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## The Importance of Cultural Competence: The Defining Characteristic Separating Veteran Treatment Courts from Other Specialized Dockets

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THE IMPORTANCE OF CULTURAL COMPETENCE:  
THE DEFINING CHARACTERISTIC SEPARATING  
VETERAN TREATMENT COURTS FROM  
OTHER SPECIALIZED DOCKETS

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A thesis submitted in partial  
fulfillment of the requirements for the

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The Importance of Cultural Competence: The Defining Characteristic Separating Veteran Treatment Courts from Other Specialized Dockets

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## ABSTRACT

The current study provides a systematic review of veteran treatment court research with two main purposes in mind. The first is to establish whether and how the courts adhere to current evidence-based best practices, and if such practices differ from other specialty court programs. The second is to establish whether and how the concepts of “moral injury” and “posttraumatic growth” are incorporated in current veteran treatment court research and court practices, as an indicator of the cultural competency of both researchers and practitioners. This is a groundbreaking study that expands current research on moral injury and posttraumatic growth from the psychology and theological fields to criminology. The study is limited in its ability to fully and comprehensively evaluate all current veteran treatment courts since there has been a limited amount of research conducted on them and the first such court was established just over a decade ago. Further research is needed to build on this review. This study may have wide policy implications, directly impacting veteran treatment courts by influencing sentencing decisions prior to the admission of a veteran into a veteran treatment court program or the assessment of mitigating circumstances in the criminal cases of military veterans.

*Keywords:* veteran treatment court, specialty court, moral injury, posttraumatic growth

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# CHAPTER 1

## INTRODUCTION

At the age of 50, following 30 years of military service that included three deployments to a combat zone, a Nevada military veteran experienced “A recurring, intensely vivid mental image of a past traumatic experience,” otherwise known as a flashback (American Psychiatric Association, 2013; *Exhibit C*, 2012, p. 14). The flashback was initiated while horseplaying with a pool cue, but resulted in an arrest for child abuse. Posttraumatic stress disorder (PTSD) was recognized as a contributing factor to the crime, and the veteran was remanded to a specialized veteran treatment court program. The specialty court addressed the veteran’s PTSD through supervised individual and group treatment, along with regular court appearances and random drug testing.

Not all military veterans who are arrested and convicted are diverted into specialty veteran treatment courts, however. A Nevada Air Force Sergeant recently accepted a plea bargain to serve from 10 to 25 years in prison for 2<sup>nd</sup> degree murder after the killing of his wife in January 2014 (Avila, 2016). He was not eligible to be processed through one of the three veteran treatment courts that exist in the Las Vegas area. As some of the crimes committed by veterans tend to be violent and often serious in nature (Sales, 2015), many are still processed through the conventional criminal court system.

How do courts decide which veterans are eligible for processing through the specialty dockets designed for them and which aren’t? Are there specific factors that separate criminally-charged veterans from other criminally-charged individuals? If such factors exist, do specialty court programs and dockets focused on military servicemembers and veterans uniquely address



them? Are they able to accomplish this task in a manner that other specialty court programs cannot? Such questions are pertinent for several reasons.

First, military combat operations related to the Global War On Terror (GWOT) have been ongoing since the invasion of Afghanistan on October 7, 2001, following the World Trade Center attacks of September 11, 2001 (Walker, 2006, p. 5). Second, the first veteran treatment court (VTC) was established in 2004 in Anchorage, Alaska (Smith, 2012). There are now more than 330 VTCs scattered across the United States and several of its territories (Justice for Vets, 2016). Third, the existence of VTCs has been challenged as unethical and unnecessary by several scholars, politicians, prosecutors, judges and nongovernmental organizations (Brown, Stanulis, Theis, Farnsworth & Daniels, 2013, p. 12; Hora, 2016; Moses, 2009, p. 12).

The current study seeks to provide a systematic review of veteran treatment court research to establish effective intervention trends that may reduce recidivism, as well as lead to positive secondary effects for participants. This review will begin to establish the factors which separate veteran treatment courts from drug courts, as the essential framework is closely related (Russell, 2009; The history, 2016). See Table 1 for a comparison between drug and veteran treatment courts. Emphasis will be placed on the concepts of cultural competence, posttraumatic growth, and moral injury. These concepts are hypothesized to play a unique role in veteran treatment courts.

Table 1

*Summary comparison between drug and veteran treatment courts.*

Court Characteristic	Veteran Treatment Court	Drug Court <sup>1</sup>
Number of established courts	333	2,900
Years in existence	14	29
Complementary Services according to needs:	Provided by federal Veterans Administration and nonprofit veteran service organizations, supplemented with state resources if necessary	Provided through state and local government and nonprofit resources
<i>Responsivity needs</i>	Well funded Comprehensive mental and physical health resources; Trauma-informed care; HUD-VASH housing vouchers; Limited housing for parents with children	1 <sup>st</sup> phase focus on mental health treatment and physical health issues; Sober living housing; Less funding than VA, lacking in trauma-informed care
<i>Criminogenic needs</i>	Family counseling; Lacking with females: prostitution and fraud deterrence ineffective	Interim phases; Address criminal thinking errors, criminogenic peers, and family conflict
<i>Maintenance needs</i>	GI Bill and vocational rehabilitation support	Final phase focus; scholarships and Pell grant for education/vocation support
Case management	VA Veteran Justice Outreach coordinator, Parole/probation officer, Peer Mentor support; Multidisciplinary team lacking in clinical psychologists	Clinical case manager, Parole/probation officer; Team lacking in credentialed mental health professionals
Peer mentorship	Yes	No
Established best practices	No, adapted from drug court model	Yes; Infrequently delivered effectively
Multidisciplinary team	Primarily criminal justice	Yes
Communication style	Authoritative (judge as commanding officer), No consistency across courts	Motivational interviewing technique based on Network for the Improvement of Addiction Treatment (NIATx) model
Census impact	17-23% of incarcerated veteran population; Lacking impact with historically disadvantaged groups	Less than 10% of those in need of service
Monitoring & evaluation	Lack of legislative authorization for over 90% of VTCs; Few monitored or evaluated; Lacking longitudinal data due to new development	Routine monitoring established by legislative mandate and funding providers
Outcome measures	Primarily program graduation and recidivism, Posttraumatic growth measures	Retention, sobriety, recidivism, length of stay in program as established by National Research Advisory Committee (NRAC)
Risk assessment	Unknown; Research lacking	Yes

<sup>1</sup>Source: U.S. Department of Justice, 1997; National Association of Drug Court Professionals, 2015

The systematic review process will be covered in more detail in the methodology section. This analysis expands criminological theory in the areas of biological, psychological, and cultural contributors to crime, as well as the influence of strain and labeling on crime. This study has significant practical implications, particularly in the area of therapeutic jurisprudence as

related to cultural competency. Cultural competency has recently been established in the fifth edition of the *Diagnostic and statistical manual of mental disorders* used by mental health professionals as an important factor in the diagnosis of PTSD (American Psychiatric Association, 2013). Further, the absence of cultural competency may pose an ethical dilemma for the courts given this new inclusion in the DSM, as well as changes to Federal Sentencing guidelines (USSG §5H1.11) that require an evaluation of military service.

Comprehensive evaluation of specialty court practices may also assist in most appropriately responding to veteran criminality. This analysis may assist the criminal justice system with understanding how wartime and combat experience influences military veteran criminality, and how this may differ from those who serve during peacetime. Finally, this analysis may assist veteran treatment courts and researchers by establishing best practices and addressing possible deficiencies.

## CHAPTER 2

### HISTORICAL BACKGROUND

#### Factors Contributing to Military Veteran Criminality

##### *Post-Traumatic Stress Disorder (PTSD)*

As early as 490 B.C., negative reactions to combat were noted by the Greek historian Herodotus (DeWald & Marincola, 2006, pp. 214-15). It wasn't until 1980 that such reactions became recognized in the medical community as a clinical diagnosis, however. The American Psychiatric Association defined PTSD in order to help military veterans obtain mental health services from the Veterans Administration (VA) (Friedman, 2016).

One out of every five Iraq and Afghanistan veterans retains a diagnosis of PTSD or major depression (Tanielian & Jaycox, 2008, p. 47). The VA's National Center for PTSD (Hamblen & Kivlahan, 2016) estimates that one-fifth of Iraq and Afghanistan veterans receiving care through the VA also struggle with alcoholism and drug abuse. The combination of such disorders could lead to conflicts with the law through crimes such as illicit drug use, drunk driving, domestic violence, and other risky behavior (Brown, Stanulis, Weitzel & Rodgers, 2015; Russell, 2009; Shay, 2009). Danger seeking, thrill seeking and the loss of capacity for social trust also contribute to veteran criminality, and this phenomenon has been observed many years prior to the official establishment of PTSD as a diagnosis. T.E. Lawrence, one of the most famous veterans from World War I who carried the moniker "Lawrence of Arabia," was killed in a motorcycle accident and at one time described riding at a speed of 90 miles per hour while the rest of the traffic was traveling at 25 miles per hour through the lanes of Oxford, England (Shay, 2009, p. 293).

## *Traumatic Brain Injury*

Among returning Iraq and Afghanistan veterans, traumatic brain injury (TBI) has been recognized as a signature condition that has wide-ranging and negative implications for those who are affected. The disorder forms obstacles for veterans to smoothly transition back to civilian life (Tanielian & Jaycox, 2008, p. 124). High rates of TBI in returning troops are a consequence of two primary factors.

First, enemy fighters during recent conflicts primarily utilize asymmetric, or guerilla-style tactics in their fight against Coalition forces (Kiss, 2017). The most significant threat to troops was the use of improvised explosive devices (IEDs), which range from rudimentary handmade explosives to sophisticated weapons that contain high-grade explosives (Ramasamy, Hill & Clasper, 2009, p. 265). They may be employed as roadside bombs, blast mines, explosively formed projectiles, or suicide bombings.

The use of IEDs is not a new phenomenon unique to the recent Global War on Terror. During the Vietnam War and other prior engagements, the use of improvised weapons, ranging from explosive mines to crude weapons made of sharpened bamboo, were known by the term “booby traps” but still had the same effect as the IEDs of today (Turse, 2013). The difference between current and prior engagements is that the IED has been a primary method of enemy warfighting whereas prior enemy forces utilized more conventional fighting styles with direct rifle engagements, supplemented with booby traps (Green et al., 2016).

Dr. Deborah Warden (2006, p. 401) explains that another reason for the increase in TBIs over past wars may be greater effectiveness of protective armor, and better medical responses to such injuries. She noted that the number of serious brain injuries was approximately five times the number of amputees. TBI that damages the amygdala, frontal lobe, or specific

neurotransmitter systems has been associated with poor impulse control and violent behavior (Barzman, Kennedy & Fozdar, 2002, p. 49), which may subsequently result in criminal justice involvement.

### *Moral Injury*

More recently, the term “moral injury” has been developed to better explain reactions from war that do not fall within the clinical diagnostic scope of PTSD. According to psychologist Dr. Brett Litz and colleagues (2009, p. 700), moral injury is defined as “perpetrating, failing to prevent, bearing witness to, or learning about acts that transgress deeply held moral beliefs and expectations.” In their preliminary study, Litz et al. (2009) explains that participation in atrocities and killing may be a significant factor in parasuicidal behavior, domestic violence, and criminal behavior.

The reason given for demarcating moral injury from PTSD is that PTSD attempts to explain the phenomenology of individuals harmed by others, but it does not consider the potential harm from perpetration. In war, both phenomena are often experienced simultaneously, so a focus on PTSD only paints half the picture. The study introduces what may be potentially morally injurious in war, such as exposure to human remains, or participation or perpetration of atrocities. It introduces basic concepts of morality, defining morality as, “the personal and shared familial, cultural, societal, and legal rules for social behavior, either tacit or explicit” (p. 699).

The importance to criminology is that violations of these morals may lead to self-harming behaviors, self-handicapping behaviors, demoralization, shame proneness, or neuroticism that may manifest as alcohol and drug abuse, parasuicidal behavior, decreased empathy for others, or increased focus on internal distress and psychopathology (Litz et al., 2009).

Following the initial introduction of the moral injury concept offered by Litz et al., Dr. Kent Drescher and colleagues (2011) sought to further the understanding of the moral injury concept. The study used a purposeful snowball sampling method to interview 23 participants. The participants were all professionals who work with military veterans. Some were military veterans themselves, and five of them had served in infantry roles.

Participants were given four semistructured questions that asked how the professionals viewed the current construct of moral injury, what elements of combat experience are most likely to cause moral injury, what are the signs and symptoms of moral injury, and what type of interventions may be useful for targeting moral injury. The results indicated that moral injury as a concept was more encompassing than PTSD diagnostic criteria, but consensus was not found for a workable definition. Several opposed the term moral injury itself, several felt the definition was too narrow, and others also added more potential indicators and consequences of moral injury. This study was a logical next step to further define the construct.

