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B. [REDACTED]'s Military Service

As mentioned above, [REDACTED] served in the Army, including in combat in Vietnam, and he was highly decorated for his heroism and valor. His service and experiences in the military included violent combat under hostile fire in a brigade that suffered many casualties. Unusually, his first military assignment to a hostile situation came when his unit, the 82nd Airborne, was sent to quell domestic rioting in Washington, D.C., following the April 4, 1968 assassination of the Reverend Dr. Martin Luther King, Jr., a nerve-jarring experience dealing not with enemy soldiers but with fellow Americans on the "other side" of conflict.

Military service, particularly in combat, has long been recognized as a relevant mitigating circumstance in determining a criminal sentence to be imposed and is now explicitly recognized in the Sentencing Guidelines. Effective November 1, 2010, U.S.S.G. §5H1.11 was amended to strike military service as a factor discouraged from use as a basis for a departure (“not ordinarily relevant”), *see* U.S.S.G., Appendix C, Amendment 239, and explicitly added the following to the 5H1.11 policy statement:

Military service may be relevant in determining whether a departure is warranted, if the military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines.

U.S.S.G. §5H1.11. The Commission promulgated the amendment to recognize significant military service as among the facts of the history and characteristics of the defendant in order “to draw a distinction between military service and the other circumstances covered by that policy statement.”

U.S.S.G., Appendix C, Amendment 739, Reason for Amendment. “The commission determined that applying this departure standard to consideration of military service is appropriate because such service has been recognized as a traditional mitigating factor at sentencing.” *Id.*, *citing*, *Porter v. McCollum*, 558 U.S. ___, 130 S.Ct. 447, 455 (2009).

In *Porter*, the Court, in considering a habeas corpus petition in a Florida death penalty case, found the state courts’ discounting of Porter’s military service as a circumstance of “inconsequential proportions” to have been unreasonable. 558 U.S. at ___, 130 S.Ct. at 455. As the Court explained:

Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did. Moreover, the relevance of Porter’s extensive combat experience is not only that he served honorably

under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter.

Id. (emphasis added, footnotes omitted). In holding that the law recognizes consideration of military service, particularly combat, by the sentencing decisionmaker, the Court cited historical studies supporting its conclusion. *Id.* at 455 n.8, citing, Abbott, *The Civil War and the Crime Wave of 1865-70*, 1 Soc. Serv. Rev. 212, 232-34 (1924) (discussing movement to pardon or parole prisoners who were veterans of the Civil War) and Rosenbaum, *The Relationship Between War and Crime in the United States*, 30 J. Crim.L. & C. 722, 733-34 (1940) (Wisconsin Board of Control study in 1922 discussing number of veterans imprisoned in Wisconsin and the appropriateness of leniency shown to veterans in court). The *Porter* Court also noted state provisions for special proceedings pursuant to California and Minnesota statutes for individuals asserting the presence of issues arising from military and combat service. *Id.* at 455 n.9.

In this case, Mr. ██████ military service included service under extreme hardship and gruesome and grueling conditions as an Army airborne soldier during the Vietnam war during extensive combat in 1968 and 1969. His combat service rises to the level of being "present to an unusual degree and distinguish[ing] the case from the typical cases covered by the guidelines." U.S.S.G. §5H1.11. Not only did he experience and endure such extreme hardship and horrendous conditions, but he did so with the highest of valor as recognized by his receipt of numerous awards not lightly bestowed, including three Bronze Stars, the Air Medal and the Combat Infantryman's Badge. Accordingly, the Court should give appropriate consideration to Mr. ██████ exceedingly distinguished service in horrendous military combat conditions as an important factor in determining

the sentence to be imposed, which should be at the bottom of the range established by the plea agreement, 24 months.

A telling and insightful account of Mr. [REDACTED] military service and experience is presented in the following report of William B. Brown, Ph.D. (whose curriculum vitae is attached hereto as Exhibit A):

William B. Brown, PhD
1098 34th Ave NW
Salem, OR 97304
503-588-5052

October 27, 2011

re: [REDACTED]

To Whom it May Concern:

William J. Sheppard, Esquire, attorney for [REDACTED], provided me with a copy of his client's DD 214 (Discharge Document) received by [REDACTED] at the time of his discharge from the U.S. Army on October 9, 1970. Mr. Sheppard asked me to evaluate his client's military history, as reflected in his DD 214, and to determine if that history could have any effect on his client's behavior, which resulted in the current legal proceedings.

