
Leaving No Veteran Behind: Policies and Perspectives on Combat Trauma, Veterans Courts, and the Rehabilitative Approach to Criminal Behavior

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Abstract

As of June 2012, at least 104 jurisdictions spanning 28 states have created specialized criminal courts for veterans. Known as Veterans Treatment Courts (VTCs), these courts focus on rehabilitation, rather than incarceration, to address the root causes of criminal behavior. Although other articles have described the emergence of VTCs, few, if any, have focused on the jurisdictional differences between them. This Comment addresses the basic treatment process and jurisdictional differences among VTCs in the United States, with a particular focus on VTCs in Pennsylvania. This Comment also discusses trends in the VTC movement, the effectiveness of VTCs to date, perspectives from both critics and advocates, and the need for greater awareness efforts regarding the unique purposes of these courts.

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On a tour of this country . . . I have visited 18 governmental hospitals for veterans. In them are a total of about 50,000 destroyed men . . . men who were the pick of the nation 18 years ago. Boys with a normal viewpoint were taken out of the fields and offices and factories and classrooms and put into the ranks. There they were remolded; they were made over; they were made to “about face”; to regard murder as the order of the day. They were put shoulder to shoulder and, through mass psychology, they were entirely changed. We used them for a couple of years and trained them to think nothing at all about killing or being killed. Then, suddenly, we discharged them and told them to make another “about face!” We didn’t need them anymore.¹

I. INTRODUCTION

The psychological consequences of war can be devastating.² As Judge Charles Kornmann reflected during the sentencing of one veteran, “[N]ot all the casualties [of war] . . . come home in body bags.”³ For

1. PENNY COLEMAN, FLASHBACK: POSTTRAUMATIC STRESS DISORDER, SUICIDE, AND THE LESSONS OF WAR 23 (2006) (quoting Maj. Gen. Smedley Butler, U.S. Marine Corps, two-time Congressional Medal of Honor recipient, from a letter written in 1936 and excerpted in *The VVA Veteran*, April 1995).

2. See generally RAND CTR. FOR MIL. HEALTH POL’Y RES., INVISIBLE WOUNDS OF WAR: SUMMARY AND RECOMMENDATIONS FOR ADDRESSING PSYCHOLOGICAL AND COGNITIVE INJURIES (Terri Tanielian & Lisa H. Jaycox eds., 2008) [hereinafter INVISIBLE WOUNDS OF WAR].

3. Deborah Sontag & Lizette Alvarez, *In More Cases, Combat Trauma is Taking the Stand*, N.Y. TIMES, Jan. 27, 2008, at A1, A14.

some veterans, the greatest struggle they encounter is the return to a regular life.⁴

Indeed, “he came back different” is a shared refrain among the loved ones of many returning veterans.⁵ For instance, U.S. Army Specialist (SPC) Shane Parham—like many others—returned from Iraq irritable, detached, and volatile.⁶ He suffered from sleeplessness and excessive drinking, and he kept a weapon near him at all times.⁷ He returned from Iraq as a war hero;⁸ however, within one year of his diagnosis with post-traumatic stress disorder (PTSD), Parham had been charged with obstruction of an officer, disorderly conduct, and driving under the influence of alcohol (DUI).⁹ He had also attempted suicide twice.¹⁰

In view of veterans like SPC Parham who struggle after returning from duty, both the military and the criminal justice system are tasked with finding ways to deal with veterans who commit crimes. The question remains whether incarceration is the most practical solution.

As of June 2012, at least 104 jurisdictions spanning 28 states have created specialized Veterans Treatment Courts (VTCs).¹¹ Rather than incarcerating veterans, these courts focus on rehabilitative treatment to address the underlying causes of criminal behavior.¹² This Comment focuses on that rehabilitative system. Although other articles have described the emergence of VTCs, few, if any, have focused on the jurisdictional differences among these courts and the major criticisms lodged against them.

4. Telephone Interview with Bradley Schaffer, coordinator of the Veterans Justice Outreach Program, Dep’t of Veterans Affairs, Butler Healthcare Ctr., Butler, Pa. (Sept. 13, 2011) [hereinafter Schaffer Interview].

5. See, e.g., ILONA MEAGHER, MOVING A NATION TO CARE: POST-TRAUMATIC STRESS DISORDER AND AMERICA’S RETURNING TROOPS 117 (quoting a friend of one veteran: “[W]hen he came back from Iraq the difference in him was so sad.”); Sontag, *supra* note 3 (documenting behavioral changes in veterans who committed homicide after returning from Iraq and Afghanistan); BRET A. MOORE & CARRIE H. KENNEDY, WHEELS DOWN: ADJUSTING TO LIFE AFTER DEPLOYMENT 7-19 (2011) (discussing some of the changes that veterans should expect post-deployment).

6. See Moni Basu, *Seven Months in Iraq, Six Years Back Home: A Soldier’s War on Two Fronts*, CNN (May 22, 2011), <http://bit.ly/zdCcvR>.

7. See *id.*

8. See *id.*

9. *Id.*

10. *Id.*

11. *The History*, NAT’L ASS’N OF DRUG CT. PROF’LS, <http://bit.ly/Ru5eSz> (last visited Jan. 10, 2013).

12. *Id.*; see also *Other than Honorable*, IN THEIR BOOTS, <http://bit.ly/z1JxeT> (last visited Jan. 10, 2013) (discussing the VTC in Orange County, California, and the struggles of three combat veterans in the criminal justice system); Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 363-64 (2009) (discussing the VTC in Buffalo, New York).

This Comment begins with a discussion of PTSD, a major justification for the development of VTCs. Specifically, Part II will describe PTSD symptoms and the diagnostic history of this disorder. Part III will address the link between PTSD and criminal behavior, and Part IV will explore the development of VTCs to address this issue. Part IV will also discuss the VTC process, the effectiveness of maintaining a VTC, and perspectives on VTCs from both critics and advocates. Finally, Part V will conclude with a recommendation that, as the VTC movement continues to gain momentum, advocates should focus on awareness campaigns to emphasize the purposes of these courts.

II. PTSD AND THE PSYCHOLOGICAL CONSEQUENCES OF WAR

Since 2001, the U.S. military has deployed more than two million troops in support of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF).¹³ Although most soldiers function normally despite repeated deployments,¹⁴ roughly 10 to 20 percent of these returning troops exhibit psychological problems warranting treatment.¹⁵ Studies indicate that veterans are susceptible to aggression,¹⁶ risk-taking behavior,¹⁷ depression,¹⁸ and suicide.¹⁹

In recent years, no psychological difficulty among veterans has received greater attention than PTSD.²⁰ While estimates vary,²¹ studies

13. Michelle Tan, *Two Million Troops Have Deployed Since 9/11*, MILITARY TIMES (Dec. 18, 2009, 1:20 PM), <http://bit.ly/AzCF3j>.

14. The military has deployed approximately 800,000 personnel more than once in support of OEF and OIF. *Id.*

15. See, e.g., INVISIBLE WOUNDS OF WAR, *supra* note 2, at 30 (estimating that, based on a sample of 1,965 OEF and OIF veterans, 14% have PTSD); Charles W. Hoge et al., *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, 351 NEW ENG. J. MED. 13, 13 (2004) (reporting that 15.6% to 17.1% of returning OIF troops have mental health issues); OFFICE OF THE U.S. ARMY SURGEON GEN., MENTAL HEALTH ADVISORY TEAM (MHAT) V. OPERATION IRAQI FREEDOM 06-08: IRAQ, OPERATION ENDURING FREEDOM 8: AFGHANISTAN, at 3-4 (2008), available at <http://bit.ly/wxbCio> (finding that 18% of soldiers in Iraq and Afghanistan showed symptoms of depression, acute stress, or anxiety).

16. See, e.g., Matthew Jacupcak et al., *Anger, Hostility, and Aggression Among Iraq and Afghanistan War Veterans Reporting PTSD and Subthreshold PTSD*, 20 J. TRAUMATIC STRESS 945 (2007).

17. See, e.g., William D.S. Killgore et al., *Post-combat Invincibility: Violent Combat Experiences are Associated with Increased Risk-taking Propensity Following Deployment*, 42 J. PSYCHIATRIC RES. 1112 (2008).

18. See Hoge et al., *supra* note 15, at 17.

19. See, e.g., Bridget M. Kuehn, *Soldier Suicide Rates Continue to Rise: Military, Scientists Work to Stem the Tide*, 301 JAMA 1111 (2009) (estimating that two-thirds of soldiers committing suicide since 2005 have done so during or soon after deployment).

20. See, e.g., JOSEF I. RUZEK ET AL., CARING FOR VETERANS WITH DEPLOYMENT-RELATED STRESS DISORDERS: IRAQ, AFGHANISTAN, AND BEYOND 15 (2011) (describing the increased public and institutional awareness for PTSD).

indicate that 10 to 20 percent of OIF and OEF veterans develop significant PTSD symptoms following deployment.²² PTSD also coincides with other psychological and behavioral issues.²³ Due to PTSD's complexity,²⁴ Part II provides an overview of the diagnostic history and symptoms of this disorder.

A. *The History of Combat Trauma*

Stories of PTSD-like symptoms date back to ancient Greece.²⁵ In Homer's *Iliad*, Achilles's grief after the death of his friend Patroclus, and his sense of betrayal at the hands of his commander Agamemnon, was so overwhelming that he renounced hope of returning from war alive.²⁶

21. INST. OF MED. OF THE NAT'L ACADS., TREATMENT OF POSTTRAUMATIC STRESS DISORDER: AN ASSESSMENT OF THE EVIDENCE 22 (2008) (asserting that recent PTSD surveys among veterans yield a wide range of results). Estimating the PTSD incident rate is difficult due to onset delay and the stigma of PTSD. See, e.g., Thomas W. Britt, *The Stigma of Psychological Problems in a Work Environment: Evidence from the Screening of Service Members Returning from Bosnia*, 30 J. APPLIED SOC. PSYCHOLOGY 1599, 1614 (2006) (finding that troops do not report mental health issues because of the associated stigma); Matthew J. Friedman, *Acknowledging the Psychiatric Cost of War*, 351 NEW ENG. J. MED. 75, 76 (2004) (asserting that clinicians underestimate the PTSD incident rate due to the "lag" that occurs between trauma and PTSD symptoms).

22. See INVISIBLE WOUNDS OF WAR, *supra* note 2, at iii; Karen H. Seal et al., *Trends and Risk Factors for Mental Health Diagnoses Among Iraq and Afghanistan Veterans Using Department of Veterans Affairs Health Care, 2002–2008*, 99 AM. J. PUB. HEALTH 1651, 1651 (2009) (estimating a 21.8% PTSD incident rate for 289,328 OIF and OEF veterans who have enrolled in health care programs offered by the Department of Veterans Affairs); Karen H. Seal et al., *Bringing the War Back Home: Mental Health Disorders Among 103,788 U.S. Veterans Returning From Iraq and Afghanistan Seen at Department of Veterans Affairs Facilities*, 167 ARCH. INTERNAL MED. 476, 478 (2007) (estimating a 13% PTSD incident rate for 103,788 OIF and OEF veterans seen at Department of Veterans Affairs health centers between 2001 and 2005).

