

University of Miami Law School Institutional Repository

University of Miami National Security & Armed Conflict Law Review

7-1-2015

Best Emerging Holistic Advocacy Practices to Break the Cyclical Trauma, Depression, Alienation and Criminalization Afflicting our Returning War Heroes

Paul Freese

Natalie Klasky

Follow this and additional works at: <http://repository.law.miami.edu/umnsac>

 Part of the [Military, War and Peace Commons](#), and the [National Security Commons](#)

Recommended Citation

Paul Freese and Natalie Klasky, *Best Emerging Holistic Advocacy Practices to Break the Cyclical Trauma, Depression, Alienation and Criminalization Afflicting our Returning War Heroes*, 5 U. Miami Nat'l Security & Armed Conflict L. Rev. 85 (2015)
Available at: <http://repository.law.miami.edu/umnsac/vol5/iss1/9>

This Contribution is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami National Security & Armed Conflict Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

Best Emerging Holistic Advocacy Practices to Break the Cyclical Trauma, Depression, Alienation and Criminalization Afflicting our Returning War Heroes

By: Paul Freese and Natalie Klasky*

ABSTRACT

Combat Veterans returning home with untreated Post Traumatic Stress Disorder (“PTSD”) and/or Traumatic Brain Injury (“TBI”) have historically faced a vicious cycle: A war hero returns home with a warrior’s culture of denial paving the way to ever increasing depression, anxiety, nightmares and paranoia. These emotions lead to self-medication, erupting into anti-social behavior resulting in incarceration. Incarceration only exacerbates this trauma by increase depression and alienation as well as unemployment,¹ family breakup due to economic and psychological distress, and ultimately homelessness. Veterans, particular Vietnam Veterans, then are relegated to living in and out of jail and on and off the streets.

* Paul Freese is the Director of Litigation and Policy Advocacy at Neighborhood Legal Services in Los Angeles, and Natalie Klasky is a Staff Attorney at Public Counsel in Los Angeles. This article was prepared in connection with a presentation on Veterans advocacy that the University of Miami School of Law convened on November 14, 2014. Any statements made in the first person refer to the opinions of Mr. Freese. I have been invited to speak across the country on behalf of Public Counsel’s work and the Veterans-focused efforts of the American Bar Association. I have been very impressed by how extraordinarily well this conference was organized and synchronized. I was truly stunned to learn that the students managed all of the complex logistics. I wish to commend specifically, Laura Scala, Michael Kranzler, and Sabrina Segura for their truly outstanding efficiency, thoughtfulness and countless kindnesses. They are a credit to the University of Miami and to our profession.

¹ The Veteran’s unemployment often stems from a criminal record.

This article will illustrate the role the legal profession can play in breaking this devastating cycle. Some of the emerging practices that will be discussed include Veterans Treatment Courts, integrating legal services into the Veterans Administration ("VA"), strategic settings, and building dynamic partnerships between the legal community, Veterans service providers, and government entities.²

Table of Contents

ABSTRACT.....	85
I. FRAMING THE CHALLENGE.....	87
II. CAUSES OF INCARCERATION	88
III. ILLUSTRATIONS OF UNTREATED TBI AND UNTREATED PTSD	89
IV. INNOVATIVE LEGAL PROGRAMS RESPONDING TO THE CALL.....	91
<i>A. ABA Coordinating Committee on Veterans Benefits & Services: a Powerful National Umbrella Group Promoting Mobilization of Veterans Legal Services and Best Practices for Serving Veterans</i>	92
<i>B. Noteworthy Holistic Veterans Advocacy Projects</i>	93
1. Public Counsel's Center for Veterans Advancement.....	94
2. Patriotic Hall Los Angeles	95
3. Veterans Justice Initiative	96
<i>C. Strategic Partnerships</i>	96
1. ABA Veterans Claims Assistance Network ("VCAN")	96
2. VA-Based Legal Clinics	99
<i>D. Other Highly Innovative and Impressive Legal Advocacy Projects Emerging Across the Country.....</i>	100
1. Stateside Legal	100
2. Texas Lawyers for Texas Veterans: Clinic in a Box.....	100
3. John Marshall Law School Veterans Legal Center.....	100
4. Army OneSource.....	101
5. Veterans Court Programs	101

