Beginning, in large part, with the year 2008, a number of State and Local efforts emerged seeking to address the large numbers of Iraq-Afghanistan veterans who, it was believed, would experience high levels of justice contact following their terms of military service. This document provides a review of background materials around the social repercussions arising out of military service and how those impacts might be framed in a justice context. It provides a review of the various State and Local options thus far fielded, as well as, a summary of Federal responses in context. The intent is to both serve as a resource for and a critical review of extant efforts at all levels of government and within the private sector.

A RESOURCE FOR STATES CONSIDERING ALTERNATIVE JUSTICE RESPONSES FOR MILITARY VETERANS

LET'S BE SMARTER THAN THE PROBLEM THIS TIME
A RESOURCE

LET’S BE SMARTER THAN THE PROBLEM

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Introduction

The writing of this document was undertaken in preparation for a teleconference to be held on March 17, 2012 and including stake-holders from the State of Pennsylvania. The teleconference was organized by the staff of the Veterans Legal Foundation, an advocacy organization based in the city of Chester, Pennsylvania, with the intent of considering and organizing an effort aimed at ameliorating the impacts of arrest and incarceration upon returning veterans. Specifically, the group was considering sentencing mitigation legislation based upon what has come to be known the “Minnesota Model”. In the estimation of the author the Veterans Treatment Courts and sentencing mitigation legislation have come to represent the public responses in the public view of the problem, veterans in justice. Both responses, however, are by no means ideal and they often fail to meaningfully address the problems which led to their inception in the first place. Having assisted many States and municipalities in the crafting of alternative responses to veterans experiencing justice interaction the author would note that in light of a variety of limitations what often happens is that stakeholders get word of an effort (Sentencing Mitigation, Veterans Courts) and they opt to pursue that response, to the detriment of all other possibilities. In the national efforts around Sentencing Mitigation and the propagation of Veterans Courts those now in the public view are often Judges and Attorneys, some of them prior military themselves…none of whom, to the author’s knowledge, spent a protracted time in a Veteran’s Hospital undergoing treatment for a mental health disorder. None of whom was ever homeless, suffered from an addictive disorder, or was arrested and incarcerated. Precisely because of this deficit on the experiential side of the equation they may miss large parts of the problem or fail to understand fully in the crafting of responses. It must also be remembered elected officials must be concerned about re-election chances. Attorneys earn a living from the practice of the law. In this context attorneys are service providers, nothing more and nothing less. They are important allies, but we also need to understand many other elements and systems in order to avert making the same mistakes we made, as a nation, in the wake of Vietnam. Every article, every announcement dealing with Veterans Treatment Courts or Sentencing Mitigation Legislation recites the same litany of barriers or problems experienced by veterans; housing barriers resulting in homelessness, suicide, divorce and familial rupture, substance and alcohol abuse employment barriers, the presence of digital records. How do the extant public responses fundamentally alter these barriers which are worsened by arrest and conviction for a criminal offense? Attorneys and
Judges understand the letter of the law, but are they the best spokespeople for what might be more apt set of public responses? A wide range of other options are possible, yet the proliferation of veteran’s courts and mitigation legislation have shunted all other responses to the side. It is the intent of this document—written over the course of five days in March of 2012—to offer veterans advocates in the State of Pennsylvania something resembling a Resource Guide which outlines other possible justice options. This document avowedly needs to undergo further revision, emendation and correction and for now it is precisely what the watermark on its pages purports, a draft. It is the sincere hope of the author that it will foster discussion, a deeper understanding and perhaps usher in an effort to redefine “expertise” in context.

**Identifying and Articulating a Problem**

In the wake of the conflicts in Southeast Asia, large numbers of American soldiers had returned home and begun the process of readjustment to society. The unpopularity of the war in Vietnam fostered a far more difficult environment for returning soldiers, exacerbating the problems of readjustment exponentially. As these returning soldiers became veterans, civil rupture became manifest in many ways; high rates of divorce and estrangement from family, suicide, arrest and incarceration, alcoholism, substance abuse, and homelessness. Vietnam veterans were stigmatized in a way no previous generation of veterans had been in American society. A number of years would pass before the public would begin to understand the men who had fought and died in Vietnam and come to see them in a clearer light. While some things have changed since the Vietnam era, there is still evidence of civil rupture or disconnection on the part of veterans today as noted in the following national chart depicting unemployment rates for veterans.
Vietnam had been a new kind of war, in the public view of the conflict. For the first time in American history, the public was exposed to often graphic images of the war on a daily basis. Images of the Buddhist bonze Thích Quảng Đức engaged in self-immolation, notorious photos such as that of a naked girl, Phan Thị Kim Phúc, fleeing a US Air strike which had delivered napalm upon her village, or the prize-winning photo of the South Vietnamese National Chief of Police General Nguyên Ngọc Loan executing a Viet Cong guerilla at point-blank range bore in to the popular consciousness with an indelible and horrific concision. War ceased to be, in the public eye, a glorious and heroic endeavor. War was, in a new and unprecedented manner, exposed for the grotesque and obscene business it had always been.
In no small part due to the role played by the entertainment industry, the public view of the men who had fought the war shifted dramatically over the course of the late 1970s and early 1980s. Movies such as “The Boys of Company C”, “The Green Berets”, “The Deer Hunter”, “Go Tell the Spartans”, “First Blood” and “Apocalypse Now” gradually cultivated a wide empathy for Vietnam veterans markedly different from the views that had prevailed during the sixties and seventies. The public view of soldiers and veterans had undergone a profound alteration by the time American soldiers deployed to fight the wars in Afghanistan and Iraq.

In 1980, the American Medical Association had recognized Post-Traumatic Stress Disorder as a valid psychiatric diagnosis and the Veterans Administration, the following year, began fielding the first of its treatment programs for combat veterans suffering from the disorder. Public figures such as Audie Murphy, the most highly decorated soldier in the history of the US Army, played a key role in this social recognition of the impact of war upon soldiers and veterans. Murphy’s public recounting of his three marriages, his alcohol and substance abuse disorders and other behavioral manifestations of war-time trauma did much to dispel the imagery and onus surrounding what had once been referred to as “malingering”.

By the time United States forces began deploying to Iraq and Afghanistan, a fundamental shift had occurred in American society. This change of attitude or view might be characterized as follows; having realized that we had met large numbers of veterans of the conflicts in Southeast Asia with a series of punitive and reactive responses we vowed to respond to a younger generation of veterans with responses that were more preventative and supportive in nature. Amongst the panoply of readjustment barriers to be brought under scrutiny would be interaction with our criminal justice systems. In place of arrest and incarceration, we were going to recognize that mental health disorders arising out of psychological trauma as opposed to an express criminal intent formed the basis for a percentage of justice interactions experienced by combat veterans. We also recognized that once justice contact had been experienced the long-term, cascading repercussions—most clearly witnessed in the chronic homelessness of large numbers of Vietnam veterans—were both costly and ill-informed. We were going to do something different this time.
A Statistical Overview: What do the Numbers Tell Us?

On October 10, 1978 The Carter Administration ordered the Department of Justice to conduct a national survey specifically targeting incarcerated veterans for identification. The National Criminal Justice Information and Statistics Service (NCJISS), forerunner of the Bureau of Justice Statistics, included questions regarding military service and veterans’ status in its second quinquennial Survey of Inmates of State Correctional Facilities. The Survey and the parallel, Census of State Correctional Facilities, was conducted during November, 1979. The Survey interviewed twelve thousand State prison inmates which represented a stratified random sample. Participation was voluntary and information regarding veterans’ status and military service was self-disclosed. The facilities entered were prior identified. The measure was undertaken in response to growing concerns around the numbers of Vietnam veterans who had experienced justice contact and gone to prison following their service in Southeast Asia. The results noted that one quarter of State inmates were veterans. They tended to be more likely to be convicted of a violent offence, their education level was comparable to or exceeded that of general population members, their average age was twenty seven and one quarter had been drug-involved at point of arrest. One in five incarcerated veterans had also received a less than honorable discharge from military service. In terms of Vietnam veterans it was found that five percent of the total veterans’ population in State prisons had served in Southeast Asia. The results of the survey were publicly released in 1981.

Prior to this first national survey we possessed very little in terms of data with regard to veterans in jail and prison. Much of the information prior to this first survey had been anecdotal with isolated exceptions such as the study conducted by Martin Lunden, from 1946-1949. Lunden had looked at new prison admissions to eleven Midwestern prisons during the time period specified and he had found that over forty percent had served in World War II.

In January of 2000, the Department of Justice, Bureau of Justice Statistics released the results of its second national survey entitled, simply, "Veterans in Prison and Jail". This time around the national survey covered the period 1985-1998. The report opens by noting that there were 25,062,400 veterans in the United States in the year 1998, according to the US Census Bureau. It goes on to note that there were then 225,700 veterans in the nation's prisons and jails. The survey noted that while the percentage of the
total number of veterans among inmates declined during the period, the total number of veterans increased.\textsuperscript{xxii}

One recapitulation of extant literature on the topic of data and veterans experiencing justice contact is that provided by Doctors Greenberg and Rosenheck in an April, 2007 article entitled, \textit{Risk of Incarceration among Male Veterans and Nonveterans: Are Veterans of the All Volunteer Force at Greater Risk?}. Published in Armed Forces & Society Magazine, notes,

\textit{“The few studies that have directly examined veterans’ involvement in the criminal justice system report mixed findings. Three surveys found that compared to their civilian peers, veterans who served in the Vietnam theater had higher arrest rates and greater criminal-justice system involvement. Card also found that both Vietnam-theater and Vietnam-era veterans had higher conviction rates than non-veterans. A review by Beckerman and Fontana concluded that most studies indicate that Vietnam theater veterans (i.e., those who served in the war zone) have higher arrest rates than non-veterans but that Vietnam era veterans (those who served during the period of war but who did not serve in a war zone) do not have higher arrest rates. On the other hand, a United States Department of Justice study that used data on veterans from all periods of service found that they were incarcerated at less than half the rate of adult male non-veterans.”}\textsuperscript{xxiii}

Perhaps the explanation for the disparities between the statistical references and comparisons made by the DOJ-BJS versus other sources of data on arrest and incarceration rates for veterans might be explained by outright omissions in the disclosure of critical information needed to qualify the national surveys or vis-à-vis just plain old oversight in the process or methodology used in their conduct. In a heated exchange during the 2010 Coalition on Iraq-Afghanistan Veterans (CIAV), between the author and DOJ Researcher Margaret Noonan, Noonan rebutted queries made regarding methodology by noting, “Guy, you do not get it! We are comparing veterans to veterans and non-veterans to non-veterans”. Yes, Ms. Noonan, that is what you were doing, but you omitted to qualify such statements by disclosing some vital information needed in order for the public to fully understand the thoroughness of-and impermeability to-criticism of the surveys. In an advanced press release that preceded the (updated) 2000 study in 2004 it was noted,

\textit{“Male “military veterans are incarcerated in the nation’s prisons and jails at less than half the rate of non-veterans, the Justice Department’s Bureau of Justice statistics (BJS) announced today. In a new study BJS found that there were 937 incarcerated adult male veterans per 100,000 U.S. veteran residents in 1998, compared to 1,971 per 100,000 among adult male non-veterans. Males make up 95 percent of the U.S. veteran population.”}\textsuperscript{xxiv}
That statement should have been qualified by noting one salient difference between veterans and non-
veterans (read, members of the general population): Veterans represent a sub-set of the general
population that has been subjected to rigorous mental and physical testing and deemed fit for service by
the Federal Government of the United States of America. While Greenberg, Rosenheck and others have pointed out the possible relation between improved enlistment standards and tentative decreases in
incarceration rates for a volunteer military none has treated this simple and damning difference between
general population members and military veterans to the degree of thoroughness that it warrants. Given
entrance standards and testing it should, at the very least, have been cause for concern that veterans were
arrested at half the rate of general population members. The inferences made by the rather irresponsible
press release which antecedent the DOJ-BJS survey came across rather clearly and might be paraphrased
as follows, “don’t worry, there is no relation between military service and justice interaction”. Well,
there isn’t if you skew the totality of the picture by not disclosing vital information needed by the public
to form good judgments and enact good policy.

There are further problems with the DOJ-BJS National Surveys on Veterans: First of all, it is implied
that the “random stratified sample” extracted represented a totality of all State and Federal correctional
facilities without bar or hindrance of any kind in terms of facility access. Simply put, that is a false
assertion or inference. The Bureau of Justice Statistics was not granted unrestricted access to a totality
of Federal and State institutions during the course of the conduct of the surveys. In 2010, the author and
Penny Coleman (author of “Flashback”) inquired of BJS lead statistician Allen Beck for a list of the
correctional facilities that were entered during the conduct of the surveys, the following response was
received,

I have had the opportunity to speak with Ms. Snell. I believe there is some confusion as to the nature of the data and the
restrictions placed on disclosure. Let me attempt to clarify these matters:

(1) The surveys of interest were conducted in 1979, 1986, 1991, 1997 and 2004 (for prisoners) and 1983, 1989, 1996 and
2002 (for local jail inmates).

(2) These surveys are of inmates, and involve micro-data from randomly sampled inmates in sampled correctional
facilities. The surveys are designed to provide nationally representative estimates and not facility or state level estimates. In
1997 and 2004 the prisoner surveys were designed so that separate estimates for the 4 largest state prison systems (NY, TX,
CA and FL) could be reliably produced. These systems comprise “self-representing strata” as indicated by Ms. Snell. Access
to micro-level data files that can identify these systems is restricted.

(3) Sampling descriptions for each of the surveys are available from the National Archive of Criminal Justice Data
(http://www.icpsr.umich.edu/NACJD/home.html). For every survey, the facility sample (first stage) is a probability sample,
with the chances of selection proportionate to the size of the facility (based on the most recent facility census). The inmates
are subsequently randomly sampled, so that every inmate has the same probability of selection. (Please look at the study documentation for each survey for more detail.)

(4) Due to BJS statutory requirements (3789g) and agreements with institutional review boards (IRB’s), BJS cannot release any data that could identify individuals participating in the survey or their responses. This includes any information that in combination could be used to identify persons – including any facility-level identification in combination with respondent demographics, criminal justice statuses or criminal history characteristics. As a result BJS does not (and cannot) release names of institutions in which the survey was conducted. Moreover, none of the data files have facility level identifiers.

I hope this clarifies the nature of the data that have been collected, the disclosure restrictions, and what data are available to you and other researchers.

In short, some facilities prohibited entry to DOJ-BJS staff during the conduct of the National Surveys. Which facilities? We do not know. How may facilities? We don’t know that for sure, either. Therefore, it is a bit dubious to assert that the “stratified random sample” represented the totality of Federal and State Correctional facilities—that was simply not the case. Until we have that information it is untenable to assert that the DOJ National Veterans Surveys represent an accurate depiction of incarcerated veterans during the period 1979-2002. Greenberg and Rosenheck outline the process employed in the conduct of the jail and prison surveys as follows;

State and federal prisons surveys. The sample design for the 2004 Survey of Inmates in State and Federal Correctional Facilities was also a stratified two-stage selection with sample selection involving several steps. First, the 14 largest prisons with male inmates and the 7 largest prisons with female inmates were selected from the 1,758 state prisons in 2000 Census of State and Federal Correctional Facilities (CSFCF) data file. A list of the remaining state prisons was stratified by census region. The prisons within each stratum were ordered by the size of their population. Using selection based on probability, 211 additional prisons with male inmates and 58 additional prisons with female inmates were selected. Additional prisons were selected from a file containing data on facilities that were opened between completion of the 2000 CSFCF and April 1, 2003. Of the 36 prisons, an additional 6 prisons with male inmates and 1 prison with female inmates were selected using the same techniques for selecting prisons that were in the 2000 CSFCF data file. A total of 40 federal prisons were chosen in an analogous manner with the only difference being that federal prisons were first stratified by security level rather than by region (for further details, see U.S. Department of Justice, BJS, 2007b). Of the 1,947 U.S. prisons, 327 (287 state and 40 federal) participated in the study. Fifteen selected prisons did not participate for various reasons, such as they were closed after selection or no longer housed the sex of the inmate for which they had been chosen. In the second stage of sample selection, inmates in state prisons were randomly selected from a list provided by each prison. The total number of prisoners selected at each state prison was based on prison size and the gender of the prison inmates. A total of 13,098 males and 3,054 females (out of 1,115,853 male and 77,404 female inmates) were randomly sampled from state prisons. For federal prisons, the sample was drawn in two stages so as to make sure that nondrug offenders would be included in the sample in large enough numbers to be analyzed. First, an oversample of inmates was randomly selected from a central list using a random start and a predetermined sample interval. Next, from these inmates, one in every three drug offenders and all the non-drug offenders were selected, resulting in a sample of federal prisoners that consisted of 3,347 males and 1,009 females. Interviews were completed for 14,499 state inmates and 3,686 federal inmates. All interviews were an hour long and based on computer assisted personal interviewing. Inmates were assured of confidentiality (for further details, see U.S. Department of Justice, BJS, 2006, 2007b).