The study is limited in that it only interviewed a small number of professionals, and did not include any veterans who have dealt with their own moral injury. The researchers did not answer their research question, but rather opened the door to more questions that should encourage further research. The researchers stress the importance of multidisciplinary input to more fully develop the construct of moral injury.

With the concept of moral injury preliminarily developed, an attempt to assess moral injury within a population of military combat veterans was made with the introduction of the Moral Injury Events Scale (MIES) in 2013 (Nash et al). The 9-item scale was found to be a conceptually valid and psychometrically sound tool for measuring exposure to events in a military context that may contradict deeply held moral beliefs. This is important for criminal

justice courts, as they may have difficulty differentiating offenders whose crime resulted from morally injurious effects and those whose did not. This tool may assist court actors with increasing their cultural competency specifically in relation to each individual veteran that appears in the court or applies for admittance.

Nash et al. evaluated the MIES by surveying 1,039 U.S. Marines following deployments to Iraq and Afghanistan. In order to support the scale further, researchers with the University of Utah's National Center for Veterans Studies conducted a study (Bryan et al., 2015) that utilized two different samples. One sample was selected from the Arizona National Guard and another from the U.S. Air Force, to replicate the study conducted on US Marines. Their study found possible overlap between moral injury with PTSD. Betrayal scores were found not to be strongly correlated with deployment-specific events, but rather entailing a violation of trust by people or institutions on which military personnel depend on for survival.

This finding is important for the criminal justice system, as failure to recognize military influences on criminality may be interpreted as a betrayal of both the military community and the individual veteran caught up in the system. Such an interpretation may negate efforts to rehabilitate or deter the offender, and may lead to greater noncompliance in institutional and community settings. Cultural competency plays an important role in the effectiveness of interventions with military veterans.

Cultural competency also applies to the concept of morality itself. The definition of moral and amoral behaviors differs greatly between the military and civilian cultures, and the differences range at the most extreme ends of the spectrum of morality, as defined by heroic action in the military and the most serious violent offense listed in the criminal code. Killing in war often results in significant reward and notoriety. Such awards are not only rewarded with



prestigious medals, but can also result in a 10 percent increase in retired pay, guaranteed admission for the children of recipients into military academies, and an additional lifetime special pension of more than \$1,300 per month, among many other benefits (Howell, 2014).

Killing in the civilian sector, however, results in heavy punishment that can include life in prison or death. Even driving erratically at high speeds in a combat zone may be life-saving, in stark contrast to the strict driving environment within the confines of the United States (Shay, 2009). These drastic differences in codes of morality between the military and civilian cultures emphasizes the need for moral injury research and understanding to expand to veteran treatment court collective knowledge.

Nearly concurrent with development of the MIES, researchers also developed the Moral Injury Questionnaire-Military Version (MIQ-M) as an alternative method to evaluate morally injurious events. Currier and colleagues (2015, p. 56) utilized a scale with 20 items, rather than nine as with the MIES, and found similar results. This scale has not been tested as thoroughly as the MIES, however, as it so far has only been used with two small samples of combat veterans. The first sample consisted of 131 Iraq and/or Afghanistan veterans attending a community college, and that sample was compared with 82 Iraq and/or Afghanistan veterans housed in an inpatient treatment program for PTSD.

In summary, two different survey tools have been developed as preliminary methods for analyzing ‘moral injury’ in military veterans. The Moral Injury Events Scale (MIES) has been studied more extensively and broadly than the concurrently produced MIQ-M, and found to be both psychometrically sound and conceptually valid. Bryan et al. found possible overlap between PTSD and moral injury, and also discovered that the moral injury concept of “betrayal” may not be limited to servicemembers deployed outside the United States. Drescher et al. determined that

further research is needed to improve the overall concept of moral injury. Finally, Dr. Brett Litz laid the initial foundation of both a preliminary model of moral injury and a strategy for intervention. The current study seeks to assess whether moral injury as a concept has been applied in the realm of veteran treatment courts.

### *Cumulative Continuity*

Roberts and Caspi (2002, p. 183) conceptualize obstacles encountered by traumatic events in a model they call, “cumulative continuity.” That model states that behaviors and choices at each stage of life have consequences that accumulate to shape and limit an individual’s options at subsequent stages of life. Cumulative continuity highlights the ways that negative consequences can emerge over time in an additive way. For the returning service member, the cumulative impact of combat stress would involve the continued experience of symptoms such as irritability and hypervigilance in civilian life that endanger work and personal relationships.

Tanielian and Jaycox (2008, p. 122) found that service members who were aggressive and uncontrolled upon return from deployment were likely to suffer both professionally and socially. The consequences of combat irritability and erratic behavior following combat may accumulate in civilian life through loss of jobs, divorce, and strained friendships. This may substantially inhibit options for readjustment after deployment. Lack of employment or employment in low skill, low pay jobs may additionally add to stress that may trigger a cascade of negative consequences, substantially affecting later stages of life. The cumulative continuity concept indicates that veteran treatment courts must understand a multitude of facets that may contribute to veteran criminality, and each facet may cumulatively contribute. These include PTSD, TBI, moral injury, compassion fatigue, preexisting mental health problems, and transition

issues after deployment largely related to the difficulty of adapting from the military to civilian cultures.

## Veteran Treatment Courts

### *History*

The number of veterans in the legal system has been estimated around 10 percent of the custody population, which is approximately 200,000 nationwide with more than twice that on parole or probation (McQuaid & Bankman, 2014; Noonan & Mumola, 2007). This number is difficult to accurately assess due largely to the self-reported nature of veteran status and lack of data collection criteria. Military veteran incarceration rates have also been reported at much higher levels by state departments of corrections. For example, Oregon has reported a veteran incarceration level over 19 percent and Nevada reported more than 11 percent (Shelden, Brown, Miller & Fritzler, 2016). Rising appearances of military veterans in criminal courts, particularly those who participated in the Global War on Terror campaigns in Iraq and Afghanistan, led to the creation of specialized dockets catered to military veterans (Russell, 2009; Smith, 2012).

The newest major development in the realm of specialty courts focuses on diverting military veterans into treatment, with a primary objective of avoiding the negative label associated with a criminal record in order to reduce the overrepresentation of military veterans among the homeless population (McGuire, Gelberg, Blue-Howells & Rosenheck, 2009, p. 255). The first of these courts was established in 2004, and as of June 30, 2014 there were 330 of the specialty courts scattered across the nation (The history, 2016). Given that such rapid change occurred within just over seven years in the proliferation of veteran treatment courts, it is the purpose of this thesis to further examine the current status of veteran treatment courts. There are

many research questions related to the courts that could aid their development and assess their effectiveness.

These courts are important to study largely because they are so new that little is known about their effect on reducing criminality among the military veteran population. History suggests that increased criminality among returning combat veterans is not novel, but the veteran treatment court model is a drastic new change compared to the previous use of reformatories and insane asylums. This examination will begin with a basic understanding of the current status of veteran treatment courts.

*Ethical Controversy.*

“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...” (Porter v. McCollum, 558 U.S., 130 S. Ct. 447, 448, 2009, p. 14). Although well intentioned, this statement implies that recognition of military service as a mitigating factor in the crimes of military veterans is granted merely as a means of thanking them for their service. It also implies that such service warrants leniency, yet veterans tend to receive longer sentences than their civilian counterparts even though their criminal backgrounds tend to be much shorter or nonexistent (Brown et al., 2013). This assertion highlights an ethical challenge proposed by the American Civil Liberties Union (ACLU), along with several others (Walberg, 2009, Weiss, 2009;).

The ACLU challenges the efficacy of veteran treatment courts and other forms of leniency for veterans in the courtroom, citing that any special treatment based purely on social status is unethical (Walberg, 2009). However, the United States Sentencing Commission issued a document released November 1, 2010, (USSG §5H1.11) that in part reads:

Military service may be relevant in determining whether a departure is warranted, if the military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines. (Sessions III et al., 2010, p. 349)

Multiple studies (Brown et al., 2015; Killgore et al., 2008; Marx et al., 2010; Wilk et al., 2009) indicate that there are several intervening variables that may increase the likelihood of criminality among military veterans, but this research does not indicate that military service alone is directly correlated with crime. While some military veterans leave military service to subsequently commit crime (Avila, 2016), others go on to live highly successful lives (Lockie, 2015). In order to appropriately react to the criminality of military veterans, criminal justice system actors need to be thoroughly familiar with the cultural and psychological factors that can contribute to military veteran criminality rather than simply granting leniency based on prior service.

Another challenge to veteran treatment courts stems from the fact that some military veterans had some kind of criminal record prior to entering the service. For example, Marilyn Moses (2009) cites that nearly one quarter of military recruits in 2006 were granted some type of criminal record waiver in order to enter the military. Such a narrative used to describe the military veteran experience may make it difficult for courts to distinguish veterans whose crime truly did result from their service. The implication may be that veteran criminality stems from a pattern that was established prior to military service. According to one researcher (Personal Interview, Dr. William “Bud” Brown) who has personally testified in over 150 military veteran criminal cases, only a small handful had prior criminal records. Out of those few, the offenses were minor and mostly apply only to juveniles, such as a charge of minor in possession of alcohol or tobacco. The extensive screening process potential recruits must endure eliminates those individuals who have shown a pattern of serious criminality prior to applying to serve in

the military.

An important consideration when evaluating the criminality of veterans is that crime is a very broad term that includes many types of offenses, which may have very different influences on their commission. Some crimes are committed after very careful planning, such as a bank robbery or burglary, while others may result from impulses that have virtually no prior thought or planning involved, such as an assault following a verbal dispute. Clarke and Cornish (1985, p. 148) emphasize that analysis specific to each type of crime is crucial both for explaining and controlling crime in general. Different offenders may be predisposed to commit different types of crime. The crimes committed by military veterans that directly correlate with their military service tend to be situationally influenced as a reaction with no planning involved (Brown, 2008).

General strain theory (Agnew, 1992, p. 47) explains crime in general by suggesting that three major types of strain influence criminality. Strain may occur as the actual or anticipated failure to achieve positively valued goals, as the actual or anticipated removal of positively valued stimuli, or as the actual or anticipated presentation of negatively valued stimuli. Each type can be present in the life of a military veteran, such as the strain resulting from unemployment following active duty service or divorce that may result from the stress of repeated deployments. Further, betrayal is a common theme cited in moral injury literature, as many veterans are sold on the idea that numerous jobs would be available once their service ended, only to find that they don't qualify for most due to a lack of transferrable skills and education.

Social disorganization theory (Shaw & McKay, 1942) further compliments strain theory by suggesting that neighborhoods characterized by poverty, racial/ethnic heterogeneity, and residential mobility are more likely to experience high rates of crime. This suggests that veterans

living in neighborhoods with these characteristics may be at a higher risk for criminality than those in more affluent neighborhoods. Veterans experience unemployment at all age ranges at a higher rate than their non-veteran counterparts, indicating the veteran community may be heavily impacted by social disorganization influences (Loughran, 2014, p. 5).

The theory of collective efficacy (Sampson, 2006) further elaborates on the concept to explain that mutual trust and solidarity among residents is not likely to exist in neighborhoods characterized by social disorganization, hindering the willingness of residents to provide informal social control to reduce crime. Veterans commit suicide at a rate that is double that of non-veterans among males and six times as high for female veterans (Kemp & Bossarte, 2012, p. 19). Military veterans may feel especially isolated in their communities, inhibiting their ability to develop strong social cohesion. Such social isolation may indicate an additional reaction to the betrayal and cultural conflict mentioned previously (Personal interview, Dr. William “Bud” Brown).

Finally, the relationship between increased combat exposure and increased rates of violent crime may stem from mental disorders and stress that result from experience in war. This concept is supported by criminological theories of biological harms (Peskin et al., 2013) and negative emotionality (Caspi et al., 1994). Combat experience is associated with post-traumatic stress disorder, traumatic brain injury, and moral injury. Each of these factors can cause mental deficits and negative emotionality that have been recognized as mitigating circumstances in criminal cases of veteran defendants (Brown et al., 2015).

Recognizing any of the previous factors as mitigating circumstances in veteran criminal cases is often a matter of cultural awareness (Brown et al., 2015). That same awareness may help communities recognize when military veterans need some sort of assistance and aid them in

referring a veteran before problems reach the point of criminality, particularly in communities where social cohesion and trust are high. No prevention effort has been fully successful, but the veteran treatment court model has served as a safety net fulfilling the tenets of restorative justice and reintegrative shaming (Braithwaite, 1989; 2002). The main tenet of both is to shame the act but not the individual by preserving their identity as a productive member of society.

Additionally, the tenets of restorative justice that are carried out in the veteran treatment court model ideally serve both the needs of the offender and victim, focusing on treatment and accountability to reduce the likelihood of a repeated offense.