23. PTSD is associated with unemployment, alcohol abuse, relationship dissatisfaction, decreased physical health, and domestic violence. See Peter W. Tuerk et al., *Combat-Related PTSD: Scope of the Current Problem, Understanding Effective Treatment, and Barriers to Care*, 29 DEV. MENTAL HEALTH L. 49, 50 (2010); see also Bonnie L. Green & Stacey I. Kaltman, *Recent Research Findings on the Diagnosis of PTSD: Prevalence, Course, Comorbidity, and Risk*, in POSTTRAUMATIC STRESS DISORDER IN LITIGATION: GUIDELINES FOR FORENSIC ASSESSMENT 19, 22-23 (Robert I. Simon ed., 2003) (stating that PTSD rarely exists without concomitant problems).

24. See generally ERIN P. FINLEY, *FIELDS OF COMBAT: UNDERSTANDING PTSD AMONG VETERANS OF IRAQ AND AFGHANISTAN* (2011) (discussing how PTSD is perceived by the military, medical personnel, and society); DARYL S. PAULSON & STANLEY KRIPPNER, *HAUNTED BY COMBAT: UNDERSTANDING PTSD IN WAR VETERANS INCLUDING WOMEN, RESERVISTS, AND THOSE COMING BACK FROM IRAQ xv-xvi* (2007) (stating that PTSD has no single answer and that medical mainstream aggravates the tendency to "simplify something that is not simple at all").

25. See generally JONATHAN SHAY, *ACHILLES IN VIETNAM: COMBAT TRAUMA AND THE UNDOING OF CHARACTER xiii-xxiii* (1994).

26. See *id.* at xx-xxi.

Some scholars have commented that Achilles's behaviors would likely warrant a PTSD diagnosis in a modern setting.²⁷

During the American Revolutionary War, troops in the Continental Army suffered from "melancholia," a condition referring to invasive flashbacks, and "nostalgia," a depression allegedly caused by homesickness.²⁸ During the American Civil War, physicians recognized similar PTSD-like symptoms as "soldier's heart" or "irritable heart."²⁹

Throughout the nineteenth century, military commanders showed little sympathy towards combat-stressed troops.³⁰ Soldiers incapable of masking their symptoms were either reassigned or shot by firing squad.³¹ Commanders believed that such executions would instill obedience within the ranks and eliminate "the contagion of weakness."³²

During World War I, combat stress acquired the evocative diagnostic label "shell shock."³³ Some shell-shocked soldiers suffered from "nervous instability" and "breathlessness";³⁴ many showed odd symptoms such as the inability to see, smell, or taste, although they suffered no physical injury.³⁵ Initially, physicians theorized that artillery-shell explosions caused physical "shocks" to the nervous system.³⁶

Military physicians later replaced the term "shell shock" with "war neurosis."³⁷ Physicians hypothesized that the cause of war neurosis was emotional, rather than physical, because explosive concussions failed to explain many "shell shock" cases.³⁸ Like their American Civil War

27. *See id.*

28. *See* COLEMAN, *supra* note 1, at 23.

29. *See* PAULSON, *supra* note 24, at 9; ERIC T. DEAN, JR., SHOOK OVER HELL: POST-TRAUMATIC STRESS, VIETNAM, AND THE CIVIL WAR 46-69 (1997) (discussing combat trauma experienced by soldiers during the Civil War). *See generally* Louis F. Bishop, Jr., *Soldier's Heart*, 42 AM. J. NURSING 377 (1942).

30. COLEMAN, *supra* note 1, at 23 (describing how soldiers were "buried as they fell" in unmarked graves to "symbolically erase" their existence).

31. *See* COLEMAN, *supra* note 1, at 23-24; DEAN, *supra* note 29, at 68-69; MEAGHER, *supra* note 5, at 15.

32. COLEMAN, *supra* note 1, at 23.

33. *Id.* at 29-37. *See generally* BEN SHEPHARD, A WAR OF NERVES: SOLDIERS AND PSYCHIATRISTS IN THE TWENTIETH CENTURY (2001) (discussing shell shock during World War I).

34. Joel D. Howell, "Soldier's Heart": *The Redefinition of Heart Disease and Specialty Formation in Early Twentieth-Century Great Britain*, Supp. No. 5 MED. HIST. 34, 43 (1985), available at <http://1.usa.gov/z2Edqs>.

35. *See* FINLEY, *supra* note 24, at 90; SHEPHARD, *supra* note 33, at 1-3.

36. *See* SHEPHARD, *supra* note 33, at 1-3.

37. Paul Wanke, *American Military Psychiatry and Its Role Among Ground Forces in World War II*, 63 J. MIL. HISTORY 127, 128 (1999).

38. *See id.*; *see also* DEAN, *supra* note 29, at 35; FINLEY, *supra* note 24, at 90. Indeed, some psychiatrists estimated that 90% to 95% of shell-shocked soldiers suffered from a "nervous breakdown brought about by fear, fatigue, and horrific experiences."

counterparts, World War I commanders executed many combat-stressed troops;³⁹ one commander tied the “cowards” to front-line barbed wire to be shot by the enemy.⁴⁰

During World War II, the military sought to avoid combat-stress symptoms by closely screening draftees for any predisposition to mental illness.⁴¹ This process disqualified 1.6 million of 20 million draftees;⁴² however, over 1.3 million soldiers eventually developed a mental illness during World War II.⁴³

After screening procedures failed to reduce the “psychiatric casualty” rate,⁴⁴ the medical community began to recognize that *anyone* could develop combat stress.⁴⁵ One of World War II’s greatest Allied Forces commanders, General George Patton, might have even suffered from it.⁴⁶ By the end of World War II, physicians replaced war neurosis with the less stigmatizing term “combat fatigue.”⁴⁷

B. *Post-Traumatic Stress Disorder and Modern Warfare*

Although combat trauma received significant attention from military physicians during the first half of the twentieth century, the Vietnam War redefined the condition for both the medical community and society.⁴⁸ Dr. Matthew Friedman, Executive Director of the National Center for PTSD, identified the issue’s magnitude: “[Veterans] were

SHEPHARD, *supra* note 33, at 140. Unlike shell shock, war neurosis was often associated with a “soldier’s attitude,” thus subjecting those troops suffering from it to the stigma of being a “coward.” *Id.* at 136.

39. COLEMAN, *supra* note 1, at 30.

40. DENIS WINTER, *DEATH’S MEN: SOLDIERS OF THE GREAT WAR* 129 (1978) (quoting one commander who tied “cowards” to front-line barbed wire with “most effective results”).

41. See FINLEY, *supra* note 24, at 92; DEAN, *supra* note 29, at 35; Wanke, *supra* note 37, at 127.

42. DEAN, *supra* note 29, at 35.

43. *Id.*

44. “Psychiatric casualty” refers to soldiers who were released from duty for mental health reasons. See Wanke, *supra* note 37, at 132. Despite screening procedures, the psychiatric casualty rate during World War II was 2.4 times greater than in World War I. *Id.*

45. See FINLEY, *supra* note 24, at 93; SHEPHARD, *supra* note 33, at 201.

46. MEAGHER, *supra* note 5, at 13. Meagher asserts that General Patton was just one in a “long line of soldiers” affected by combat stress. *Id.* (quoting CARLO D’ESTE, *PATTON: A GENIUS FOR WAR* 539 (1996) (“Patton’s difficulty was that he refused to acknowledge in himself the battle fatigue he deplored in his men.”)).

47. Wanke, *supra* note 37, at 142.

48. See COLEMAN, *supra* note 1, at 65-91 (answering the question “why was Vietnam different?”); Thomas L. Hafemeister & Nicole A. Stockey, *Last Stand? The Criminal Responsibility of War Veterans Returning from Iraq and Afghanistan with Posttraumatic Stress Disorder*, 85 *IND. L.J.* 87, 97 (2010). See generally ROBERT JAY LIFTON, *HOME FROM WAR: LEARNING FROM VIETNAM VETERANS* (1992).

flooding the clinics, demanding that we do something for their distress. We had no clinical terminology for what we were seeing. Their suffering was so raw.”⁴⁹

In response, some clinicians proposed the formal recognition of “post-Vietnam syndrome”⁵⁰ for an array of symptoms including rage, guilt, emotional numbness, and alienation.⁵¹ These advocacy efforts also collided with a revolutionary shift in modern psychiatry: an attempt to create standard diagnostic criteria for mental illnesses.⁵²

By the late 1970s, the American Psychiatric Association (APA) considered adopting post-Vietnam syndrome in its *Diagnostic and Statistical Manual of Mental Disorders* (DSM).⁵³ Some APA members were reluctant to do so because research did not support its distinction from other mental illnesses.⁵⁴ That is, many psychiatrists argued that post-Vietnam syndrome’s cause—a traumatic event—was unique, but not its symptoms.⁵⁵ Nevertheless, the APA officially recognized post-Vietnam syndrome in 1980, renaming it PTSD.⁵⁶

C. *Understanding PTSD: Symptoms and Diagnosis*

By the late 1980s, PTSD had become an internationally recognized disorder.⁵⁷ PTSD is currently associated with traumatic events such as childhood abuse, rape, automobile accidents, terrorist attacks, and natural disasters.⁵⁸ The disorder currently affects between one and three percent of the U.S. population.⁵⁹ Despite its widespread recognition, PTSD

49. Kate Mulligan, *For PTSD Care, It’s a Long Way from Vietnam to Iraq*, 39 MICHIGAN PSYCHIATRY NEWS 1, 1 (May 07, 2004), available at <http://bit.ly/wgDBhA>.

50. MEAGHER, *supra* note 5, at 20.

51. See FINLEY, *supra* note 24, at 95.

52. *Id.*

53. *Id.*

54. See *id.* at 96.

55. See *id.*

56. See generally AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3d ed. 1980); Hafemeister & Stockey, *supra* note 48, at 94.

57. See, e.g., SHEPARD, *supra* note 33, at 386; DAVID KINCHIN, A GUIDE TO PSYCHOLOGICAL DEBRIEFING: MANAGING EMOTIONAL DECOMPRESSION AND POST-TRAUMATIC STRESS DISORDER 15 (2007).

58. See AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 463-64 (4th ed. 2000) [hereinafter DSM-IV-TR] (describing traumatic events associated with PTSD); see also KINCHIN, *supra* note 57, at 21 (describing individuals at high risk for PTSD); *What Is PTSD?*, NAT’L CTR. FOR PTSD, U.S. DEP’T OF VETERANS AFFAIRS, <http://1.usa.gov/AzAbGY> (last updated May 29, 2012).