There are yet other omissions or problems with the DOJ-BJS methodology in the National Surveys. In the realm of racial data the first (1981) survey noted that Latino veterans were more likely to be incarcerated than nonveteran Latinos and it goes on to note, within this, that nine States did not
distinguish racial data during November, 1979—the date the survey was conducted. In the later surveys they do not indicate whether or not this data shortfall has been remedied. It was 2002 before Minnesota began collecting racial data on Latino-Hispanic arrestees and inmates. Yet the later surveys continue to note an higher likelihood of incarceration for the veteran members of the Latino-Hispanic community. In terms of African-American veterans all three surveys note lower incarceration rates for veterans vs. non-veterans. The entire push behind the veteran’s courts and sentencing mitigation legislation arises out of concern that combat veterans run an higher risk of arrest and incarceration than other population groups, yet black veterans are less likely than non-veterans to be arrested. If one reviews State-by-State racial data on the Sentencing Project’s interactive map the racial disparities are glaring; Connecticut, 15:1 (Black to White inmates); California, 4.6:1, etcetera. It doesn’t make much sense, in the opinion of the author of this document.

What might explain this seemingly nonsensical and non-linear clash of data-sets? Well, if DOJ-BJS was prohibited by Federal Regulation from disclosing omitted facilities and if, through prior agreement with State Institutional Review Boards (IRBs), facilities were not entered which may have had higher populations of veterans then does there not exist a distinct possibility that the surveys may not have been representative? We would need to know whether or not specific facilities had an higher likelihood of accepting higher numbers of veterans for sentencing than other facilities—within specific States. Do we know whether or not this was done in some States? Well, we do know that the Vietnam Veterans operated combat veteran support groups in a number of State correctional systems. For example, the New York DOC, during the course of the 1980s, there were 11-13 such groups operating out of their total of 70 State and Federal prisons. But we do not know with certitude that these facilities were more likely to have veterans sent to serve sentence within their walls. Until we possess a knowledge of which facilities were not entered during the course of the surveys and whether or not individual State systems were more likely to sentence veterans to specific institutions within them we cannot assert that the DOJ-BJS surveys should be impermeable to criticism. It is also notable that participation in the surveys was voluntary and the tendency by a percentage of veterans experiencing justice contact to not wish to disclose their status for fear of besmirching their military service has been widely remarked upon.

In the following chart the massive increase in incarceration rates in the United States from 1981 forward are of interest in that Vietnam and Vietnam veterans, as evidenced in the DOJ-BJS and other statistical sources, formed—by any measure—an integral component in what has been deemed the “rise
of the carceral State. We do not now know how Iraq-Afghanistan veterans may or may not be contributing to a similar rise in prison populations since the start of the current conflicts. We will not know until the conduct of the next national survey has been completed in the year 2013 and released to the public in the year 2015.

![Graph of Incarceration Rates 1920-2008]

**FIGURE 3: INCARCERATION RATES 1920-2008**

**Defining Cultural Competency in Context**

At one point a prominent veteran’s attorney working on the veterans courts noted, “I am the closest we have to an expert in this area”. As a retired Marine and an attorney it is completely understandable why he would make such a statement and hold such a belief. Yet, competency in the realm of veterans-in-justice should not be confined solely to an understanding of the law and of the military. Competency in this area should be more broadly defined. Having rendered military service to one’s country is a noble and selfless thing to do. Such experience grants an understanding of self-sacrifice, of patriotism, and of what it means to be separated from one’s family and friends for protracted periods of time. If one sees combat during one’s service an even deeper level of understanding of service emerges. Soldiers and veterans come to an understanding of the dearness of life that can be fathomed in no other way. They have borne witness to horrific acts and they have lost their brethren in ways that sometimes evade even a
proximate definition. Attorneys will also possess a level of understanding here that is of value in context. They will possess knowledge of Statute, of the Rules of Procedure and of Evidence. They will understand the mechanics of the law in a way others may not. But if we are to value the experiential side of a given set of problems then to solely value military experience or knowledge of the letter of the law rules out a wide range of other levels of understanding of high import.

In this context there are other competencies of great value. For veterans who have spent years navigating the Veteran’s Administration and related systems another level of understanding emerges: They will have personally experienced the vagaries of the disability compensation process, for example. They will possess a finer understanding of both the short-comings and the strengths of an institution which employs over 280,000 people. If they have been treated for a Mental Health Disorder they may remember a time when many veterans, who may have actually suffered from combat related stress disorders, were assigned diagnoses such as Anti-Social Personality Disorder (ASPD) or Borderline Personality Disorder (BPP). A number of studies have considered the close relationships between Post-Traumatic Stress Disorder and other Disorders. They will be a bit more cautious in blanket assignments of process to an institution as large as the VA. Those who have been arrested, charged and convicted of a criminal offense will have still another experiential component of high value.

In the national dialogue we find a series of echoes of this neglect of experiential knowledge at the apex of the decision-making processes. In the eyes of those who have undergone protracted treatment for mental health disorders in the VA system or those who have been arrested and incarcerated the priorities may appear very different from those forwarded by attorneys and judges by senior members of the military, federal staffers, or researchers working within the VA system. In the national dialogue, dominated by attorneys, judges and federal staffers—a few of them veterans themselves—one notes, with some level of dismay, that there seems to be a feeling that once a veteran is “diverted” to mental health or other treatment program in the VA the veteran has been “fixed” and the problem has been resolved in some tangibly different manner than during the Vietnam era. Precisely because there is an abiding absence of those who have lived out the rest of the story along the service continuum we will fail in our efforts to effectuate fundamental and meaningful change.

The process of recovery does not cease at that point when a Judge slams a gavel and “diverts” a veteran to the VA for treatment. The process of rehabilitation and the barriers encountered during said process do not disappear at the end of a court-stipulated diversion. Moe Armstrong, a Vietnam veteran who
fought in 26 major battles during the war, who served as a combat medic with the Marine Corps, appeared on the cover of Leatherneck Magazine in 1965, and went on to found Vet2Vet\textsuperscript{xxxii} once told the author, “I would rather go back into combat than into homelessness. Being homeless was worse than combat”. That statement may be among the most telling of all.\textsuperscript{xxxiii}

In order to better illustrate why cultural competency in this context needs to be more fully considered and defined I shall provide an actual story, my own. In 2000 I entered into the Chemical Dependency Treatment program at the St. Cloud VAMC\textsuperscript{xxxiv} for a second time. I had previously undergone treatment there but had relapsed ten months later. This marked an ending point for three years of episodic homelessness and I met the HUD definition of \textit{“chronically homeless”}.\textsuperscript{xxxv} I had had two suicide attempts, slashing my wrists once and injecting what should have been a fatal dose of Oxycontin and Cocaine. I got into the bathtub to bleed out. The unexpected arrival of an old girlfriend saved my life.

On a second occasion I had parked outside a strip club in St. Paul, MN. I had been drinking and using drugs for days…distraught over battles with my son’s mother in a custody and visitation case I opted to end it all. I had taken a .45 caliber pistol and prepared to shoot myself. However, I was so high that I had grabbed .38 rounds and couldn’t go through with the plan. I passed out behind the wheel of the car in the parking lot and awoke the next day.

Prior to all of this I had been a caseworker for the Minnesota Department of Human Services\textsuperscript{xxxvi} working in Stearns County, Minnesota\textsuperscript{xxxvii} with migrant farm-workers as a bilingual intake worker. I had worked there for nearly 8 years prior to quitting my job. The downward spiral began in the fight over custody of my son and it culminated in homelessness, severe addiction to methamphetamine, cocaine and periodic use of opiates. Having lost my job I went further and further down. I was on an FBI watch list and many of my friends went to prison for long sentences…a number of them are still behind bars. I was charged with many offenses, including moving violations, assault and domestic violence. Altogether I suppose I spent about eight months in County Correctional facilities and one protracted stint in a State Hospital on a court order.

My second admittance to the VA Hospital in St. Cloud, MN arose out of both court and family interventions. The CD and Alcohol treatment track in the St. Cloud VAMC is the same duration as all such tracks in the VA system, twenty-eight days. I completed successfully and went into a ten day hold in the Domiciliary waiting for an entry slot into the Dual-Diagnosis\textbackslash PTSD Track. I entered into the track
and successfully completed the 60 Day Program. On Discharge I went back into the domiciliary program to await a slot in the Minneapolis Veteran’s Homes Transitional Housing Program (THP).xxxviii

It was a two year program, but I was granted an extra month so I resided there, along with fifteen other veterans for a total of twenty-five months.

The VA does provide good services, but there are also many flaws. I can relate that three of the residents who lived in my building died there during the time I was a resident. Two others, that I am aware of, died during the three years which followed their completion of the program.

During my residence in the VAMC in St. Cloud and the Minnesota Veterans Homes (MVH) system I worked in four of the work programs made available to veterans; IT (Intensive Therapy Work Program), CWT (Compensated Work Therapy),xxxix in a CWT-Related Work Program which provided a limited number of work slots for veterans housed in the St. Cloud VAMC Domiciliary and which entailed working 12 hour shifts at one of two local factories, and another CWT slot, one of two, in the Radiology Department at the Minneapolis VAMC. For the sake of putting these various work programs and their relative value in perspective, IT positions paid $2.60 per hour and CWT positions paid $5.54 per hour. The only exception to these wages was the factory-based slots…and they involved grueling physical labor that not all were fit to withstand. It must be kept in mind that the CWT work-slots were only available after in-patient programs and probationary periods in residence had been successfully completed.

It is important that people understand that by the time a veteran arrives at that point in time when he or she gains admittance to a VA program there are multiple barriers to overcome. In my case I had a record of arrest and conviction that would make it quite difficult to find gainful employment after my discharge. I had been homeless for nearly three years and spent two and half years more in the Veteran’s Administration system. There would be a five year gap in my resume and any employer would surely inquire as to the curious blank in my experience. I had been assigned mental health diagnoses by both the VA and the Social Security Administration. I was over thirty thousand dollars in debt, had an on-going Child Support obligation of over three hundred dollars per month and no one during my stint in the VA offered to help me in any substantive way with any of these multiple barriers to anything resembling a future success. The thing of import I would note is that my case was by no means atypical and, in fact, I was one of the better off of my peers.
It remained for me, upon my admittance to the Minnesota Veteran’s Home to figure out how to repay the thirty thousand in debts, figure out my Child Support, find a job that would support me, find housing with a criminal record…it was largely up to me and me alone to figure out how I was going to survive after my twenty-four month track had been completed. I was to do all of this on working not quite forty hours a week at less than six dollars an hour. Amongst my peers the choices were relatively difficult. One could file a claim for disability and hope you would receive compensation or one could rely on one’s own initiative, digging one’s self out from under what seemed an insurmountable set of barriers.

I realized I was an exceptional member amongst my peers. I had a College Degree. I had had a professional career prior to my plunge into homelessness. In addition, I was multi-lingual and highly resourceful. I had an Honorable Discharge from the Military. I am affable, presentable, and I am, according to most, a gifted individual in many ways. Most of my peers were not so fortunate and the majority opted to file for disability and hope for the best. Their backgrounds were very diverse, in terms of military service, educational level and other demographics. Some of my peers, who had never seen combat or endured any comparable level of trauma during their service, were awarded full disability by the VA and they did not, in my opinion, deserve their awards. Others, who were combat veterans, waited for years to have their claims processed. A wide range of variables entered into the disability determination process and one’s success in being awarded disability benefits appeared often to be more attributable to chance or the level of individual skill in navigating systems than to merit.

When a veteran leaves a facility or program such as the Minnesota Veteran’s Home it is not unusual for him or her to go into either section eight or other low-income housing upon discharge. Often such housing situations are located in those parts of major metropolitan areas where alcohol and substance abuse are rife and the very stressors the veteran seeks to evade are inescapable. If one continues to utilize VA services it needs to be understood that navigating that system is not a simple nor is it an easy process. Waits to see a given staff person are often long. If you need to access an array of services you will probably need to return on multiple occasions. If you lack transportation the process can become difficult or even all but impossible. I have often encountered people who portray the VA in other terms altogether. “Yes”, I may respond, the VA can offer some wonderful services. “Yes” if you are persistent and you are capable it may change aspects of your life. However, I also often note that people who portray the VA in wholly favorable terms have never had to do one thing: Navigate the system themselves. If they had done so they would not see it in such favorable light. A senior military official once remarked to me, “Guy, the VA is simply too big of a boat to turn.” Yes, Sir, yes it is.
It is high time for us to consider competency in this realm, as in so many other areas of social justice advocacy in the United States. It should not be defined solely by an understanding of the law or an understanding of the mechanics of this or that institution or academic area of concentration. There is an experiential component that is all too often relegated to a level of secondary or tertiary importance. Competency in this context should not be solely restricted to an understanding of the law or of modern medicine it should be far more broadly defined and considered. A young Afghanistan veteran told me some years ago, “I don’t care what they say (Senior Enlisted and Officers), I listen to the Joes”. It is important to fathom the meaning of such a statement. Those of us who have lived and navigated in the various systems….we will be capable of spotting shortfalls or errors long before anyone else. It is so very unfortunate that we are often the last to be listened to and heeded.

For my part, I would note that due to this lack of attention to the admonitions of those who possess a deeper understanding of all that is involved we will—of course with the best of intentions and while being ‘focused’ on the problem in segmented fashion—create a new generation of veterans whose long-term demographics will not be all that dissimilar to those experienced by Vietnam veterans. Of course those responsible for the ensuing mess shall have retired or will remain beyond the scope of accountability and for they will have adhered to the standards of ‘evidenced-based practices’. To reproach them at some future date for their arrogance and presumption will yield nothing and any such attempt will then, as now, be viewed as effrontery and characterized as ‘personal attacks’. It does little good and provides even less comfort to recognize the prevailing, ludicrous state-of-affairs in such large proportion in the United States. I would note that when you remove those who understand the problems in an experiential or personal sense from the crafting of responses over the long-term you do one thing; ensure that said problems shall perpetuate ad infinitum. I had hoped we had learned a valuable lesson during and in the wake of the Vietnam era….yet it is abundantly clear that we failed to learn the most valuable lesson of all; that none shall understand and process certain types of problems and situations as well as those who have lived them. We continue to fail to see the problem as it really is, preferring to portray it as it suits us.
The Sequential Intercept Model

The National Alliance for the Mentally Ill provides the following description of the Sequential Intercept Model:

“The Sequential Intercept Model is a framework for understanding how people with mental illness interact with the criminal justice system. The model, which was described by Mark Munetz and Patricia Griffin in 2006 in Psychiatric services presents this interaction as a series of points where interventions can be made to prevent a person from entering the justice system or becoming further entangled.