Expert Witness Foundation I have provided expert evaluations and/or testimony in numerous criminal cases with veteran defendants during the past couple of years in Oregon, Washington and California Courts, including Federal Court in Spokane, Washington. These cases include Capital Murder, Murder, Attempted Murder, Aggravated Assault, and Domestic Violence.

My distinctive and unique evaluations and analysis, while funneled through the rigors of the social science discipline of sociology, are informed by my own military experiences as a Vietnam combat veteran who served with the 173rd Airborne Brigade as an infantryman, a Drill Sergeant at Ft. Lewis, Washington, Leadership Honor Graduate from Officer Candidate School at Ft. Benning, Georgia, where I received a commission in Infantry, and a Platoon Leader in B Company 75th Rangers. This background, when combined with my experience working with, and conducting recognized research in, the criminal justice system, provides a foundation to apply social science data, principles, and research relative to the military total institution and its impact on veteran reintegration back into the civilian culture within a legal system context.

As a sociologist, the scope of my evaluation and/or testimony, as it applies to legal issues relative to veteran defendants, centers on the Military Total Institution (MTI), and is guided by the methodological requirements of the discipline of sociology. The MTI is recognized in the discipline of sociology as a formal institution that is responsible for the transitioning of individuals from the civilian culture to the military culture beginning at the point of induction and extending to discharge. Consistent with the sociological argument that people are products of their environment, the influences of the MTI accompanies individuals as they make the transition from military service member to veteran within the civilian culture. The extent of influence the MTI has had on an individual often depends upon the level and types of training experienced by the veteran. On-the-ground experiences (e.g., number of deployments to a combat area) also influence the veteran's civilian reintegration experiences.

This type of evaluation facilitates the understanding of the influence of the MTI on the post-military behavior and experiences of veteran defendants who are entangled in the criminal justice legal system. Such an evaluation is applicable for mitigation either pre- or post-trial, and assists the trier of fact to determine the effect of social influences by describing the social influences as experienced by the defendant at the time of the alleged crime on the defendant's behavior and/or state of mind experienced by the defendant when determining guilt or innocence. Furthermore, a comprehensive understanding of the influence of the military total institution at the time of the instant offense can assist in providing a context for consideration of the relationship of posttraumatic stress disorder and traumatic brain injury to the instant offense by understanding the content and dynamics of military training and other military experiences.

Contextual sociological background included in the evaluation is also at the core of formulating a Dynamic Risk Assessment and Management Plan that improves compliance and assists in making sentencing and case management recommendations.

I am uniquely qualified because I have conducted research and published the results of that research on the topic of the military total institution and its impact on veteran reintegration back into the civilian culture in peer-reviewed journals and books, presented professional papers and presentations at national conferences, conducted presentations that have been approved for legal CLE's, and facilitated workshops at national veterans conferences. My most recent research has been a national comparative study that focuses on the effects of the military total institution on the reintegration processes experienced by Iraq and Afghanistan veterans. This study enables comparative analysis of the characteristics and behaviors of Iraq and Afghanistan veterans who have become entangled in the criminal justice system with those veterans who have not become entangled in that system.

Many in the criminal justice system do not understand why it is important to apply the science of sociology to solve legal problems. This is understandable because the legal system and sociology have different and distinct methodology and focus. Sociology is the scientific study of social life, social changes, and the social causes and consequences of human behavior. Sociology is the study and analysis of group structures, organizations and institutions, and societies with a particular emphasis on explaining how people respond and interact within these settings. From a sociological perspective, human behavior is a product of social factors and social influences. Sociology helps the legal system to understand criminal behavior and solve problems.

The Military Total Institution: The following pages are provided to familiarize those who review this report on the social science foundation of the Military Total Institution. A total institution is a place of residence and work where significant numbers of like-situated individuals, who are isolated from the wider society for a substantial period of time, together lead an enclosed, formally administered life.¹ The basic characteristics germane to any total institution include:

- All components of an individual's life occur in the same place or setting
- Large numbers of people are treated nearly or exactly the same
- All stages of the individual's day and night are tightly scheduled and monitored

¹ Goffman, E. (1961). Asylums: Essays on the Social Situation of Mental Patients and Other Inmates. New York: Doubleday.