59. See INST. OF MED. OF THE NAT’L ACADS., *supra* note 21, at 26 (citing Ronald C. Kessler et al., *Lifetime Prevalence and Age-of-Onset Distributions of DSM-IV Disorders in the National Comorbidity Survey Replication*, 62 ARCH. GEN. PSYCHIATRY 593 (2005)); see also *National Comorbidity Survey Replication*, Dep’t of Health Care Pol’y,

remains hotly debated among clinicians who disagree about its causes, symptoms, and treatment.⁶⁰

Notwithstanding these debates, the DSM establishes the generally accepted diagnostic criteria for PTSD.⁶¹ The DSM requires (1) a traumatic experience⁶² and (2) distress symptoms that fall into each of three categories: intrusive recollections,⁶³ avoidant and numbing symptoms,⁶⁴ and increased arousal symptoms.⁶⁵ Such symptoms must persist for at least one month and significantly influence the patient's daily life.⁶⁶

While medical opinions concerning PTSD diagnosis have diverged since its recognition, clinicians generally agree that the disorder is a serious mental illness.⁶⁷ They also agree that PTSD is treatable.⁶⁸ Some studies indicate that certain treatments can even eliminate PTSD symptoms.⁶⁹

Harvard Med. Sch., tbl. 2, Twelve-month Prevalence of DSM-IV/WMH-CIDI Disorders by Sex and Cohort, available at <http://bit.ly/zLLIzw> (sampling 9282 people).

60. FINLEY, *supra* note 24, at 2.

61. See DSM-IV-TR, *supra* note 58, at 463-68; KINCHIN, *supra* note 57, at 15.

62. DSM-IV-TR, *supra* note 58, at 467. The DSM defines a traumatic event as a subjective response involving "fear, helplessness, or horror." *Id.*

63. *Id.* at 468 (describing recollections as dreams, memories, or feelings of reliving the trauma).

64. *Id.* at 464, 468. Avoidant behaviors refer to efforts to avoid thoughts or feelings associated with the traumatic event. *Id.* at 468. Symptoms in this category also include emotional distancing or "numbness." *Id.* Numbing can lead to a lack of emotion, detachment from others, and the inability to imagine a future. *Id.*

65. DSM-IV-TR, *supra* note 58, at 464, 468. Increased arousal symptoms often include symptoms of irritability, sleeplessness, and extreme vigilance. *Id.* at 464.

66. *Id.* at 468.

67. FINLEY, *supra* note 24, at 168-69.

68. See generally EFFECTIVE TREATMENTS FOR PTSD: PRACTICE GUIDELINES FROM THE INTERNATIONAL SOCIETY FOR TRAUMATIC STRESS STUDIES (Edna B. Foa et al. eds., 2d ed. 2009).

69. Studies suggest that effective PTSD treatments involve exposure-oriented therapies to overcome avoidance behaviors. See David P. Valentiner, *Coping Strategies and Posttraumatic Stress Disorder in Female Victims of Sexual and Nonsexual Assault*, 105 J. ABNORMAL PSYCH. 458 (1996); INST. OF MED. OF THE NAT'L ACADS., *supra* note 21, at 97. Exposure therapies involve deliberate encounters with traumatic memories until the intensity of the negative emotions subside. See INST. OF MED. OF THE NAT'L ACADS., *supra* note 21, at 97. Studies also indicate that these treatments are effective for OIF and OEF veterans. See, e.g., Sheila Rauch et al., *Prolonged Exposure for PTSD in a Veterans Health Administration PTSD Clinic*, 22 J. TRAUMATIC STRESS 62 (2009); Peter W. Tuerk et al., *Diagnosis and Treatment of PTSD-Related Compulsive Checking Behaviors in Veterans of the Iraq War: The Influence of Military Context on the Expression of PTSD Symptoms*, 166 AM. J. PSYCHIATRY 762 (2009).

III. LINKING PTSD AND CRIMINAL BEHAVIOR

The media has recently investigated whether veterans are more likely than civilians to commit crimes.⁷⁰ In 2008, for example, *The New York Times* documented 121 cases in which American veterans were charged with homicide shortly after returning from Iraq or Afghanistan.⁷¹ The article drew heavy criticism for its statement that combat trauma sets the stage for later criminal misconduct.⁷² Despite this critical reaction, evidence suggests a causality that cannot be ignored.⁷³

A. *Setting the Framework: PTSD and Criminal Behavior*

In a seminal 1983 study, John P. Wilson and Sheldon D. Zigelbaum examined the possible connection between PTSD and criminal behavior in 114 Vietnam combat veterans.⁷⁴ These researchers found a significant relationship between PTSD and crime.⁷⁵ Specifically, their results indicated that PTSD correlated with weapons charges, DUI, disorderly conduct, and assault.⁷⁶

Wilson and Zigelbaum also provided an influential framework by which researchers could link crimes to PTSD symptoms.⁷⁷ The authors proposed that PTSD-inflicted veterans re-experience trauma in a

70. See, e.g., Lizette Alvarez & Deborah Sontag, *When Strains on Military Families Turn Deadly*, N.Y. TIMES, Feb. 15, 2008, at A1 (describing three sergeants who murdered their wives after returning from Afghanistan); Dave Philipps, *Casualties of War, Part II: Warning Signs*, COLO. SPRINGS GAZETTE, July 28, 2009, at A1 (describing how untreated combat trauma leads to a “crescendo” in which returning soldiers’ problems start out small but later “explode”); Ashley Hayes, *Experts: Vets’ PTSD, Violence a Growing Problem*, CNN (Jan. 17, 2012), <http://bit.ly/yG2tdL>.

71. Deborah Sontag & Lizette Alvarez, *Across America, Deadly Echoes of Foreign Battles*, N.Y. TIMES (Jan. 13, 2008), <http://nyti.ms/wNERZ6>.

72. One commentator criticized Sontag and Alvarez’s methodology, arguing that the research showed only a “dramatic increase in the number of news reports in which homicide defendants are identified as servicemen or recent veterans.” James Taranto, *We Stand Behind Our Stereotype*, WALL ST. J. (Jan. 14, 2008), <http://on.wsj.com/w4aPJC>. Similarly, another commentator observed that Sontag and Alvarez provide “another example of how statistics and facts can be tweaked to push whatever agenda or outcome a person desires.” David Paulin, *The Return of the Wacko Vet Media Narrative*, AM. THINKER (Feb. 2, 2008), <http://bit.ly/wWyIWR>.

73. See Justin G. Holbrook, *Veterans’ Courts and Criminal Responsibility: A Problem Solving History & Approach to the Liminality of Combat Trauma* 14-19 (Widener Law Sch. Legal Studies Research Paper No. 10-43, 2010), available at <http://bit.ly/y0eTYw>.

74. John P. Wilson & Sheldon D. Zigelbaum, *The Vietnam Veteran on Trial: The Relation of Post-Traumatic Stress Disorder to Criminal Behavior*, 1 BEHAV. SCI. & L. 69, 70 (1983).

75. *Id.* at 80.

76. *Id.*

77. See Holbrook, *supra* note 73, at 27 (asserting that the Wilson & Zigelbaum study continues to influence research on PTSD and criminal responsibility).

“survivor mode.”⁷⁸ This mode can manifest in three distinct ways leading to crime: dissociative syndrome, sensation seeking syndrome, and depression-suicide syndrome.⁷⁹

First, the authors asserted that dissociative syndrome is commonly associated with violent behavior.⁸⁰ Veterans with this syndrome will often react as they did in combat.⁸¹ That is, behaviors in this state tend to be aggressive and directed at perceived danger.⁸²

Second, veterans sometimes display sensation-seeking syndrome.⁸³ Characterized by attempting to find excitement “similar to that experienced in combat,”⁸⁴ this syndrome manifests in risk-taking activities such as parachute jumping, motorcycle riding, and gambling.⁸⁵ Behaviors in this state are frequently associated with nonviolent crimes.⁸⁶

Finally, Wilson and Zigelbaum hypothesized that depression-suicide syndrome can motivate criminal behavior.⁸⁷ Veterans in this state tend to experience painful imagery, hopelessness, and survivor guilt.⁸⁸ To end their psychological pain, veterans in this state may attempt suicide or react violently toward perceived sources of suffering.⁸⁹

B. Supporting Evidence for the Framework

Subsequent research has corroborated Wilson and Zigelbaum’s findings.⁹⁰ Notably, in 1983, Congress mandated an extensive study of

78. Wilson & Zigelbaum, *supra* note 74, at 73 (defining this mode as an “altered state of consciousness, hyperalertness, hypervigilance, excessive autonomic nervous system arousal, and the use of survival skills and cognitive capacities learned in combat”).

79. *Id.* at 73-75.

80. *Id.* at 74.

81. *Id.*

82. *Id.* at 73.

83. Wilson & Zigelbaum, *supra* note 74, at 73.

84. *Id.*

85. *Id.*; see also Phillip J. Resnick, *Guidelines for Evaluation of Malingering in PTSD*, in POSTTRAUMATIC STRESS DISORDER IN LITIGATION: GUIDELINES FOR FORENSIC ASSESSMENT, *supra* note 23, at 187, 202 (describing how veterans with PTSD may seek to revive the excitement of combat).

86. See Wilson & Zigelbaum, *supra* note 74, at 74.

87. *Id.* at 75.

88. *Id.*

89. Wilson & Zigelbaum, *supra* note 74, at 75.

90. See, e.g., Thomas Yager et al., *Some Problems Associated With War Experience in Men of the Vietnam Generation*, 41 ARCH. GEN. PSYCHIATRY 327, 330 (1984) (finding that combat experience was associated with later stress symptoms and arrests in 1342 Vietnam veterans); Natasha B. Lasko et al., *Aggression and Its Correlates in Vietnam Veterans With and Without Chronic Posttraumatic Stress Disorder*, 35 COMPREHENSIVE PSYCHIATRY 373, 379 (1994) (finding that aggression in veterans is causally connected to PTSD and is not a direct consequence of military combat).

PTSD among Vietnam veterans.⁹¹ This four-year study culminated in the 1988 National Vietnam Veterans Readjustment Survey (NVVRS).⁹² The NVVRS showed that 45.7 percent of male combat veterans with active PTSD had been arrested at least once, compared to only 11.6 percent of male veterans without PTSD.⁹³

In 2007, researchers also examined the relationship between PTSD and violence in 1,140 incarcerated male felons.⁹⁴ This study differed from past research in that many participants experienced traumatic events unrelated to combat.⁹⁵ Nevertheless, compared to inmates without PTSD, those inmates with PTSD were 6.75 times more likely to have been arrested for a violent crime in the year before their imprisonment.⁹⁶ After controlling for demographics, antisocial personality, and chronic drinking, the researchers concluded that PTSD was “causally important” to violent behavior.⁹⁷

Recently, researchers in the United Kingdom also reviewed nearly a dozen studies concerning PTSD prevalence rates in offender populations.⁹⁸ The researchers acknowledged the difficulty of linking PTSD and violence because additional factors—substance abuse and personality traits, for example—contribute to aggressive behavior.⁹⁹ Nevertheless, the researchers concluded that past studies supported a “direct association” between PTSD and violence.¹⁰⁰

IV. VETERANS TREATMENT COURTS: A REHABILITATIVE APPROACH

Given the percentage of veterans with PTSD,¹⁰¹ as well as the evidence to support a link between PTSD and crime,¹⁰² it is not surprising that many veterans find themselves in criminal courts.¹⁰³ Concerned by the number of veterans appearing in their courtrooms, in

91. RICHARD A. KULKA ET AL., *TRAUMA AND THE VIETNAM WAR GENERATION: REPORT OF FINDINGS FROM THE NATIONAL VIETNAM VETERANS READJUSTMENT STUDY* xxiii (1990).

92. *Id.*

93. *Id.* at 186-87.