The points of interception include law enforcement and emergency services; initial detention and hearing; jails, courts, forensic evaluation and forensic hospitalizations; reentry from jails, prisons and hospitalization; and community supervision and community support services. According to the model, at each of these points, there are unique opportunities to assist a person in getting appropriate services and preventing further justice involvement.

Without intervention, these stages can become a revolving door – with individuals encountering law enforcement during a crisis, and progressing through the various stages of involvement, until they are released from jail or prison. Without support or intervention during this process, there’s a high likelihood that the individual will ultimately come back into contact with law enforcement during another crisis and repeat the cycle.

Ideally, the best point of intervention is in the community, before law enforcement becomes involved, and treatment needs can best be met through community mental health services. Unfortunately, if these services do not adequately address the needs, a person in crisis may be drawn into the criminal justice system. Even with adequate community services, a few people may slip through the cracks and encounter police. In a system with appropriate interventions at each intercept, fewer and fewer people will slip through the cracks, so by the time of release from jail and prison, most people should be connected with services to help them recover and prevent further contact with the justice system.”

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Pretrial Diversion Strategies

Late in 2010, the author pulled together a group of twenty-one stake-holders drawn from around the United States who had both an interest and experience with working on the problems around veterans in the criminal justice system. The group included the National Director for the Veteran Administration’s Veterans Justice Outreach Effort Sean Clarke, Dan Abreu from the National GAINS Center (overseeing the 13 State Jail Diversion Pilots for veterans), the Military-Veterans Lead from the National Association of Drug Court Professionals Brian Clubb, the National President for the National Alliance
of Pretrial Services Association Peter Kiers, and ABA Homeless\Vets Commission member Sara Sommerstrom. The author asked San Diego-based attorney and retired Naval Officer Jude Litzenberger to Chair the work-group and also secured the help of the MN Justice Foundation in recruiting Law Students to conduct scan and produce a compilation of State Diversion Statutory provisions. The work-group efforts have been on-going.

The idea behind the convocation of this group of stake-holders was the observation on the part of the document’s author that, seemingly, in the national movement to assist veterans experiencing justice contact there had not been a whole lot of emphasis placed on pretrial diversion options. He reached out to the President of NAPSA, Peter Kiers, and invited him to participate with the work-group.

The Mission Statement of NAPSA, easily referenced on their National web-site is as follows;

The National Association of Pretrial Services Agencies, NAPSA, is the national professional association for the pretrial release and pretrial diversion fields.

Incorporated in 1973 in the District of Columbia as a not-for-profit corporation, the goals of the Association are expressed succinctly in Article II of its Articles of Incorporation:

- to serve as a national forum for ideas and issues in the area of pretrial services;
- to promote the establishment of agencies to provide such services;
- to encourage responsibility among its members;
- to promote research and development in the field;
- to establish a mechanism for exchange of information; and
- to increase professional competence through the development of professional standards and education.

NAPSA consists primarily of pretrial practitioners; however, others interested in pretrial issues such as judges, lawyers, researchers, and prosecutors, comprise its five-hundred plus membership from forty-four states, the District of Columbia, and Puerto Rico. "xii"

NAPSA’s work, including their national standards for pretrial diversion may be found here;

http://napsa.org/default.html
It is the hope of the membership of the aforementioned NAPSA work-group that upon completion of the review of State Statutory provisions on diversion, the results will be carried forward and States will be encouraged, where feasible, to broaden the parameters of pretrial diversion for veterans.

**Law Enforcement Intervention Strategies (CIT, ride-alongs)**

For those of us who have worked on veterans-in-justice and related issues for some time now it has been refreshing—and surprising—to discover the willingness of many in law enforcement to strive toward finding new and innovative responses to veterans experiencing justice contact. This is attributable, in part, to the aforementioned deeper understanding prevalent within a broader social context, but it is also due to the large numbers of law enforcement officers who have deployed to Iraq or Afghanistan during the course of the Global War on Terror (GWOT). The bond between soldiers is, in some aspects, transferable in many ways to the bond shared by law enforcement officers. For law enforcement officers who have also deployed to the Middle East there is a deep empathy that comes to the fore when they encounter a veteran who has also served. The Chicago, Los Angeles, Santa Clara and Austin Police Departments are amongst the national leaders who have worked toward developing alternative justice responses for veterans-in-crisis.

In the City of Chicago Lieutenant Jeffry Murphy, a veteran police officer who retired in 2011 after forty years with the Chicago Police Department, worked with Senior Departmental Officers and other stake-holders to develop an adjunctive program to train already certified CIT (Crisis Intervention Training) Officers how to respond to veterans in mental health crisis. Murphy and Dr. Bruce Handler worked to develop a forty hour module aimed at training already certified CIT Officers how to respond specifically to veterans in crisis.

Chaplain Dave Walker in California, himself a combat veteran who served in Vietnam, has worked with both the Los Angeles and Santa Clara Police Departments in an attempt to craft earlier prevention responses with intercepting young combat veterans prior to arrest. The Chaplain and other members of law enforcement have sought to do this in a number of ways but perhaps most interesting of all is the conduct of ride-alongs that pair a young veteran up with an older veteran police officer. The teams seek to search out young veterans on the street who appear to be engaging in high risk behaviors and then
engaging them in the hope that they can intervene and stave off the likelihood of arrest. It is a good idea that merits further consideration indeed.

In Austin, Texas, Constable Maria Conchola, the wife of a Vietnam veteran, and her allies have also sought to try to craft responses. It was their efforts that led to the ninety day survey of veterans amongst inmates in Austin that gives us one of a very few views of what is going on “out there” in terms of current conflict veterans experiencing justice contact.

In the view of the author it is a shame that the furor over veterans courts and sentencing mitigation legislation has, in a sense, relegated these and other efforts on the part of law enforcement to a second tier level of consideration. While Federal and State attention and the focus of the legal profession have gravitated towards the two predominating responses and funding streams have followed suit those seeking to craft earlier responses involving law enforcement have largely been ignored. This represents an ill-advised and squandered opportunity that we will, over time, come to regret deeply.

**Sentencing Mitigation Legislation**

In 2005, Peter Cameron, of the Vietnam Veterans of California, attempted to revise section 1170.9 of the California Penal Code-originally put on the books in 1982-allowing for broader latitude in sentencing options for veterans of military service who had incurred some level of psychological impact such as Post-Traumatic Stress Disorder or PTSD as a result of their service. The effort was unsuccessful. The following year, another veteran of the war in Vietnam, Pete Conaty of Conaty & Associates successfully carried the modification to existent Statute to fruition, modifying the State’s code. The author prefaced his efforts in Minnesota with relatively heavy correspondence with the people who had worked on amending California’s Penal Code prior to efforts in his home State of Minnesota.

In 2008, the author, an Army veteran, orchestrated a meeting of approximately fifty stake-holders at the Minnesota Department of Veterans Affairs. He had cut a deal with then Deputy Commissioner of Veterans Affairs, Michael Pugliese, whereby the main conference room of MNDVA would be allowed for use. MNDVA could not publicly back any type of legislation without a nod from both the Governor’s office and the Veteran’s cabinet so the author put together the meeting and the deal was that if the legislation went forward MNDVA could officially back the effort at a later date. The meetings
held over the course of the Summer of 2008 represented the culmination of an advocacy effort which spanned an eight month period. Present at the MNDVA were; the MN Departments of Corrections, Veterans Affairs and Health, the National Alliance for the Mentally Ill (NAMI), the Council on Crime and Justice, representatives from the County Veterans Service Offices, the Police Chiefs and Sheriffs Associations, Prison Staff, the Office of MN Courts, the Governor’s Office, Catholic Charities, the Minnesota Housing and Finance Association, Metro-Wide Engagement on Shelter and Housing, Representative Joe Mullery’s Office and Senator Linda Higgins, the Army Reserves, Minnesota National Guard, the Veterans Administration, Minnesota Psychological Association, and a number of other stakeholders. In short, all the players needed to successfully push Sentencing Litigation legislation forward through the Minnesota Legislature. St. Paul Pioneer Press & Dispatch reporter Ruben Rosario was invited to attend and the result was an article entitled, “Alternatives to Jail Can Help Troubled Veterans.”

It is critical to understand that it was the personal history of the author that led to the understanding required to summon the various stakeholders who were to attend that first meeting at MNDVA. As covered in the section ‘Defining Cultural Competency in Context’ the understanding required was not confined to military service or to an understanding of the letter of law. Again, this is crucial to the crafting of good policy and ensuring integrity of process. Because the attorneys who later picked up the gauntlet lacked experience in a wide range of critical areas of relevance they failed—and they still fail—to push the envelope where it needs to be pushed.

In the wake of passage of the Minnesota Sentencing Mitigation Legislation, the author understood that a commensurate public education campaign would need to occur. With that goal in mind he organized a briefing for staffers in six of Minnesota’s eight Congressional Districts, Continuing Legal Education (CLEs) Seminars with the Hennepin and Ramsey County Bar Associations, and briefings for the Minnesota Department of Corrections and the Minnesota Corrections Associations, as well as, a number of non-profit and private sector briefings and public meetings.

The result came to be known as “The Minnesota Model” and said template was picked up by a number of other States, including Illinois and Texas. While the model is not a bad idea, if sentencing mitigation legislation is done in isolation and without any sort of public education campaign and if those who pass such legislation cease to continue to expand the parameters of diversion it is the opinion of the author that the long-term impacts of such legislation will remain relatively modest.
At the end of this document there is provided a cross-section of the sentencing mitigation legislation for veterans from across the country, including the legislation passed in Minnesota, Illinois, California and Texas. These pieces of legislation are provided for ease of reference. (Appendix)

**The Veterans Courts**

The movement toward veteran’s courts in the United States began with a Mental Health and Drug Court Judge who presided within the District Court located in Buffalo, New York, the Honorable Robert Russell. Judge Russell kicked off his court’s efforts late in 2008. Not long after the launching of his court the National Association of Drug Court Professionals (NADCP) quickly snapped up Judge Russell’s new Specialty Court. They bagged it, tagged it, and marketed the new “Veterans Treatment Court” model widely. Despite numerous criticisms of the Drug Court Model such as the simple fact that completion of court-ordered programming and the resultant sealing of records simply does not work the NADCP has not undertaken any noticeable measures to remedy the problems that arise. In the eyes of many in the public, this became the silver bullet, the easy “fix” for the problem of veterans experiencing contact with the criminal justice system.

![Figure 4: Russell's Vets Court](image)

First of all, many of the initial Veterans Treatment Courts opted for a Drug Court, as opposed to a Mental Health Court model. The so-called “diversions” offered occurred largely on a post-plea or post-conviction basis. They were largely (most still are) restricted, in terms of eligibility or admissions
criteria, to misdemeanor-level or non-violent felonies such as 5th Degree Poss. of a Controlled Substance (paraphernalia). Under most State Statutory provisions the maximum penalty for a first time misdemeanor-level offense would be a six hundred dollar fine and ninety days in jail yet everyone knows no one will get the max on a first time offense. A typical guilty plea will result in a one to two hundred dollar fine and STS (sentence to time served) of, say, 3-4 days, depending on the offense. The defendant will be admonished to commit “no same or similar” offense for the duration of a calendar year and released from custody. If a veteran with a substance abuse or alcohol problem who is brought in on a first time offense and offered this option versus pleading guilty in order to enter into a Veteran’s Treatment Court which will require him or her to check in with both the VA and the Court for a period of eighteen months to two years, providing random urinalysis tests, navigating the vagaries of the VA system, traveling back and forth to these offices on a weekly basis….well, it goes without saying that a significant number will not opt to enter into the Veterans Treatment Courts. In fact, many of those who are perhaps in the direst of need will find it far more preferable to not enroll. There are exceptions, of course, yet in the first two years of operation the bulk of the veterans coming in are Vietnam and Vietnam-era veterans over whom the courts have some leverage due to multiple prior justice interactions.

It must be reiterated that most of the veteran’s courts do not allow for admission or diversion of violent offenders, period—the definition of “violent” it might be added, differs from jurisdiction to jurisdiction. This is a critical point to understand, in terms of importance in this particular context. In looking at the DOJ-BJS National Surveys (1981, 2000, 2004) we find that veterans were more likely to be arrested for violent offenses than general population members, they also received sentences for such offenses that averaged eight years longer in duration. It is also worthy of note that for the bulk of the time period covered by the first two national surveys we were yet to see the impacts of Domestic Violence Statutes, Three Strike Laws, a wide range of sentencing enhancements for drug and alcohol-related offenses, the advent of zero-tolerance community policing strategies such as Broken Windows and sentencing guidelines commissions. Yet we based our responses to veterans, this time around, on a statistical “picture” which, in multiple ways, no longer resembles the national situation as it plays out for today’s younger veterans. The end result of this lack of consideration, across multiple aspects of the problem, is that we will not be helping the bulk of today’s young warriors who enter into our justice systems…for they will not be eligible for consideration.

Another troubling aspect of the movement towards Veterans Courts is that none of the venues involved, to the best of the knowledge of this document’s author, are adequately informing those who pass through the system about their options.
through that their criminal records will not go away on successful completion of their one to two year sentencing stipulation agreements. While District Court judges may seal records within official channels the records may still be accessible if the veteran signs a job or housing application informed consent agreement. Compounding the problem is the proliferation of justice data within the private sector vis-à-vis the Commercial Data-Mining Industry. We shall cover this concern more fully in the Collateral Consequences and other sections of this document.

The utilization of veteran-peer mentors is still another mechanism of high concern in the practices of the Veterans Treatment Courts. No one has taken the trouble to think about, and define, what a “peer-mentor” might be in the context of these courts. Is it simply someone who has served in the military? Should that person also be a veteran who has been justice-involved? Should a peer, in this context, have experienced homelessness, recovery from an addictive disorder or alcoholism? What, exactly, should a veteran peer-mentor be, in experiential terms….and in terms of training? At times they will prove helpful during the court process, at other times they will not. The extant strategies do a great disservice to young veterans by not training these court participants to be advocates rather than cogs in a larger process. In addition, there is very little in the way of empirical data on what gainful role veteran peer mentors play in a justice context…and, of course, there is no funding to give them proper levels of training to be effective over the long term.

While the proliferation of Veterans Treatment Courts has been wonderful publicity for a plethora of elected officials and judges, made the careers of many an attorney, been great PR for the National Association of Drug Court Professionals, and been a source of interest to a rather wide public it remains to be seen if they will have any quantifiable, meaningful impact over time. It is the feeling of this author that in ten years or so those who have passed through the various treatment courts will begin to realize that their records did not go away and that the barriers many a Vietnam veteran experienced decades before were not dissimilar to the ones they will experience. The Veterans Treatment Courts may very well represent the best of intentions but they surely do not represent the sort of aggressive stance which may only emanate from those who have lived a problem in an experiential sense. Amongst the fifty or so national voices in this realm there are a few who are veterans themselves, some are also lawyers. Yet, none of them has been arrested, done time, gone through a protracted stay in a VA Hospital….none who have experienced the travails of struggling with an addictive or mental health disorder, none who has experienced homelessness…none who have lived out what comes after the gavel slams down …and they
revisit many of the same struggles experienced by veterans of an earlier generation. Of course they will opt to grab for the lowest hanging fruit, they don’t understand the bitterness of making a mistake as a young man that you can never fully overcome.

In the realm of veteran’s courts a wide variety of responses prevails, ranging from pretrial diversion to post-conviction ameliorations in the sentencing process. Further, some veterans courts accept statutorily defined ‘violent’ offenders while most continue to restrict entry to non-violent criminal offenses. Many continue to strive to widen the parameters of admission yet it remains to be seen how deeply the collective efforts at the State level will ultimately impact long-term outcomes.