#### *Therapeutic Jurisprudence and Restorative Justice in the Military Veteran Community*

The Veterans Health Administration (VHA) focused increased resources on ending homelessness among the military veteran population following the wars in Iraq and Afghanistan, finding a strong correlation between homelessness and prior incarceration. In a follow-up study that focused on incarcerated veterans, researchers found that “30% of the sample had a homeless history, which is five times the 6% rate of past homelessness among adult men in the general population” (Tsai, McGuire, Rosenheck & Kaspro, 2014, p. 360). The greatest contributing factor to homelessness is being labeled with a criminal record, which reduces opportunities for employment, housing, and access to many other resources (Kushel, Hahn, Evans, Bangsberg & Moss, 2005, p. 1747).

Studies like these led to initiatives focused on rehabilitating and reintegrating military veteran offenders, largely through the concepts of restorative justice as practiced in veteran treatment courts. A principal tenet of nearly all specialty courts is the reduction of strain and stigmatization that results from labeling individuals as criminals with public records. As



discussed earlier, criminal records limit the ability to pass background checks required for many jobs and housing opportunities.

Additionally, the label of criminal is likely to encourage secondary deviance that increases the likelihood of recidivism, as the new label of criminal becomes an ingrained part of the stigmatized individual's identity. This concept was established by Edwin Lemert's (1951) theory of primary and secondary deviance, and compliments Braithwaite's (1989, 2002) concept of stigmatization. Specialty courts have the potential to reduce the likelihood of secondary deviance by minimizing the impact of stigma on offenders, maintaining their identity as good people who made a mistake but are given tools and guidance to ensure that mistake is not repeated.

The concepts of reintegrative shaming and restorative justice are not new, although they have only recently been given scientific scrutiny and become popular in the field of criminology. As explained by Meredith Rossner (2008, p. 1734) in her critical assessment of restorative justice practice and theory, "The practice is a centuries-old way of dealing with conflict that has been practiced by Maori, Celtic, and Native American cultures before the advent of the Western-style criminal justice system."

There are two main goals of restorative justice. The first is restoration, which is often measured subjectively as victim and offender satisfaction, social reintegration, healing, or shame. Tony Marshall, author of *Restorative justice: An overview* (1999), suggests that the more general aim is to repair the harm from an offense in a manner that is respectful not just to one party involved, but for both victim and offender. This is accomplished through the interaction of offender, victim, family, and sometimes the community to assess what steps must be taken in order for the offender to make amends to the victim and the community as a whole. Restorative

justice is focused on achieving the best possible outcome for all parties effected by crime in the here and now.

The second goal of restorative justice is crime reduction. John Braithwaite's (1989) theory of reintegrative shaming is particularly useful in this respect. The theory suggests that the use of stigmatizing shaming rather than the reintegrative sort results in higher crime rates. Reintegrative shaming emphasizes the criminal act as bad, wrong, or evil while essentially preserving the identity of the offender as good (p. 272). Stigmatization labels the offender as an outcast of society, and no effort is made to reintegrate them with the community. For example, public arrest and criminal records or specific add-on labels for domestic violence or sexual offenses could be considered aspects of stigmatization in the modern American criminal justice system (Jacobs, 2006, p. 387). The vast divide between civilian and military cultures only adds to the stigmatization where many veterans already no longer feel like they fit in society.

The reform movement that followed the Civil War, eventually leading to the establishment of reformatories, was an early attempt at reintegrative shaming. Offenders were still incarcerated to shame the actual crime that led to their imprisonment, but emphasis was placed on attempting to restore offenders to a productive role in society. Although the techniques of the reformatory that included shock therapy, ice baths, and even lobotomies may not have been effective, the concept of eventually curing criminality in order to return the offender to society remained the same. These ideas guided the early founders of criminology, motivating Cesar Lombroso's search for the criminal mind (Cullen, Agnew & Wilcox, 2014, p. 31; Lombroso, 2006). The search continues to this day and the development of veteran treatment courts represents the newest advancement toward that endeavor.

## CHAPTER 3

### METHODOLOGY

#### Objectives

This review has two main objectives. The first is to establish cumulative knowledge on the current status of VTCs, with focus on the best practices that have been established thus far in the early developmental phases of the courts. This includes basic demographics, such as the current number of veteran treatment courts and where they are located. To aid further research, this also includes an analysis of the number of published research articles in relation to each state.

The second objective is to indicate the cultural competency of VTCs and researchers who publish about them. Cultural competency as assessed in relation to VTCs also indicates the level of interdisciplinary cooperation between the fields of criminology, criminal justice, psychology, psychiatry, theology, and sociology.

#### Systematic Review

The systematic review process utilized for this study follows guidelines established by The Campbell Collaboration Crime and Justice Coordinating Group (Crime and Justice, 2017). The Campbell Collaboration is an international organization that publishes systematic reviews of research findings on the effectiveness of social interventions (History, 2017). The Crime and Justice Coordinating Group specifically focuses on systematic reviews of research that focuses on methods to improve the quality of justice and reduce crime. The protocols for the methods used to conduct a Campbell Review (Guidelines, 2001, p. 2) are as follows:

1. Establish criteria for inclusion and exclusion of studies in the review
2. Establish a search strategy for identification of relevant studies

3. Describe the methods used in the component studies
4. Establish criteria for determination of independent findings
5. Annotate details of study coding categories
6. Report statistical procedures and conventions
7. Assess the treatment of qualitative research

### *Guiding Principles*

Moral injury and cultural competency may be key components that separate military veteran criminality and treatment courts apart from other types of offenders and specialty courts. The concepts of reintegrative shaming, restorative justice, and aftercare are key components contributing to reductions in recidivism and increased levels of success for specialty court graduates. Posttraumatic growth may be an appropriate measure of successful graduation from veteran treatment court, along with measures of recidivism and other secondary measures of success.

### Data Collection and Analysis

#### *Search methods for identification of studies*

A systematic review of academic journal articles and texts related to veteran treatment courts, specialty courts, moral injury, posttraumatic growth and compassion fatigue was conducted. Searches included all electronic databases available through the University of Nevada, Las Vegas (UNLV) library, as well as those listed in article reference lists. Personal communication with key researchers and experts was utilized to further ensure all articles relevant to VTCs were collected and analyzed.

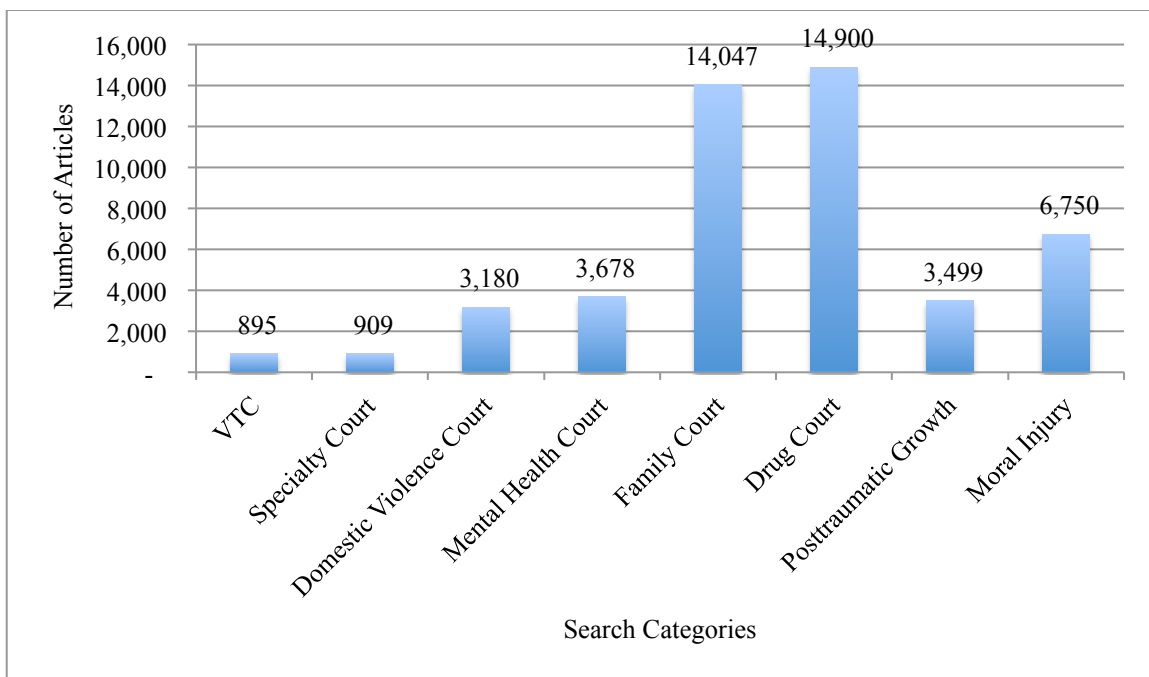
The search strategy employed focused on gathering all articles that specifically focused on empirically evaluating VTCs. Each database was searched using the concepts of veteran

treatment courts, specialty courts, moral injury and posttraumatic growth to maximize the likelihood that all articles relevant to veteran treatment courts would be gathered. Keywords relevant to each concept were utilized in searches to create a comprehensive list of related studies, and as many variations as possible were used in searches.

### Data Consolidation

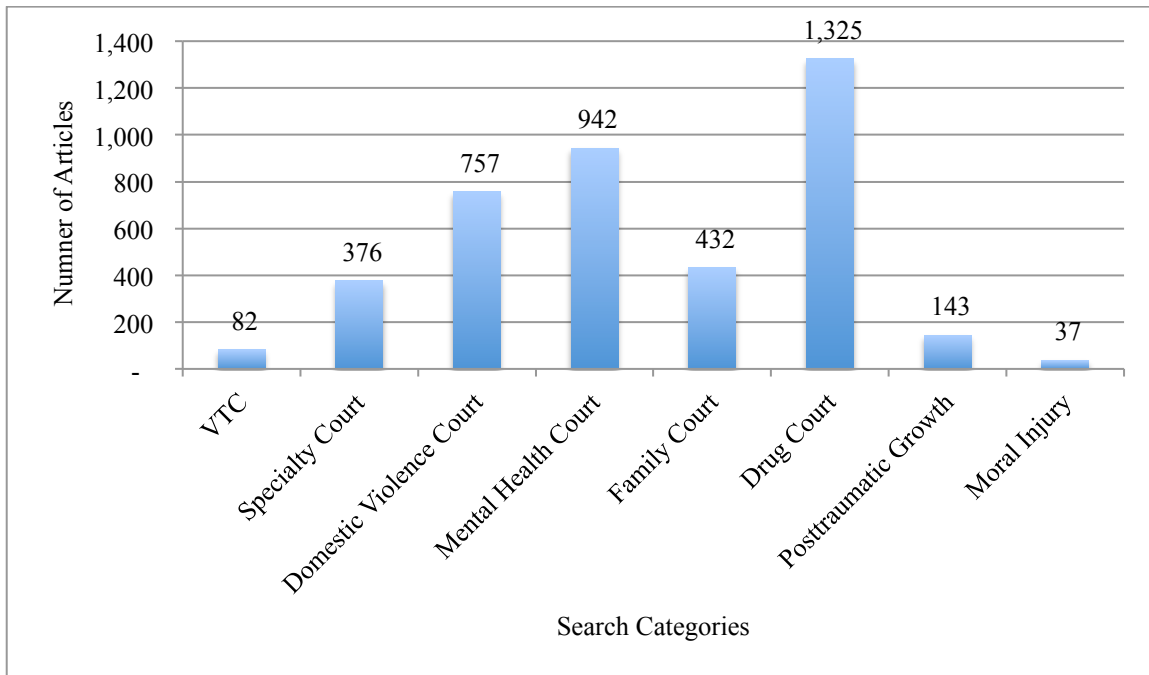
The first step in data collection began with searches of research databases available through the UNLV library. The databases utilized are listed in Appendix 1. Keywords were utilized to return all articles relevant to the four search categories of veteran treatment courts, specialty courts, moral injury, and posttraumatic growth. All article citations were transferred to RefWorks citation management software. Duplicates were removed to return the total number of responses for each search category, as displayed in *Figure 1*. The specialty court category was broken down into different types of special court designs to compare the level of research conducted on each type.