94. James J. Collins & Susan L. Bailey, *Traumatic Stress Disorder and Violent Behavior*, 20 J. TRAUMATIC STRESS 203 (2007).

95. *Id.* at 205 (stating that two-thirds of the inmates were non-veterans).

96. *Id.* at 215.

97. *Id.* at 216.

98. See Andrea Friel et al., *Posttraumatic Stress Disorder and Criminal Responsibility*, 19 J. FORENSIC PSYCHIATRY & PSYCHOL. 64, 66 (2007).

99. *Id.* at 71.

100. *Id.* at 81.

101. See *supra* Part II.

102. See *supra* Part III.

103. See Russell, *supra* note 12, at 362-63 (noting the increased prevalence of veterans in criminal courts).

2004, Judges Sigurd Murphy and Jack Smith created a VTC in Anchorage, Alaska.¹⁰⁴ This small-scale effort consists of alternative sentence arrangements based on rehabilitation for misdemeanor offenses.¹⁰⁵

According to Judge Smith, this alternative sentence arrangement is like “a contract” in which the prosecutor gives the defendant two options: “This is what’s going to happen with your criminal case if you follow through with treatment; this is what will happen if you don’t.”¹⁰⁶ Judge Smith further commented that treatment usually requires the offender to commit more time and effort than is involved in a traditional sentence.¹⁰⁷ One veteran, for example, chose to undergo 18 months of treatment instead of serving fewer than 30 days in jail.¹⁰⁸

In 2008, Judge Robert T. Russell developed the first official VTC in Buffalo, New York.¹⁰⁹ While presiding over Buffalo’s Drug Treatment Court and its Mental Health Court, Judge Russell had noticed many veterans on his dockets.¹¹⁰ Consequently, Judge Russell created a specific criminal docket for veterans.¹¹¹ This court was the first of its kind, matching offenders with mentors who offer support “in a way that only other veterans can.”¹¹²

In addition to providing mentors, the Buffalo VTC works closely with medical professionals and the U.S. Department of Veterans Affairs

104. See Steven Berenson, *The Movement Toward Veterans Courts*, 44 CLEARINGHOUSE REV. 37, 39 (2010); Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO ST. J. CRIM. L. 563, 565 (2009); Amanda Ruggeri, *New Courts Give Troubled Veterans a Second Chance*, U.S. NEWS & WORLD REP. (Apr. 3, 2009), <http://bit.ly/xS1SC6>.

105. See Justin G. Holbrook & Sara Anderson, *Veterans Courts: Early Outcomes and Key Indicators for Success* 20 (Widener Law Sch. Legal Studies Research Paper No. 11-25, 2011), available at <http://bit.ly/ApkctA>; ALASKA COURT SYS., PUB-121, ALASKA VETERANS COURT (2008), available at <http://bit.ly/A7iaHI>.

106. Ruggeri, *supra* note 104.

107. See *id.*

108. *Id.*

109. See Berenson, *supra* note 104, at 39 (discussing “the current [VTC] movement” beginning in Buffalo, New York); Russell, *supra* note 12, at 364. Many media reports have discussed the Buffalo VTC. See, e.g., *Judge: Keep Vets Out of Jail*, NAT’L PUB. RADIO (June 18, 2008), <http://n.pr/AdjWZ7>; *The Today Show: A Courtroom Just for Veterans* (NBC television broadcast Oct. 22, 2008); Matthew Daneman, *N.Y. Court Gives Veterans Chance to Straighten Out*, USA TODAY (June 1, 2008, 9:03 PM), <http://usat.ly/wW7ibp>; *Carolyn Thompson, Special Court for Veterans Addresses More than Crime*, BOSTON GLOBE (July 7, 2008), <http://bo.st/AEuNWm>.

110. Russell, *supra* note 12, at 363.

111. *Id.* at 368.

112. *Id.* at 370.

(VA) to address the needs of each veteran.¹¹³ Serving veterans who suffer from substance abuse and mental illness, the Buffalo VTC has some similarities to drug and mental health courts.¹¹⁴ In fact, all of these “problem-solving”¹¹⁵ courts have similar characteristics:

Problem-solving courts use their authority to forge new responses to chronic social, human, and legal problems including problems like family dysfunction, addiction, delinquency, and domestic violence that have proven resistant to conventional solutions. They seek to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to changing the future behavior of litigants and ensuring the future well-being of communities.¹¹⁶

Simply put, problem-solving courts address risk factors associated with crime to reduce recidivism rates and improve the lives of criminal defendants.¹¹⁷ Communities are now establishing VTCs, the newest such problem-solving court, at a rate faster than any other treatment model in the United States.¹¹⁸

A. VTCs in Pennsylvania

With the fifth largest veteran population in the United States,¹¹⁹ Pennsylvania is among the leaders of the VTC movement.¹²⁰ Pennsylvania opened its first VTC in November 2009.¹²¹ As of April

113. *Id.* at 368-70; *see also* BUFFALO VETERANS COURT, MENTORING AND VETERANS HOSPITAL PROGRAM AND POLICY AND PROCEDURE MANUAL, *available at* <http://bit.ly/AdSz3i>.

114. Russell, *supra* note 12, at 364-70.

115. Problem-solving courts began in 1989 with the first drug court in Dade County, Florida. *See* DRUG STRATEGIES, DRUG COURTS: A REVOLUTION IN CRIMINAL JUSTICE 8 (1999). Since then, jurisdictions have developed dozens of different treatment court models. *See id.* at 31-36.

116. Greg Berman & John Feinblatt, *Problem-Solving Courts: A Brief Primer*, 23 LAW & POL’Y 125, 126 (2001).

117. *See id.* at 131-32.

118. *See* NAT’L ASS’N OF DRUG CT. PROF’LS, SITREP 002-11, JUSTICE FOR VETS: THE NATIONAL CLEARINGHOUSE FOR VETERANS TREATMENT COURTS (2011), *available at* <http://bit.ly/Az5AWu>.

119. *Veterans Courts*, UNIFIED JUDICIAL SYS. OF PA., <http://bit.ly/AmJ605> (last visited Jan. 10, 2013).

120. Interview with Chief Justice Ronald D. Castille, Pa. Supreme Court, in Harrisburg, Pa. (Nov. 29, 2011) [hereinafter Castille Interview].

121. Telephone interview with Karen Blackburn, Problem-Solving Courts Coordinator, Admin. Office of Pa. Courts (Dec. 2, 2011) [hereinafter Blackburn Interview]; *see also* UNIFIED JUDICIAL SYS. OF PA., *supra* note 119.

2012, VTCs operate in thirteen counties, and six additional counties are currently in the process of planning them.¹²²

As with other problem-solving courts, no two VTCs are identical.¹²³ Most VTCs follow the Buffalo court model, but key differences have emerged in jurisdictions throughout both Pennsylvania and the United States.¹²⁴ A brief case study illustrates these differences.

1. Montgomery County, Pennsylvania

The Montgomery County VTC opened in April 2011.¹²⁵ The following information derives from the *Montgomery County Veterans Treatment Court Policy and Procedure Manual*.¹²⁶

a. Eligibility

Participants must qualify for VA benefits¹²⁷ and suffer from Traumatic Brain Injury (TBI),¹²⁸ PTSD, substance abuse, or some other psychological problem.¹²⁹ In addition, the court often handles “non-violent offenses” but considers each offense on a “case-by-case basis.”¹³⁰ The VTC does not consider murder or manslaughter under any circumstances.¹³¹

122. Blackburn Interview, *supra* note 121; see *Commonwealth of Pennsylvania Veterans Courts*, ADMIN. OFFICE OF PA. COURTS, <http://bit.ly/Ue3cs8> (showing a map of VTCs in Pennsylvania) (last visited Jan. 12, 2013).

123. Interview with Justice Seamus P. McCaffery, Pa. Supreme Court, in Harrisburg, Pa. (Nov. 29, 2011) [hereinafter McCaffery Interview].

124. See discussion *infra* Part IV.A.1.

125. MONTGOMERY CNTY., VETERANS TREATMENT COURT POLICY AND PROCEDURE MANUAL 1 (2011) [hereinafter MONTGOMERY PROCEDURE MANUAL], available at <http://bit.ly/wWKjR0>.

126. See *id.*

127. To be eligible for VA benefits, a veteran must receive a military discharge “under conditions other than dishonorable.” 38 U.S.C. § 1110 (2006 & Supp. 2010). Among current veteran prisoners, about 20 percent received dishonorable discharges. See CTR. FOR MENTAL HEALTH SERVS. NAT’L GAINS CTR., RESPONDING TO THE NEEDS OF JUSTICE-INVOLVED COMBAT VETERANS WITH SERVICE-RELATED TRAUMA AND MENTAL HEALTH CONDITIONS 3 (2008).

128. TBI is a physiological injury caused by explosive impacts to the brain. See FINLEY, *supra* note 24, at 98. TBI symptoms may be difficult to distinguish from PTSD. See Charles W. Hoge et al., *Mild Traumatic Brain Injury in U.S. Soldiers Returning from Iraq*, 358 NEW ENG. J. MED. 453, 457 (2008) (concluding that TBI is strongly associated with PTSD); Deborah Warden, *Military TBI During the Iraq and Afghanistan Wars*, 21 J. HEAD TRAUMA REHAB. 398, 400 (2006) (discussing overlapping symptoms of PTSD and TBI). Although this Comment does not address TBI, the arguments supporting VTCs for veterans with PTSD may be extended to veterans with TBI.

129. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 2.

130. *Id.*

131. *Id.*

Like the Montgomery court, VTCs in other jurisdictions generally restrict eligibility to veterans with mental illnesses or substance abuse issues.¹³² Some VTCs restrict eligibility solely to combat veterans.¹³³ In addition, some VTCs accept veterans who are not eligible for VA benefits.¹³⁴ Finally, some VTCs exclude veterans with substance abuse issues, limiting eligibility to veterans with mental illnesses.¹³⁵

With respect to eligible offenses, the Montgomery VTC follows the standard approach.¹³⁶ That is, most VTCs focus on non-violent crimes,¹³⁷ although some VTCs handle low-level domestic violence charges.¹³⁸ In addition, some VTCs limit eligibility to misdemeanor offenses.¹³⁹ All VTCs appear to exclude sexual assault, child abuse, and serious violent crimes.¹⁴⁰

132. See Holbrook & Anderson, *supra* note 105, at 25-27. This restriction makes sense considering the primary purpose of VTCs is to provide treatment for mental illness and other risk factors associated with crime.

133. Blackburn Interview, *supra* note 121. For example, the VTC in Orange County, California, only accepts combat veterans eligible for probation. See Melissa Pratt, *New Courts on the Block: Specialized Criminal Courts for Veterans in the United States*, 15 APPEAL 39, 54 (2010).

134. Blackburn Interview, *supra* note 121 (stating that some VTCs, such as the VTC in Philadelphia, Pennsylvania, do not require defendants to be eligible for VA benefits). However, even when VTCs do not require veterans to be eligible for VA benefits, VA involvement is critical. See Holbrook & Anderson, *supra* note 105, at 25.

135. For example, the VTC in Tarrant County, Texas, limits eligibility to veterans with “brain injury, mental illness, or mental disorder, including post-traumatic stress disorder.” See *Veterans Court Diversion Program: Criteria*, TARRANT CNTY., <http://bit.ly/A54TxZ> (last updated Nov. 30, 2011).