Nevertheless, the Veterans Treatment Court Model does help a percentage of veterans. The level of assistance depends on many variables; venue, State Statutory provisions on diversion, the veteran him\herself, the quality of localized programming, *etcetera.* The National Association of Drug Court Professionals provides a number of resources for those seeking to bring a Veterans Treatment Court to their service area. Their web-site (URL) may be found here;

[http://www.nadcp.org/vets](http://www.nadcp.org/vets)

Points of contact for the National Association of Drug Court Professionals, Veterans Program are;

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From the National Association of Drug Court Professionals web-site;

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About Justice For Vets

In 2009, the National Association of Drug Court Professionals (NADCP) launched **Justice For Vets: The National Clearinghouse for Veterans Treatment Courts**. Justice For Vets (JFV) is exclusively committed to ensuring that veterans involved in the criminal justice system have access to Veterans Treatment Courts and the benefits, services and treatment they have earned.

Since Justice For Vets was launched the number of operational Veterans Treatment Courts has grown to over 80. Justice For Vets activities include advocating for federal Veterans Treatment Court funding, assisting with state legislation, training and technical assistance, public awareness, and building coalitions within the criminal justice, business, and Veterans Service Organization communities.

About The National Association of Drug Court Professionals

Since 1994, NADCP, a non-profit organization 501(c)(3) representing over 27,000 multi-disciplinary justice professionals and community leaders, has worked tirelessly at the national, state and local level to create and enhance Drug Courts. NADCP is recognized as the experts in the field of addiction and its intersection with the criminal justice system. In 1998, NADCP launched the **National Drug Court Institute** (NDCI). To date, NDCI has directly trained 65,440 Drug Court professionals from all fifty states and U.S. territories as well as fourteen other countries. Because of the breadth, quality and impact of NDCI’s services, the Drug Court field has grown from 347 programs in 1998 to 2,600 Drug Courts currently in operation.

The National Association of Drug Court Professionals also provides a sampling of Veterans Court Legislation from around the country. That legislation may be referenced and downloaded here; [http://www.nadcp.org/learn/veterans-treatment-courts/veterans-treatment-court-legislation](http://www.nadcp.org/learn/veterans-treatment-courts/veterans-treatment-court-legislation)

Again from the NADCP web-site;

Services, Education, and Rehabilitation for Veterans (SERV) Act

In the 111th Congress, NADCP was honored to work with members of the House and Senate to produce the bipartisan SERV Act. The SERV Act would have provided funding for communities with existing Drug Courts that serve veterans or will establish new Veterans Treatment Courts. This critical legislation is the key to providing the resources necessary to expand Veterans Treatment Courts throughout the country.

On September 16, 2009, NADCP joined national leaders in the Veterans Treatment Court movement on Capitol Hill for a House Committee on Veterans’ Affairs roundtable discussion on Veterans Treatment Courts. This discussion helped the SERV Act gain momentum on Capitol Hill.
NADCP and Justice For Vets is currently working with Congress on a bill that would provide federal funding specifically to Veterans Treatment Courts.

**The American Bar Association (ABA)**

For the sake of being thorough and for easy reference the American Bar Association’s Commission on Homelessness & Poverty Homeless Veterans Justice Initiative shall be reprinted here. It is an interesting aside to note that, given the work of the various ABA Commissions it would have seemed more appropriate to house this Commission within the ABA Commission on Effective Criminal Sanctions rather than in the Commission on Homelessness & Poverty. The reason for this decision makes sense if one stops to consider that ABA involvement with veterans in criminal (as opposed to civil) justice was minimal and that until the launch of the Veteran’s Administration’s After-Prison and VJO Initiatives VA, as an institution, had no official mechanisms for working with veterans experiencing justice contact. It is also worth noting that the VA still prohibits acceptance of locally incarcerated veterans for treatment in any VA treatment program.

The ABA Commission on Homelessness & Poverty Homeless Veterans Justice Initiative:
Removing Legal Barriers to Benefits, Employment, Housing, Treatment and Services

*Background*

President Obama and the Secretary of Veterans Affairs have pledged to end homelessness among veterans in 5 years, formalized with the creation of a new office, the U.S. Department of Veteran’s Affairs’ National Center on Homelessness Among Veterans. In furtherance of this commitment, the U.S. Department of Veteran’s Affairs (VA) approached the Commission in 2009 to partner on three initiatives aimed at addressing homelessness among veterans: (1) fostering replication of Veterans Courts; (2) supporting the Veterans Justice Outreach Initiative; and (2) removing barriers to housing and self-sufficiency by addressing child support arrears. The Department did so in recognition of the Commission's historical work on these issues, including ABA policy, advocacy and trainings in support of so-called Homeless Courts, and the expertise of particularly a few Commission members.
The VA recognizes that criminal legal issues serve as barriers to housing and self-sufficiency and is looking to the Commission for assistance with developing and implementing mechanisms to address the barriers based on the Commission’s track record with fostering replication of the Homeless Court model at Stand Down events for homeless veterans. Specifically, San Diego Public Defender Steve Binder (past Chair of the Commission and presently a Special Advisor) is widely recognized for his leadership in responding to the need for support in the judicial system identified by veterans at the San Diego Stand Down in 1988, and then for developing and spreading the innovation now known as Homeless Court beginning in 1989. Steve received the Secretary’s Award from Secretary Shinseki in 2009, and the Homeless Court Program (and the ABA’s replication efforts) were recognized by the U.S. Interagency Council on Homelessness in their annual list of top innovations in 2008.

Lawyers Working to End Homelessness among Veterans

The Commission is presently drafting a new publication based on its successful 2006 book “Lawyers Working to End Homelessness.” The new publication --- “Lawyers Working to End Homelessness among Veterans” --- will highlight the myriad legal issues and barriers to benefits, employment, and housing faced by homeless veterans along with substantive legal guidance and strategies lawyers and the courts can utilize to assist their clients. Building on existing relationships with staff at the VA, HHS, the National Coalition for Homeless Veterans, NADCP, and other partner organizations, the book will feature contributions from nationally recognized experts as well as judges, lawyers, and providers affiliated with model programs across the country.

Chapters will cover the follow topics:
- VA’s 5 year plan to end homelessness among veterans
- VA’s Veteran Justice Outreach Initiative
- VA Benefits
- Discharge Upgrades
- Housing (access to, different models (transitional, permanent))
- Criminal Legal Issues (bench warrants, expungement)
- Civil Legal Issues (Family Law Issues/Child Support)
- Veterans Treatment Courts
- Homeless Courts
- Stand Down

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- Female Homeless Veterans (special issues, housing, family law, etc.)
- Model Pro Bono Programs

Veterans Treatment Courts

On April 29, 2009, the Commission participated in a Veterans Court Summit convened by the VA in Washington, DC. The purpose of the small, invitation-only summit was to discuss the Veteran Justice Program with leaders and pioneers in the establishment of Veterans Courts across the nation. Attendees included high-ranking staff from the VA’s homeless service programs; two state Supreme Court Justices; 7 judges; and two representatives from the ABA (Amy Horton-Newell and Ken Goldsmith).

During the summit, we discussed the VA’s efforts to end homelessness among veterans by removing legal barriers to housing, employment, treatment, and ultimately self-sufficiency. The ABA was invited to comment on Veterans Treatment Courts and the VJO Initiative, and it was suggested that an ABA policy outlining the basic tenets and safeguards of model Veterans Treatment Courts would be helpful. The Commission immediately undertook an initiative to examine the various Veterans Treatment Courts that were already operational with the goal of drafting a policy recommendation that would highlight the guiding tenets and principles of the nation’s leading Veterans Treatment Courts.

In the fall of 2009, the Commission drafted Policy Recommendation 105A, a policy supporting the creation of Veterans Treatment Courts. The policy was approved by the ABA House of Delegates in February 2010 during the ABA Midyear Meeting. Efforts to implement the policy began immediately through the circulation of the policy to partner organizations as well as to lawyers and service providers working directly with homeless veterans.

In addition to the policy, the Commission has hosted a number of trainings on Veterans Treatment Courts and related legal issues (including a session at the VA’s Summit to End Homelessness among Veterans held in Washington, DC in the fall of 2009) and has provided technical assistance to judges, lawyers and advocates seeking to create Veterans Treatment Courts in their communities. The Commission is presently coordinating a training for NCHV on Veterans Treatment Courts for its annual conference this summer. The Commission is partnering with the VA and NADCP to secure appropriate speakers. The Commission is working to support the efforts of the VA and NADCP to foster replication of the Veterans Treatment Court model. The Commission is working with partner organizations to develop pro bono models to address civil legal issues and other barriers identified through Veterans Treatment Courts.
Helping Homeless Veterans Comply with Child Support Obligations: Removing Legal Barriers to Employment, Housing and Self-Sufficiency

Many homeless veterans find that their ability to secure employment and/or move into permanent housing is compromised by old fines, debts and other legal judgments. Many of these obligations were incurred while the veteran was homeless, in a phase of active addiction, or otherwise untreated for a serious mental illness. For incarcerated veterans, the growing arrears from unpaid child support can be particularly damaging to their ability to reintegrate into the community.

The American Bar Association Commission on Homelessness and Poverty is collaborating with the Department of Health and Human Services (HHS) and the Department of Veterans Affairs (VA) to provide guidance to communities to work with homeless veterans and their families to address unresolved child support issues. Models for collaboration are presently being developed at ten pilot sites across the country. Veterans currently enrolled with VA specialized homeless services will be eligible for services. Initially, referrals will be generated by VA residential homeless programs, the VA’s Health Care for Reentry Veterans, or the VA’s soon to be established Supportive Services for Veterans Families. Drawing from this relatively stable population of homeless and at-risk veterans, who are connected to ongoing rehabilitation and support services, offers the continuity and motivation necessary for a successful resolution of child support issues. As this project develops and capacity increases, a local determination may be made to expand the target population to include additional groups of homeless and at-risk veterans from other referral sources.

Several outcomes to measure the effectiveness of this collaborative effort have been identified although evaluation plans are still being developed.
Recidivism should decrease.
Compliance with child support payment should improve.
Time formally employed should increase.
Time housed should increase.
Constructive family communication should increase.
Since 2009, the Commission has worked with the VA and HHS to develop and implement the initiative. After identifying local lawyers presently providing legal services to homeless veterans in the target cities, the Commission worked with the VA and HHS to develop teams comprised of representatives from VA funded housing providers, the local Office of Child Support Enforcement, and the legal community to coordinate and staff the initiative. The Commission secured speakers and developed the legal educational content for a webinar training held on March 3, 2010 to launch the initiative. A follow-up webinar focusing on the role of the Office of Child Support and effective strategies for lawyers and providers to handle modifications was held on April 27, 2010. A comprehensive evaluation protocol has been developed to track case resolution.

The Commission has begun to follow up with the lawyers affiliated with the programs to assess the implementation plans and offer technical assistance related to developing entry criteria, protocol, and evaluations. All such efforts are being coordinated with staff at the VA and HHS. Next steps will include demonstrating the effectiveness of the initiative as well as fostering replication efforts across the country in partnership with the VA and HHS and other partner organizations that serve homeless veterans.

Stand Down

The original Stand Down for homeless veterans was modeled after the Stand Down concept used during the Vietnam War to provide a safe retreat for units returning from combat operations. At secure base camp areas, troops were able to take care of personal hygiene, get clean uniforms, enjoy warm meals, receive medical and dental care, mail and receive letters, and enjoy the camaraderie of friends in a safe environment. Stand Down afforded battle-weary soldiers the opportunity to renew their spirit, health and overall sense of well-being.

In 1988, Veterans Village of San Diego (VVSD) hosted the nation’s first Stand Down for homeless veterans. The three-day event provides a wide range of support services in one location, allowing homeless veterans to access desperately needed services in an efficient manner. The exit survey indicated that homeless veterans wanted assistance with outstanding criminal matters (and bench warrants in particular). Recognizing that outstanding criminal issues serve as barriers to housing, treatment, employment, and services, San Diego’s 1989 Stand Down included the nation’s first Homeless Court session (see details below under “Homeless Court”). In 2009, they held the nation’s first Child Support Court session at Stand Down.

The ABA Commission on Homelessness & Poverty partners with VVSD, the Office of the Public Defender of San Diego, and the National Coalition for Homeless Veterans (NCHV) each year to host a free training at San Diego’s acclaimed Stand Down. This program allows judges, lawyers and providers from across the
country to observe the Homeless Court and Child Support Court sessions in action.

The Commission also partners with NCHV and other organizations to host trainings on Stand Down, Homeless Court, and Child Support Court.

Homeless Court

The ABA Commission on Homelessness & Poverty has had a hand in creating or enhancing over 50 Homeless Courts across the nation. Since 2001 when the ABA Commission first began its initiative to foster the replication of homeless courts, it has provided technical assistance to more than 75 communities across the nation and abroad (Toronto; Australia). The Commission will continue to provide technical assistance and educational resources to communities via conference call and in-person trainings, participation in regional and national conferences, and by developing new educational resources and reports. Given that communities are hesitant to create new programs due to the current economic situation, the Commission plans to draft an article highlighting how to create a Homeless Court that is cost-neutral through collaboration and utilization of existing community-based resources.

The Commission has published a number of manuals and educational resources related to Homeless Courts, including “Taking the Court to Stand Down” (published in association with NCHV) and “The San Diego Service Provider Toolkit” (funded through a generous grant from the San Diego Bar Foundation). The Commission drafted two ABA policies related to Homeless Courts that were adopted by the House of Delegates in February 2003 and August 2006. The 2006 policy highlights the guiding principles and safeguards incorporated in model Homeless Courts. This policy has served as the foundation for technical assistance and replication efforts.

Programming

The Commission routinely sponsors or participates in programming related to Veterans Treatment Courts, Homeless Court Programs held at Stand Down events for homeless veterans, and other programming related to alternatives to the criminalization of homelessness and removing legal barriers to housing and self-sufficiency for homeless veterans. The following is a list of the Commission’s veteran-related programming from 2007-2010.
The American Bar Association’s work around Veterans may be referenced on-line here;

http://www.americanbar.org/groups/committees/veterans_benefits.html

The ABA also provides a Veterans Advocacy Toolkit which can be down-loaded here;

http://www.americanbar.org/content/dam/aba/migrated/lsd/veterans/toolkit.authcheckdam.pdf

**Expanding the Use of the Pardon Remedy**

One of the more interesting avenues of approach in terms of veterans-in-justice is the possible expansion of the use of the Pardon Remedy at the State level. The Pardon remains the most effective of remedies from the sanctions imposed by a criminal conviction, yet it is used very infrequently by many States. How might this be applicable in the realm of Veterans-in-Justice?

According to the Congressional Research Service during the period September, 2001 and November 30, 2007 forces deployed broke down as follows; 254,894 National Guard, 202,113 Reserves, and 1,193,234 Active Component personnel have been deployed to Iraq and Afghanistan. This represents an unprecedented utilization of National Guard components, by Executive Order, in an overseas conflict. For our purposes this is of great importance in that the Commanders-in-Chief of the National Guard are the Governors of the respective States from whence the contingents deployed. State Governors have widely gotten behind veterans courts efforts, sentencing mitigation legislation and other alternatives in justice for veterans. I think that is great…now let them put some teeth behind that approval by expanding the use of the pardon remedy in their respective States for combat veterans who were incarcerated and have been released back into society. Let them use their authority to pardon veterans in those cases where a link between the psychological trauma of military service provided a substantive and causal link to the offense for which they were incarcerated. Let’s let our Governors put some bite to their support of veterans-in-justice…let them take a political chance for those who once risked it all. Let our State Governors grant meaningful relief to those veterans who served, made a mistake, paid for it and are now seeking to rejoin society.