² See American Bar Association ("ABA") Military Pro bono Center, http://www.americanbar.org/portals/public_resources/aba_home_front/Military_Pro_Bono/ (A pro bono attorney can assist Veterans by registering with the Military Pro Bono Center which is generating a registry of attorneys across the country willing to provide pro bono legal services to Veterans. The ABA is an outstanding vehicle serving to connect attorneys who share a passion to give back to our war heroes. The ABA provides outstanding forums to build great working relationships, networking, and business opportunities. It serves as a great investment toward raising the visibility of the good work our profession has embraced. I joined nearly 10 years ago and it was the best professional volunteer move in my career.).

6. Components of a Nationwide Veterans Treatment Court Model	103
7. Integrating Family Jurisprudence into the Veteran Treatment Court Model to Help Keep Veterans' Family's Intact and Healthy	104
8. Mentoring Components Invigorate the Veteran Court Model	106
9. VTC's Utilization of Challenge Coins	107
10. Practice Pointers	107
V. CONCLUSION	107

I. FRAMING THE CHALLENGE

The film *We Were Soldiers* accurately frames the challenge we face with Veterans across the country:

“Look around you. In the 7th Cavalry, we got a Captain from the Ukraine, another from Puerto Rico, we got Japanese, Chinese, Blacks, Hispanics, Cherokee Indian, Jews and Gentiles, all American. Now here in the States some men in this unit may experience discrimination because of race or creed, but for you and me now, all that is gone. We're moving into the valley of the shadow of death, where you will watch the back of the man next to you, as he will watch yours, and you won't care what color he is or by what name he calls God. They say we're leaving home. We're going to what home was always supposed to be. Let us understand the situation; we're going into battle against a tough and determined enemy. I can't promise you that I will bring you all home alive, but this I swear: when we go into battle, I will be the first one to set foot on the field, and I will be the last to step off. And I will leave no one behind. Dead or alive, we will all come home together. So help me God.”²

Lieutenant Colonel Hal Moore gave this address to his troops just before they were deployed to engage our nation's first military engagement in Vietnam. His speech powerfully projects the core cultural military value that, when we send our brave men and women into battle, we will “leave no one behind.” It is a promise made sacred because it recognizes that their spirit of self-sacrifice is a national treasure and the backbone of our nation's freedom. The courage, camaraderie and self-sacrifice Americans share in combat represents what home was always supposed to be. However, when these valiant individuals return with the untreated wounds of PTSD or TBI, they often end up on the streets or in

² We Were Soldiers (Paramount Pictures 2001).

jail. As a nation, we have left behind our soldiers. It is a broken promise that results in broken lives and a lesser country.

Consider this startling figure: 223,000. That is the current estimate of veterans in our jails and prisons – the ones we have left behind.³ Almost 40% of those are Vietnam-era Veterans who are in their 60's with untreated PTSD, histories of addictive disorders and unemployment, and are alienated from their families.⁴ Their numbers are not included in any census of homelessness or unemployment. However, these Veterans have the potential to transition from incarceration to becoming fully functional members of society.

II. CAUSES OF INCARCERATION

The cycle, once poorly understood, is now predictable. Combat heroes return with the invisible wounds of PTSD and with a military cultural mindset that says “you are too tough to care about your injuries.” As a Veteran who served our country, I experienced this mentality and it almost cost my life. When I was in basic training, I tried to “sleep off” walking pneumonia to avoid the stigma of a sick day. I could barely report to duty Monday morning. I told a buddy that I had no choice but to take a sick day. My comrade scoffed, “you wuss!” The Doctor told me that one lung was entirely flooded with phlegm and the other was quickly filling. Had I not taken a sick day, I would have drowned in my own phlegm in less than three days. My experience was with a physical ailment; if this is the culture for Veterans, one can only imagine how deeply psychiatric ailments are stigmatized.

Accordingly, a warrior's invisible wounds often go untreated and he or she begins self-medicating with alcohol and/or drugs to numb the pain as well as cope with nightmares, survivor's guilt, anxiety attacks, and flashbacks. These warriors can become self-destructive and anti-social while under the influence of their self-medication. This behavior all-too-often ends in imprisonment.⁵

Being jailed confines a wounded warrior to an environment that only exacerbates his distress, anxiety, trauma, and sense of helplessness and despair. It also results in having a criminal record that can cause unemployment. Unemployment can lead to economic stress that strains and breaks up families. Children and spouses become traumatized.