136. See Holbrook & Anderson, *supra* note 105, at 26 (finding that some VTCs will consider certain felonies but most exclude serious violent offenses).

137. See *id.* Some VTCs, such as the VTC in Tulsa, Oklahoma, exclude all violent offenses. See TULSA CNTY. DIST. COURT, PROGRAM AND POLICY AND PROCEDURE MANUAL: TULSA VETERANS COURT 14 (2011), available at <http://bit.ly/zRjR4F>.

138. McCaffery Interview, *supra* note 123 (describing the VTC in Allegheny County, Pennsylvania); see also Tracy Carbasho, *Veterans Court Provides Support and Services for Local Veterans*, J. ALLEGHENY CNTY. B. ASS’N, Jan. 29, 2010, at 4. Although the Allegheny VTC considers low-level domestic abuse charges, it excludes violent crimes such as homicide, sexual offenses, drug trafficking, assault with a deadly weapon, and burglary of a residence. CNTY. OF ALLEGHENY OFFICE OF THE DIST. ATT’Y, A GUIDE TO ALLEGHENY COUNTY VETERANS COURT 2 (2010) (on file with author).

139. For example, the VTC in Anchorage restricts eligibility to misdemeanor offenses. See ALASKA COURT SYS., *supra* note 105. Nevertheless, many VTCs will consider certain felonies. See Holbrook & Anderson, *supra* note 105, at 38.

140. See Holbrook & Anderson, *supra* note 105, at 26.

b. Application Process

The Montgomery VTC accepts referrals from sources such as law enforcement, the prosecutor, defense counsel, or the actual offender.¹⁴¹ Referrals are initially directed to the Adult Probation Office after criminal charges have been filed against the defendant or after the offender violates an existing probation or parole sentence.¹⁴²

Once the VTC receives a referral, a Veterans Justice Outreach (VJO) specialist¹⁴³ meets with the offender to determine his or her eligibility for VA benefits.¹⁴⁴ The VJO specialist determines the offender's suitability for medical treatment and other VA programs.¹⁴⁵ The VJO specialist then provides the VTC with a report outlining the offender's criminal history and a proposed treatment plan.¹⁴⁶

The VTC Team¹⁴⁷ ultimately determines whether the offender may enter the program.¹⁴⁸ The team considers the type of offense, the offender's behavioral health issues, and the likely success of treatment.¹⁴⁹ To a lesser degree, the Montgomery team also considers whether the offender assumed responsibility for his or her actions and whether the offender has a strong sense of military identity.¹⁵⁰ To enter the program,

141. See MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 3; Telephone interview with Stephanie Landes, VTC Court Coordinator, Montgomery Cnty. (Jan. 3, 2011) [hereinafter Landes Interview].

142. *Id.*

143. The VJO specialist is a representative from the VA who coordinates VA programs for veteran offenders in local courts and jails. Schaffer Interview, *supra* note 4; see also *Veterans Justice Outreach Initiative*, DEP'T OF VETERANS AFFAIRS, <http://1.usa.gov/yU779D> (last visited Jan. 12, 2013).

144. The VA has three major subdivisions: The Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA). See generally OFFICE OF HUM. RES. & ADMIN., DEPARTMENT OF VETERANS AFFAIRS ORGANIZATIONAL BRIEFING BOOK (2010), available at <http://1.usa.gov/xzVIJ0>. The VHA is critical to VTCs because it provides treatment for mental illness, substance abuse, and PTSD. Schaffer Interview, *supra* note 4. The VHA has regional divisions known as Veterans Integrated Services Networks (VISNs). *Id.* Each VISN has VA medical centers, and each VA medical center has a VJO specialist. *Id.* Aside from healthcare, the VA provides other benefit programs. For instance, the VBA offers five main programs including Home Loan Guaranty, Insurance, Vocational Rehabilitation and Employment, Education, and Compensation and Pensions. *Id.*

145. Schaffer Interview, *supra* note 4; see also discussion *supra* note 144.

146. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 3.

147. The VTC team includes the judge, court coordinator, the DA, defense counsel, a probation officer, and a VA representative. See discussion *infra* Part IV.A.1.c.

148. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 3.

149. *Id.* at 2.

150. Landes Interview, *supra* note 141 (stating that veterans with a strong sense of military identity tend to be more successful in the program).

the offender must plead guilty to certain charges,¹⁵¹ which the prosecutor will either reduce or drop upon program completion.¹⁵²

Like the Montgomery VTC, many VTCs in other jurisdictions require offenders to plead guilty to certain charges.¹⁵³ However, even when the offender pleads guilty, VTCs usually permit the District Attorney (DA) to reduce the charges and, in certain cases, to dismiss them entirely.¹⁵⁴ By contrast, some VTCs defer charges and dismiss them once the defendant completes the program.¹⁵⁵ Still other courts adopt one of these two approaches on a case-by-case basis.¹⁵⁶

Like the Montgomery VTC, most VTCs accept veterans into the treatment program on a case-by-case basis.¹⁵⁷ VA representatives, usually VJO specialists, are instrumental in developing and administering the treatment plans for most VTCs.¹⁵⁸

151. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 2.

152. *Id.*

153. For example, to enter the VTC in Tarrant County, Texas, the veteran must “admit to the commission of the offense, and agree that this admission may be used against the defendant in court as provided by law.” TARRANT CNTY., *supra* note 135; *see also* Holbrook & Anderson, *supra* note 105, at 28.

154. For example, the Tarrant County VTC requires the veteran to plead guilty. However, the prosecutor drops the charges upon program completion. *See Veterans Court Diversion Program: Structure of the Program*, TARRANT CNTY., <http://bit.ly/wn30qC> (last updated Nov. 30, 2011); *see also* Holbrook & Anderson, *supra* note 105, at 28 (“[N]early all [of the VTCs in the survey] appeared to allow at least some participants to withdraw any previously entered guilty pleas and have any pending charges dismissed following successful completion of the program.”).

155. *See* Holbrook & Anderson, *supra* note 105, at 21. For instance, Delaware began the first statewide VTC in the nation, adopting this type of diversionary approach. *See New Court Offers Hope for Veterans with Mental Health or Substance Abuse Issues*, DEL. DOCKET (Del. Admin. Office of the Courts, Wilmington, Del.), Spring 2011, at 1-2, available at <http://bit.ly/x3UZz5>; *Veterans Treatment Court*, DEL. STATE COURTS, <http://1.usa.gov/wO40Ds> (last visited Jan. 12, 2013).

156. For example, the VTC in Lancaster County, Pennsylvania, set to open in early 2012, will use both approaches. Some offenders will plead guilty, and the prosecutor will reduce the sentence after the defendant completes the program. Others will have charges deferred pending completion of the program. Telephone Interview with Joshua Parsons, Clerk of Courts of Lancaster Cnty. (Dec. 29, 2011) [hereinafter Parsons Interview].

157. Telephone interview with Justin G. Holbrook, Assoc. Professor of Law and Dir. of the Veterans Law Clinic, Widener Law Sch. (Sept. 26 2011) [hereinafter Holbrook Interview]; Blackburn Interview, *supra* note 121; Parsons Interview, *supra* note 156.

158. Holbrook & Anderson, *supra* note 105, at 26, 32. Indeed, Chief Justice Ronald Castille stated that he is “astounded by the level of commitment from the VA.” Castille Interview, *supra* note 120.

c. The VTC Team

A team of professionals manages the Montgomery VTC.¹⁵⁹ This team includes the judge, court coordinator, DA, defense counsel, probation officer, VJO specialist, and representatives from both the County VA Department and the correctional facility.¹⁶⁰ The team meets weekly for about one hour and is present at VTC proceedings.¹⁶¹ The judge leads the VTC team,¹⁶² holding team meetings and administering sanctions or incentives to offenders as needed.¹⁶³ The court coordinator assists the judge by gathering information for the meetings.¹⁶⁴

The DA plays an important role in determining whether a veteran may participate in the program.¹⁶⁵ The DA reviews the offender's criminal history, consults with victims, and considers the appropriate disposition of the charges.¹⁶⁶ The entire VTC team votes on whether a veteran may participate, but the judge makes the final decision.¹⁶⁷

Defense counsel also contributes to the process by protecting the veteran's constitutional rights.¹⁶⁸ Counsel must seek solutions that "mitigate the consequences of a criminal conviction."¹⁶⁹ Another team member, the probation officer, works closely with the defendant to ensure compliance with program terms.¹⁷⁰ The correctional facility representative further assists the team by acting as the liaison between the prison and the VTC.¹⁷¹ The VJO specialist serves as the link to VA services and, in addition, helps develop treatment plans.¹⁷²

The final team member is a representative from the Montgomery County VA Department who manages the mentor program.¹⁷³ Mentors

159. Blackburn Interview, *supra* note 121; *see also* Russell, *supra* note 12, at 367-70 (describing how the VTC team works together to provide veterans with treatment).

160. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 5-6.

161. *Id.* at 4; Landes Interview, *supra* note 141.

162. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 4.

163. Sanctions include increased court appearances, community service, and increased participation in treatment activities. *Id.* Incentives include decreased court appearances and positive verbal feedback. *Id.*

164. *Id.* The coordinator is sometimes an unpaid volunteer such as a local attorney or a veterans group representative. Blackburn Interview, *supra* note 121. However, the Montgomery VTC coordinator is an experienced probation officer. Landes Interview, *supra* note 141.

165. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 4.

166. *Id.* at 4-5.

167. Landes Interview, *supra* note 141.

168. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 5.

169. *Id.*

170. *Id.*

171. *Id.* at 6.

172. *Id.* at 5.

173. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 4-5.

are community volunteers who are also veterans.¹⁷⁴ The representative pairs each defendant with a mentor who serves as an “unofficial probation officer.”¹⁷⁵ Mentors, although not part of the criminal justice system or the medical community, provide additional support for the defendant.¹⁷⁶

Most VTC teams in other jurisdictions include members similar to those of the Montgomery team.¹⁷⁷ For example, most teams have a VA representative who oversees treatment services, and prosecutors frequently serve a critical role in the admission process.¹⁷⁸ Most VTCs also have volunteer mentors.¹⁷⁹ The local VA office manages the mentor program for some VTCs;¹⁸⁰ for others, the court coordinator manages this program.¹⁸¹

d. Graduation Requirements

The Montgomery program has three phases.¹⁸² Although program completion averages 12 to 24 months, the length of each phase depends on the individual case.¹⁸³ Offenders move to the next phase by showing consistent improvement.¹⁸⁴ During Phase I, offenders must appear in court and meet with a probation officer every week.¹⁸⁵ They must also comply with additional program terms, such as maintaining stable housing.¹⁸⁶ During Phases II and III, offenders appear in court biweekly and monthly, respectively.¹⁸⁷ The VTC recognizes offenders who complete Phase III at a short graduation ceremony.¹⁸⁸

Many VTCs in other jurisdictions have distinct progress phases similar to those at the Montgomery court.¹⁸⁹ Each VTC has different

174. *Id.*

175. Castille Interview, *supra* note 120.

176. *Volunteer Veteran Mentor Online Training Program*, ADMIN. OFFICE OF PA. COURTS, <http://bit.ly/zw6qkn> (last visited Jan. 12, 2013) [hereinafter *Online Training Program*].