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The author, in preparation to the writing of this document, inquired of the leading authority on the use of the Pardon Remedy in the United States, Margaret Colgate-Love, for any information she might be willing to share on this particular topic. Her advice was to push for this in those States where the Pardon remedy would be most meaningful. The following information was provided;

_Love, Klingele & Roberts, Collateral Consequences of Criminal Conviction: Law, Policy & Practice (forthcoming 2012)_

<table>
<thead>
<tr>
<th>STATE</th>
<th>Type Of Administration</th>
<th>Type Of Process</th>
<th>Eligibility Requirements</th>
<th>Effect</th>
<th>Frequency of Grants</th>
<th>Alternative Restoration Mechanism</th>
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<tr>
<td>ALABAMA</td>
<td>Independent Board appointed by Governor exercises power</td>
<td>Public hearings at regular intervals; each Board member gives reasons</td>
<td>Following completion of sentence, incl. fine, no pending charges, or after 3 yrs &quot;permanent parole;&quot; federal and out-of-state offenders eligible</td>
<td>Only as specified in grant (full pardons rare)</td>
<td>More than 500 pardons granted annually; 3000+ restoration of rights</td>
<td>None</td>
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<td>ARKANSAS</td>
<td>Governor decides, Board consultation required but advice not binding</td>
<td>No hearing, Governor must give 30 days public notice of grant and reasons</td>
<td>No eligibility restrictions; federal and out-of-state offenders eligible</td>
<td>Relieves legal disabilities, grounds for expungement in most cases</td>
<td>100 grants each year, about 400-500 applications annually</td>
<td>Deferred adjudication and expungement for first offenders</td>
</tr>
<tr>
<td>CONNECTICUT</td>
<td>Independent Board appointed by Governor exercises power</td>
<td>Public hearings at regular intervals, reasons for denial given</td>
<td>5 years following completion of sentence; misdemeanants may apply state</td>
<td>Relieves all legal disabilities, may go to court to get conviction</td>
<td>400-500 pardon grants annually (about 60% of applicants get hearing, most of those granted)</td>
<td>None; law prohibits discrimination in licensing and employment</td>
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<tr>
<td>State</td>
<td>Decision</td>
<td>Public Hearing Requirement</td>
<td>Time Following Completion</td>
<td>Legal Disabilities Removed</td>
<td>Number of Grants</td>
<td>Special Considerations</td>
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<td>Delaware</td>
<td>Governor decides, affirmative Board recommendation required (gatekeeper model)</td>
<td>Public hearings at regular intervals; favorable recs. sent to Governor; Board recommendations and reasons are public record</td>
<td>3-5 years following completion of sentence, absent hardship; misdemeanants may apply; state offenders only</td>
<td>Relieves all legal disabilities except constitutional prohibition against holding state office or employment</td>
<td>100-200 grants per year since 2004 (about 70% of applications granted)</td>
<td>None</td>
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<tr>
<td>Georgia</td>
<td>Independent Board appointed by Governor</td>
<td>Paper review, no public hearing</td>
<td>5 years following completion of sentence, incl. payment of fines, no pending charges; out-of-state offenses eligible for restoration of rights but not pardon.</td>
<td>Relieves all legal disabilities except return to public office</td>
<td>Between 300-400 pardons w/o gun rights; about 100 pardons w/ gun rights, several hundred ROR (approx. 35% of applicants), dozen or more immigration pardons.</td>
<td>Deferred adjudication and ‘exoneration’ for first offenders</td>
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<tr>
<td>Idaho</td>
<td>Independent Board decides for most convictions; certain serious felony cases must be approved by Governor</td>
<td>Public hearing at regular intervals; reasons for each action must be filed with Secretary of State</td>
<td>Three years for non-violent offenses, five years for violent.</td>
<td>Relieves certain legal disabilities, but not firearms disabilities.</td>
<td>In recent years 60-70 applications filed each year, about half of which are granted.</td>
<td>Deferred adjudication but no expungement; some juvenile offenses may be expunged</td>
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<tr>
<td>Illinois</td>
<td>Governor decides, Board consultation optional</td>
<td>Public hearings at regular intervals; confidential recommendations sent to Governor</td>
<td>No eligibility requirements, state offenders only</td>
<td>Relieves legal disabilities; if authorized by the terms of the pardon, the record of conviction can be expunged</td>
<td>Between 2009 and 2011, 666 pardons granted, 1069 petitions denied. Still working on cases from prior administration. Board hears 500-600 applications each year; 30% from misdemeanants.</td>
<td>Judicial certificates of relief from disabilities and good conduct; judicial sealing available for certain misdemeanors and minor felonies</td>
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<td>State</td>
<td>Governor decides, Board consultation optional</td>
<td>Paper review, no public hearing</td>
<td>Eligibility at any time</td>
<td>Average of 35 full pardons each year between 2005 and 2010, with another 30-60 grants to restore firearms privileges</td>
<td>Restoration of gun rights by governor; Deferred adjudication for first offenders; no expungment</td>
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<tr>
<td>Iowa</td>
<td>Governor decides, Board consultation optional</td>
<td>Paper review, no public hearing</td>
<td>Eligibility at any time</td>
<td>Average of 35 full pardons each year between 2005 and 2010, with another 30-60 grants to restore firearms privileges</td>
<td>Restoration of gun rights by governor; Deferred adjudication for first offenders; no expungment</td>
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<td>Maine</td>
<td>Governor decides, Board consultation optional</td>
<td>Public hearings at regular intervals; Board makes confidential recommendations to Governor, who must give prior public notice of grant and reasons</td>
<td>5 years following completion of sentence.</td>
<td>Relieves legal disabilities.</td>
<td>Between 2002 and 2010, Governor Baldacci granted 131 pardons. 51 in final year. About 50 people are granted hearings each year, and of them about 25% are granted pardon. No other relief provided</td>
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<tr>
<td>Nebraska</td>
<td>Board composed of Governor, secretary of state and attorney general exercises power</td>
<td>Public hearings at regular intervals; no reasons given</td>
<td>10 yrs following completion of sentence for felonies, 3 yrs for misdemeanors; state offenders only</td>
<td>Restores civil rights other than vote; gun rights must be separately restored.</td>
<td>An average of 80 pardons granted each year between 2002 and 2011, about 25% with firearms privileges. 60% of applicants are granted, 1/3 of which are from misdemeanants. Set-aside for probationers, no sealing</td>
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<td>Nevada</td>
<td>Board composed of governor, with justices of supreme court and attorney general</td>
<td>Public hearings at regular intervals, ex. non-violent first offenders</td>
<td>no formal eligibility criteria, but ordinarily must wait &quot;a significant period of time&quot;</td>
<td>Relief from disabilities, including guns; no predicate</td>
<td>An average of 20 grants each year since 2005, about half of those that apply Sealing for most convictions after eligibility period of 7-15 years</td>
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<td>Ohio</td>
<td>Governor decides, board consultation required but advice not binding</td>
<td>Public hearings at regular intervals; no reasons given</td>
<td>Eligibility at any time</td>
<td>Pardon &quot;erases&quot; the conviction, and entitles recipient to have court records sealed.</td>
<td>Gov. Strickland granted 290 pardons in four years. Most of those pardoned were convicted of minor non-violent offenses. First offender sealing</td>
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<td>Oklahoma</td>
<td>Governor decides, Board recommendation required</td>
<td>Following completion of sentence or 5 years under supervision; misdemeanants eligible; state offenders only</td>
<td>Relieves legal disabilities ex. firearms; grounds for judicial expungement for non-violent first offenders.</td>
<td>About 100 pardon grants annually (80% of those that apply).</td>
<td>Judicial sealing for first offender misdemeanants after 10 yrs.</td>
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<td>State</td>
<td>Governor decides, board advisory</td>
<td>Public hearings at regular intervals, recommendations sent to Governor</td>
<td>Ordinarily no eligibility period, ex. first offenders must wait five years after release to apply for “exceptional pardon”; state offenders only</td>
<td>When recommended by board, record sealed; otherwise not</td>
<td>Between 2000 and 2010, governor granted 310 pardons, about 60% of applicants, all with Board recommendation.</td>
<td>Deferred adjudication and judicial sealing for first offenders</td>
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<td>PENNSYLVANIA</td>
<td>Governor decides, Board recommendation required</td>
<td>Public hearings at regular intervals; Favorable recs. announced publicly and sent to Governor; no reasons given</td>
<td>No eligibility requirements; misdemeanants may apply; state offenders only</td>
<td>Relieves all legal disabilities, including employment and licensing; grounds for expungement</td>
<td>Of 500-600 applications, Board recommends about 150 favorably each year, most of which are granted by Governor; 20% to misdemeanors and summary offenses.</td>
<td>Expungement for “violations”; law prohibits discrimination in employment and licensing</td>
</tr>
<tr>
<td>SOUTH CAROLINA</td>
<td>Independent board appointed by governor</td>
<td>Public hearings at regular intervals</td>
<td>Following completion for sentence, or after 3 years under supervision, payment of restitution in full; state offenders only</td>
<td>Erases legal effect of conviction, including use as predicate offense</td>
<td>Board reviews 60-80 cases each quarter; about 200 grants each year, 60% of applicants. Few misdemeanants.</td>
<td>None</td>
</tr>
<tr>
<td>SOUTH DAKOTA</td>
<td>Governor decides, board advisory</td>
<td>Public hearings at regular intervals, recommendations sent to Governor</td>
<td>Ordinary no eligibility period, ex. first offenders must wait five years after release to apply for “exceptional pardon”; state offenders only</td>
<td>When recommended by board, record sealed; otherwise not</td>
<td>Between 2000 and 2010, governor granted 310 pardons, about 60% of applicants, all with Board recommendation.</td>
<td>Deferred adjudication and judicial sealing for first offenders</td>
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Litigation Strategies (M’Naughton, Diminished Capacity, Temporary Insanity)

It goes without saying that public attention and commensurate levels of publicity can impact legal proceedings. In a number of cases involving veterans in the legal process across the country public attention helped foster an higher level of understanding and empathy for veterans accused of criminal acts. Examples of such cases would be California v Binckley and Oklahoma v Jordahl. In both cases a level of public pressure and publicity facilitated more favorable outcomes for both defendants. One possible avenue for public participation and support for veterans-in-justice would be to craft litigation strategies that cultivate and incorporate such support. State and Local Bar Associations and National Organizations such as the National Association of Criminal Defense Lawyers could assist in the orchestration of such litigation strategies.
A standard definition of a Temporary Insanity Defense would be as follows:

DEFENSE, INSANITY

A criminal defense asserting that at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

U.S.C. 18

A person is insane, and is not responsible for criminal conduct if, at the time of such conduct, as a result of a severe mental disease or defect, he was unable to appreciate the nature and quality or the wrongfulness of his acts. This is because willfull intent is an essential part of most offenses; and a person who is insane is not capable of forming such intent. Mental disease or defect does not otherwise constitute a defense; the person has the burden of proving the defense of insanity by clear and convincing evidence.

United States Code: 18 USC § 17 - Insanity defense

(a) Affirmative Defense.— It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

(b) Burden of Proof. — The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

From the Legal Information Institute at Cornell;

Insanity Defense, Overview

A person accused of a crime can acknowledge that they committed the crime, but argue that they are not responsible for it because of their mental illness, by pleading "not guilty by reason of insanity."

An important distinction: "Not guilty by reason of insanity" and "diminished capacity"
Although a defense known as "diminished capacity" bears some resemblance to the "reason of insanity" defense (in that both examine the mental competence of the defendant), there are important differences. The most fundamental of these is that, while "reason of insanity" is a full defense to a crime -- that is, pleading "reason of insanity" is the equivalent of pleading "not guilty" -- "diminished capacity" is merely pleading to a lesser crime.

One of the most famous recent uses of the insanity defense came in *United States v. Hinckley*, concerning the assassination attempt against then-President Ronald Reagan.

The history of "not guilty by reason of insanity"

The insanity defense reflects a compromise on the part of society and the law. On the one hand, society believes that criminals should be punished for their crimes; on the other hand, society believes that people who are ill should receive treatment for their illness. The insanity defense is the compromise: basically, it reflects society's belief that the law should not punish defendants who are mentally incapable of controlling their conduct.

In the 18th century, the legal standards for the insanity defense were varied. Some courts looked to whether the defendant could distinguish between good and evil, while others asked whether the defendant "did not know what he did." By the 19th century, it was generally accepted that insanity was a question of fact, which was left to the jury to decide.

The *M'Naghten* rule -- not knowing right from wrong

The first famous legal test for insanity came in 1843, in the *M'Naghten* case. Englishman Daniel M'Naghten shot and killed the secretary of the British Prime Minister, believing that the Prime Minister was conspiring against him. The court acquitted M'Naghten "by reason of insanity," and he was placed in a mental institution for the rest of his life. However, the case caused a public uproar, and Queen Victoria ordered the court to develop a stricter test for insanity.

The "*M'Naghten* rule" was a standard to be applied by the jury, after hearing medical testimony from prosecution and defense experts. The rule created a presumption of sanity, unless the defense proved "at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did
not know what he was doing was wrong."

The *M’Naghten* rule became the standard for insanity in the United States and the United Kingdom, and is still the standard for insanity in almost half of the states.

The *Durham* rule -- "irresistible impulse"

Monte Durham was a 23-year-old who had been in and out of prison and mental institutions since he was 17. He was convicted for housebreaking in 1953, and his attorney appealed. Although the district court judge had ruled that Durham's attorneys had failed to prove he didn't know the difference between right and wrong, the federal appellate judge chose to use the case to reform the *McNaughton* rule. Citing leading psychiatrists and jurists of the day, the appellate judge stated that the *McNaughton* rule was based on "an entirely obsolete and misleading conception of the nature of insanity." He overturned Durham's conviction and established a new rule. The *Durham* rule states "that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." The *Durham* rule was eventually rejected by the federal courts, because it cast too broad a net. Alcoholics, compulsive gamblers, and drug addicts had successfully used the defense to defeat a wide variety of crimes.

The Model Penal Code: turning responsibility to the jury

In 1972, the American Law Institute, a panel of legal experts, developed a new rule for insanity as part of the Model Penal Code. This rule says that a defendant is not responsible for criminal conduct where (s)he, as a result of mental disease or defect, did not possess "substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law." This new rule was based on the District of Columbia Circuit's decision in the federal appellate case, *United States v. Brawner*, 471 F.2d 969 (1972).

Obviously, this standard is very vague. It leaves a number of factors up to the jury to determine, given the facts of a case and the testimony of experts. About half the states have adopted the Model Penal Code rule for insanity.

The Federal rule: Reagan gets into the act
In 1984, Congress passed, and President Ronald Reagan signed, the Comprehensive Crime Control Act. The federal insanity defense now requires the defendant to prove, by "clear and convincing evidence," that "at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts" (18 U.S.C. § 17). This is generally viewed as a return to the "knowing right from wrong" standard. The Act also contained the Insanity Defense Reform Act of 1984, 18 U.S.C. § 4241, which sets out sentencing and other provisions for dealing with offenders who are or have been suffering from a mental disease or defect.\footnote{xxiv}

18 USC § 4241-Determination of mental competency to stand trial to undergo post-release proceedings?

(a) Motion To Determine Competency of Defendant.— At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) Psychiatric or Psychological Examination and Report.— Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247 (b) and (c).

(c) Hearing. — The hearing shall be conducted pursuant to the provisions of section 4247 (d).

(d) Determination and Disposition. — If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—
(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and
(2) for an additional reasonable period of time until—
(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or
(B) the pending charges against him are disposed of according to law; whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant’s mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246 and 4248.

(e) Discharge. — When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant’s counsel and to the attorney for the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247 (d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial or other proceedings. Upon discharge, the defendant is subject to the provisions of chapters 207 and 227.

(f) Admissibility of Finding of Competency.— A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

And What of Prevention, What Might Yet Be Done?