³ David Wood, *Veterans: Coming Home*, HUFF. POST, Oct. 2, 2012, available at http://www.huffingtonpost.com/2012/10/02/veterans-coming-home_n_1932366.html.

⁴ *Id.*

⁵ See generally *War Torn 1861-2012* (Attaboy Films & HBO Documentary Films 2010), (Nathan Damingo is discussed *infra* pp. 7-9).

Losing family can lead to an even further downward spiral of depression, helplessness, anxiety, despondency, and ultimately homelessness.

Currently, we are seeing this same pattern afflicting a new generation of Veterans. Experts note the salient factors that clearly account for this new wave of Veterans with PTSD and TBI. First, our nation is mired in the longest span of war in its history—thirteen years.⁶ Because we no longer utilize a draft, the pool of youth available to fight our current war is far smaller. This means many service members have been ‘recycled’ and experience multiple deployments. The violence we see from our war often involves these ‘recycled’ service members.⁷ Because of the understandable and common effects of violence, the armed forces should require respite and a period of evaluation once any service member experiences more than three deployments.

III. ILLUSTRATIONS OF UNTREATED TBI AND UNTREATED PTSD

So far, this article has asserted the causal connection between PTSD and TBI and self-destructive behavior. The following are real stories of Veterans who have fallen victim of this vicious cycle.

American Sniper is a movie based on the true story of United States Navy Seal sniper Chris Kyle, who killed more individuals than any other sniper in United States military history.⁸ This movie conveys how even the most fervent and rugged war hero can reel dangerously under the influence of PTSD. In one scene, Mr. Kyle is at a birthday party with a harmless pet dog. During the birthday party, Mr. Kyle flashes back to when he was under attack by a watchdog and nearly kills his family dog.

The movie also conveys the impact of survivor’s guilt poignantly. After returning from his second deployment, Mr. Kyle goes to a store with his young son. A fellow soldier recognizes him, comes over to Mr. Kyle, and thanks him for saving his life. The soldier shows Mr. Kyle his prosthetic limb and says “you made it possible for me to return and see my little girl.”⁹ However, in response to this torrid effort to thank him, Mr. Kyle has trouble looking the man in the eye. “Well you’re wounded and I’m not and I could be saving more but I’m here.”¹⁰

⁶ Lynne O’Donnell, *U.S., NATO mark end of 13-year war in Afghanistan*, WASH. TIMES, Dec. 28, 2014, available at <http://www.washingtontimes.com/news/2014/dec/28/us-nato-mark-end-of-13-year-war-in-afghanistan/>.

⁷ See, Brock Hunter, *Echoes of War: Learning Lessons from History in Preparing for the Aftermath* NAT’L DRUG COURT INST., http://www.ndci.org/conferences/2012/Sessions/CG_sessions/CG-14.pdf (2012).

⁸ *American Sniper* (Warner Brothers 2014).

⁹ *Id.*

¹⁰ *Id.*

The film *We Were Soldiers* also conveys this unsettling emotion. At the end of a battle, Colonel Hal Moore says to a correspondent, "I'll never forgive myself."¹¹ The correspondent, confused, asks why: "Because I survived and they didn't."¹²

Mr. Kyle and Colonel Moore were able to stabilize despite their PTSD and survivor's guilt, but far too many combat heroes do not. Consider the documentary *War Torn 1861-2012*: The film provides a heart-wrenching historical examination of the devastation of PTSD and TBI from the Civil War era to our modern wars.