- All participants are required to accept and adapt to the total institutions' cultural expectations and standards.

These characteristics are prevalent in all military institutions throughout the world.

The Military Total Institution begins with a collection of benchmarks that must be met and maintained. They are measured and evaluated at specific intervals. The first benchmark is the recruitment and selection process. The ultimate goal is to identify and enlist recruits who will most likely adopt and adapt to the military total institution culture and philosophy. War often necessitates the lowering of standards to meet the manpower requirements of the military total institution. This often results in the induction of those who demonstrate less than complete willingness to adopt and adapt to the institution's culture and philosophy. One of the most significant goals of military training is to produce military personnel who will respond to orders without question, and perform their assigned duties in an exemplary manner. The military attempts to accomplish this through repetitive training that emphasizes compliance without question or hesitation, and demonstrable discipline.

Research that has focused on the military total institution includes Bamberger and Hasgall's work with the instructor's role in education and training in military settings,² and Zurcher's research on the process of assimilation into the military through training.³ Brown has addressed the influence of the military total institution on veteran's reintegration into civilian culture, and veterans entangled in the criminal justice system.⁴

Military total institutions require complete control of the recruit's entire being, and replacement of the recruit's civilian cultural beliefs and responses. Until the recruit's contractual agreement expires (discharge), AWOL (Absent Without Leave) or desertion become the only options available for recruits or military personnel to escape the restrictions set forth by the military total institution – or until she or he is dead. The military total institution requires the modification of the thought processes of its civilian inductees to meet the needs and goals of the military. Principles and values acceptable within the civilian environment are generally not beneficial to the military milieu. On the other hand, a good soldier's principles, which are artifacts of the military total institution, are not always favorable to the civilian environment.⁵

² Bamberger, P., and Hasgall, A. (1995). *Instructor Role in Educational Organizations having the Characteristics of Total Institutions*. Journal of Educational Administration, 1995, 33:3, 68-85.

³ Zurcher, L.A. 2007. *The Naval Recruit Training Center: A Study of Role Assimilation in a Total Institution*. Sociological Inquiry, 2007, 37:1: 85-98.

⁴ Brown, W.B., (2008) *Another Emerging Storm: Iraq and Afghanistan Veterans with PTSD in The Criminal Justice System*. Justice Policy Journal, Volume 5:2, (1-37); Brown, W.B., (2010) *War, Veterans, and Crime*. Transnational Criminology Manual, Professor Martine Herzog-Evans, University of Reims, Law Faculty, France, Editor, The Netherlands: Wolf Legal Publishers; Brown, W.B. *The Baggage Carried by Combat Veterans: Similarities and Differences Among Vietnam and Iraq and Afghanistan Veterans*, " Contemporary Justice Review (Forthcoming Winter 2012).

⁵ Brown, W.B., (2008) *Another Emerging Storm: Iraq and Afghanistan Veterans with PTSD in The Criminal Justice System*. Justice Policy Journal, Volume 5:2, (1-37); Brown, W.B., (2010) *War, Veterans, and Crime*. " Transnational Criminology Manual, Professor Martine Herzog-Evans, University of Reims, Law Faculty, France, Editor, The Netherlands: Wolf Legal Publishers.

Regimentation, esprit de corps, and strict discipline are inherent within all branches of the military, and within individual M.O.S. (Military Occupational Specialties) classifications of each branch of the military. These aspects promote competition among different military branches and the units or subsets within individual branches of the military. Controlled opposition between branches, units, and various M.O.S. classification groups throughout the military encourages competition within the military total institution. Rigorous competition promotes the goals of all military systems. After all, the ultimate goal of the military is to defeat the enemy – to win.