In addition to the efforts undertaken by members of law enforcement in a number of cities and briefly touched upon in the appropriate section of this document a number of
other efforts, aimed at prevention, are worthy of mention. First of all, the efforts that began to unfold within the various Regional Readiness Commands (RRC) beginning with the first Combat Operational Stress and Military Sexual Assault Readjustment units, the first of which began in 2003. Based out of Ft. Snelling, MN the 88th RRC unit was put in play following six homicides involving soldiers of the 10th Mountain Special Forces who killed their spouses within the first two months of returning from Afghanistan. The 88th RRC was given purview over pre- and post-deployment adjustment and wellness of the families and soldiers spread over an eight State region. A great deal might be learned from their experience, including within the realm of justice contact.

Another avenue on the preventative side of response would be to augment and train up veteran-peers—and not just to serve within a court context, but to advocate in their own right. By funding national peer advocacy groups such as Vet2Vet or Vet4Vet and further augmenting their involvements in the realm of justice we might also enjoy positive results…yet despite the approbation for veteran-peer mentors within a court context compensation for the vast majority has not been forthcoming and most continue to act in a volunteer capacity. The NADCP training for Veteran-Peers is not, per se, what would be of interest for such training does not prepare young veterans for roles in the realm of advocacy. It prepares them for a role, and a modest one at that, in the facilitation of process already decided upon by systemic or judicial assent.

One possible strategy as yet unexplored might prove rather simple: Most young veterans experiencing justice contact are either Army or Marine Corps veterans and this demographic is echoes in extant statistical data on incarceration during and after Vietnam. Most States operate under the CVSO (County Veteran Service Officers) model and, by assent of the soldier at point End of Term of Service (ETS), CVSOs would receive DD-214s from these soldier\veterans as they return home. If the likelihood of justice contact is higher for those serving in Combat Arms units within the Army or
Marine Corps we might flag cohorts of such veterans at the CVSO or County level and target them for more intensive readjustment efforts, ideally utilizing other veterans.

Unfortunately, such possibilities as those touched upon here have received little to no attention and paltry little in terms of funding. Why? No money in it for the systems and leading stake-holders who are running the show. Hey, it’s as simple as that.

**More on Collateral Consequences**

Another curious and interesting aside for those with knowledge of both the modern justice reform movement and of advocacy on behalf of veterans as a sub-population in the justice system is the divergence and relative isolation from one another of these two groups of stakeholders. I usually date the birth of a modern justice reform movement with teeth to 2003-2004 and Justice Kennedy’s addresses before the ABA Hall of Delegates in San Francisco. Out of this address came the Kennedy Commission and, later, the Urban Institute’s Justice Round-Table and the Re-entry Policy Council. These three central entities spawned a plethora of related efforts. In some ways the Second Chance Act served as the culmination of these collective, reformist efforts and the year 2011 was the first year the United States witnessed a decline in the prison population for thirty years.

As mentioned above it is curious indeed that in the entire corpus of the Kennedy Commission and the Justice Round-Table of the Urban Institute veterans are hardly mentioned at all. Curious in that in 1981 when the DOJ-BJS released the first of its national surveys on veterans in prison one in four State inmates were veterans. The only reference of any import is that made by Prof. Chris Uggen in his work on disenfranchised veterans in the United States, later featured on the Sentencing Project’s web-site. Uggen estimated there were, at the time of his study, over 584,000 military veterans who had been disenfranchised in the United States due to a criminal conviction.

What are often referred to as “the unintended consequences” of justice contact were categorized and articulated by both the Kennedy Commission and Justice Round-Table. The major categories of these collateral consequences include; housing barriers, employment barriers, barriers to education, prohibitions or bars to the obtainment of government benefits, disenfranchisement, and restrictions on
freedom of personal movement (such as the loss of the right to travel outside of the United States). In a sense, convictions for criminal offenses relegate an ex-offender to the status of a permanent, second-class citizen with little prospect of ever being able to fully overcome an error made at an earlier point in life.

It is crucial for us, as a society, to recognize and fully understand the enormity of the problem. The PEW Center recently estimated that over 15% of adult citizens of the United States have a record of a criminal conviction, not counting traffic or moving violations.\textsuperscript{lxix} If one adds in civil judgments the number goes ever higher. PEW also noted that there are over two million US residents now in prison, a higher incarceration rate than any nation on the planet.\textsuperscript{lxx} If as high as one fifth of American residents experience enduring or even perpetual barriers to anything resembling a good quality of life how long can it be before a fundamental, societal destabilization occurs which cannot and perhaps will not be repaired? I referred to the curious omission of veterans in so much of the justice reform movement simply out of the recognition that veterans formed such a large component of what has been referred to as “the rise of the carceral State” by some. And yet it is not so curious if one considers the wide gaps between those working in the VA system and within the military justice continuum, on the one hand, and those who worked in the non-profit and other governmental sectors during and in the wake of Vietnam. On the one hand a group of people who had, in many cases, been drafted or enlisted to fight in Southeast Asia and on the other those who had been more likely to have received deferments from military service…of course they did not communicate well across institutional lines.

And what grew out of some indisputable historical realities was perpetuated over the course of forty years. Systems forgot, over time, how to deal with one another…the lines of communication closed up. A result of this clearly witnessed today is a group of stake-holders working on veterans in justice and, in some ways, re-inventing the wheel. It is essential for us to pull together these two groups of stake-holders if we wish to not repeat the fundamental errors of a previous era in our history.

Multiple studies and reports, Congressional Commissions and academic commentaries have laid out and identified, clearly, the problems surrounding the enduring mark of justice contact often referred to as “the unintended collateral consequences of justice contact.”\textsuperscript{lxxi} And yet, in the realm of veterans courts, for example, stake-holders proceed as if none of this work existed. Young veterans are marched in, plead out and referred on for treatment….believing that their records will go away because a Judge tells them so. The Commercial Data-Mining Industry will not forget about these records, they harvest them at
the local point of origin or at an higher level of data collection. They store these records, trade them back-and-forth with one another. They sell them, disseminate them widely. Again, this practice is well documented and the resultant impacts have been well documented. Yet where is this information, this knowledge, reflected in the work being done in the veterans courts? For those who wish to reference information around collateral consequences I would suggest going to the Sentencing Project’s web-site and Margaret Colgate-Love’s excellent State by State iteration of State remedies for criminal records, the Legal Action Center’s web-site on employment barriers, the SEARRCH Compendium, and a report entitled The National Task Force on the Criminal Back-grounding of America.

To re-emphasize why this is important I refer back to an earlier set of statements made in this document as to just how we came to that point in time when we vowed to do something different for veterans of the current conflicts from that which we had done in the wake of Vietnam. In the wake of Vietnam we came to recognize that we had met tens of thousands of military veterans with a series of punitive and reactive responses. In that recognition we decided to respond with a series of more preventative and supportive responses. We further recognized that the unintended collateral consequences of punitive and reactive responses (read arrest and incarceration) resulted in a cascading series of societal impacts no more clearly seen than in the case of veterans in homelessness. We vowed not to repeat the same mistakes….and then we proceeded to forget what our profound national recognition of the nature of the problem and we did that most American of things….we went for the easy fixes and ignored anything resembling possible flaws. In the end, barring some fundamental re-ordering of priorities, it remains to be seen how the fate of many an Iraq or Afghanistan veteran who has experienced justice contact will be all that different from the fate of Vietnam veterans a generation ago.

This document should serve a number of purposes, amongst them it should serve as a clarion call and a challenge to those working now on the problem of veterans-in-justice that they do not get to ignore a big part of the problem simply because to take said problem on would represent an organizational inconvenience. It is a clarion call and a challenge that they not ignore the indisputable and factual corpus of work on the enduring legacy of criminal records and that they should not imply to younger veterans entering into justice that an expungement or sealing order will “fix” it all at point of court-stipulated program completion. I shall call such inferences what they are: they are simply put, gross misrepresentations of the truth. This was never about, and should never have been about, the career of
this or that Judge or this or that organizational director. It was about not visiting the same mistakes on a new generation of veterans….sorry, but to my mind that was always the priority, wasn’t it?

National GAINS Center, State Veterans Jail Diversion Pilots

The SAMHSA-National GAINS Center, by any measure, is one of the “heavy-hitters” in the realm of veterans-in-justice in the United States at this juncture. In 2008 they called together one of the first convocations of stakeholders in Bethesda, Maryland and the result was a National Brief on Justice-involved veterans which served as a prelude to the launch of the first six Federally-funded pilots. The first six JDTR State Jail Diversion Pilots (Preference for Veterans) kicked off in 2009 and included the following States; Connecticut, Massachusetts, Vermont, Colorado, Illinois and Georgia. The 2.5 million dollar federally funded pilots have a time-frame of five years and Federal funds were matched with local resources of an equal dollar amount. The second slate of State Pilots kicked off in 2011 and included; Texas, Florida, Ohio, Pennsylvania, Delaware, New Hampshire, and New Mexico. The GAINS Center promotes the use of the Sequential-Intercept Model within the State Pilots and what is taking place within the States varies widely. GAINS has promoted the use of Veteran Peer-Mentors in its work and they are to be commended with being willing to augment efforts and deepen public understanding and veterans participation through a series of National Teleconferences, including one on the Collateral Consequences of Justice contact.\textsuperscript{lxxvii}

\textit{From the national GAINS CENTER Web-site;}

On May 9, 2008, SAMSHA’s GAINS Center held a workshop on \textit{Creating Effective Responses for Combat Veterans with Trauma who Are Justice-Involved}\textsuperscript{lxxviii} in Bethesda, MD. This one time, one day meeting provided GAINS Center staff with a refined look at the important issues surrounding military service members. The Center's goal was to establish priorities for action in providing treatment for veterans and decreasing their involvement in the criminal justice system. Speakers at the meeting highlighted vital issues regarding service members including characteristics of the veteran population, information on PTSD, and the effects of traumatic brain injury (TBI). The information gathered from this meeting was used to inform the activities of the 2008 CMHS National Returning Veterans Conference that was held in May, 2008. In addition, information gleaned from the presentations and discussions has assisted GAINS Center staff in drafting an issue brief for jail administrators to
implement during the screening/assessment stage. The brief will aid administrators in identifying incoming veterans that may be in immediate need of mental health services. The brief will also help to establish priorities for action in providing treatment for veterans and decreasing their involvement in the criminal justice system, specifically members returning from Operation Iraqi Freedom and Operation Enduring Freedom.

Because of these issues and the growing number of individuals with PTSD and trauma histories who come into contact with the criminal justice system, SAMHSA awarded six Jail Diversion and Trauma Recovery Program grants in the fall of 2008, six Jail Diversion and Trauma Recovery Program grants in the fall of 2009 and one Jail Diversion and Trauma Recovery Program grant in the spring of 2010 to support local implementation and statewide expansion of trauma-informed jail diversion programs for people with post-traumatic stress (PTSD) and other trauma-related disorders. RAND also identified that there is a dramatically higher prevalence of trauma related diagnosis among veterans. In recognition of these findings, these programs will prioritize eligibility for veterans.

As the technical assistance center for the 2008 and 2009 grantees, SAMHSA's GAINS Center will provide support to this initiative by:

Assisting states with infrastructure development by offering aid in program design, action planning, and overcoming barriers;

- Supporting states in proactively incorporating veterans’ voices into program development and implementation by providing training to mental health veterans working with jail diversion programs;
- Providing TA regarding jail diversion, criminal justice linkages, and reentry program development for specific to veterans needs;
- Imparting direction on creating trauma-informed systems and providing trauma-specific services that highlight veterans combat experiences;
- Assisting states’ program planning and design by conducting states’ systems mapping and encouraging the use of evidence-based practices;
- Implementing support by providing training, annual meetings, and on-site TA visits; and
- Providing guidance on identifying methods for program sustainability.

Contact Information for the National GAINS Center;
You may contact the GAINS Center at;

800.311.4246 or GAINS@prainc.com

Information on the SAMHSA-National GAINS Center's work around veterans may be found here;


**The Veterans Administration’s Veterans Justice Outreach (VA-VJO)**

The purpose of the Veteran Justice Outreach Initiative (VJO) initiative is to avoid the unnecessary criminalization of mental illness and extended incarceration among Veterans by ensuring that eligible justice-involved Veterans have timely access to VHA mental health and substance abuse services when clinically indicated, and other VA services and benefits as appropriate.

VA is requiring justice-focused activity at the medical center level. VA Medical Centers have been strongly encouraged to develop working relationships with the court system and local law enforcement and must now provide outreach to justice-involved Veterans in the communities they serve.

Each VA medical center has been asked to designate a facility-based Veterans' Justice Outreach Specialist, responsible for direct outreach, assessment, and case management for justice-involved Veterans in local courts and jails, and liaison with local justice system partners.

A list of VA-VJO contacts, State by State, may be referenced here;

http://www.va.gov/HOMELESS/VJO_Contacts.asp

The National Contacts for the VA-VJO initiative are;

Sean Clark, National Coordinator, Veterans Justice Outreach, 202-461-1931, sean.clark2@va.gov

Jim McGuire, Director., Veterans Justice Programs, 310.478.3711 ext. 41450, james.mcguire@va.gov
A Cautionary Note on Mental Health Diagnoses

It is worthwhile to remember in any justice-related work conducted with veterans or, more specifically, combat veterans that the American Medical and Psychiatric Professions did not recognize Post-Traumatic Stress Disorder (PTSD) as a valid diagnosis until 1980. It is further worth remembering that this in no way means we had never recognized the psychological or psychic impact of combat upon combatants. In fact, the history of the psychological impact of war upon has been remarked upon since the dawn of written history proper.

Since the professional acceptance of the validity of PTSD as a valid diagnosis the primary diagnostic instrument, the DSM(R), has moved through four subsequent versions—and we are now slated to move to a fifth edition…and with each successive edition the profession was no less adamant in their level of certitude as to the scientific validity of diagnostic procedure.

It is important for us to understand that modern psychiatry and psychology contain elements of science, but the respective disciplines are not “scientific” in the same manner as are organic chemistry or mechanical engineering. Last night when I went to bed the atomic weight of Hydrogen stood at a value of one. This morning when I awoke it had not changed…just as it has not changed since the inception of the periodic table of elements. Barring some unforeseen and revolutionary change in Quantum Physics, it will not have changed tomorrow. Science, in a pure or applied sense, dictates that we can replicate the same results again and again and again given the same set of conditions. Yet, in psychological or psychiatric diagnostic procedure that is something we most assuredly cannot do. Anyone who has been-on an in-patient basis-in any VA facility for any length of time will provide a narrative of treatment which will recount the administration of a wide variety of medications during its course….until “the right one (or combination) is found. By definition, that is indicative of a lack of certitude and it is the antithesis of the tenets of science.

PTSD or Acute Stress Reactions will remain, for some time to come, highly individualized responses to abnormal situations. While we possess an understanding of some aspects, there is much more we have yet to understand. Religious beliefs, personal relationships, socio-economic background or status, race, gender, age….all these factors contribute to how an individual will react to combat.
As the grandson of a man who worked for fifty-two years at the Mayo Clinic as one of the world’s leading Physicians in his realm of expertise and the son of another who held a PHD, I can assure one and all that I recognize the inherent value of medical practice and its contributions to humanity. As a man who has served in the military and spent years in the VA system, however, I am equally sure that we have yet to find the silver bullet to solve the conundrums raised by the diagnostic attempts to categorize and fit into typological schema a broad range of reactions which wear the label, “Post-Traumatic Stress Disorder”. As noted, the perhaps innumerable personal reactions to the experience of combat may defy full understanding for some time to come. We need to remember this and caution our responses more carefully. At a personal level I would note that perhaps one of the most efficacious modalities for managing a condition like PTSD is to let peers work with one another, yet there remains a paltry level of commitment to supporting such efforts.

**Military Service as a Social Contract**

“To care for him who hath borne the battle, and his widow and his orphan”.