For example, the film determined that more than 50 percent of the mental health beds in the nation were filled by Civil War Veterans shortly after the war ended.¹³ *War Torn* tells the true story of a Veteran named Nathan Damigo.¹⁴ Mr. Damigo was a highly decorated Marine with six years of combat experience and multiple deployments.¹⁵ He had never been in trouble with the law and was highly decorated.¹⁶ He lost three of his closest friends to roadside bombs and suffered from TBI because of his exposure to those explosives.¹⁷

While transitioning to civilian life in San Diego, he did the wrong thing on the anniversary of his best friend's death. He became intoxicated and delusional, and snapped. Mr. Damigo believed he was performing checkpoint procedures and waved down a cab operated by a Middle Eastern man.¹⁸ He put the man down at gunpoint and inspected his wallet.¹⁹ He waved the man on but held onto the wallet, wandering in a daze only to wake up in the police station.²⁰ Mr. Damigo thought he had another nightmare about his combat experiences, but instead discovered he was facing 12 years in prison.²¹

I was so haunted by his experience that I had a pro bono private investigator locate his mother, Charlotte Damigo, hoping we might help have his case brought before the San Diego Veterans Court. However, Mrs. Damigo disclosed that he had already served two years in prison in Arizona. He decided to enter a plea agreement for six years rather than risk the twelve years in prison the prosecutor wanted. She also shared that she and her husband had to mortgage their house to pay for Nathan's

¹¹ *We Were Soldiers*, *supra* note 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *We Were Soldiers*, *supra* note 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

defense and their travel costs to and from San Jose court and prison. Clearly, Mr. Damingo's invisible wounds had a profound and depressing effect on the entire family. I asked Mrs. Damingo how her son was doing and she replied:

"Not well. Every day he looks around and sees murderers, rapists, thieves, and thugs. He reflects, 'I gave six of the best years of my youth in service to our country and repeatedly risked sacrificing everything. I lost three of my best buddies to combat and have brain damage from it as well. Yet my country treats me as a criminal because I acted out on those wounds when I was not provided the help to heal I needed.' He is acting out in rage and frustration, getting into fights and ending up in solitary confinement."²²

This is an injustice of the most grotesque order. And sadly, Nathan's case is repeated in countless numbers across the land. Fortunately, the legal profession can prevent Veterans from suffering the dehumanizing fate that so many of these Veterans endured.

IV. INNOVATIVE LEGAL PROGRAMS RESPONDING TO THE CALL

I have spent much of my time this past decade reaching out to and educating community partners about the vital role of integrative legal service models. Consider the following observation of a psychologist invited to a program on legal supports for Veterans:

Just a quick note on why I am so enthusiastic about this program. In treating veterans in the mental health service, legal problems are often the most disruptive obstacle to veterans moving forward in their lives, and one that we on the clinical side of the house have almost no ability to address. Partnering with volunteer legal support has already been life changing (and in some cases, probably lifesaving) for a number of our veterans, and the need is only growing.²³

At the request of World War II hero and Ninth Circuit Judge Harry Pregerson,²⁴ Public Counsel teamed up with the ABA in July 2013 to provide a day-long workshop on legal issues at Camp Pendleton that was followed with individual consultations for the Marines and their families. The outreach was so successful that the Commanding General sent a letter commending the volunteers for "promoting mission readiness" by

²² Interview with Charlotte Damingo, Mother of Nathan Damingo (Sept. 2012).

²³ John R. McQuaid, Ph.D., Professor of Clinical Psychology, University of California San Francisco in an address to VA Psychologists, Oct. 2014.

²⁴ Judge Pregerson, serving on the United States Court of Appeals for the Ninth Circuit, has done more for homeless veterans than any member of our profession I've ever known.

helping alleviate the depressing influence unresolved legal issues pose to Veterans.

A. ABA Coordinating Committee on Veterans Benefits & Services: a Powerful National Umbrella Group Promoting Mobilization of Veterans Legal Services and Best Practices for Serving Veterans

I mentioned earlier that the ABA has played a strong leadership role urging its vast membership to step up and address our Veterans' unmet needs for pro bono legal assistance and access to justice. The ABA is attracting massive support to build our collective capacity to serve Veterans. The ABA established the Coordinating Committee on Veterans Benefits & Services ("CCVBS") to mobilize members to engage in pro bono legal services for our Veterans, to build networks of mutual support, and to facilitate access to emerging technology and resources that empower us to be of greater and more effective service.²⁵

CCVBS is directed by Amy Horton-Newell, whose organizational skills, networking acumen, and mission-driven devotion mark her as a national treasure in connection with any Veteran-connected advocacy efforts. The CCVBS is co-chaired by dynamic leaders, retired Brigadier General Butch ("Clyde") Tate and Minnesota's Veterans advocacy superstar Sara Sommarstrom. The CCVBS Network introduced almost all of the innovative projects summarized in this article. Indeed, I have worked on legal issues affecting Veterans for more than 20 years and have never encountered a more dynamic grouping of advocates and leaders responsible for creating incredibly powerful pro bono programs for veterans than through CCVBS.