Four indispensable factors – obedience, discipline, survival, and sacrifice – maintain the foundation of the Military Total Institution. Obedience requires military personnel to accept the command of authority without hesitation or question. Submission to obedience is measured in the degree of willingness to obey orders. The greater the obedience demonstrated by subordinates the greater the likelihood that superiors will successfully complete their assigned missions and demonstrate their own level of obedience to their superiors. Discipline is crucial to the perfection of the recruit's mental faculties and moral character. High levels of discipline are obtained through repetitive training whereby the trainee's reaction to circumstances portrayed during military training becomes second nature.⁶ Survival is the means and individual commitment to insure the continuation of life. Survival is vital to the successful completion of the military's mission. Dead soldiers cannot fight or carry out their orders. Dead soldiers are unable to protect other soldiers. A soldier who cannot survive places the remainder of his or her unit in jeopardy. Survival augments the probability of success of the military mission. Finally, there is sacrifice, which requires the soldier to surrender something of value to insure that something else of value is maintained or secured. As recruits are integrated into the military total institution they are required to sacrifice their own individuality. During the training process sacrificing one's own life is portrayed as an honorable act. This segment of training and indoctrination prepares soldiers, who may later be confronted with life or death situations, to willingly make the ultimate sacrifice – their life.

Recruits are placed in stressful situations where they are forced to make decisions. The punishment is generally more severe for those recruits who cannot or will not make a decision. The logic is that a bad decision is better than no decision. Physical training is one of the most exhausting components of a recruit's training. The U.S. Army requires all recruits to successfully complete the parallel bars exercise in a rigidly prescribed period of time. Drill Sergeants must insure that all members of their platoons complete the parallel bars exercise satisfactorily within a prescribed time frame. If a recruit is unable or unwilling to meet the required standards of this exercise Drill Sergeants frequently resort to profanity and physical humiliation of the trainee to enhance the likelihood of success for the trainee and the other members of the platoon on the physical training course.⁷ Trainees are conditioned to select the fight option, as opposed to the flight option, when confronted with dangerous or stressful circumstances. Recruits are trained to respond instantaneously and aggressively to any and all perceived or real dangerous circumstances or confrontations without hesitation. Failure to comply typically results in punishment ranging from

⁶ Caputo, P. (1977). *A Rumor of War*. New York: Holt, Rinehart and Winston.

⁷ As a former U.S. Army Drill Sergeant I confronted recruits who were not performing their required tasks adequately. I was required to condition them to perform satisfactorily by increasing their level of stress through humiliation, which would increase their physical ability and eliminate any inclination of hesitation in a combat situation.

individual humiliation to physical exploitation. Drawing from the knowledge of general deterrence, some recruits are subjected to severe forms of punishment in order to insure compliance by other recruits within the unit.⁸ Recruits who are unable or unwilling to comply are often expelled – they receive less than honorable discharges from the military.⁹

Weapons' training, with the emphasis on defensive and offensive responses, is a primary function of military training. For those trained extensively in the use of weapons, the more likely the weapon will be used instantaneously in a time of threat.¹⁰ A threat is often defined as a perception of the individual, and is therefore contingent upon the perception of a given individual. Therefore, an individual who is trained to instantaneously react to the perceived threat is highly likely to respond to that training. For many military personnel, resorting to the use of a weapon is similar to a professional table tennis player who automatically reacts when an opponent hits the ball. Training in hand-to-hand combat produces similar responses. Hand-to-hand combat training also emphasizes the importance of spontaneous response when confronted with a threatening situation. Hesitation in firing a weapon or responding physically to a threat, real or perceived, can result in the loss of life and the demise of the military total institution's mission – to defeat the enemy.

People are sometimes faced with making decisions in critical circumstances. The concept critical is related to the perception of the individual. What may be critical to one individual may not be perceived as critical to another individual. Individuals confronted with flight or fight circumstances are subjected to the natural release of adrenaline into the body. This process is an early evolutionary adaptation that allows enhanced coping with dangerous and unexpected situations. Adrenaline is naturally produced in high-stress or physically exhilarating situations, whereby the natural release of adrenaline increases one's physical performance. When adrenaline is released into the body it is a good idea to "work it off" through some form of physical exertion. High levels of adrenaline remaining in the body can result in insomnia and/or a nervous condition.

Recruits trained in combat arms M.O.S. classifications must demonstrate high levels of obedience and discipline, they must develop skills to insure their own survival and the survival of others in their units, and recognize the importance and develop their willingness to make sacrifices in order to insure that the goals and mission of the military total institution are met – defeat the enemy.