*Figure 1:* Total number of articles with search term in title or body



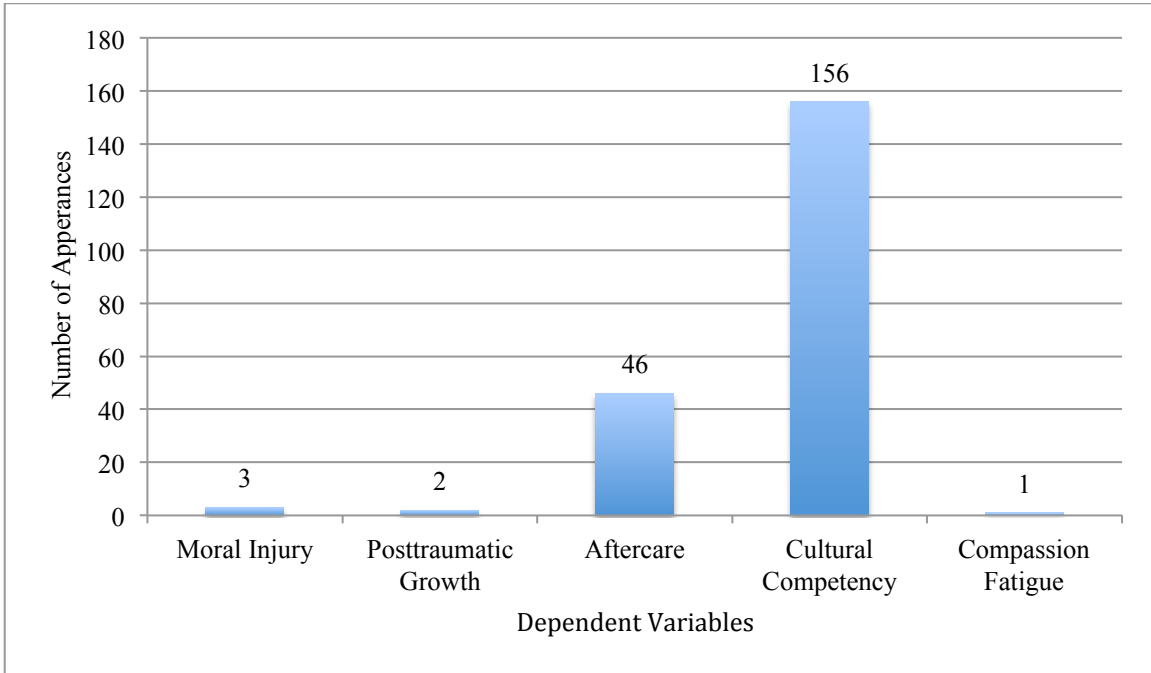
Search results were analyzed as a two-step process. First, abstracts were read to assess the relevance of each study. Only peer-reviewed scholarly journal articles were accepted as relevant to the current review. Second, those studies excluded based on abstracts were scanned in full to insure they were correctly discarded. Each individual article analyzed served as the units of analysis. There was no use of human subjects, as all data was acquired secondarily through academic journal databases, library resources and referral from key researchers. The reference lists from each article identified in the initial database search were consulted to ensure a more comprehensive and thorough analysis of all related and current research. The final count of relevant articles is displayed in *Figure 2*.

*Figure 2*: Relevant articles with search term in title or body



Finally, journal articles within the VTC category were searched for the terms “moral injury,” “posttraumatic growth,” “aftercare,” “cultural competency,” and “compassion fatigue.” These are the terms chosen as dependent variables. The number of times each term appeared in the VTC articles is displayed in *Figure 3*.

Figure 3: Dependent variable appearances in VTC articles



A final quantitative analysis assessed how many VTCs there are in each state and the maximum number of veteran clients served by each state’s VTCs. These results are displayed in Table 2. The number of veterans incarcerated in each state was assessed as eight percent of each state’s total incarcerated population, as indicated by the most recent Bureau of Justice Statistics available (Bronson, Carson & Noonan, 2015; Carson, 2018).

The maximum number of potential clients served by each state’s VTCs was established by averaging the annual capacity of the four National Association of Drug Court Professionals’ (NADCP) Justice for Vets’ mentor courts (Erickson, 2016b; Justice for Vets, 2018). The four mentor courts are located in Jacksonville, Florida; Colorado Springs, Colorado; Buffalo, New York and Billings, Montana. The Jacksonville VTC serves 70 veteran defendants annually (The Florida Times-Union, 2017). The VTC in Billings serves 40 annually (Alcohol Monitoring Systems, 2018). The Colorado Springs VTC served an average of 48 veterans between December 2009 and October 2015 (Erickson, 2016a, p. 222). The mentor VTC located in

Buffalo serves 90 veteran defendants annually (McMichael, 2011, p. 4). The average annual service of the four courts is 62. The number of VTCs located in each state was established from the latest available data from the NADCP's Justice for Vets program (Justice for Vets, 2016).



## CHAPTER 4

### FINDINGS

As shown in Table 2, the maximum annual capacity of all veteran treatment courts combined is about 20,770 when utilizing the latest data available from the NADCP. This number is lower than the total number of VTCs indicated by Veterans Administration' (VA) data, which states that there are 461 VTCs (Flatley, Clark, Rosenthal & Blue-Howells, 2017, p. 1), but the VA's inventory does not account for each state individually as the NADCP data does. Also, the VA's inventory includes court programs that are actually dockets within other courts rather than stand-alone specialty court programs. According to the VA inventory, only 75 percent of the 461 courts included in their count are separately designated VTCs. The estimated annual maximum capacity of the 461 VTCs is 28,582.

According to the U.S. Department of Justice, military veterans account for eight percent of all inmates in state and federal prisons and local jails (Bronson et al., 2015). The latest Bureau of Justice Statistics' data available indicates that the total prison population was 1,505,400 in 2016 (Carson, 2018), so the estimated current incarcerated veteran population is 120,432.

Table 2

*The number and maximum capacity of Veteran Treatment Courts located in each state.*

State/Territory	VTCs	Maximum Capacity			
Alabama	20	1,240	Nebraska	0	0
Alaska	1	62	Nevada	5	310
Arizona	11	682	New Hampshire	0	0
Arkansas	11	682	New Jersey	0	0
California	27	1,674	New Mexico	1	62
Colorado	6	372	New York	2	124
Connecticut	0	0	North Carolina	3	186
Delaware	3	186	North Dakota	0	0
Florida	21	1,302	Ohio	19	1,178
Georgia	18	1,116	Oklahoma	2	124
Hawaii	2	124	Oregon	4	248
Idaho	4	248	Pennsylvania	18	1,116
Illinois	17	1,054	Rhode Island	1	62
Indiana	15	930	South Carolina	3	186
Iowa	1	62	South Dakota	2	124
Kansas	1	62	Tennessee	5	310
Kentucky	5	310	Texas	24	1,488
Louisiana	4	248	Utah	2	124
Maine	1	62	Vermont	0	0
Maryland	2	124	Virginia	0	0
Massachusetts	2	124	Washington	10	620
Michigan	22	1,364	West Virginia	0	0
Minnesota	12	744	Wisconsin	10	620
Mississippi	1	62	Wyoming	1	62
Missouri	11	682	Guam	1	62
Montana	3	186	Ft. Hood Army Base	1	62
			<i>Total</i>	<i>333</i>	<i>20,770</i>

A previous evaluation of incarcerated veterans in 2004 (Bronson et al., 2015) estimated that veterans accounted for ten percent of the total incarcerated population. Bronson et al. note that the reduction to eight percent is consistent with a decline in the number of veterans in the overall U.S. population, but it is not known whether VTCs have had any impact on the incarceration of veterans.

Keywords were chosen to indicate interdisciplinarily how VTCs may differ from other forms of specialized court programs. The most common variable that was used to distinguish VTCs was cultural competency. Aftercare also sets VTCs apart from other court programs, as most VTC participants have unique access to follow-up care through the Veterans Health

Administration and other veteran support organizations that aren't available to the general public.

### *Outcome Measures*

As with all correctional programs in criminal justice, veteran treatment court success is primarily measured by the prevalence of new crimes committed by prior clients. There is no operationalized standard for how recidivism is actually measured, however. Most VTCs have not existed long enough to have a single graduate from their program, and those that do have a record of graduates can only account for recidivism in the last couple years. One of the earliest VTCs established in 2008 in Buffalo, New York boasts a zero percent recidivism rate (Russell, 2011, p. 397). In contrast, the oldest VTC in the nation, established in 2004 in Anchorage, Alaska, has averaged a recidivism rate of 45 percent (Arno, 2015, p. 1067). Since any sort of longitudinal evaluation is impossible due to the recency of VTC developments, many emphasize program completion as an indicator of success.

The Buffalo VTC has had 26 of its 202 enrollees drop out of the program, and none of the veterans who graduated have been rearrested. Nationwide, the NADCP has stated that 70 percent of the veterans who enroll in a VTC complete the program, and 75 percent of those graduates were not rearrested within the first two years following graduation (Arno, 2015, p. 1050). Lucas & Hanrahan (2016) differentiate between internal and external success. The researchers explain that program compliance is viewed as most important to internal success, defined as the functioning of the courtroom workgroup, but the relationship of compliance to veteran success, or rather external success, has not been established. Graduation rates are difficult to compare across VTCs, since there is no standard criteria of how to graduate. Some programs may be more or less vigorous than others.

Judge Robert Russell of the Buffalo VTC, along with several other judges (Lucas & Hanrahan, 2016, p. 57; Russell, 2015, p. 370), stresses that neither recidivism or graduation rates truly describe the success of VTC participants or even the program itself. Judge Russell states that success may be better measured by the positive changes that occur in individual participants lives. Even without directly utilizing the term posttraumatic growth, Judge Russell's sentiment echoes that of many researchers and VTC stakeholders. The posttraumatic growth inventory is a psychological tool developed to measure such positive improvements, and particularly applies to military veterans (Cox, 2017). This review found that it may be the best measure of VTC success, in addition to recidivism, sobriety, and graduation rates.

### *Stakeholders*

The members of the courtroom workgroup consist of all the same actors as any conventional criminal court, along with several additional members of the treatment team. The courtroom workgroup is encouraged to work together toward the common goal of rehabilitating the offending veteran while protecting the safety of the public. Additional members often include at least one representative from the Veterans Administration (VA), who is most typically a Veteran Justice Outreach (VJO) coordinator specifically assigned to assist with developing treatment plans through the Veterans Health Administration for veterans involved with the criminal justice system. Only 5% of VJO coordinators are licensed psychologists (Smee, 2013, p. 259). The absence of forensic psychiatrists or psychologists was highlighted as a major problem inhibiting the effectiveness of VTCs. The VJO program developed out of a VA commitment to end homelessness among military veterans where researchers found that the most common correlate with homelessness was criminal records that inhibit the ability to obtain stable housing and meaningful work (Tsai et al., 2014, p. 362).

Additional team members often include representatives from state departments of veteran affairs, local social workers from VA-affiliated Vet Centers, volunteer peer mentors, nonprofit veteran service organization representatives, state agencies that typically represent housing or unemployment service providers, parole or probation officers, and a military representative such as a Judge Advocate General (JAG) attorney. Linkage with the Veterans Administration is noted as a key factor for every VTC. Each cites that this helps the veteran obtain the best care free of cost and minimizes the burden on state resources. It has also been argued that the inclusion of peer mentors greatly impacts the success of the court. Arno (2015, p. 1067) notes that the absence of peer mentors may account for the 45 percent recidivism rate associated with the Anchorage VTC, whereas the Buffalo VTC that does utilize peer mentors has so far maintained a recidivism rate of zero percent.

Each VTC, particularly those that began prior to the availability of large federal grants, began as a result of exemplary advocacy and coordination of leadership by one individual, or champion (Robinson & Tate, 2016, p. 34). Robinson notes that such champions have generally been judges aware of military culture and are often veteran's themselves, and each has made significant sacrifices to ensure the successful implementation and ongoing support of their VTC. For example, all VTC judges in Pennsylvania perform their work in the VTC in addition to their current calendar of cases in order to minimize state costs. Judge Murphy of the Anchorage VTC established his court by volunteering all of his time to establish the court without a single dime in funding, and also faced opposition and skepticism (Smith, 2012, p. 97). It would be four years before even one other VTC existed in the nation (Russell, 2015), so there was no precedent for Judge Murphy to follow. The mentors who give their time to support veteran defendants through

the VTC process also do so on a volunteer basis. Individual personalities may make a greater impact on successful outcomes than the actual program structure alone (Sinnott, 2016, p. 1).

The judge is cited by every VTC as serving the most crucial role toward program success. The judge must take on several roles to be successful at motivating positive change in the veteran defendants. These roles include that of mentor, supervisor, social worker, and commanding officer. The Army installation Ft. Hood maintains a VTC that is available to both veterans and Soldiers who are being processed out of the military for disciplinary reasons. The judge in charge of this VTC utilizes a unique method to connect with the defendants in his courtroom by changing into civilian clothing absent of any robes following formal proceedings and engages the court in a round table setting (Robinson, & Tate, 2016, p. 33). The tenets of motivational interviewing are important characteristics of an effective VTC judge (Miller & Rollnick, 2013). These include particular communication and listening skills, collaborative problem solving techniques, and techniques of persuasion.

One particular example was observed by author of the current study during a VTC session in Nevada that exemplified the motivational interviewing strategy of an effective VTC judge. The presiding judge had collected many urinalysis results over several weeks from one veteran defendant. The veteran had initially stated that he did not have a problem with alcohol and had refused substance abuse treatment as he felt it wasn't needed. Nonetheless, he was still required to abstain as a requirement of the VTC program. The judge could have sanctioned the defendant after the first failed urinalysis, but instead accrued several before confronting the veteran. The judge used them to demonstrate to the veteran that there may be a need for

treatment and ultimately let the defendant himself draw that conclusion based on the evidence presented.