In the Roman Republic the sons of those who formed the Equestrian Order were gathered before the steps of the Senate for review. A *Praetor* would pass before each soldier and his mount and inspect them to ensure they were up to standard. If a soldier did not pass muster the inspector would deliver the
command “vende equus” (sell your horse). The practice was a reflection of the old Roman concept of civitas. Civitas carried an inherent reciprocity: The citizen owed a term of service to the State and the State, in turn, owed he who had rendered service a set of obligations. This inherent reciprocity was echoed in the commitment made by President Lincoln whose words preface this section.

Military service represents a social contract which should not wax and wane in fervor with the tides and fickle moods of the American public. We live, still, in a representative Democracy—at least nominally, at any rate. There are those who cite the necessity to revoke Executive Authority and the War Powers Act and restore the authority for issuing a Declaration of War to the elected representatives of the American people, the Congress of the United States. I would tend to agree with them. Yet the young men and women who put on uniforms and serve their country in time of peace and in time of war should not suffer the vagaries of public mood or the oblique meanderings of our governance. Most are far too young to have mastered such nuance. They enter into a social contract, an act of blind faith, rendering service to a people and a nation. It is up to us to ensure that the articles of our governance are properly adhered to, not them.

One of the most troubling of rumblings I experienced in helping family after family, veteran after veteran, came when I realized what an high percentage of the sons and daughters who I had helped had a father or, in some cases, grandfather who had served in Vietnam. In bitterness over what had happened following the return of their sons from Iraq or Afghanistan what emerged was a sentiment that might be characterized as follows, we suffered the breaking of our nation’s contract with us for our service during Vietnam and we forgave that...we shall not pardon her again. In my own family and in the families of many whom I have helped or tried to help what has emerged is a determination not to send our sons into the military, ever. The American public needs to consider that carefully and be ready to go the next time the call goes out. Next time around many of us will remember the breaking of the social contract on two previous occasions and, as the old adage goes, “three strikes and you’re out.”

Despite a very different public reception to the veterans of Iraq and Afghanistan the realities of their homecoming have often been less than cordial. The suicide rates, unemployment rates, the large numbers of GWOT veterans experiencing justice contact and the rising numbers of young homeless veterans bespeak a reality very different from the fanfare and claptrap around “our warriors”. Rhetoric is simply that, rhetoric. The realities lived out are another matter altogether.
Former Senior Intelligence Analyst, Chalmers Johnson, in *The Sorrows of Empire* notes that the United States operates over 900 military bases in over 100 countries around the globe. Our unbridled militarism is untenable and diametrically opposed to the precepts of our Founding Fathers. We are no longer a Republic, but an Empire. While we spare no expense in the maintaining of our Empire we piddle around in the realm of caring for our veterans. We are faced with some very difficult choices. The time has come to scale back our Empire and restore the essence of our Republic. Yet in making that assertion I sincerely hope that we shall not confuse such scaling back and make of it an excuse to neglect those who have served us. The onus of the excesses of Empire should not be placed upon veterans. The blame rests upon the American public as a whole, period. The time has come for us to begin to have an honest conversation with ourselves. The American public has benefitted greatly from the excesses of world dominance. They have not minded benefitting from the spoils of Empire, they just didn’t wish to know the sordid details. Let us not place the onus upon our veterans, they have borne enough already.

**Aftermath: What Will We Have Done?**

I am not sure how to best characterize my sentiments when I look out at the national feeding frenzy generated around the need to assist “veterans in justice”. Perhaps the word rage is most befitting. Or maybe indignation….better still, righteous indignation. A visual contrast often proves quite effective and the most apt I can dredge up from my personal experience might be serving as a Peer Reviewer for the Deployment-Related Medical Research Programs in 2009. A total of thirty-two veterans and family members of veterans gathered at a posh Hotel in Virginia to assist twenty or so panels filled with ten to twelve PHDs and MDs from around the United States who possessed expertise in Traumatic Brain Injury and PTSD. The panel on which I served was populated by twelve such medical experts. Their average salary, as a group, was just over $350,000 dollars per annum. I and my fellow reviewers were paid $1500 dollars for three days’ service as peer reviewers. It took over two months to receive our reimbursements, however, and that late date for our recompense required the intercession of Special Adviser to the Joint Chiefs of Staff, General Xenakis. As a soldier I had been paid less than six hundred dollars per month. My fellow peer reviewer, Dr. Tom Berger of the Vietnam Veterans of America, had received seventy-five dollars extra in hazardous duty pay per month as a combat medic at Khe Sanh.
level of commitment to our veterans is reflected in that visual quite well, I venture. The Veteran’s Administration reported paying out 38.5 billion dollars during the course of 2011…less than the cost of the war during the course of one day in Iraq. Such jarring juxtapositions speak volumes.

Amidst the public rhetoric and the bullshit one tries to find some measure of hope, some respite from a fury that cannot help but well up from within. I think of the hundreds of families and individual veterans and service-members I helped, in some way, since the onset of the wars in Iraq and Afghanistan. I am not a lawyer. I had no resources whatsoever. And yet family after family ended up calling me because they had nowhere else to turn. I think of one of the families with whom I became most involved and to whom my heart will always extend its fullest measure, was the Jordal family of Iowa. One son went off to Iraq, the other to Afghanistan. A total of seven immediate family members fought in the latest of our wars. Both sons were diagnosed with PTSD, one with TBI. The eldest, Stephen, after three tours with the 101st Airborne, ended up going to jail in Oklahoma on one of the most ludicrous sets of criminal charges I have ever seen….and I have seen plenty. After over a year of incarceration during which he received no treatment for his TBI or PTSD he finally pled out on several of the eight felony counts against him. He was put on probation with the County Attorney acting as his Probation Officer. He was allowed to leave the State, released to his mother’s custody. Since when does that ever happen? I will tell you when. When you’re a County Attorney who succumbs to public pressure because you know you don’t have a case, that’s when. And what of this family, whose ancestors fought at Gettysburgh and in every war since. Oh, a mere $50,000 or so in debt, publicly embarrassed, put through Hell. 

How many families are in such a position? How many? How many veterans took their own lives, distraught, in debt, broken…with nowhere to turn. And to add insult to injury SAMHSA doles out $50,000,000 dollars for a suicide prevention study. I am sorry but I shall call that for what it is, a gross misuse of public monies. I can guarantee that for a fraction of that sum you could put ten combat veterans in a room for three days and have them author a paper about the causation of suicide amongst veterans and what they would yield would probably far exceed what is derived from the $50,000,000 federally funded study.

A group of veterans and families from around the country have been trying for over five years to fund a place called VICTRI Veterans Village in Central Minnesota. The group is entirely comprised of veterans and the family members of veterans, most of us well known in our respective areas of expertise. And yet we have been unable to raise the modest sum it would take to make VICTRI Village a reality. I shall again call it for what it is, a gross and obscene travesty. They do not really value us, they use us.
Looking at it amidst the onslaught of evidence to the contrary and drawing any conclusion other than that makes you one thing; stupid, foolish…pick one.

If our opinions were truly valued the responses would look very different. The Federal Agencies would not call us in, ask our opinions, write briefs which recommend things like funding veteran peers and then ignore what we say. Yet that is precisely what they do. Again, they use us. The beginning of this section reads, “Aftermath, What Will We Have Done?” Well, my assessment would be that a variegated array of researchers, attorneys, judges, politicians, Federal Staffers and Non-Profit Directors will have built their careers and reputations atop the backs of a bunch of men and women who joined the military and then experienced justice contact. In the baffling and frenzied activity dressed up beneath the stunning rhetorical trope “wounded warriors” it is almost understandable that no one seems to notice that those who often benefit least are those who are the subjects of the trite hullabaloo. One forgets to notice that of the fifty or so people calling the shots nationally in this arena there are only a very few who are veterans….none of them whom has ever gone to jail, suffered from an addiction, attempted suicide, experienced homelessness. The whole shebang is not without an element of bitter humor, however. I can think of more than one occasion when I went after this or that group for what they were doing. Of course my harangues got me voted off the island. One would think that a group of professionals whose charge it is to work with those with mental health and substance abuse disorders, the homeless and with veterans would be able to withstand a bit more than the likes of yours truly can dish out in an e-mail. Hey, you guys, toughen up for God’s sakes…Jeez. If I had been that skittish during any number of efforts I led I would have surely been prostrated on my fainting couch long before I ever brought anything to fruition. All I can say is, “Come on now, really?”

As is so often the case in a wide range of social justice advocacy efforts the last ones to be heard are often those who experience the problems…and if they are allowed to speak it is only in pre-formatted and tightly orchestrated fashion. And when such is the case what message does it really send? At some point it would be nice to witness the re-emergence of bloody common sense. On and on we go “fixing” a wide array of problems that never seem to reach anything resembling resolution. Gee, I wonder why?

At the end of the day, twenty years down the road, most of the guys and gals who were ostensibly to benefit from the collective efforts which have expended—and continue to expend—hundreds of millions of dollars will suffer a fate not all that dissimilar from that suffered by many a veteran of the conflicts in
Southeast Asia a generation ago. It is great the public wants to do something for veterans in crisis…but the public needs to pay attention to the simple fact that there are many who benefit greatly from the buzz and blur and almost none of them are veterans. That should bother all of us….but we have to notice, first.

Appendix (selected materials, State legislation, Veteran’s Court legislation)

California Penal Code Section 1170.9

(a) In the case of any person convicted of a criminal offense who could otherwise be sentenced to county jail or state prison and who alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the United States military, the court shall, prior to sentencing, make a determination as to whether the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of that service. The court may request, through existing resources, an assessment to aid in that determination.

(b) If the court concludes that a defendant convicted of a criminal offense is a person described in subdivision (a), and if the defendant is otherwise eligible for probation and the court places the defendant on probation, the court may order the defendant into a local, state, federal, or private nonprofit treatment program for a period not to exceed that which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.

(c) If a referral is made to the county mental health authority, the county shall be obligated to provide mental health treatment services only to the extent that resources are available for that purpose, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans service officer, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. The county mental health agency shall not be responsible for providing services outside its traditional scope of services. An order shall be made referring a defendant to a county mental health
agency only if that agency has agreed to accept responsibility for the treatment of the defendant.
(d) When determining the "needs of the defendant," for purposes of Section 1202.7, the court shall consider the fact that the defendant is a person described in subdivision (a) in assessing whether the defendant should be placed on probation and ordered into a federal or community-based treatment service program with a demonstrated history of specializing in the treatment of mental health problems, including substance abuse, post-traumatic stress disorder, traumatic brain injury, military sexual trauma, and other related mental health problems.
(e) A defendant granted probation under this section and committed to a residential treatment program shall earn sentence credits for the actual time the defendant serves in residential treatment.
(f) The court, in making an order under this section to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of that service, including, but not limited to, programs operated by the United States Department of Defense or the United States Veterans Administration.

(g) The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Veterans Administration to maximize benefits and services provided to the veteran.

Minnesota State Statute 609.115 subd. 10

Subd. 10. Military veterans.

(a) When a defendant appears in court and is convicted of a crime, the court shall inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States.

(b) If the defendant is currently serving in the military or is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may:

1. order that the officer preparing the report under subdivision 1 consult with the United States Department of Veterans Affairs, Minnesota Department of Veterans Affairs, or another agency or person with suitable knowledge or experience, for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, state, and local programming; and
(2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.

**Illinois Legislation**

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Unified Code of Corrections is amended by changing Section 5-4-1 as follows:

(730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)
Sec. 5-4-1. Sentencing Hearing.
(a) Except when the death penalty is sought under hearing procedures otherwise specified, after a determination of guilt, a hearing shall be held to impose the sentence. However, prior to the imposition of sentence on an individual being sentenced for an offense based upon a charge for a violation of Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance, the individual must undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of such a problem. Programs conducting these evaluations shall be licensed by the Department of Human Services. However, if the individual is not a resident of Illinois, the court may, in its discretion, accept an evaluation from a program in the state of such individual's residence. The court may in its sentencing order approve an eligible defendant for placement in a Department of Corrections impact incarceration program as provided in Section 5-8-1.1 or 5-8-1.3. The court may in its sentencing order recommend a defendant for placement in a Department of Corrections substance abuse treatment program as provided in paragraph (a) of subsection (1) of Section 3-2-2 conditioned upon the defendant being accepted in a program by the Department of Corrections. At the hearing the court shall:
(1) consider the evidence, if any, received upon the trial;
(2) consider any presentence reports;
(3) consider the financial impact of incarceration based on the financial impact statement filed with the clerk of the court by the Department of Corrections;
(4) consider evidence and information offered by the parties in aggravation and mitigation;
(4.5) consider substance abuse treatment, eligibility screening, and an assessment, if any, of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois courts;
(5) hear arguments as to sentencing alternatives;
(6) afford the defendant the opportunity to make a statement in his own behalf;
(7) afford the victim of a violent crime or a violation of Section 11-501 of the Illinois Vehicle Code, or a similar provision of a local ordinance, or a qualified individual affected by: (i) a violation of Section 405.405.1, 405.2, or 407 of the Illinois Controlled Substances Act or a violation of Section 55 or Section 65 of the Methamphetamine Control and Community Protection Act, or (ii) a Class 4 felony violation of Section 11-14, 11-15, 11-17, 11-18, 11-18.1, or 11-19 of the Criminal Code of 1961, committed by the defendant the opportunity to make a statement concerning the impact on the victim and to offer evidence in aggravation or mitigation; provided that the statement and evidence offered in aggravation or mitigation must first be prepared in writing in conjunction with the State's Attorney before it may be presented orally at the hearing. Any sworn testimony offered by the victim is subject to the defendant's right to cross-examine. All statements and evidence offered under this paragraph (7) shall become part of the record of the court. For the purpose of this paragraph (7), "qualified individual" means any person who (i) lived or worked within the territorial jurisdiction where the offense took place when the offense took place; and (ii) is familiar with various public places within the territorial jurisdiction where the offense took place when the offense took place. For the purposes of this paragraph (7), "qualified individual" includes any peace officer, or any member of any duly organized State, county, or municipal peace unit assigned to the territorial jurisdiction where the offense took place when the offense took place;

(8) in cases of reckless homicide afford the victim's spouse, guardians, parents or other immediate family members an opportunity to make oral statements; and

(9) in cases involving a felony sex offense as defined under the Sex Offender Management Board Act, consider the results of the sex offender evaluation conducted pursuant to Section 5-3-2 of this Act.

(b) All sentences shall be imposed by the judge based upon his independent assessment of the elements specified above and any agreement as to sentence reached by the parties. The judge who presided at the trial or the judge who accepted the plea of guilty shall impose the sentence unless he is no longer sitting as a judge in that court. Where the judge does not impose sentence at the same time on all defendants who are convicted as a result of being involved in the same offense, the defendant or the State's Attorney may advise the sentencing court of the disposition of any other defendants who have been sentenced.

(c) In imposing a sentence for a violent crime or for an offense of operating or being in physical control of a vehicle while under the influence of alcohol, any other drug or any combination thereof, or a similar provision of a local ordinance, when such offense resulted in the personal injury to someone other than the defendant, the trial judge
shall specify on the record the particular evidence, information, factors in mitigation and aggravation or other reasons that led to his sentencing determination. The full verbatim record of the HB2281 Enrolled - 4 - LRB096 09107 RLC 19250 b sentencing hearing shall be filed with the clerk of the court and shall be a public record.

(c-1) In imposing a sentence for the offense of aggravated kidnapping for ransom, home invasion, armed robbery, aggravated vehicular hijacking, aggravated discharge of a firearm, or armed violence with a category I weapon or category II weapon, the trial judge shall make a finding as to whether the conduct leading to conviction for the offense resulted in great bodily harm to a victim, and shall enter that finding and the basis for that finding in the record.