For many veterans, particularly those veterans who have participated in combat, their military total institution experiences are embedded for life. Similar to PTSD, for which there is no cure, the experiences acquired in the military total institution becomes part of the baggage many veterans will carry as they navigate through their reintegration process back into the civilian culture. Many veterans are not aware of that baggage until they become homeless, involved in a domestic violence situation at home, or a defendant in the criminal

⁸ Brown, W. B. (2005). *It Means Something: The Ghosts of War*. In Ronald J. Berger and Richard Quinney, ed. *Storytelling Sociology: Narrative as Social Inquiry*. Boulder (CO): Lynne Rienner Publishers.

⁹ Brown, W. B. (2008). *Another Emerging 'Storm': Iraq and Afghanistan Veterans with PTSD in the Criminal Justice System*. *Justice Policy Journal*. Volume 5:2, 1-37.

¹⁰ Grossman, D. (Lt. Colonel, retired). (1995). *On Killing: The Psychological Cost of Learning to Kill in War and Society*. Boston, MA: Little, Brown and Company.

justice system. Many returning veterans will become discontented with civilians. In some cases, mere apathy demonstrated by those who do not share similar past experiences serves as a triggering mechanism for veterans with PTSD. The military total institution influence provides the tactical means to respond – often instantaneously. Their inability to sustain meaningful relationships and their inability to control the rage they sometimes feel – often an artifact of combat exposure – increases the likelihood that many of these veterans will experience criminal justice confrontations.

Following release from the military the veteran does not experience extraction or deprogramming of the military-installed mental “software.” Obviously, some veterans have been successful in the deprogramming or removal/replacement of military-installed software. Others have not been so successful. Many veterans are not even aware that the resocialization process they participated in during their military experience altered their former thought mechanisms and processes. Scores of veterans often assume that being discharged from the military will have no affect on their resocialization process back into civilian society. For some veterans, this may actually be true. For others, particularly those who have experienced traumatizing events, PTSD and the remnants of their military resocialization process will serve as a filter for those life experiences.¹¹

Neither the military nor the Veterans Administration is planning to contact these veterans after discharge to ask how they are doing. Many returning veterans become discontented with civilians. In some cases, mere apathy demonstrated by those who do not share similar past experiences serves as a triggering mechanism for veterans with PTSD. For many veterans, past military resocialization processes will contaminate their return to the civilian social landscape. Veterans will be forced to make decisions. Which software program will they rely on to make their decisions? One software program provides a particular set of options, while the other software program provides a completely different set of options. The answer to the previous question is, of course, no one knows – including the veteran. Many members of the civilian environment ask a common question related to returning veterans, “Why don’t they just get over it?” Many returning veterans regurgitate past experiences over, and over, and over again.¹²

DD 214

Based on information contained in Mr. [REDACTED] DD 214, he enlisted in the U.S. Army on October 10, 1967. He successfully completed Basic Training and A.I.T. (Advanced Individual Training) and received an infantry (11B) M.O.S. (Military Occupational Specialty). He also successfully completed airborne training.

Mr. [REDACTED] served in Vietnam from October 18, 1968 to October 17, 1969. His assigned unit in Vietnam is not noted in Mr. [REDACTED] DD 214. Mr. Sheppard has informed me that Mr. [REDACTED] was assigned to D Company, 1st Battalion, 503rd Infantry, 173rd Airborne Brigade. During the period that Mr. [REDACTED] served in Vietnam the 1st Battalion operated out of An Khe, Binh Dinh Province and other locations throughout the Central Highlands region of South Vietnam.

¹¹ Brown, W.B., (2008) *Another Emerging ‘Storm’: Iraq and Afghanistan Veterans with PTSD in The Criminal Justice System*. *Justice Policy Journal*, Volume 5:2, (1-37).

¹² Brown, W.B., (2008) *Another Emerging ‘Storm’: Iraq and Afghanistan Veterans with PTSD in The Criminal Justice System*. *Justice Policy Journal*, Volume 5:2, (1-37).