It provides not only a great opportunity to learn about great emerging movements worthy of replication or support, but also an enduring network of like-minded and committed individuals who have dedicated their hearts and souls to ensure that our Veterans access the justice and dignified treatment and support they have earned in putting their lives into harm's way to protect our liberties. This remarkable working group generates awareness of the power we can help summon and support in each other by joining forces through the unparalleled unifying body of the ABA rather than working in isolation.²⁶

²⁵ See ABA COORDINATING COMMITTEE ON VETERANS BENEFITS AND SERVICES, http://www.americanbar.org/groups/committees/veterans_benefits.html.

²⁶ *Id.* (If you are interested in serving as a CCVBS representative for your geographic vicinity please see the following link, which contains more information about this dynamic working committee.: http://www.americanbar.org/content/dam/aba/publications/division_for_public_services/ccvbs_update_fall_2013.authcheckdam.pdf); For a recent

B. Noteworthy Holistic Veterans Advocacy Projects

The word “holistic” is mentioned frequently in advocacy and social services circles. It derives from recognition that effective advocacy must deal with the whole person and the range of issues that often afflicts those who have experienced the trauma of war. In this case, the repeated trauma is multiple deployments. This approach is more formally referred to as the “continuum of care model of service delivery,” which cautions that it is vitally important to undertake a comprehensive needs assessment to ensure that an area of need is not neglected when working to help an individual who has faced the trauma of war, especially when it is compounded by the degradation and deprivations of living on the streets.

As one Veteran case worker remarked:

“We have come to see how critical it is to help our homeless Veterans clear their tickets and warrants because if we spend six months helping them obtain psychiatric help, enable them to get medication and health care, help them with independent living and give them independent living skills, and help them get a job. It may be the first job they’ve had in five years, only to have them head to work, get picked up on a ticket that went to a bench warrant. So, they end up in jail when they are supposed to be working, and then lose their job. Now, at a personal level they are deflated because they spent all that time focused upon recovery and getting back on their feet again only to be knocked back down. He or she feels, ‘I did all this work only to end up right back where I started from after all this effort.’ So, at a personal level, they are completely deflated. Plus, at a societal level, the entire investment of resources dedicated to one positive outcome was wasted because a glaring area of need that put him or her at risk was neglected.”²⁷

The power of cross-leveraging in delivering services holistically has long been appreciated in the advocacy community and is most well known through the “medical-legal” partnership model that originated in

“how-to” guide see National Veterans Foundation, *Attorney’s Guide to Representing Veterans in Criminal Court* (Floyd Meshad & Brockton Hunter, eds.).

²⁷ Interview of Veteran Caseworker at SAMOSHEL by Paul Freese, Oct. 1995.

Philadelphia about ten years ago.²⁸ The importance of the medical-legal partnership model can be illustrated by the experience of a mother with a child with severe asthmatic problems. The child was missing school because the symptoms persisted and the mother was risking her job because she needed to take him to the doctor repeatedly. The doctor concluded that the child's symptoms were not alleviated because the mother and child lived in a toxic environment in their apartment. The doctor told her to ask her landlord to remediate these hazardous conditions. The landlord refused. The mother found a pro bono attorney who was able to have the landlord remove the toxins from the apartment. Once the environment was habitable, the child's health stabilized and his education resumed without disruption. The mother no longer faced the prospects of losing her job and realized normalcy again. The model of health professionals examining the legal issues that may interfere with health and public interest has succeeded across the country.

Thus, a successful advocacy model must focus on the whole person and the range of issues that place or keep an individual at risk. The following are examples of best practices that operate out of a holistic advocacy framework.