### *Entrance requirements*

Deciding which veterans gain access to VTCs and which ones are processed through the conventional court system is the most controversial aspect of the specialty courts. There are no national standards for entrance into a VTC. Some courts (6%) will only accept combat veterans (Flatley et al., 2017). Some will only accept veterans who served after September 11, 2001 (2%). Some courts will only accept veterans who have military related mental health conditions (20%). Most will allow veterans who are ineligible for VA health care benefits (68%), while others will allow active duty (71%), and reservist or National Guard members (67%). Most will accept both misdemeanor and felony charges (66%), and a large portion will also accept violent offenses (62%). Some will only accept violent offenses if they involve domestic violence (18%), whereas others will allow violent offenses excluding domestic violence (4%).

Many courts require a veteran to retain a mental health diagnosis. An encounter with the criminal justice system may be the first indicator a veteran has that there is anything amiss in their life, however, so a VTC may be a veteran's first opportunity for assessment and treatment. This is reflected in military culture stigma against weakness, exemplified by General George Patton's "slap heard round the world" during World War II. While visiting an evacuation hospital in Sicily, the General encountered a soldier with no visible wounds. Upon learning that the soldier was there due to a diagnosis of psychoneurosis, the General screamed at the soldier, slapped him across the face, and ordered him removed from the hospital. The General explained that "I won't have these other brave boys seeing such a bastard babied" (Perlin, 2013, p. 459).

The gatekeeper of nearly all veteran courts evaluated in the current study is the prosecutor. While the entire courtroom workgroup may be allowed input, it is the district attorney who must grant final approval for those admitted to a VTC. The role of the prosecutor as gatekeeper has been criticized as basing enrollment on pretextualism (Erickson, 2016b, p. 77). Cherry-picking defendants for participation confounds measures of success and any analysis of VTC characteristics that may impact such success rates. One example is the Buffalo VTC that boasts a recidivism rate of zero percent and a high level of program graduates.

Buffalo excludes nonviolent offenses, however, so it is impossible to compare the program with another that does include violent offenders. It is possible that the veterans chosen for participation in the Buffalo VTC were not likely to reoffend no matter how their case was processed. In contrast, the Orange County Combat Veterans Court in California accepts all violent offenses besides murder and sexual assault. Judge Wendy Lindley (Russell, 2015, p. 396) argues that “if our goal is to protect our communities and make them a safer place, then why wouldn't we take cases of violence?”

Mikkelson (2010, p. 4) notes an additional issue with identifying potential clients for VTCs, particularly in how the term veteran is defined. The current method for identifying veterans is generally to ask them to identify themselves at some point during the booking or arrest process. Many veterans do not identify themselves, however, as the cultural definition varies among different servicemembers and those who served in different eras. Some only consider a veteran to be someone who served in combat, only those who were discharged honorably, or only those who served on active duty. Many courts limit their services to honorably discharged veterans, but mental health problems could manifest while a



servicemember is still activated, leading to a discharge that is Other Than Honorable (OTH). Between 2006 and 2009, 76 thousand soldiers were given OTH discharges (Merriam, 2015).

### *Curriculum*

Generally, all VTCs draw their basic program curriculum from drug and mental health treatment courts. Justice for Vets, the primary organization that has trained and assisted in the establishment of veteran treatment courts, is a division of the National Association of Drug Court Professionals (The History, 2016). Similar to drug courts, VTCs operate on a graduated or tiered system of involvement. As participants progress through stages, they are granted more freedom in the form of less frequent court appearances or substance use testing. As with drug and mental health courts, a primary function of VTCs is to ensure abstinence from drugs and alcohol. Participants are subjected to random monitoring systems that vary depending on the type of screening and level of intrusion deemed appropriate.

Operant conditioning forms the basis of achieving program adherence among participants, which requires the four parameters of certainty, celerity, magnitude, and fairness in order to be successful (Russell, 2015, p. 389). Certainty is the most important parameter and means that rewards or punishments should be applied every time they are warranted.

Celerity refers to the immediacy in which a reward or punishment is enacted in relation to the infraction or achievement it is related to, and more frequent court appearances allow for greater celerity. The majority of VTCs (41%) meet two or three times per month, slightly less (39%) meet one or two times per week, and the rest meet every two to three months or less (Flatley et al., 2017, p. 4).

Magnitude refers to the level of severity, and moderate severity is noted as being more effective than more severe. Utilizing less severe sanctions may be explained best by the fourth

parameter, which is fairness of the process, and is based on the participant's perception of the application of the first three parameters. Judge Russell (2015, pp. 389-390) notes that perception is guided by whether a person feels they were treated in an equivalent manner to someone else in a similar circumstance, whether they were granted a fair opportunity to voice their interpretation of events, and whether they were afforded dignity and respect.

All VTCs have guidelines for ejection if necessary, but these guidelines vary across courts and in their enforcement based mostly on the individual personalities of the courtroom workgroup actors. While VTC participation must be voluntarily accepted by participants, veterans may not voluntarily decide to drop out once enrolled in most courts. Enticement for participation varies across courts as well. Some jurisdictions consider VTC participation as a form of diversion, so no formal conviction is made as long as participants successfully graduate. The majority of programs require defendants to plea guilty to certain charges, and then may or may not expunge the defendant's record upon graduation. Others do not file formal charges to convict unless a veteran fails to complete the VTC program.

Variance typically depends on the severity of crime, as those with felony convictions are less likely to receive full expungement than misdemeanors since the motivation for their participation may be to avoid a lengthy prison term and instead remain in the community. Felony defendants also tend to remain involved with the court for an average of about four months longer than misdemeanor defendants (Flatley et al., 2017, p. 4).

While the basic programmatic structure of VTCs is very similar to drug courts, the use of volunteer peer mentors is a unique factor. Just under 70% of all VTCs utilize a mentor program component, and each averages eight mentors per court (Flatley et al., 2017, p. 3). According to Justice for Vets (2018), veterans in the community volunteer their time and energy to assist their

fellow veterans participating in the veterans treatment court program by connecting them with services at the local, state, and federal level. They offer support in finding a job or obtaining job training, obtaining housing, securing transportation, advancing education, filing disability compensation claims, and contesting discharge status.

The final phase of most VTCs ends with a graduation ceremony and sometimes a dismissal of charges, depending on the court. A guilty plea followed by a dismissal of charges has been noted as more effective at producing program cooperation and graduation than diversionary programs that do not require a plea (Russell, 2015, p. 396). Judge Russell explains that requiring a plea operates as a kind of stick because defendants know what will happen if they don't perform well. He also notes that diversion may provide more incentive for participation since some veterans choose a jail sentence instead of the lengthy treatment regimen ordered by the court. Following graduation, VTC participants generally have access to a wide array of resources that aren't available to the general public, serving a major role as aftercare.

Most of the VTCs utilized in this review only mention aftercare as a continuation of treatment through the Veterans Health Administration. The term aftercare was found 46 times during this review (See *Figure 3*). The 4<sup>th</sup> Judicial District Court of Colorado includes aftercare in its final stage before a veterans record is sealed (Venkatraj, 2017, p. 411). A major difference between Colorado and other VTCs is that the aftercare phase in Colorado lasts one year after completion of the four phases of the VTC program and graduation. During the aftercare phase, the veteran continues to check in periodically and continues therapy. The veteran is also assigned an Aftercare Coach, which is a continuation of peer mentoring that occurs during the VTC process.

### *10 Key components for VTC success*

The model utilized by the Buffalo VTC has been established as the barometer by which all other VTCs are judged (National Council of Juvenile and Family court Judges, 2017). Judge Russell (2009, p. 365-367) slightly modified the essential tenets of the ten key components of drug courts, as described in the U.S. Department of Justice Publication entitled *Defining Drug Courts: The Key Components* (1997), to establish the essential components of VTCs. These components are as follows:

1. Integrate alcohol, drug treatment, and mental health services with justice system care processing.
2. Use of a collaborative (rather than non-adversarial) approach to promoting public safety while protecting participant's due process rights.
3. Eligible participants are identified early.
4. Access to a continuum of treatment and rehabilitation services.
5. Abstinence is monitored by frequent testing.
6. A coordinated strategy governs VTC responses to participant's compliance with treatment regimen.
7. Ongoing judicial interaction (i.e., active supervision) with each veteran is crucial.
8. Program goals and effectiveness are monitored and evaluated.
9. Ongoing interdisciplinary education promotes VTC planning, implementation and operation.
10. Partnerships (with the VA, public agencies and community-based organizations) generate support and enhance effectiveness.

The key components of VTCs are based in the concept of therapeutic jurisprudence, which forms the basis of all problem-solving courts in general (Vaughan, Holleran & Brooks, 2016, p. 4; Wexler, 2008, p. 3). Therapeutic jurisprudence focuses on the impact of the law on psychological well-being and emotional life, or rather the role of law as a therapeutic agent. Australian Judge Michael S. King refers to his work in restorative justice as a “statement of our belief in the redemption of human beings” (Perlin, 2013, p. 475). Michael Perlin (2013) notes key therapeutic justice strategies that should be incorporated into problem solving courts.

According to Perlin (2013), participant choice should be promoted wherever possible. Participants should be asked to formulate rehabilitation plans by setting out their goals for their time in the program and beyond. Participants should be asked what strategies they intend to pursue in order to achieve these goals. Participants’ rehabilitation plans should be included as part of behavioral contracts. Positive, but realistic, expectations should be held concerning participant achievement. Self-efficacy should be promoted, which refers to a person’s belief in his or her ability to function competently. A coercive or paternalistic approach to addressing problems with participants’ performance while engaging in the program should be avoided as much as possible. Non-confrontational Participants should be engaged with a method that is not confrontational in order to promote behavioral change, such as through motivational interviewing techniques and persuasion.

### *Cultural competency*

Culture is the notable difference separating VTCs from other types of specialty courts. Cultural competency appeared 156 times in the literature used for this review (See *Figure 3*). The tailored approach of VTCs, including the use of VA services and peer mentors, are all justified by the shared culture of military veterans. Researchers Clark, McGuire and Blue-

Howells (2010, p. 201) explain this best in the following quotation:

“...veterans have better outcomes when services are provided in a veteran-specific environment, in which military training, combat experience, and military cultural norms and values are understood and accepted; where VA staff are specifically trained in assisting veterans in managing these experiences; and where other veterans are present to provide the peer support that is often needed to cope effectively.”

The Walter Reed Army Institute of Research (Castro et al., 2006) has established that there are 10 skills adaptive for combat that must be modified for coping with the transition to civilian life. The acronym “BATTLEMIND” is used to describe these skills, which include buddies (cohesion), accountability, targeted aggression, tactical awareness, lethally armed, emotional control, mission operational security, individual responsibility, non-defensive (combat) driving, and discipline and ordering. Without modification, these skills manifest in the civilian sector as withdrawal, controlling behavior, inappropriate aggression, hypervigilance, constant carrying of weapons, anger or detachment, secretiveness, guilt, aggressive driving, and overall conflict. These are the essential cultural differences that VTCs should focus on changing in order to restore military veteran defendants to a civilian role as law-abiding citizens.

Cultural competence is a necessary factor in the sentencing of all military veterans, regardless of whether they are processed through a VTC, traditional criminal court, or any other specialty court. Effective November 1, 2010, the United States Sentencing Guidelines (*Case annotations*, 2012) were modified in response to U.S. Supreme Court case *Porter v. McCollum*. The veteran defendant had been sentenced to death for the fatal shooting of his former girlfriend and her boyfriend. Counsel had failed to present or investigate any evidence of the defendant’s military record, which revealed that he had been wounded and decorated for his service in two heavy combat engagements of the Korean War. USSG §5H1.11, in relevant part, reads:

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

### *Geographical dispersion*

According to the U.S. Geological Survey (2016), there are 3,071 counties in the United States. This review found 333 VTCs scattered across the nation, and the VA (Flatley et al., 2017, p. 3) notes that there are 461 when veteran dockets within other courts are included in that count. Just over half of all VTCs (54%) are limited to county jurisdiction, 23% serve a mix of city and county jurisdictions, 9% have regional jurisdiction, 5% serve their entire state, and 2% have federal jurisdiction. Only 44% of all VTCs will consider cases from outside their jurisdiction. This indicates that a vast majority of the country's veterans have no access to a VTC if they find themselves involved with the criminal justice system.

This is particularly problematic for veterans who live in rural areas, as VTCs tend to be concentrated in major population centers. For example, Nevada has a total of five VTCs in the state, but three of these operate out of the same courthouse in downtown Las Vegas. One has jurisdiction over the city, the other is a District court, and the third has jurisdiction over Clark County. Veterans who live in rural areas that are utilizing VA services account for 39% of those who served in Afghanistan or Iraq (Smee, McGuire, Garrick, Sreenivasan, Dow & Woehl, 2013). The problem of transportation for rural veterans is especially poignant for those living in Oregon, Alabama, Michigan, Arkansas, and Georgia. Rural Oregon and Indianapolis have addressed this issue through the use of technology, utilizing web-cams to allow veterans to appear in court virtually.