Infantry Soldiers in the 173rd Airborne Brigade:

Throughout 1968 and 1969 infantry companies within the 173rd Airborne Brigade regularly conducted search and destroy missions within their assigned areas of operation. Typically, a company would be sent out to the field and conduct assigned missions from 3 to 4 weeks. The company would return to a rear area location for what was termed a "stand down," for 2-4 days, where they were resupplied and then returned to the field. Sometimes they would return to their former area of operation. Other times they were sent to new areas of operation to perform search and destroy missions. Infantry soldiers in the 173rd Airborne Brigade would often be required to walk great distances with rucksacks (weighing 60 to 90 pounds – depending on whether they were required to carry mortar rounds or M-60 machine gun ammunition along with their individual equipment, which included claymore mines, grenades, water, food (cans of c-rations), and their own ammunition). The terrain, which was often in mountainous regions, was frequently covered with heavy vegetation, or elephant grass that significantly hindered forward movement. By 1968 members of the 173rd Airborne Brigade had learned to stay off of trails because of ambushes and "booby traps." At nightfall the company would stop and set up a perimeter. Generally, several squads would be sent out from the company perimeter to set up ambushes. The typical sleep time would be 3-4 hours, unless the soldier was sent out on ambush – sleep time on an ambush was rarely over 2 hours. During the monsoon season the soldier could expect to be soaked and wet 24 hours per day. Although most soldiers in the company were issued ponchos they were generally not allowed to wear them because of the noise they made while moving, but also because they would catch on limbs and vines and slow the soldier's movement progress. Periodically, a company in a battalion would be sent to a fire support base to provide perimeter guard. During this time it was common for squads to be sent out to conduct ambushes or for 2 soldiers to be sent out to perform listening post duties each night.

From 1965 to 1971, 1,736 soldiers of the 173rd Airborne Brigade were killed in Vietnam. To place this in perspective, 1,618 soldiers and Marines have been killed in Afghanistan since October 2001. During the period that Mr. [REDACTED] was in Vietnam, 239 soldiers of the 173rd Airborne Brigade were killed in action – this number may be validated by the names of soldiers who served with the 173rd Airborne Brigade on the "Wall" in Washington, D.C. at the Vietnam Memorial.

Decorations and Awards

- Bronze Star with V Device (Valor)
- Bronze Star (Meritorious Service) x 2
- Air Medal
- Good Conduct Medal
- National Defense Service Medal
- Vietnam Campaign Medal
- Vietnam Service Medal
- Parachute Badge
- Combat Infantryman's Badge

Mr. [REDACTED] DD 214 reflects his assignment and duty in Vietnam through the awarding of the Vietnam Campaign Medal and the Vietnam Service Medal. Mr. [REDACTED] participated in helicopter Assaults while serving in Vietnam, which is validated by his noted award of an Air Medal (given that he has an Infantry M.O.S.).¹³ The Bronze Star is awarded to soldiers who served heroically or meritoriously in military operations against an armed enemy.¹⁴ Mr. [REDACTED] was awarded two Bronze Stars for meritorious service and one Bronze Star for Valor. Mr. [REDACTED] was awarded the Combat Infantryman Badge, which requires that he was personally present and under hostile fire while serving in an assigned infantry unit.¹⁵

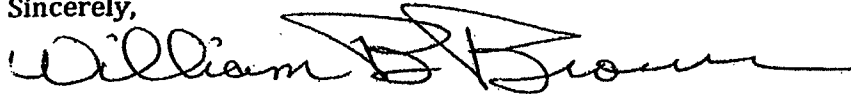
Summary

Mr. [REDACTED] served honorably in the United States Army – evidenced by his Honorable Discharge. It is confirmed that Mr. [REDACTED] participated in combat actions while assigned to an infantry unit. Moreover, because Mr. [REDACTED] was awarded the Bronze Star with a "V" Device, he served with valor. Mr. [REDACTED] participation in combat operations, as reflected in his DD 214, was both meritorious and valorous.

To assume that a combat soldier, after 42 years, would have "gotten over" the experiences or trauma of combat and/or war is not substantiated by data. In 2005, there were 19 soldiers from Oregon who died in the ongoing wars in Iraq and Afghanistan. During that same year 153 veterans residing in Oregon committed suicide.¹⁶

If further information is required, please do not hesitate to contact me.

Sincerely,



William B. Brown, PhD

¹³ See Army Regulation 600-8-2 Military Awards, pp. 41-42.

¹⁴ See Army Regulation 600-8-2 Military Awards, p. 41.

¹⁵ See Army Regulation 600-8-2 Military Awards, pp. 98-101.

¹⁶ Portland Tribune, August 21, 2008.