(c-2) If the defendant is sentenced to prison, other than when a sentence of natural life imprisonment or a sentence of death is imposed, at the time the sentence is imposed the judge shall state on the record in open court the approximate period of time the defendant will serve in custody according to the then current statutory rules and regulations for early release found in Section 3-6-3 and other related provisions of this Code. This statement is intended solely to inform the public, has no legal effect on the defendant's actual release, and may not be relied on by the defendant on appeal. The judge's statement, to be given after pronouncing the sentence, other than when the sentence is imposed for one of the offenses enumerated in paragraph (a)(3) of Section 3-6-3, shall include the following: "The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, assuming the defendant receives all of his or her good conduct credit, the period of estimated actual custody is ... years and ... months, less up to 180 days additional good conduct credit for meritorious service. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations, does not receive those credits, the actual time served in prison will be longer. The defendant may also receive an additional one-half day good conduct credit for each day of participation in vocational, industry, substance abuse, and educational programs as provided for by Illinois statute." When the sentence is imposed for one of the offenses enumerated in paragraph (a)(3) of Section 3-6-3, other than when the sentence is imposed for one of the offenses enumerated in paragraph (a)(2) of Section 3-6-3 committed on or after June 19, 1998, and other than when the sentence is imposed for reckless homicide as defined in subsection (e) of Section 9-3 of the Criminal Code of 1961 if the offense was committed on or after January 1, 1999, and other than when the sentence is imposed for aggravated arson if the offense was committed on or after July 27, 2001 (the effective date of Public Act
92-176), the judge's statement, to be given after pronouncing the sentence, shall include the following: "The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, assuming the defendant receives all of his or her good conduct credit, the period of estimated actual custody is ... years and ... months, less up to 90 days additional good conduct credit for meritorious service. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations, does not receive those credits, the actual time served in prison will be longer. The defendant may also receive an additional one-half day good conduct credit for each day of participation in vocational, industry, substance abuse, and educational programs as provided for by Illinois statute." When the sentence is imposed for one of the offenses enumerated in paragraph (a)(2) of Section 3-6-3, other than first degree murder, and the offense was committed on or after June 19, 1998, and when the sentence is imposed for reckless homicide as defined in subsection (e) of Section 9-3 of the Criminal Code of 1961 if the offense was committed on or after January 1, 1999, and when the sentence is imposed for aggravated driving under the influence of alcohol, other drugs or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, and when the sentence is imposed for aggravated arson if the offense was committed on or after July 27, 2001 (the effective date of Public Act 92-176), the judge's statement, to be given after pronouncing the sentence, shall include the following: "The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant is entitled to no more than 4 1/2 days of good conduct credit for each month of his or her sentence of imprisonment. Therefore, this defendant will serve at least 85% of his or her sentence. Assuming the defendant receives 4 1/2 days credit for each month of his or her sentence, the period of estimated actual custody is ... years and ... months. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations receives lesser credit, the actual time served in prison will be longer." When a sentence of imprisonment is imposed for first degree murder and the offense was committed on or after June 19, 1998, the judge's statement, to be given after pronouncing the sentence, shall include the following: "The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of
prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant is not entitled to good conduct credit. Therefore, this defendant will serve 100% of his or her sentence." When the sentencing order recommends placement in a substance abuse program for any offense that results in incarceration in a Department of Corrections facility and the crime was committed on or after September 1, 2003 (the effective date of Public Act 93-354), the judge's statement, in addition to any other judge's statement required under this Section, to be given after pronouncing the sentence, shall include the following: "The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant shall receive no good conduct credit under clause (3) of subsection (a) of Section 3-6-3 until he or she participates in and completes a substance abuse treatment program or receives a waiver from the Director of Corrections pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

(c-4) Before the sentencing hearing and as part of the presentence investigation under Section 5-3-1, the court shall inquire of the defendant whether the defendant is currently serving in or is a veteran of the Armed Forces of the United States. If the defendant is currently serving in the Armed Forces of the United States or is a veteran of the Armed Forces of the United States and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may:

(1) order that the officer preparing the presentence report consult with the United States Department of Veterans Affairs, Illinois Department of Veterans' Affairs, or another agency or person with suitable knowledge or experience for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, State, and local programming; and

(2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence. For the purposes of this subsection (c-4), "qualified psychiatrist" means a reputable physician licensed in Illinois to practice medicine in all its branches, who has specialized in the diagnosis and treatment of mental and nervous disorders for a period of not less than 5 years. (d) When the defendant is committed to the Department of Corrections, the State's Attorney shall and counsel for the defendant may file a statement with the clerk of the court to be transmitted to the department, agency or institution to which the person was committed together with all other factual information
accessible to them in regard to the person prior to his commitment relative to his habits, associates, disposition and reputation and any other facts and circumstances which may aid such department, agency or institution during its custody of such person. The clerk shall within 10 days after receiving any such statements transmit a copy to such department, agency or institution and a copy to the other party, provided, however, that this shall not be cause for delay in conveying the person to the department, agency or institution to which he has been committed.

(e) The clerk of the court shall transmit to the department, agency or institution, if any, to which the defendant is committed, the following:

(1) the sentence imposed;
(2) any statement by the court of the basis for imposing the sentence;
(3) any presentence reports;
(3.5) any sex offender evaluations;
(3.6) any substance abuse treatment eligibility screening and assessment of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois courts;
(4) the number of days, if any, which the defendant has been in custody and for which he is entitled to credit against the sentence, which information shall be provided to the clerk by the sheriff;
(4.1) any finding of great bodily harm made by the court with respect to an offense enumerated in subsection (c-1);
(5) all statements filed under subsection (d) of this Section;
(6) any medical or mental health records or summaries of the defendant;
(7) the municipality where the arrest of the offender or the commission of the offense has occurred, where such municipality has a population of more than 25,000 persons;
(8) all statements made and evidence offered under paragraph (7) of subsection (a) of this Section; and
(9) all additional matters which the court directs the clerk to transmit.

(Source: P.A. 94-156, eff. 7-8-05; 94-556, eff. 9-11-05; 95-331, eff. 8-21-07.)
End Notes

2 Michael T. Lambert and Robert D. Fowler, “Suicide Risk Factors among Veterans: Risk Management in the Changing Culture of the Department of Veterans Affairs”, Journal of Mental Health Administration 24,3 (1997);
4 Report of Findings from the National Vietnam Veterans Readjustment Study (New York: Brunner/Mazel, 1980)
7 Unemployment of Veterans, State by State, Iraq-Afghanistan Veterans of America (IAVA), Mar. 2012
11 Boys of Company C Directed by Sidney Furie, Golden Harvest Company, Good Times Films S.A.2 April 1978 (Denmark)
13 The Deer Hunter, 1978, Directed by Michael Cimino, EMI Films, Universal Studios, 23 February 1979 (USA)
14 Go Tell the Spartans, Directed by Ted Post, Mar Vista Productions, Spartan Productions, Release date, 1 September, 1978
16 Apocalypse Now, Directed by Francis Ford Coppola, Zoetrope Studios, 19 August 1979
18 www.ptsd.va.gov

Audie suffered from what is now known as Post Traumatic Stress Disorder (PTSD)and was plagued by insomnia and depression. During the mid-60’s he became dependent for a time on doctor prescribed sleeping pills called Placidyl. When he recognized that he had become addicted to this prescription drug, he locked himself in a motel room, stopped taking the sleeping pills and went through withdrawal symptoms for a week. Always an advocate for the needs of veterans, he broke the taboo about discussing war related mental problems after this experience. In a effort to draw attention to the problems of returning Korean and Vietnam War veterans, Audie Murphy spoke candidly about his personal problems with PTSD, then known as “Battle Fatigue”. He publicly called for United States government to give more consideration and study to the emotional impact war has on veterans and to extend health care benefits to address PTSD and other mental health problems of returning war vets.

Homelessness amongst Vietnam veterans

Department of Justice, Bureau of Justice Statistics, Veterans in Prison (Bulletin) 1981.
Christopher Mumola and Margaret Noonan, Veterans in State and Federal Prison, May 2007, NCJ 217199
Christopher Mumola and Margaret Noonan, Veterans in Prison or Jail, Department of Justice, Bureau of Justice Statistics, January 2000, NCJ 178888, Revised 9/29/2000
Male Military Veterans are incarcerated at less than half the rate of Non-Veterans, Advanced for Release AT 4:30 P.M. EST ,BJS May 18, 2000, BJS 202/307-0784
Greenberg and Rosenheck
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Allen I. Beck, DOJ-BJS Departmental Head, Statistician (e-mail on file with author)
Greg A. Greenberg and Robert A. Rosenheck, Incarceration Among Male Veterans: Relative Risk of Imprisonment and Differences Between Veteran and Nonveteran Inmates, Int J Offender Ther Comp Criminol published online 18 April 2011
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The notion of broken windows has provided important insights and innovation to the field of policing. At times, however, these ideas have been misunderstood, misapplied, or revised, and often viewed outside the context of community policing. Broken windows is based on the notion that the practice of increasing penalties for repeat offenders is fairly common and well-established, the modern three strikes law first appeared in the early 1990s in Washington State. Shortly after, California adopted a strict three strikes law, which critics have said was ineffective at reducing overall crime rates and responsible for crowding prisons.

lxxvii A BRIEF LEGAL HISTORY OF AMERICA’S SEXUAL AND DOMESTIC VIOLENCE LAWS, WWW.K-STATE.EDU/
lxxviii http://www.totalcriminaldefense.com/overview/three-strikes-law.aspx History of Three Strikes Laws: Three strikes laws, officially known in many states as habitual offender laws, get their name from the baseball rules of “three strikes and you're out.” Though the practice of increasing penalties for repeat offenders is fairly common and well-established, the modern three strikes law first appeared in the early 1990s in Washington State. Shortly after, California adopted a strict three strikes law, which critics have said was an emotional reaction to a murder committed by a twice-convicted felon. Since three strikes laws' popularity during the 1990s, many states have amended or repealed the provisions of their three strikes laws, partly because some studies have found them ineffective at reducing overall crime rates and responsible for crowding prisons.

In other words, broken windows has provided important insights and innovation to the field of policing. At times, however, these ideas have been misunderstood, misapplied, and often viewed outside the context of community policing. Broken windows is based on the notion that
papers of incivility, like broken windows, signify that nobody cares, which leads to greater fear of crime and a reduction of community efficacy, which in turn can lead to more serious crimes and greater signs of incivility, repeating the cycle into a potential spiral of decay. For police, the insight of broken windows is that they are called on to address minor quality-of-life offenses and incidents of social disorder to prevent more serious crime, and that they must take specific steps to increase the capacity of communities to exert informal social control. Just as many have inaccurately reduced community policing to community relations, others have incorrectly reduced broken windows to merely zero tolerance or order enforcement policies, with little regard for community concerns or outcomes. In fact, broken windows advocates for the careful implementation of these specific police tactics so that individual rights and community interests are respected. In addition, broken windows stresses the importance of including communities in the change process, with the primary goal being the development of informal social control mechanisms within the communities in question and not merely increased enforcement of minor offenses.”

American Bar Association’s Commission on Homelessness & Poverty Homeless Veterans Justice Initiative

http://www.abanow.org/2005/03/aba-commission-on-effective-criminal-sanctions-march-3-hearing-notes/

CRS Report for Congress, Michael Waterhouse and JoAnne O’Bryant Information Research Specialists Knowledge Services Group,

http://www.law.cornell.edu/wex/insanity_defense

**United States v. Hinckley**, a recent successful use of the insanity defense On March 30, 1981, John W. Hinckley, Jr., shot President Ronald Reagan, attempting to assassinate him. His defense attorneys did not dispute that he had planned and committed the attack. His attorneys instead argued that he was acting according to the impulses of a diseased or impaired mind. **The legal argument**: Hinckley's attorneys argued that Hinckley had not acted of his own volition, but that his life was controlled by his pathological obsession with the movie, *Taxi Driver*, starring Jodie Foster. In that movie, the title character stalks the president and fights in a shootout. Hinckley's attorneys said he saw the movie 15 times, and identified with the hero and was seeking to reenact the events of the movie in his own life. Hinckley’s attorneys argued that Hinckley was schizophrenic. They argued that the movie was the actual planning force behind the defendant's assassination attempt against the President. The judge allowed the defense to introduce evidence, in the form of a CAT scan, that Hinckley’s brain showed signs of shrunken brain tissue, one of the common symptoms of schizophrenia. The prosecution opposed this evidence, on the grounds that the technical nature of the evidence would cause the jury to place too heavy an emphasis on it. The judge rejected this argument, on the grounds that the evidence was relevant.

Justice Kennedy’s Address before the ABA Hall of Delegates, San Francisco, 2003

**AMERICAN BAR ASSOCIATION JUSTICE KENNEDY COMMISSION, REPORTS WITH RECOMMENDATIONS TO THE ABA HOUSE OF DELEGATES AUGUST 2004**

**http://www.prisonpolicy.org/scans/sp/1023.pdf**

Legal Outline of Authorities & Decisions Related to Criminal Records and Employment, Sharon Dietrich, Community Legal Services

Maurice Emsellem, National Employment Law Project, June 2006

PEW Center, State of Recidivism: The Revolving Door of America’s Prisons, April 12, 2011.

PEW Center, State of Recidivism: The Revolving Door of America’s Prisons, April 12, 2011.

Multiple citations on definition of collateral consequences

Joseph F. Fulda, DATA MINING AND PRIVACY, 2003; Will Nagel "Privacy Schmprivacy?" DRAFTING PRIVACY POLICY IN AN INTEGRATED JUSTICE ENVIRONMENT (and why it’s important), Illinois Criminal Justice Information Justice Authority, June, 2004

**RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: A STATE-BY-STATE RESOURCE GUIDE, BY MARGARET COLGATE LOVE A COLLECTION OF INDIVIDUAL STATE DOCUMENTS THAT CAN BE DOWNLOADED; INCLUDES STATE LAW REGARDING LOSS OF RIGHTS DUE TO A FELONY CONVICTION, PROCESS OF RESTORATION, PARDON/EXPUNGEMENT INFORMATION, AND CONTACT INFORMATION OF CORRESPONDING AGENCIES. MARCH, 2008,**

http://sentencingproject.org/detail/publication.cfm?publication_id=115

http://www.lac.org/index.php/lac/category/free_publications_library


On ineffectiveness of expungement remedies

GAINS Center Collateral Consequences teleconference

SAMHSA-National GAINS Center Creating Effective Responses for Combat Veterans with Trauma who Are Justice-Involved.

Bethesda, MD. 2008

As increasing numbers of combat veterans return from duty overseas, more needs to be done on helping these individuals adapt back to community life. Without adequate supports to ensure that these veterans are receiving appropriate mental health care many will go on to develop trauma-related disorders. With as many as 17 percent of returning veterans developing PTSD and other mental illnesses, the need for proactive initiatives becomes more and more apparent. When these disorders go untreated, there is an increased risk that these veterans will become involved in the justice system. On May 9, 2008, SAMSHA’s GAINS Center held a workshop on **Creating Effective Responses for Combat Veterans with Trauma who Are Justice-Involved** in Bethesda, MD. This one time, one day meeting provided GAINS Center staff with a refined look at the important issues surrounding military service members. The Center's goal was to establish priorities for action in providing treatment for veterans and decreasing their involvement in the criminal justice system. Speakers at the meeting highlighted vital issues regarding service members including characteristics of the veteran population, information on PTSD, and the effects of traumatic brain injury (TBI). The information gathered from this meeting was used to inform the activities of the 2008 CMHS National Returning Veterans Conference that was held in August 2008. In addition, information gleaned from the presentations and
discussions has assisted GAINS Center staff in drafting an issue brief for jail administrators to implement during the screening/assessment stage. The brief will aid administrators in identifying incoming veterans that may be in immediate need of mental health services. The brief will also help to establish priorities for action in providing treatment for veterans and decreasing their involvement in the criminal justice system, specifically members returning from Operation Iraqi Freedom and Operation Enduring Freedom.