177. *See id.*

178. Holbrook Interview, *supra* note 157.

179. Volunteer mentors are essential to most VTCs. *See* Russell, *supra* note 12, at 370; Holbrook & Anderson, *supra* note 105, at 34; McCaffery Interview, *supra* note 123; Castille Interview, *supra* note 120.

180. *Online Training Program*, *supra* note 176.

181. *Id.*

182. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 7-8.

183. *Id.* at 6.

184. *Id.* at 7-8; Landes Interview, *supra* note 141.

185. MONTGOMERY PROCEDURE MANUAL, *supra* note 125, at 7.

186. *Id.*

187. *Id.* at 7-8.

188. *Id.* at 8.

189. *See* Holbrook & Anderson, *supra* note 105, at 29.

graduation requirements, which often require sobriety, consistent employment, and stable living arrangements on behalf of the veteran undergoing treatment.¹⁹⁰ VTCs usually involve 12 to 24 months of court participation.¹⁹¹

As this brief case study demonstrates, each VTC is unique. In general, jurisdictions tailor VTC programs to meet the needs of their communities,¹⁹² and they often model VTCs based on existing drug or mental health courts.¹⁹³

2. Additional Efforts in Pennsylvania

In addition to community efforts, Pennsylvania has coordinated statewide assistance for VTCs.¹⁹⁴ Justice Seamus McCaffery of the Pennsylvania Supreme Court and Michael Moreland, director of the Veterans Integrated Service Network, lead the Veterans Justice Statewide Task Force.¹⁹⁵ This 28-member task force increases awareness for VTCs and helps recruit veteran mentors.¹⁹⁶

The Administrative Office of the Pennsylvania Courts (AOPC) has also developed an online training program for volunteer mentors.¹⁹⁷ Believed to be the first such program in the country, the online training program is hosted by Robert Morris University at no cost to the state.¹⁹⁸ VTCs throughout Pennsylvania use this 90-minute program, and other states have expressed interest in using it.¹⁹⁹

B. Emerging State Legislation and Other Developments

Besides Pennsylvania, other states have encouraged the VTC movement. At least seven states—Texas,²⁰⁰ California,²⁰¹ Colorado,²⁰²

190. *See id.* at 29-30.

191. Blackburn Interview, *supra* note 121; *see also* Holbrook & Anderson, *supra* note 105, at 29.

192. McCaffery Interview, *supra* note 123; Landes Interview, *supra* note 141.

193. Landes Interview, *supra* note 141; Parsons Interview, *supra* note 156; Blackburn Interview, *supra* note 121.

194. McCaffery Interview, *supra* note 123. *See generally* *Veterans Courts Initiatives*, PA. BAR FOUND., <http://bit.ly/yH0ina> (last visited Jan. 12, 2013).

195. McCaffery Interview, *supra* note 123; *see also* Press Release, Admin. Office of Pa. Courts, Nation's First Online Training for Veterans Courts Mentors Launched by Supreme Court of Pa. (Nov. 9, 2011) [hereinafter Online Training Press Release], available at <http://bit.ly/VTICg2>.

196. McCaffery Interview, *supra* note 123. The Task Force includes members from each of Pennsylvania's three branches of state government. *See* Online Training Press Release, *supra* note 195.

197. *Online Training Program*, *supra* note 176.

198. Online Training Press Release, *supra* note 195.

199. Blackburn Interview, *supra* note 121.

200. TEX. HEALTH & SAFETY CODE ANN. §§ 617.001-617.006 (West 2010).

Illinois,²⁰³ Oregon,²⁰⁴ Nevada,²⁰⁵ and Virginia²⁰⁶—have passed legislation authorizing counties to establish VTCs.²⁰⁷ Like individual VTC procedures, each statewide measure is unique.²⁰⁸

For instance, 2009 Texas legislation permits county VTCs to handle felony and misdemeanor offenses.²⁰⁹ However, the DA must consent to the defendant's participation.²¹⁰ In addition, the following conditions must be met: (1) the defendant must suffer from "brain injury, mental illness, or mental disorder";²¹¹ (2) the disorder must stem from service in a "combat zone or other similar hazardous duty area";²¹² and (3) the disorder must have "materially affected the defendant's conduct at issue in the case."²¹³

By contrast, Oregon legislation passed in 2010 permits the DA to consider a diversionary VTC program if it "would be in the interests of justice and of benefit to the defendant and community."²¹⁴ However, VTCs are unavailable for DUI charges,²¹⁵ certain felonies,²¹⁶ or any offense involving "serious physical injury to another person."²¹⁷

201. CAL. PENAL CODE § 1170.9 (West 2004 & Supp. 2011) (encouraging treatment for offenders who are otherwise eligible for probation and allege they committed an 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").

202. COLO. REV. STAT. § 13-3-101 (2011).

203. 730 ILL. COMP. STAT. 167/15 (2010). A defendant shall be excluded from VTC if (1) the charged offense was a "crime of violence," (2) the defendant had been convicted of a "crime of violence" in the past ten years, or (3) the defendant had previously completed or has been discharged from a VTC within three years. *Id.* at 167/20.

204. OR. REV. STAT. ANN. § 135.886 (West, Westlaw through Ch. 12 of the 2011 Reg. Sess.).

205. NEV. REV. STAT. § 176.015 (2009).

206. VA. CODE ANN. § 2.2-2001.1 (2011).

207. In addition, a few states have enacted laws that do not address VTCs but require existing courts to consider a special process at sentencing if the defendant is a veteran with a mental illness. *See* MINN. STAT. § 609.115 Subdiv. 10 (2008); N.H. REV. STAT. ANN. § 651:4-b (2009).

208. *See infra* notes 209-17 and accompanying text.

209. TEX. HEALTH & SAFETY CODE ANN. § 617.002(a) (West 2010).

210. *Id.*

211. *Id.* § 617.002(a)(2).

212. *Id.* § 617.002(a)(2)(A).

213. *Id.* § 617.002(a)(2)(B).

214. OR. REV. STAT. ANN. § 135.886(1).

215. *Id.*

216. *Id.* § 135.886(3). Ineligible offenses include any Class A or B felony, such as first degree assault and murder. *See generally* OR. REV. STAT. ANN. § 161.

217. *Id.*

At the federal level, the VA has provided significant support for VTCs.²¹⁸ For instance, the VA established the VJO program to help offenders receive VA treatment services.²¹⁹ These VJO workers are critical to the success of VTCs throughout the nation.²²⁰

The National Association for Drug Court Professionals (NADCP) also advocates for VTCs.²²¹ NADCP created Justice for Vets, a clearinghouse for information on VTCs.²²² In addition, NADCP launched the Veterans Treatment Court Planning Initiative (VTCPI), a federally funded training program that helps communities establish VTCs.²²³

Other VTC advocates include federal agencies such as the U.S. Department of Health and Human Services and the U.S. Department of Justice.²²⁴ Similarly, in January 2011, President Barack Obama released²²⁵ the report “*Strengthening Our Military Families: Meeting America’s Commitments.*”²²⁶ Signed by all 14 Cabinet Secretaries, this report pledges to develop VTCs to “[m]ake court systems more responsive to the unique needs of veterans.”²²⁷

C. *Early Signs of Success*

Although comprehensive data is not available, preliminary findings suggest that VTCs have been effective at reducing recidivism rates.²²⁸

218. Schaffer Interview, *supra* note 4.

219. *Id.* See generally VETERANS HEALTH ADMIN., UNDER SECRETARY FOR HEALTH’S INFORMATION LETTER: INFORMATION AND RECOMMENDATIONS FOR SERVICES PROVIDED BY VHA FACILITIES TO VETERANS IN THE CRIMINAL JUSTICE SYSTEM (2009).

220. See *supra* Part IV.A.1.a.

221. See NAT’L ASS’N OF DRUG CT. PROF’LS, *supra* note 11.

222. See *id.*

223. See NADCP Convenes Nation’s First Veterans Treatment Court Training, NAT’L ASS’N OF DRUG CT. PROF’LS, <http://bit.ly/yJ5bFt> (last visited Jan. 12, 2013). The Bureau of Justice Assistance (BJA) within the Office of Justice Programs at the U.S. Department of Justice provides funding for this program. *Id.* VTCPI is a collaborative effort between several VTCs, the National Drug Court Institute (NDCI), the BJA, and the VA. *Id.*; see also *Veterans Treatment Court Planning Initiative*, NAT’L DRUG CT. INST., <http://bit.ly/y68qlq> (last visited Jan. 12, 2013).

224. See *Resources for Court Professionals*, JUSTICE FOR VETS, <http://bit.ly/WPBLiH> (last visited Jan. 12, 2013).

225. President Barack Obama, Remarks by the President, Mrs. Obama and Dr. Biden on the Presidential Studies Directive: Strengthening Our Military Families (Jan. 24, 2011).

226. NAT’L SEC. STAFF & DOMESTIC POL’Y COUNCIL, STRENGTHENING OUR MILITARY FAMILIES: MEETING AMERICA’S COMMITMENTS (2011), available at <http://1.usa.gov/xFva7N> (establishing nearly 50 commitments from federal agencies responding to Presidential Study Directive/PSD-9 to establish a coordinated and comprehensive effort to support military families).

227. *Id.* at 12.

228. See discussion *infra* Part IV.C.

For instance, 34 veterans went through the Anchorage VTC between 2004 and 2006;²²⁹ according to Judge Smith, only one had been rearrested within two years.²³⁰ Similarly, in 2008, over 100 veterans participated in the Buffalo VTC, but only two veterans had been returned to the traditional court system by March 2009.²³¹

Other recent results seem equally promising. By 2011, the Orange County VTC had 43 participants, 7 graduates, and only 4 early terminations.²³² Similarly, in one survey of 14 VTCs throughout the country, 11 VTCs responded with a total of 59 graduates and 404 current participants.²³³ Of those 59 graduates, only one had reoffended—a recidivism rate of less than two percent.²³⁴ By contrast, the recidivism rate for all state prisoners (which includes veterans) is nearly 70 percent after three years.²³⁵

Admittedly, a lack of evaluative data makes drawing firm conclusions premature.²³⁶ As of May 2010, the Buffalo VTC had graduated 30 veterans.²³⁷ Similarly, of the 14 VTCs participating in Holbrook and Anderson's survey, only two VTCs had graduated ten or more veterans.²³⁸ Nevertheless, when compared to recidivism rates in the traditional justice system,²³⁹ the present data is encouraging.²⁴⁰

229. Ruggeri, *supra* note 104.

230. *Id.*

231. Nicholas Riccardi, *These Courts Give Wayward Veterans a Chance: The First Veterans Court Opened Last Year in Buffalo, N.Y.; Its Success Stories Have Led to More Across the Country*, L.A. TIMES (Mar. 10, 2009), <http://lat.ms/ACySWE>.

232. SUPER. CT. OF CAL., CNTY. OF ORANGE, COLLABORATIVE COURTS 2010 ANNUAL REPORT 28 (2011), *available at* <http://bit.ly/A3b9ka>.