1. Public Counsel's Center for Veterans Advancement

Public Counsel launched its Center for Veterans Advancement ("CVA") to create a national model of holistic Veterans advocacy. One of our board members, Ken Oder, said he was haunted by what we saw happen to Vietnam Veterans and wanted to make sure Public Counsel did its part to prevent such horrific outcomes from afflicting this generation of returning war heroes as well. CVA is driven by the core principle to "uphold our nation's promise to Veterans and their families."²⁹

CVA meets this core mission through: 1) stabilizing the living situation of veterans and their families; 2) securing government benefits, including, but not limited to, VA, Supplemental Security Income ("SSI"), General Relief ("GR"), and medical benefits; 3) providing Veterans with needed legal representation to overcome the burdens Veterans may face in procuring employment, housing, medical care and/or supportive services; 4) effecting systemic change within local,

²⁸ "The National Nursing Centers Consortium receives grant award by Kresge Foundation for Medical-Legal," PUBLIC HEALTH MANAGEMENT CORPORATION (July 1, 2013), http://www.phmc.org/site/index.php?option=com_content&view=article&id=852:the-national-nursing-centers-consortium-receives-grant-award-by-kresge-foundation-for-medical-legal&catid=71:2013&Itemid=1574.

²⁹ *Center for Veterans' Advancement*, PUBLIC COUNSEL (2012), http://www.publiccounsel.org/practice_areas/center_for_veterans_advancement.

state, and governmental agencies in order to overcome or escape homelessness, poverty, or loss of quality of life among Veterans; 5) providing local and national training in the area of VA adjudication and representation; 6) promoting and invigorating Veterans Treatment Courts; and 7) providing effective legal representation before select state and federal courts, the Department of Veterans Affairs, and the United States Court of Appeals for Veterans Claims.³⁰ The CVA is based in Los Angeles and also has an office in New York City.³¹ The CVA draws its pro bono base primarily from those two cities.³²

The CVA also provides legal support and partners with a national network of attorneys who specialize in Veterans benefits advocacy and appeals with the National Organization for Veterans' Advocates, Inc. ("NOVA").³³

2. Patriotic Hall Los Angeles

Following a \$50 million refurbishment, Los Angeles County dedicated the Bob Hope Patriotic Hall to use its ten floors of office space to provide a robust and comprehensive continuum of services and support for Veterans and their families. The initiative is being led by the California Department of Veterans Affairs and a nonprofit, U.S. Vets, which is one of the nation's largest providers of supportive housing for Veterans. The Hall is centrally located and easily accessible via public transportation. A group of public interest law firms are joining forces to help build a comprehensive rotation of legal clinics on site to ensure the provision of legal services for Veterans and their families.

The Legal Aid Foundation of Los Angeles ("LAFLA") and the Los Angeles County Bar Association ("LACBA") are playing lead roles with vital support from Levitt & Quinn Family Law Center, the Los Angeles Law Library Veterans Initiative, the L.A. Superior Court, and, of course, Public Counsel.

Given the magnitude of this center and its potential to help Veterans with the full range of support they may need, the goal is to direct traffic there through the 211 Social Services hotline in partnership with Volunteers of America's ("VOA") Battle Buddy project. 211 provides a central point of entry, and the Battle Buddies are combat veterans on call

³⁰ *Id.*

³¹ *See* http://www.publiccounsel.org/practice_areas/center_for_veterans_advancement (for information on volunteering through CVA).

³² *Id.*

³³ *See* <https://vetadvocates.org/about-nova> (for information about the opportunities NOVA provides)

to go out and personally meet up with any Veterans who are too distressed or traumatized to find help on their own.

3. Veterans Justice Initiative

JAG Officer Antoinette Balta, an Equal Justice Works poster child for Veterans advocacy, along with retired Major Dwight Sterling, established the Veterans Legal Institute (“VLI”). VLI is the nation’s first public interest law firm run by attorneys who are Veterans. VLI provides a robust holistic range of legal services to Veterans, including VA benefits advocacy and discharge upgrade advocacy. This pro bono firm mobilizes ambitious pro bono projects and provides policy advocacy to improve the treatment of Veterans and creates economic and employment opportunities for them. Although located in Orange County, this ambitious firm strives to become a national force of attorneys who are Veterans willing to dedicate their careers to helping other Veterans. In reviewing the sophistication of emerging advocacy models, VLI is especially impressive.³⁶

