compliance with State law	Register before entry	Time to register	Storage	Transportation	Reserve Law Enforcement	Other
FORT BRAGG ³⁴³	Yes	Yes	Yes	Before entry	Separate locked containers for firearms and ammo	Unloaded, open view, or in a case transport of POWs	May possess POWs only while engaged in official duties	Preapproval required for handgun purchases under state law.
FORT CAMPBELL ³⁴⁴	Yes	Yes	Yes, but exception for newly arrived Soldiers	72 hours	No storage requirement	Unloaded and encased	As approved by the Installation Commander POWs can be carried	No reg. required for hunters
FORT HOOD ³⁴⁵	Yes	Yes	Yes, Soldiers SSG and below must obtain approval.	Before entry	Unit arms room or separate locked container	Firearms must be declared before entering post.	Cannot carry POWs on their person but can	SSG and below commander approval for weapons

³⁴³ HEADQUARTERS, XVIII AIRBORNE CORPS AND FORT BRAGG, FORT BRAGG REG. 190-11-1, PRIVATELY OWNED WEAPONS, AMMUNITION CONTROL AND PROHIBITED WEAPONS (June 1, 2015).

³⁴⁴ U.S. DEP'T OF ARMY, FORT CAMPBELL REG. 190-1, FORT CAMPBELL'S PHYSICAL SECURITY PROGRAM (July 1, 2008).

³⁴⁵ HEADQUARTERS, III CORPS AND FORT HOOD, FORT HOOD, TEXAS, III CORPS & FORT HOOD REG. 190-11, MILITARY POLICE WEAPONS (July 31, 2014).

					ners for ammo	Transp ort unload ed in the trunk or a gun rack	store in their POV for up to 72 hours	ns reg.
FORT BENNING ³⁴⁶	Yes	Yes	Yes, but exceptio n for newly arrived Soldiers	10 days if residin g on- post	Separa te locked contai ners for firear ms and ammo	Firear ms must be unload ed and cased and stored in the trunk. No plain view storage or gun racks.	May not posses s firear ms unless author ized. No except ions for weapo ns storag e in vehicl es.	First line superv isors are respon sible for ensuri ng emplo yees are familia r with the regulat ion
FORT DRUM ³⁴⁷	Yes	Yes	Yes, but exceptio n for newly arrived Soldiers	72 hours if residin g on- post	Separa te locked contai ners for firear ms and ammo but ammo must be stored in a gov.	Firear ms must be cased, unload ed, and not left unatten ded	Only if appro ved by the Install ation Comm ander	All handg uns must be turned into the unit arms room until a NY pistol license is obtain

³⁴⁶ HEADQUARTERS, U.S. ARMY MANEUVER CENTER OF EXCELLENCE, FORT BENNING, GEORGIA, MCOE REG. 190-11, PHYSICAL SECURITY OF PRIVATELY OWNED ARMS, AMMUNITION, AND EXPLOSIVES (Aug. 27, 2012).

³⁴⁷ HEADQUARTERS, U.S. ARMY GARRISON FORT DRUM, FORT DRUM REG. 190-6, CONTROL OF PRIVATELY OWNED FIREARMS, AMMUNITION, AND OTHER DANGEROUS WEAPONS (Apr. 2, 2012).

					facility			ed
JOINT BASE LEWIS-MCCHORD ³⁴⁸	Yes	Yes	Yes, but exception for newly arrived Soldiers	72 hours if residing on-post	Weapons stored in unit billets, BEQ, BOQ must be stored in a separate locked container	Firearms must be unloaded and stored in the trunk or away from the driver	Can carry concealed weapons in an official capacity or if approved by the Installation Commander	Soldiers living off-post can only store weapons for other Soldiers with command approval. Reloading prohibited

³⁴⁸ HEADQUARTERS, JOINT BASE LEWIS–MCCHORD, JOINT BASE LEWIS–MCCHORD REG. 190-11, PHYSICAL SECURITY OF ARMS, AMMUNITION AND EXPLOSIVES (July 21, 2014).