233. Holbrook & Anderson, *supra* note 105, at 40.

234. *Id.*

235. See PATRICK A. LANGAN & DAVID J. LEVIN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1994, at 7 (2002) (reporting 67.5 percent of the 272,111 prisoners released in 1994 were rearrested within three years). In a previous Bureau of Justice Statistics study, 62.5 percent of the 108,580 state prisoners released from prisons in 1983 were rearrested within three years. See ALLEN J. BECK & BERNARD E. SHIPLEY, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1983, at 1 (1989), *available at* <http://bit.ly/xo6ATg>.

236. See Holbrook, *supra* note 73, at 41 (discussing the lack of present data regarding VTC results).

237. Holbrook & Anderson, *supra* note 105, at 4.

238. *Id.* at 31.

239. See sources cited *supra* note 235; see also Peggy Fulton Hora & Theodore Stalcup, *Drug Treatment Courts in the Twenty-first Century: The Evolution of the Revolution in Problem-Solving Courts*, 42 GA. L. REV. 717, 719 (2008) (asserting that traditional criminal courts consume vast resources and produce high recidivism rates).

240. See Holbrook & Anderson, *supra* note 105, at 41.

In addition to preliminary data, results from other treatment courts suggest positive outcomes for VTCs.²⁴¹ The Bureau of Justice Statistics estimates that two-thirds of drug offenders are rearrested within three years,²⁴² but two decades of research corroborates lower recidivism rates for drug court participants.²⁴³ In one national study of over 2000 drug court graduates, the recidivism rate was just 27 percent after two years.²⁴⁴

Positive outcomes also reach beyond recidivism rates. Treatment courts save money because incarceration is far more expensive.²⁴⁵ One authoritative study found that treatment saved taxpayers more than 79 million dollars over ten years.²⁴⁶ Moreover, the researchers asserted that these estimates were conservative because cost savings would likely accumulate beyond the ten-year mark.²⁴⁷

Aside from positive economic indicators, VTCs benefit society in non-quantifiable ways. Judge Russell explains such benefits from first-hand experience:

241. See, e.g., Holbrook, *supra* note 73, at 41-44.

242. See LANGAN & LEVIN, *supra* note 235, at 8.

243. See generally David Wilson et al., *A Systematic Review of Drug Court Effects on Recidivism*, 2 J. EXPERIMENTAL CRIMINOLOGY 459 (2006); STEVE AOS ET AL., WASH. STATE INST. FOR PUB. POL'Y, EVIDENCE-BASED PUBLIC POLICY OPTIONS TO REDUCE FUTURE PRISON CONSTRUCTION, CRIMINAL JUSTICE COSTS, AND CRIME RATES (2006), available at <http://1.usa.gov/wP0y4R>; JEFF LATIMER ET AL., CANADA DEP'T OF JUSTICE, A META-ANALYTIC EXAMINATION OF DRUG TREATMENT COURTS: DO THEY REDUCE RECIDIVISM? (2006), available at <http://bit.ly/xelVZ0>; U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-219, ADULT DRUG COURTS: EVIDENCE INDICATES RECIDIVISM REDUCTIONS AND MIXED RESULTS FOR OTHER OUTCOMES (2005).

244. JOHN ROMAN ET AL., THE URBAN INST., RECIDIVISM RATES FOR DRUG COURT GRADUATES: NATIONALLY BASED ESTIMATES, FINAL REPORT 1-2 (2003), available at <http://1.usa.gov/wFieSz>.

245. See M. SUSAN RIDGELY ET AL., RAND CORP., RAND INFRASTRUCTURE, SAFETY, AND ENVIRONMENT (ISE), JUSTICE, TREATMENT, AND COST: AN EVALUATION OF THE FISCAL IMPACT OF ALLEGHENY COUNTY MENTAL HEALTH COURT (2007), available at <http://bit.ly/x6jZMF>. The RAND Center conducted a fiscal impact study of the Mental Health Court (MHC) in Allegheny County, Pennsylvania. The study reported high initial costs due to mental health services; however, by the end of the second year, the lower cost associated with MHC was statistically significant. *Id.* at 20. Cost savings were largely due to a "dramatic decrease" in jail costs. *Id.*; see also AOS ET AL., *supra* note 243, at 9 (reporting drug courts result in net cost-benefit of \$4,767 per client); Shannon M. Carey, *California Drug Courts: Outcomes, Costs and Promising Practices: An Overview of Phase II in a Statewide Study*, J. OF PSYCHOACTIVE DRUGS 354, 353 (2006) (reporting that California realized a combined net benefit of more than 9 million dollars per year based on nine different drug courts); U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 243, at 73 (reporting net benefits of seven drug courts ranged from \$1,000 to \$15,000 per participant).

246. MICHAEL W. FINIGAN ET AL., NPC RES., IMPACT OF A MATURE DRUG COURT OVER 10 YEARS OF OPERATION: RECIDIVISM AND COSTS (FINAL REPORT), I-IV, at 46-47 (2007), available at <http://1.usa.gov/xnNnpe>.

247. *Id.* at IV (estimating actual cost savings might be at least 111 million dollars).

The successes of these veterans may not be adequately expressed simply by the inexistence of recidivism and relapse. Rather, their successes may be better understood by the positive changes in their individual lives. . . . Participants emerge from the process standing tall, smiles on their faces, with a renewed sense of hope, pride, accomplishment, motivation, and confidence in their ability to continue to face challenges and better their lives.²⁴⁸

Thus, it may be difficult and premature to measure VTC outcomes. Nonetheless, early indications point to success.

D. Criticisms of Veterans Treatment Courts and Responses

Despite early signs of success, VTCs are not without their critics. Generally, critics have questioned (1) whether status-based courts are fair, (2) whether such courts are necessary, and (3) whether such courts perpetuate harmful stereotypes.²⁴⁹

1. Courts for Veterans

Some critics have argued that it is unfair to create special courts based on veteran status.²⁵⁰ For instance, representatives from several American Civil Liberties Union (ACLU) chapters have argued that veterans should not receive preferential treatment—a “get out of jail free card”—simply because of their service in the military.²⁵¹

The most pointed ACLU critiques are as follows: First, the Nevada ACLU has expressed concerns about the disparity in treatment between similarly situated veteran and non-veteran offenders.²⁵² Second, the Colorado ACLU has argued that the term “veteran” is both “too broad

248. Russell, *supra* note 12, at 370.

249. See discussion *supra* Part IV.D.1-3.

250. See, e.g., Michael Day Hawkins, *supra* note 104, at 570; Ruggeri, *supra* note 104; Mark Brunswick, *Vets Court Focuses on Those Struggling After Their Service*, STAR TRIBUNE (Minneapolis, Minn.) (Nov. 20, 2011, 9:43 PM), <http://bit.ly/w42Xa0>; JJ Swanson, *Veterans Lobby for Bremerton Veterans Court*, BREMERTON PATRIOT (Silverdale, Wash.) (Nov. 14, 2011, 12:20 PM), <http://bit.ly/zkYU4o>.

251. Holbrook, *supra* note 73, at 45-46; see also Tiffany Cartwright, “To Care for Him Who Shall Have Borne the Battle”: *The Recent Development of Veterans Treatment Courts in America*, 22 STAN. L. & POL’Y REV. 295, 307-08 (2011); Dahlia Lithwick, *A Separate Peace: Specialized Courts for War Veterans Work Wonders. But Why Stop at Veterans?*, SLATE MAG. (Feb. 11, 2010, 1:33 PM), <http://slate.me/w7FZcH>.

252. See Hearing on Assembly Bill 187 of 2008 Before the S. Comm. on the Judiciary, 75th Sess. 24-28 (Nev. 2009) (statement of Lee Rowland, ACLU of Reno, Nev.), available at <http://bit.ly/wPHFOG>. Rowland argues that it is unfair for a veteran and a non-veteran to have similar drug or mental health issues, but only the veteran will be eligible for VTC. *Id.* at 212.

and too narrow.”²⁵³ Specifically, this term encompasses former service members with “very different experiences” and excludes “non-veterans who also suffer from PTSD.”²⁵⁴

In response, advocates have argued that VTCs should treat veterans differently.²⁵⁵ Veterans already receive many status-based benefits: medical care, loan guarantees, employment preferences, and educational support, to name a few.²⁵⁶ These benefits reflect society’s appreciation for those who “sacrifice life and limb”²⁵⁷ for their country.²⁵⁸

The 2009 U.S. Supreme Court case *Porter v. McCollum*²⁵⁹ lends credence to this view. A “strikingly sympathetic”²⁶⁰ Court overturned a veteran’s death sentence because his attorney failed to introduce mitigating evidence of his combat experience.²⁶¹ The Court observed, “Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines.”²⁶²

Advocates have also argued that VTCs do not provide “special treatment.”²⁶³ Instead, these courts provide appropriate treatment that, ideally, should be made available for all criminal defendants who need it.²⁶⁴ Hence, many proponents argue that VTCs should be viewed in the context of a broader shift in criminal justice toward rehabilitation instead of punishment.²⁶⁵

253. Lithwick, *supra* note 251.

254. *Id.* (“Should the criminal justice system take into account PTSD when it arises from military service but disregard it when it stems from different but nevertheless horrific life experiences?”).

255. Berenson, *supra* note 104, at 40.

256. Schaffer Interview, *supra* note 4.

257. *See* Berenson, *supra* note 104, at 40.

258. *See* Michael Day Hawkins, *supra* note 104, at 569.

259. *See* *Porter v. McCollum*, 130 S. Ct. 447, 450 (2009) (per curiam).

260. *See* Robert Barnes, *Death-Row Inmate’s Military Service Is Relevant, Justices Say*, WASH. POST, Dec. 1, 2009, at A6 (“[T]he justices were strikingly sympathetic [and the Court] seemed to go out of its way . . . to move beyond the issue of counsel to express the seriousness with which it views post-traumatic stress disorder.”); Linda Greenhouse, Op-Ed, *Selective Empathy*, N.Y. TIMES (Dec. 3, 2009, 9:11 PM), <http://nyti.ms/z61AHa> (“[T]he most notable feature of [the case] was the sympathy that all nine justices displayed . . . [but] I am concerned about a Supreme Court that dispenses empathy so selectively.”).

261. *Porter*, 130 S. Ct. at 455.

262. *Id.*

263. Berenson, *supra* note 104, at 40.

264. *Id.*

265. *See generally* Ben Kempinen, *Problem-Solving Courts and the Defense Function: The Wisconsin Experience*, 62 HASTINGS L.J. 1349, 1349 (2011) (noting that treatment courts have become “one of the fastest growing innovations in the criminal justice system”); *Developments in the Law—The Law of Mental Illness*, 121 HARV. L.

Critics raise a legitimate concern that VTCs serve a special class of citizen. Nevertheless, as stated by Justice Seamus McCaffery of the Pennsylvania Supreme Court, “It is important that we as a society give veterans back to their families the way we got them.”²⁶⁶ In view of society’s obligations to its veterans, it is arguably fair that VTCs serve a special class of citizen. Furthermore, following the equality logic, it is arguable that all problem-solving courts are unfair because it is impossible to serve every similarly situated criminal defendant equally.