Army Captain J. Patrick Robinson (2016, p. 30) further notes that veterans tend to congregate around active duty military bases and advocates for the establishment of VTCs on

military installations that are best equipped and familiar with military culture. The Army installation Fort Hood in Texas already has one such VTC that handles cases both from the veteran community and active duty or Reservists who have committed crimes while still in the service. Major Evan Seamone (2011), a Judge Advocate for the U.S. Army, explains that the military justice system lacks therapeutic jurisprudence and instead opts for pushing its problems out of the military through the use of negative discharge types, such as bad conduct or dishonorable discharges, which have the consequence of barring such veterans from utilizing VA services upon release from their military service obligation. The use of federal VTCs like the one located at Fort Hood can better respond to behavioral problems before a servicemember is discharged back into the civilian sector.



## CHAPTER 5

### DISCUSSION

Michelle Slattery and colleagues (2013, p. 922) describe veteran treatment courts as a “circle the wagons approach” to help veterans involved with the criminal justice system transition back to productive and useful lives. The researchers note that preliminary results from a Substance Abuse and Mental Health Services Administration-funded evaluation indicate that VTCs are correlated with significant improvements in PTSD and substance use. Judge Russell (2015, p. 397) notes a zero percent recidivism rate from the veterans who have graduated from the Buffalo VTC in New York. Yet with such impressive early results, VTCs only reach just over 10% of the incarcerated veteran population.

In nearly every case where a new VTC has been established, there has been a champion that has gone above and beyond their regular call of duty to advocate, plan and initiate a VTC within their jurisdiction. Captain J. Patrick Robinson (2016, p. 34), writing about the Federal VTC located at Fort Hood in Texas, stresses the immense time commitment required as a resistance point to the development of new VTCs, in addition to the willingness and coordination with many organizations to implement the court. Judge Jack W. Smith and Sigurd E. Murphy faced significant opposition during the creation of the Anchorage VTC that explain further potential resistance points.

Smith (2012, p. 97) explains that both the VA and municipal prosecutor initially declined to participate in any discussions regarding a veterans court. They conditioned their participation on the right to refuse entry to otherwise eligible veterans based on their criminal history, type of offense, or history with the VA. Fellow specialty court judges also opposed the new court, as they viewed the VTC as a potential competitor for scarce resources. Such resistance points may

explain, at least in part, why many states still remain replete of any VTCs while others have many.

*Too little, too late?*

Immediately following the World Trade Center attacks of September 11, 2001, military operations in support of the Global War on Terror (GWOT) began with Operation Noble Eagle, followed by the invasions of both Afghanistan and Iraq (Walker, 2006, p. 5). March 20, 2018 was the fifteenth anniversary of the Iraq invasion, and the GWOT continues on as America's longest sustained war effort. The most intense combat operations involving large numbers of deployed military personnel occurred between 2004 and 2007, however. Troops who were already serving on active duty that had a short amount of time left on their active contracts were not allowed to leave the service on their expected End of Active Service dates, as a program called Stop Loss was initiated. As soon as they returned from deployment, these military members who were held as part of the Stop Loss program were released with very little time for any sort of transitional assistance.

A standard enlistment period in any U.S. military branch is four years of active duty service, so most of those who served during the times of heaviest combat and didn't reenlist have already been living in the civilian sector for nearly a decade or more. Is it possible that many of the very troops VTCs are intended to target may already be incarcerated, homeless, or have taken their own lives? Policy decisions should take these veterans into account and consider processes to assist them in obtaining expungement, or for those held in state mental institutions to consider transferring their case to a VTC. The delay in response to heightened criminal justice involvement of veterans returning from war is inexcusable as this is a phenomenon that has been repeatedly documented by researchers since at least the Revolutionary War (Rosenbaum, 1940).

Perhaps if VTCs endure until America's next major conflict, the specialty courts may then truly live up to their desired intent of serving as a safety net for veterans. The painful and brutal reality is that thousands have already been lost to suicide that VTCs may have been able to help if they had been in place immediately as troops began returning home from the GWOT. According to the VA's Office of Mental Health and Suicide Prevention (*Suicide among veterans*, 2017), 20 veterans per day have committed suicide between 2001 and 2014, on average. According to Julie Marie Baldwin (2013), the maximum height of issues effecting Iraq and Afghanistan veterans may not be reached until 2040, however.

### *Females*

The majority of VTC participants tend to be male, but about 6% of the VTC population are female (Baldwin, 2013, pp. 79-86), which is reflective of females in the veteran population as a whole. Females account for about 7% of the overall veteran population. The crimes committed by females are different than males, and subsequently so are their needs. The women in VTCs tend to be admitted for more DUI/DWI, violence that is nondomestic, theft or fraud, and prostitution charges than males. While drug offenses constitute the highest percentage of crimes for males, they are the second highest percentage of offense types for females. Both males and females in VTCs face substance abuse, mental health, and family issues similarly, but the least prevalent issue for females is aggressive or violent behavior whereas homelessness is the least prevalent issue for males. Homelessness among female veterans is exacerbated by the unique challenges they face.

Women are taking on more significant roles in combat scenarios (King, 2015), resulting in a greater likelihood of developing PTSD and other combat-related mental health issues. Further, females account for 95% of all reported sex crimes in the military. The experience of

Military Sexual Trauma (MST) enhances the likelihood of developing PTSD by a factor of nine times. The likelihood of homelessness for any person who has experienced any form of personal violence is 6.5 times more likely than someone who has not (“Homeless female veterans,” 2018). Females are also more likely to enter a VTC as a single parent than males. The number of homeless female veterans doubled between 2006 and 2010.

The Department of Defense (Wilson, 2010) reported in 2010 that more than 30,000 single mothers have deployed to Iraq or Afghanistan. An estimated 40% of active duty women have children. More than 60% of transitional housing programs for homeless veterans do not provide housing for children, however. Lack of childcare also prevents women from accessing employment, which is cited as the most significant barrier to finding employment among the 77% (“Homeless female veterans,” 2018) of homeless women who are unemployed. Among VTC participants, female veterans cite (Baldwin, 2013) maintaining steady housing, obtaining legal employment, and ceasing to use illegal means to gain income as the most difficult requirements of VTC participation. Men, however, are more likely to cite controlling aggression and reconciling with family as their greatest challenges. As a response to the unique needs of female veterans, Judge Marcia Hirsch who presides over a VTC in Queens County, New York has female peer mentors who are called on to work with female participants (American Bar Association, 2017).

### *Risk, Needs, Responsivity*

Responsivity to needs constitutes the greatest aspect of VTC adherence to the Risk, Need, Responsivity (RNR) model of crime response. These principles have been established by at least three dozen rigorous meta-analyses of programmatic evaluations, encompassing about 1,000 studies (Van Voorhis & Salisbury, 2016, pp. 312-315). The RNR principles of effective

intervention are similar to the 10 key components of VTCs discussed in Chapter 4, but closer adherence to the RNR model in specific areas could increase the effectiveness of VTCs overall (Van Voorhis and Salisbury, 2016).

Treatment should be based on behavioral strategies that include therapeutic practices of anticriminal modeling, problem-solving techniques, effective use of authority, relationship practices, motivational interviewing (Miller and Rollnick, 2013), structured learning procedures for skill building, and effective reinforcement and disapproval. The program should emphasize positive reinforcement contingencies for prosocial behavior, with a ratio of reinforcers to punishers of four to one. The program should be individualized as possible, with at least 40% of the time spent acquiring prosocial skills. While some VTCs exemplify these practices (Robinson, 2016), others tend to use an authoritarian model reminiscent of military leadership styles (Russell, 2009; Friedman, 2015).

Treatment should be multimodal, meaning that a variety of interventions are offered and the program is equipped to minister to a wide range of criminogenic needs. This is an important area for VTCs to address in terms of housing and employment, and particularly applies to females. A major justification for VTCs is that they are able to connect veteran defendants with services offered through the Veterans Health and Benefits Administrations, but there are often additional community resources available to veterans through local nonprofit organizations. For example, the Boston VTC utilizes a nonprofit veteran service organization called Home Base to supplement services offered by the VA (Sinnott, 2016).

Psychodynamic, nondirective, medical-model treatments are inappropriate strategies according to RNR research (Van Voorhis & Salisbury, 2016), but the VHA itself is a system of medical hospitals. The VA is also notorious for extremely long waitlists to obtain services

(Merriam, 2015, p. 697), and research on VTC participants (Smith, 2012, pp. 106-107) who fail out of the program indicates that some do so in order to avoid mandated VA treatment.

The intensity of treatment should be about 100 hours of service across three to four months. However, the average length of VTC involvement for misdemeanor clients is 14 months, and felony clients average 18 months (Flatley et al., 2017). Judge Eleanor Sinnott (2016) of the Boston Veterans Treatment Court explains that such lengths may be inappropriate for minor charges, serving to deter potential clients from participating.

Medium to high risk offenders benefit the most from treatment. This is the risk principle, and perhaps the area where VTCs are the most deficient. Entrance requirements for most VTCs are limited to non-violent misdemeanors and low-level felonies. Additionally, prosecutors serve as the gatekeepers to entrance in most courts. Nearly all chief prosecutors are elected officials, as only three states appoint them (Sklansky, 2017). The political nature of their position requires prosecutors to appear tough and unforgiving, lessening the likelihood that high risk offenders will be admitted even when stated admission criteria allows for it.

The VTCs located in Boston, Los Angeles, and Orange County, California all focus specifically on high risk, high need offenders. Los Angeles only accepts felonies, and the Orange County court accepts all violent offenses except for murder and sexual assault (Russell, 2015). A 2016 VA study (Blonigen et al.) on recidivism-risk among justice-involved veterans found that veteran defendants are more likely to be violent offenders and report higher levels of alcohol abuse than comparable justice-involved civilians.

Program implementation must be of high quality. This includes the training and credentials of workgroup members, the degree to which communication and advocacy are shared among all agencies involved, the degree to which knowledge is disseminated, the participation of

staff in program decision-making, the quality of therapeutic practices, and care taken to monitor changes in the behavior of participants for more effective case management.

Beyond VTCs, several jurisdictions have developed specialized correctional units for incarcerated veterans and pretrial detainees. The Middlesex County Sheriff's Housing Unit for Military Veterans (Sinnott, 2016) assists the Boston Veterans Treatment Court when clients suffer a severe relapse by allowing veterans to share experiences and offers programs tailored to them. Colorado's 4<sup>th</sup> District maintains a veterans' ward in its jail for the same purpose (Venkatraj, 2017, p. 404). For those veterans who are ineligible for VTC participation due to the nature of their crime, reentry courts and services provide similar transitional and therapeutic support of a VTC following a period of incarceration (Blue-Howells & McGuire, 2007).

Some programmatic features have been found to actually increase recidivism or lead to higher rates of program failure. Programs that inculcate fear, typically through the use of strategies designed to punish smarter, such as boot camps, drug testing, restitution, shock incarceration, and electronic monitoring. Each of these can be useful tools, but should not form the basis of the program. Positive reinforcement has a greater effect on long-term reductions in recidivism.

Cultural awareness is a major factor cited as justification for VTCs, but an overreliance on supporting the continuation of military cultural norms may hinder participants in their integration back into civilian society. Programs that solely focus on the importance of respecting an offender's culture, providing access to opportunities for the disadvantaged to access legitimate opportunities, or diversion from the corrections system are inappropriate strategies according to the RNR model of crime intervention. These are useful tools to support an overall program, but should not form the basis of the program.

## *Cultural Competency*

Cultural competency was mentioned 156 times (see *Figure 3*) in the articles used for this systematic review. It was the most cited term justifying the existence of VTCs as separate entities from other types of specialty courts. Shared experiences are noted as the key factor of success for VTCs that utilize peer mentorship (Russell, 2009, p. 2015). Court staff, particularly the champions and judges behind the initial establishment of a VTC, tend to have their own military backgrounds (Sinnott, 2016; Russell, 2015; Venkatraj, 2017).

Is the experience of military service alone enough to qualify as cultural competence that can be applied across all branches of the military, occupational specialties, eras of service, type of military experiences (combat versus garrison), and military ranks? A common military job specialty of judges, prosecutors and defense attorneys is that of Judge Advocate General as an officer who oversees enlisted personnel. These personnel do not typically engage in any sort of combat scenario, instead working in the military court system. As officers, they are paid at a much higher rate than enlisted personnel and are older upon enlistment since they must have a college degree prior to entry.

The experiences of justice-involved veterans, however, are more likely to involve combat specialties and experiences of enlisted personnel. Although both have exposure to the military, their respective experiences are vastly different. Reliance solely on personal experience creates significant bias toward a singular and narrow understanding of military culture based in egocentrism. Military customs are utilized heavily in some courts (Venkatraj, 2017), but are these customs reflective of the cultural experiences of defendants or judges?

Judges may emphasize the official values promoted by a military branch, but a combat-experienced veteran defendant may interpret those values as morally injurious. For example, the



core values expressed officially by the United States Marine Corps are honor, courage, and commitment. Some veterans may interpret their experiences as violations of those values, however, such as through betrayal by their commanders or dishonorable actions that were witnessed or even perpetrated. This highlights a need for greater cultural understanding of moral injury, compassion fatigue and total institution concepts as they apply to military and combat.

The expression of military customs in the courtroom, such as requiring participants to treat the judge as a commanding officer by standing at parade rest, do not reflect adequate adherence to the responsivity principle. Cultural competency is a necessary tool to understand how best to respond to the needs of each individual defendant. Replicating romanticized military cultural customs in the courtroom may only reinforce the division between veterans and their civilian counterparts. In one instance, the current author observed romanticized military customs used as a tool of shaming in the courtroom. Images from World War II were displayed on every wall of the VTC, and a World War II veteran was invited to the court session to support the myth of the Greatest Generation. This concept supports the idea that past combat veterans were able to transition to the civilian sector without the support granted to modern veterans, so modern veterans should be able to replicate or exceed their success. The myth is simply not true, however, as research shows that past veterans struggled with the same issues that current veterans face (Brown, 2015, p. 2013). More research is needed on how the use of military customs in the courtroom impact long-term and short-term success of participants.

### *Critical evaluation*

The current systematic review supports VTCs as an effective method of therapeutic jurisprudence that benefits participants and society as a whole in a unique capacity. These benefits extend beyond the capabilities of the conventional corrections system or other types of

specialty courts. The most immediate beneficial function of VTCs for criminal justice practitioners is the sharing of resources among federal and private entities. This relieves state services of a major financial burden and demand for services, freeing up limited resources for use by nonveteran participants in other specialty courts, as well as limited incarceration space in jails and prisons. Nearly every study utilized in this review cites cost-effectiveness as the major benefit of VTCs (Mikkelson, 2010; O’Dea, 2015; Robinson, 2016).

The shared culture of military experience in VTCs allows for the most appropriate response to issues specific to the veteran community. VTCs provide accountability that may assist veterans in their transition into the civilian sector as productive members of society. Courts that dismiss or reduce charges as an incentive for participation minimize the negative impact that a criminal justice label may have on offenders as well, increasing the likelihood that they will be able to integrate into civilian society with prosocial attitudes supportive of law-abiding behavior. The impact of VTCs can be improved and expanded further by heeding the lessons compiled throughout this review.

Defense counsel in VTCs has been criticized as lacking in cultural competency and mental health understanding. The culture of therapeutic jurisprudence has also been criticized as creating personal and institutional disincentives to diligently defend clients. Defenders are encouraged to support the courtroom workgroup rather than strongly advocate for their client as expected in a traditional adversarial courtroom setting (Perlin, 2013). Caution and care must be taken to ensure that the ethical responsibility to provide proper counsel is maintained. Additionally, problem solving courts established without legislative approval have been criticized as reducing democratic legitimacy (Shah, 2014). Related to the issue of judges

establishing court programs on their own without legislative approval, problem-solving court judges have also been criticized for overstepping appropriate boundaries (Shah, 2014, p. 82).

The separation of powers doctrine requires that laws are distinctly made in the legislature, ensuring a balance of power between the judicial and legislative branches of government. The lack of legislative authorization for many VTCs has allowed each court to develop their own procedures, rules and structures. VTCs established by an elected legislature have greater democratic legitimacy with more standardized basic requirements and procedures. The lack of basic requirements established by legislatures allows judges to exceed their delegated authority. For example, Oregon VTC Judge Vance Day was charged with 13 counts of ethics violations (Friedman, 2015) when he was accused of showing favoritism and violating court rules for having too much contact with a VTC participant.

#### *Implications for veterans*

Military veterans are not the only people to experience PTSD, TBI, moral injury, or compassion fatigue. Those who have never served in the military may engage in the same type of criminal activities related to drug addiction or mental health issues that are addressed in a VTC (Merriam, 2015). However, the mental health issues stemming from combat or military experience that veterans experience are directly attributable to actions performed by government, and this is the prime reason that VTCs and any consideration of military service as a mitigating circumstance is valid. The criminality of military veterans, particularly following combat exposure, is a government-created problem. The availability of VTCs and recognition of military experience as a mitigating circumstance during sentencing is an action of government to accept responsibility and attempt to remedy the problem it created.

The criminal justice system as a whole should not be viewed as an adequate method for remedying the problems created by war and the aspects of military culture that are toxic when transferred to the civilian sector. The criminal justice system by its nature is solely reactionary to problems. Crime must be committed in order for the system to act. Veterans must do great harm to themselves, to those close to them, or both in order to receive VTC services, yet if that harm is too great then they will likely be disqualified and processed traditionally. The gruesomeness of war may lead to equally proportional gruesome crimes committed by the veterans most effected by combat trauma, yet heinous crimes ensure they will never gain access to a VTC. For these veterans, often their best hope from any recognition of their military service as a mitigating circumstance is the difference between receiving the death penalty or life in prison (Avila, 2016). The criminal justice system is not a grand solution for any social ill for this specific reason. It is a safety net at best when all prior methods of prevention have failed.

Greater emphasis beyond VTCs needs to be placed on techniques of prevention. VA educational assistance through the Post 9/11 GI Bill or vocational rehabilitation can be improved to increase graduation and retention rates of military veterans, increasing their odds of successfully obtaining meaningful employment while at the same time encouraging interaction with civilian students in a controlled environment to support their overall transition away from the military culture. Nonprofit veteran service organizations should be supported, utilized and engaged to supplement the overburdened VA. Research on fostering posttraumatic growth can support such endeavors as evidence-based models for transition support.

The existence of VTCs as a response to a government-created problem illuminates an enormous elephant sitting quietly amidst all discussions of military transitional issues. That elephant represents the use of war itself as a political tool. Is the damage inflicted on society as a

whole, and especially the troops who participate in war, justified by the political agenda of the government? Who actually benefits from war? The elephant raises the challenge that the use of war in any capacity may be too damaging at the societal level to justify its use at all. The elephant challenges all governments everywhere to utilize every nonviolent, cooperatively diplomatic measure possible to resolve conflicts.

## CHAPTER 6

### CONCLUSION

#### Limitations

The current review is limited by two major factors. The first is the limited amount of research that has been conducted on VTCs. A few of the early courts have several published journal articles related to them, such as the Anchorage and Buffalo VTCs, but each court needs to be evaluated separately since there is such great disparity how each is implemented. The eighth Key Component of VTCs established by the U.S. Department of Justice (*Defining drug courts*, 2004) requires ongoing evaluation of program effectiveness at meeting program goals. VTCs thus far are largely lacking in this area, or at least are lacking in sharing this knowledge through academic journal publications. The perceptions of VTC participants should also be considered in program evaluations (Baldwin, 2013; Slattery et al., 2013). Appendix 2 displays the states that were completely lacking any peer-reviewed publications related to VTCs.

The second major limitation of the current review is a lack of operationalization among the different courts in order to generalize from one to another. The term veteran itself varies and has changed over time. Definitions may be limited to whether an individual served in combat or deployed overseas, whether they served on active duty, whether they earned a discharge status of honorable, or whether they served a full career of 20 years or more. The 1944 Veterans Preference Act (5 U.S. Code § 2108) defines a veteran as an ex-servicemember who had been drafted into military service due to the disruption caused to their usual life, excluding those who volunteered or served in reserve components. The current VPA, which grants a 5-point preference for federal service occupations, maintains a similarly strict definition.

Recidivism is not operationally defined, nor are participants adequately tracked once they graduate from a VTC. Other measures of success may be better adequate for describing the impact of VTCs as well, such as indicators of Posttraumatic Growth. Has the graduate obtained stable housing, remained sober, reunited with family, obtained gainful employment, or continued their education in pursuit of such goals?

#### Further research

The key difference between VTCs and all other forms of specialty courts is the use of volunteer peer mentors. Judge Robert Russell (2015) cites them as the key factor promoting the zero percent recidivism rate of the Buffalo court's graduates. Is it possible that peer mentorship could promote greater success in other courts as well? Could former drug addicts or those who have learned to manage their own mental illnesses assist those engaged in drug court or mental health courts? If it is the shared cultural experience of veterans that makes peer mentors successful, it may be possible that engaging others culturally can have similar results. Former gang members, prostitutes, or prisoners may serve the role of mentors in a similar fashion to VTCs. What is the rationale for using volunteer mentors instead of paying them for their time?

Volunteers may save the court money and be more motivated and passionate to help, but the lack of pay may also make it difficult to motivate them for intensive training. Payment may also further increase their level of commitment and increase retention of effective mentors. Compared to incarceration costs, payment of mentors would likely be minor. What are the characteristics of a mentor that make them more or less successful at motivating positive change in their clients? Research specifically focused on peer mentors could help increase their effective use and generalize best practices to other VTCs and specialty courts in general.

The basic concept of restorative justice that informs the specialty court philosophy focuses on restoration from the damage caused by the initial crime, with a major focus on preventing further damage in the future (Wexler, 2008). Research focused on the effects of completion incentives on recidivism and program completion may better inform how to best utilize these tools. Debate and inconsistency was found in the current review as to which method has the greatest impact, with little research supporting one idea over another. For example, diversion may limit negative labeling effects, but also may not incentivize program completion.

The 10 key principles of VTC success established as guidelines by the Department of Justice are supported by virtually no research in regard to their effect on military veteran defendants specifically. The 10 key principles are modified from the principles of drug treatment courts (Russell, 2009). Research is needed to establish whether the 10 key principles are efficient as they are written currently, or are there additional factors pertaining to military veterans that may require further modification of the principles?

Those who opt out of VTC participation, fail out or recidivate may offer insight into how the principles of VTC success could or should be modified. How do these individuals fare as citizens in comparison to VTC graduates? The reasoning behind failure to complete a VTC program may inform improvements to VTC programming or entrance requirements. The length of time required may serve as a deterrent to participation if a traditional plea would require less of a time requirement. Research is also needed to assess crimes that are not accepted into VTCs, such as sexual assault and domestic violence.

Domestic violence reports in the military were five times higher than the civilian community rate in 2001 (MacDonald & Tucker, 2003). Perpetrators of intimate partner violence with military backgrounds have been found to cause greater physical assault and injury than



perpetrators without military backgrounds (Hoyt, Wray & Rielage, 2014), but those with military backgrounds have also demonstrated lower rates of recidivism than nonmilitary offenders. Research should be directed toward understanding how or if VTCs can impact domestic violence rates among military veterans.

According to the U.S. Department of Justice (Bronson et al., 2015), incarcerated veterans were more likely to be incarcerated for a violent sexual offense than nonveterans. Thirty-five percent of veterans were in prison for the commission of a violent sexual offense, in comparison with 23% among the incarcerated nonveteran population. No VTC was found in the course of this review that allows for the participation of sex offenders. The exclusion of domestic violence and sex offenses limits the ability of VTCs to have a major positive impact on reducing the number of veterans behind bars since veterans are disproportionately represented among both of these criminal populations.

This may be reflective of military culture that supports certain aspects of toxic masculinity which serves a role in the male dominant military society but is maladaptive when females are introduced to the equation (Vaughan et al., 2016). Research is needed to understand why veterans are more likely to commit such crimes and how to best respond. Specialty courts can only be as effective as the treatments in which offenders are referred, demanding greater empirical support for effective treatment modalities. Researchers Patricia Cluss and Alina Bodea (2011) note that intervention programs based on feminist-psychoeducational or cognitive-behavioral approaches lack empirical backing, which tend to be those most widely implemented.

#### Policy Recommendations

The most outstanding factor in regard to VTCs is the need for research, which translates into policy as a need for funding. University students and professional researchers are often

eager to gain access to data and may be able to support program evaluations and other research projects at little or no cost. Policies which allow or mandate consistent cooperation with nearby university researchers can assist in garnering a wealth of knowledge at little or no cost to VTCs. Also, policies are needed that allow researchers access to the military records of subjects in order to measure nuances among individual military experiences.

The greatest benefit and motivator for VTC participants is the ability to have their criminal records sealed or expunged, or to be placed in diversionary status that doesn't become public knowledge. Criminal background checks have taken on a role of extrajudicial punishment, effectively barring many otherwise qualified individuals from employment and housing opportunities (Mikkelson, 2010). This informal justice inflicted by society negates any therapeutic progress that may have been made through VTC participation.