In reality, criticisms about fairness have more to do with leniency than with equal opportunity. Simply put, critics seem to view rehabilitation as a “free pass.”²⁶⁷ However, as stated by Judge Smith, rehabilitation often requires “more time and more effort” than jail for the offender.²⁶⁸ Due to the rigor of most VTCs, some offenders choose criminal sentences instead of treatment programs.²⁶⁹ Therefore, once critics understand that VTCs do not provide “free passes” to participants, fairness concerns should subside.²⁷⁰

2. The Necessity of a Separate System

Critics have also questioned the necessity of VTCs. One ACLU representative suggested that VTCs are no different from courts for “police officers, teachers, or politicians.”²⁷¹ Along these lines, some critics suggest that courts should place veterans in existing mental health or drug courts rather than in some new specialty court.²⁷²

However, one must keep in mind the underlying treatment purposes of VTCs. For many veterans, the primary source of their criminal

REV. 1114, 1168 (2008) (“[Treatment courts] indicate that an important step has been taken toward a more rehabilitation-focused justice system as a whole.”).

266. McCaffery Interview, *supra* note 123.

267. See, e.g., Lindsay Goldwert, *Tough-Love Judge a Veteran’s Lifesaver*, CBSNEWS.COM (Mar. 1, 2010, 8:36 PM), <http://bit.ly/yMIs06> (“This isn’t a ‘get-out-of-jail-free card’ . . . it’s a ‘Who are you? What are you doing? What can we do to provide you with the type of treatment to make you a citizen again?’”); *Statement of Pennsylvania Bar Association Before the H. Judicial Comm. and the Veterans Affairs And Emergency Preparedness Comm.*, 2011 Gen. Assemb., Reg Sess. 20 (Pa. 2011) (statement of Wesley R. Payne, Pa. Bar Ass’n Military & Veterans’ Affairs Comm.), available at <http://bit.ly/ykJWOI> (“[V]eterans courts are not a free pass for the veteran.”).

268. Ruggeri, *supra* note 104.

269. *Id.*

270. For example, the Illinois ACLU now supports the VTC in Cook County, Illinois. See Debra Weiss, *ACLU Likes Veterans Courts If It Doesn’t Include Special Sentencing Deals*, A.B.A. J. (July 15, 2009, 12:43 PM), <http://bit.ly/xrTe22> (“[V]ets don’t get special treatment under the law, but they get assistance with drug treatment, housing, health care and job training.”).

271. Jerry Zremski, *Buffalo Veterans Court Wins Praise in Congress*, BUFFALO NEWS (Aug. 21, 2010, 2:01 AM), <http://bit.ly/yDPOKH>.

272. See Cartwright, *supra* note 251, at 302-03; Russell, *supra* note 12, at 363.

misconduct is combat trauma.²⁷³ This cause is unique to veterans, and other problem-solving courts do not adequately address this trauma because other specialty courts have no inherent measures in place that are sensitive to or cognizant of combat trauma.

Another justification for the necessity of VTCs—including those VTCs that treat non-combat veterans²⁷⁴—is that they serve important efficiency purposes. The VTC team develops necessary expertise in handling veteran cases.²⁷⁵ VTCs also make it practical for VA staff to attend court proceedings. By taking advantage of a consolidated court docket, a VA staff member can attend court once per week and help coordinate treatment services for all veterans during the same visit.²⁷⁶

In addition to efficiency benefits, VTCs provide a unique experience for veterans.²⁷⁷ Unlike drug or mental health courts, VTCs are unique because they match defendants with mentors who are also veterans.²⁷⁸ According to VTC representatives, these mentors are essential to the treatment process.²⁷⁹ Furthermore, VTCs enable veterans to undergo the treatment process with other veterans. A key rationale behind VTCs is that veterans respond more favorably to other veterans who have common experiences and needs.²⁸⁰ Such an approach likely provides the empathy that is necessary for treatment, which veterans might not receive in mainstream society.

3. The “Wacko-Vet” Myth

An entirely different concern raised by some critics, including a few veterans groups, is that VTCs perpetuate the stereotype that all veterans

273. Holbrook Interview, *supra* note 157.

274. As previously discussed, some VTCs only require veteran offenders to be in need of mental health treatment. See discussion *supra* Part IV.A.1.a.

275. See, e.g., NAT’L SEC. STAFF & DOMESTIC POL’Y COUNCIL, *supra* note 226, at 1 (discussing the unique challenges faced by veterans and their families); DEP’T OF DEF. TASK FORCE ON MENTAL HEALTH, AN ACHIEVABLE VISION: REPORT OF THE DEPARTMENT OF DEFENSE TASK FORCE ON MENTAL HEALTH 41 (2007) (“[S]ervice members and their families experience unique stressors. . . . The delivery of high-quality care for psychological health . . . requires providers who are knowledgeable about and able to empathize with the military experience.”).

276. Schaffer Interview, *supra* note 4; see also Cartwright, *supra* note 251, at 305 (“By consolidating all of the veterans into a single docket . . . [the VTC] made it worthwhile for the VA to send an employee with a secure VA computer to every court session.”).

277. See Russell, *supra* note 12, at 363; see also discussion *supra* Part IV.A.1.

278. See discussion *supra* Part IV.A.1.c.

279. See discussion *supra* Part IV.A.1.c.

280. See Russell, *supra* note 12, at 370. Indeed, peer mentoring provided by other veterans in the court is important. According to Patrick Welch, director of the Erie County Veterans Service Agency, “One reason [VTCs] work[] is the camaraderie that comes with serving in the military.” Zremski, *supra* note 271.

return from war with mental health problems.²⁸¹ This so-called “wacko-vet”²⁸² myth is a concern among veterans groups who claim that the stereotype contributes to poor employment prospects for veterans.²⁸³

Although the “wacko-vet” myth dates back to World War I,²⁸⁴ critics argue that VTCs help promulgate that stigma.²⁸⁵ For instance, one Army veteran stated:

It’s been popular to create this illusion of these people coming home from the war who are now somehow deficient. . . . They’re not wacky wing nuts that have to come home to be treated differently than the average American. If you have veterans courts, what does that say about veterans?²⁸⁶

Critics make a valid point. Many veterans will never attend a VTC or need any mental health services. Furthermore, veterans should have self-interest in avoiding negative stereotypes, and it is understandable that some advocates might be concerned about the potential message projected by VTCs for the overall image of the military.

In response, however, advocates argue that these critics should direct their efforts at helping to publicize the many accomplishments of returning veterans.²⁸⁷ Rather than denying assistance to those veterans who need it, a more responsible solution is to educate society about the psychological effects of war and to recognize veterans for their many achievements.

As Part II of this Comment illustrates, society has often ignored the hidden wounds of combat. Veterans amplify this problem by refusing to

281. See Ruggeri, *supra* note 104.

282. See Cartwright, *supra* note 251, at 308; Ruggeri, *supra* note 104.

283. See VANESSA WILLIAMSON & ERIN MULHALL, IRAQ & AFG. VETERANS OF AM., CAREERS AFTER COMBAT: EMPLOYMENT AND EDUCATION CHALLENGES FOR IRAQ AND AFGHANISTAN VETERANS (2009), available at <http://bit.ly/zvs10V> (citing “wacko-vet” myth as an obstacle to employment); Hope Yen, *War Veterans Face Job Search Woes*, USA TODAY (Feb. 8, 2008, 5:08 PM), <http://usat.ly/wmyryO> (quoting Joe Davis, spokesman for Veterans of Foreign Wars: “The issue of mental health has turned into a double-edged sword. . . . [P]ublicity has generated more public awareness and federal funding for those who return home different from when they left. However, more publicity—especially stories that perpetuate the ‘wacko vet’ myth—has also made some employers more cautious to hire a veteran.”).

284. Sontag, *supra* note 71 (“After World War I, the American Legion passed a resolution asking the press ‘to subordinate whatever slight news value there may be in playing up the ex-service member angle in stories of crime or offense against the peace.’”).

285. Ruggeri, *supra* note 104. Note that commentators have also criticized the media for perpetuating the “wacko-vet” myth by selectively reporting violent crimes committed by veterans. See sources cited *supra* note 72.

286. Ruggeri, *supra* note 104 (quoting Kevin Creed, an Army veteran who served in OIF and OEF).

287. Berenson, *supra* note 104, at 41.

acknowledge that such wounds exist or that some veterans return from war as changed people.²⁸⁸ In addition, research suggests that veterans who suffer from combat trauma are at a higher risk for committing crimes,²⁸⁹ and it is vitally important that those veterans suffering from combat trauma receive treatment.

This Comment does not suggest that the heightened risk for crime is due to military service or combat. Rather, evidence suggests that this heightened risk of crime is due to the *symptoms* of combat trauma.²⁹⁰ Until society understands this critical distinction, as well as the fact that combat trauma is treatable, the wacko-vet myth will persist in American society with or without VTCs. Finally, VTCs may help educate the public, thereby helping to dispel the myth rather than to promulgate it.

V. CONCLUSION

As a large number of veterans return from Iraq and Afghanistan with serious mental health problems, courts face difficult decisions regarding how to handle veterans who commit crimes. The prevalence of veterans on criminal court dockets is uncontroverted.²⁹¹ Indeed, some veterans have fallen into a justice system unprepared to address their unique needs.

Since 2008, jurisdictions have created VTCs that help facilitate the necessary treatment for struggling veterans. Joining forces with the VA, VTCs hold veterans accountable for their actions while also addressing the psychological trauma that contributes to criminal behavior.²⁹² Although each VTC is unique, most rely on established VTCs and local drug or mental health courts for guidance.²⁹³

In general, VTCs include veterans charged with misdemeanors or non-violent felonies, but most VTCs restrict eligibility to veterans who qualify for VA benefits.²⁹⁴ Arguably, VTCs that restrict eligibility to veterans with VA benefits are denying treatment to those veterans whom it would benefit most. Nevertheless, VTCs should be lauded for their efforts to provide a better future for many veterans.

Critics have argued that VTCs unfairly serve a special class of citizen, that drug and mental health courts are better equipped to serve veterans, and that VTCs project a stereotype that all veterans have

288. See discussion *supra* Part I.

289. See discussion *supra* Part III.

290. See discussion *supra* Part III.B.

291. See *supra* notes 115-23 and accompanying text.

292. See *supra* Part IV.D.1.

293. See *supra* Part IV.A.1; see also *supra* notes 192-93 and accompanying text.

294. See *supra* Part IV.A.1.a.

psychological issues.²⁹⁵ Advocates defend VTCs based on their early signs of success, their rigorous programs, the unique needs of veterans, and the societal tradition of affording care to those who sacrifice for their country.²⁹⁶ Concerns will likely fade as the benefits of VTCs become more apparent to the public.

In a short period, VTCs have sparked the interest of judges, court administrators, and legislators.²⁹⁷ As VTCs become increasingly common, advocates should help raise awareness for their unique purposes. Veterans often return from combat with psychological wounds.²⁹⁸ VTCs address each offender's emotional injuries as well as their other individual needs. As a result, these courts are quickly becoming a vital component in the criminal justice system and an overarching symbol for the rehabilitative movement.

295. See discussion *supra* Part IV.D.

296. See discussion *supra* Part IV.D.

297. See *supra* Part IV.B.

298. See *supra* Part II.