The harshest punishment for many individuals involved with the criminal justice system doesn't begin until they are released back into society due to the stigma associated with criminal backgrounds. In order to ensure progress isn't lost, offenders records should be sealed or expunged upon completion for felony convictions, and diversionary tracts should be utilized for misdemeanor offenders (McMichael, 2011). The Health Insurance Portability and Accountability Act of 1996 (HIPAA; 45 CFR Part 160 and Part 164, Subparts A and C) or Family Educational Rights and Privacy Act of 1974 (FERPA; 20 U.S.C. § 1232g; 34 CFR Part 99) serve as excellent examples of laws protecting personal privacy and security that could be used to deter extrajudicial punishment. Criminal labeling only further exacerbates the likelihood of recidivism (Lemert, 1951).

The operational model established by the Buffalo VTC's ten key principles for VTC success should be altered slightly to minimize extrajudicial punishment through labeling, and

also incorporate the tenets of the RNR model discussed previously. The Fort Hood VTC (Robinson, 2016) utilizes an effective method for dealing with serious offenses requiring punishment that should also be considered for expansion to other VTCs. Punishments are administered creatively, such as a stay in jail over the weekend so treatment can be continued during the week. Punishments are established through a restorative justice approach where all parties effected by the initial crime are involved as much as possible. The goal is to restore all parties to a state where they can move forward with as little residual harm as possible and no new or repeated criminal offenses (Wexler, 2008; Braithwaite, 2002).

In addition to improved RNR model adherence, geographical coverage needs to be improved as well. Some states are completely lacking any VTCs at all, whereas others reach a portion of veterans in only a few counties or cities. Legislative mandates could establish VTCs statewide, allowing for the transference of cases to a nearby VTC. Some rural counties may rarely encounter a veteran defendant, so it wouldn't be practical to establish a completely separate court in such areas where funding may already be limited. Veterans in such areas should not be denied access to therapy simply because they didn't commit their crime in a VTC jurisdiction. Legislative authorization would grant democratic legitimacy to the courts, and allow for increased operationalization based on evidenced-based practices instead of the whims of the courtroom workgroup which may or may not be supported by sound research. Further coverage concerns include ex-patriots living abroad, Reservists, and active duty offenders. This requires a level of cultural competency to understand how to best engage the varying levels of military service.

Military culture is dynamic, as new citizens enlist and terminate service on a daily basis. The type of combat, whether urban or jungle, or the absence of extended combat, such as during

the 1980's and 1990's, impact how troops react to their time in the service. Policy changes have major impacts as well. In earlier times, female troops were relegated to noncombat roles and openly homosexual individuals were barred from service. The repeal of Article 125 of the Uniform Code of Military Justice, also known as the "Don't Ask, Don't Tell" ban, decriminalized intimacy between same-sex couples in the military. As a result, VTCs need to be aware of issues specific to the LGBTQIA community that may impact their clients.

The same consideration must be taken with female veterans in the courts. In order to be effective, access to childcare and housing that accepts children needs to be made available when possible to improve success. Military sexual trauma, or simply sexual assault, is a strong correlate with female veteran criminality. Male authority figures may serve as a negative mental health trigger for such women, so the use of female mentors or a specific day set aside for female participants is recommended.

Prostitution charges were found in this review to be an issue specific to female veterans, calling into question whether such laws are necessary. Decriminalization of prostitution is possible to allow for an exchange between two consenting adults, while still maintaining laws that protect against coercion, trafficking, or forms of assault. The lack of employment opportunities which can pay at the same level or better than prostitution or other crimes serves as a hindrance to prosocial behavior. The same consideration should be made for individuals in relation to race, immigration status, or other cultural factors specific to each individual.

Finally and most paramount for policymakers to consider is that VTCs exist as a consequence of a problem created by government. Care should be taken to avoid a responsabilization strategy which allows the government to be excused from its role in veteran criminality. The correlation between combat exposure and PTSD is clear, and has been

established long before PTSD was officially recognized as a mental health diagnosis. As far back as the earliest writings of Homer's *Odyssey* and Shakespeare's *Henry V* (Shay, 2009), symptoms that fit the current diagnosis of PTSD have been annotated.

The correlation between PTSD and crime has also been made clear over centuries of American war. Following the Civil War, it was estimated that "in 1866 two-thirds of all commitments to state prisons in loyal states were men who had seen service in the army or navy" (Rosenbaum, 1940, 725). Toward the end of World War I, an astute soldier observed that

When the rules of civilized society are suspended, when killing becomes a business and a sign of valor and heroism, when the wanton destruction of peaceable women and children becomes an act of virtue, and is praised as a service to God and country, then it seems almost useless to talk about crime in the ordinary sense.  
(Blackmar, 1918, 123)

The above statement sums up well the most important recommendation this review has established. That recommendation is to avoid the use of violence as a political tool to reduce the need for VTCs and other support services for military veterans returning from war, and when war is waged to have those support services in place concurrently. Ignorance of the historical relationship between combat exposure and crime is not an adequate excuse for the delay in services for the current generation of GWOT warfighters. The number of veterans who already reside behind bars, walk free post-incarceration with heinous criminal records, are living homeless and unemployed due to those records, or have committed suicide while government has lagged in reacting to the problems it created by waging the GWOT is likely staggering. Perhaps with continued research and investment in VTCs and related support services, the United States will be better prepared to welcome home its next generation of combat veterans.

## APPENDIX

### Appendix 1: List of research databases utilized

ABI/INFORM Collection	LWW Health Library Basic Sciences Premium Collection
Academic Search Premier	LWW Total Access Collection
America: History & Life with Full Text	Medline via OGLC FirstSearch
American Periodicals Series	Mental Measurements Yearbook
Art Full Text	Military & Government Collection
Article First	Mountain West Digital Library
Cambridge Core	NAACP Papers
Child Development and Adolescent Studies	Native American Archives
Clinical Key	New York Times, 1851-2013
Cochrane Library	New York Times, 1980 - current
Congressional Publications (ProQuest Congressional)	Oxford Journals
CQ Press Library	PAIS International
Criminal Justice Abstracts	Philosopher's Index
Criminology and Criminal Justice	Philosophy Online (POIESIS)
Dissertations and Theses: UNLV	PhilPapers
EconLit	PILOTS
Edinburgh University Press Journals	Professional Development Collection
Embase	Project MUSE
Ebsco eBook Collection	ProQuest Databases
Ethnic NewsWatch	PsycARTICLES
Factiva	Psychiatry Online
Family & Society Studies Worldwide	Psychology and Counseling
GenderWatch	PsycINFO 1887 - Current
Global Health	PubMed
Google Scholar (only allows access to first 1,000)	RAND Reports
GPO'S Federal Digital System	Roper Center - iPOLL Databank
Health and Psychosocial Instruments (HaPI)	Sage Journals Online
HeinOnline Law Journal Library	ScienceDirect Journals
JAMAevidence	Scopus
JSTOR	SocINDEX with Full Text
Legislative Insight	Sociology: A Sage Collection
LexisNexis Academic	UpToDate
LGBT Life with Full Text	Web of Science
Los Angeles Times, 1881-1992	Wiley Online Library
Los Angeles Times, 1985 - current	

Appendix 2: States/territories with no specific VTC research

<i>Arkansas</i>	<i>Maine</i>	<i>Oklahoma</i>
<i>District of Columbia</i>	<i>Mississippi</i>	<i>Rhode Island</i>
<i>Georgia</i>	<i>Missouri</i>	<i>South Dakota</i>
<i>Hawaii</i>	<i>Montana</i>	<i>Tennessee</i>
<i>Idaho</i>	<i>Nebraska</i>	<i>Utah</i>
<i>Illinois</i>	<i>Nevada</i>	<i>Vermont</i>
<i>Indiana</i>	<i>New Hampshire</i>	<i>Virginia</i>
<i>Iowa</i>	<i>New Jersey</i>	<i>Washington</i>
<i>Kansas</i>	<i>New Mexico</i>	<i>West Virginia</i>
<i>Kentucky</i>	<i>North Carolina</i>	<i>Wisconsin</i>
<i>Louisiana</i>	<i>North Dakota</i>	<i>Wyoming</i>

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## CURRICULUM VITAE

**Kyle Nathan Rodgers**

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### **Education**

August 2015 - present University of Nevada, Las Vegas Las Vegas, Nevada  
Master of Arts Degree in Criminology & Criminal Justice

June 2014 Western Oregon University Monmouth, Oregon  
Bachelor of Science Degree in Public Policy and Administration

- Concentration in Law Enforcement and Corrections
- Minor in Psychology
- GPA: 3.86 Cumulative (Summa Cum-Laude)

### **Honors and Awards**

Graduate and Professional Student Association Sponsorship Committee Travel Award of \$700, 2016

Rebel Grad Slam 3MT Competition, Audience Favorite Award of \$100, 2015:  
Awarded for summarizing Master's thesis in a memorized 3-minute oral competition. Received most votes as favored by audience.

Navy and Marine Corps Achievement Medal with Combat Distinguishing Device for "Valor." Awarded for exemplary service in Iraq, 2005.

Certificate of Commendation, United States Marine Corps. Awarded for outstanding service as an attachment to a Marine Infantry unit in Iraq, 2005.

Certificate of Commendation, United States Marine Corps: Awarded for highest overall GPA during Non-Commissioned Officer's Training Academy, 2009.

### **University Teaching Experience (undergraduate courses), Western Oregon University**

PS 458 Veterans in Transition, Spring 2015  
SSC 407/507 Veteran Reintegration, Fall 2014

### **University Co-Teaching Experience (undergraduate courses), Western Oregon University**



CJ 352 Introduction to Criminology, Fall 2014 & Winter 2015  
SSC 407/507 Veteran Reintegration, Spring 2014  
CJ 270 Introduction to Criminal Law, Fall 2014

### **Publications (Articles/Professional Presentations)**

Western Society of Criminology Annual Conference, February 11, 2017; Las Vegas, NV: "The criminal justice system as a tool of coercion in pimping, pandering and prostitution."

American Society of Criminology Annual Meeting, November 18, 2016; New Orleans, LA: "Exploring the concept of moral Injury as a potential mitigating circumstance in the criminality of military veterans."

Arizona State University Lawyer's Guild, November 10, 2015; Tempe, AZ: "Abandoned and betrayed: Iraq and Afghanistan veterans caught in the criminal justice system."

Iraq Veterans Against the War National Convention, September 4, 2015; Ocoee, Tennessee: "Abandoned and Betrayed: Iraq and Afghanistan Veterans Caught in the Criminal Justice System."

Brown, W., Stanulis, R., Weitzel, M., & Rodgers, K. (2015). You probably don't know who or what you are talking about: Cultural and moral incompetence in evaluating the veteran in the criminal justice system. *Justice Policy Journal*, 12(1). San Francisco, CA: Center on Juvenile and Criminal Justice.

Oregon Criminal Defense Lawyers Association Annual Development Symposium, June 19, 2015; Panel Presentation "Enter at Your Own Risk: Defending Veteran Clients Facing Prison Time."

American Society of Criminology Annual Meeting, November 5, 2014; San Francisco, California: "Abandoned and Betrayed: Iraq and Afghanistan Veterans Caught in the Criminal Justice System."

Barton, J. Home free: New performance standards for combating veteran prosecution and incarceration. (2014) *Oregon Criminal Defense Lawyers Association Quarterly Journal*, XXXV(5), 24-26.

### **Current Professional Affiliations/Memberships**

Pacific Sentencing Initiative, Researcher  
American Society of Criminology, Member  
The Bunker Project, President  
Council on Colleges and Military Education, Member

Student Veterans of America, Member  
UNLV Criminal Justice Club, Member

## **Relevant Work History**

University of Nevada, Las Vegas: Military and Veteran Services Center,  
Peer Advisor for Veterans in Education (P.A.V.E). Connect with 12 to 15  
freshman undergraduate student veterans to guide them through the  
adjustment to campus culture from the military culture, with the intent of  
increasing retention.

Western Oregon University

Veteran's Coordinator, Admissions Counselor, and Adjunct Professor.

Duties have included:

- Assisting incoming freshman and transfer students with navigating the admissions and veteran benefit processes;
- Managing the Veteran Success Center
- Managing the Veteran Success Center website and social media accounts
- Teaching a senior-level course on veteran reintegration following military service
- Teaching a faculty development workshop on "Veterans in the Classroom"
- Provide community outreach and recruitment through collaborations with local and national, public and private veteran organizations

The Bunker Project

President of the governing board. This has included developing the mission of the nonprofit organization, managing the website, developing community partnerships, and fundraising. I conducted my undergraduate Senior internship with The Bunker Project before taking over as President.

Pacific Sentencing Initiative

Assist with research and advising for veterans involved with the criminal justice system. Administer interview schedules to veteran defendants. Advise defense attorneys and prosecutors. Provide court testimony as requested.

Field Radio Operator

Served four years on active duty with the United States Marine Corps. Deployed twice to Iraq in support of Operation Iraqi Freedom in 2004 and 2005 with an infantry unit. Secret security clearance level. Also worked as Military Police Officer aboard Marine Corps Base Camp Pendleton in 2006.

## References

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