C. *Strategic Partnerships*

1. ABA Veterans Claims Assistance Network (“VCAN”)

In recent years, changes in VA benefits law have allowed attorneys to represent Veterans in navigating the often multi-year process to appeal the denial of disability compensation claims. However, while the inclusion of attorneys at the appellate level has benefited many Veterans, it has not helped the hundreds of thousands of Veterans who are forced to wait for the VA to render an initial decision on their filed claims. There are more than 235,000 Veterans in the VA’s “claims backlog,” meaning Veterans have been waiting more than 125 days for the VA to make an initial determination on compensation for what are often seriously disabling conditions that require extensive medical attention and prevent them from working.³⁴

Recognizing the value provided by attorneys in the VA appellate process, the White House Office of General Counsel contacted the American Bar Association (ABA) to explore the idea of engaging lawyers in providing pro bono assistance to Veterans in the initial claim-filing stage. The White House proposed that the ABA should find ways

³⁶ See <https://www.facebook.com/veteranslegalinstitute> (for more information or volunteer opportunities).

³⁴ Jackie Maffucci, PhD., *VA Reports Increase in Total Claims, Slight Decrease in Backlog*, IRAQ AND AFGHANISTAN VETERANS OF AMERICA, Nov. 10 2014, available at <http://iava.org/blogs/va-reports-increase-in-total-claims-slight-decrease-in-backlog/>.

to add to the ongoing efforts of the VA and veterans service organizations to improve the speed in which Veterans' claims move through the VA system. These efforts would theoretically reduce the claims backlog and get benefits paid to Veterans more quickly. With the support of the White House, the ABA's dynamic leaders, particularly Jason Vail, Amy Horton-Newell, Antonia Fasanelli, and Kenneth Goldsmith, engaged in extensive discussions with the VA General Counsel's staff to design a system that would efficiently move backlogged claims out of the VA's system into the hands of ready-and-willing volunteer attorneys. These attorneys would develop the claims into a ready-to-rate status for submission to the VA. The resulting project became the ABA Veterans' Claims Assistance Network ("VCAN"), which launched a pilot phase in August 2014 targeting 3,300 unrepresented claimants in Chicago, St. Petersburg, and Roanoke Regional Centers.

ABA's Chief Counsel to the Standing Committee on Legal Assistance for Military Personnel, Jason Vail, noted the great pro bono opportunity VCAN offers:

"Fully-supported, limited-scope volunteer opportunity for attorneys interested in helping unrepresented Veterans, complete their VA disability compensation claims, resulting in expedited rating and award of benefits to the Veteran. In a typical case, the attorney will complete work on the claim and the Veteran will receive a decision from the VA within 90 days of the Veteran's first contact with VCAN. Lawyers who specialize in health law are uniquely positioned to contribute great value to the program because of their expertise in legal matters involving health care."³⁵

Jason emphasizes that the process is relatively simple and is open to all attorneys regardless of membership in the ABA. The first step is to register online at www.ABAVCAN.org, which involves providing contact information and some basic practice background information. The web site includes whether the attorney is currently accredited by the VA. Accreditation is required by law of any attorney seeking to handle claims at any level on behalf of veterans. Attorneys who are not already accredited may, after registration, utilize a special VCAN email address for submitting their VA accreditation applications, both of which are

³⁵ American Bar Association, *Homeless Veterans*, http://www.americanbar.org/groups/public_services/homelessness_poverty/initiatives/homeless_veterans.html (last visited May 5, 2015).

available on the VCAN website. By using the special email address, VCAN attorneys can expect to receive confirmation of accreditation from the VA within a week or two instead of having to wait a month or longer under the standard process. Attorneys either already accredited or receiving accreditation through VCAN then may view one of two different recorded continuing legal education (CLE) programs on VA claims. Both programs are available on the VCAN website, and more will be added in the future. These programs are approved for VA accreditation, and will meet either the initial CLE requirement for new applicants, or the ongoing CLE requirement for those already accredited. Finally, once the attorney has registered, is accredited, and completes the CLE, the attorney will submit a one-page form which is also available on the VCAN website, affirming all of the above steps have been taken. At this point, the attorney is expected to be available to take on a case for a Veteran, whether immediately or within the next thirty, sixty, or ninety days. Upon submission of that form, the attorney is deemed ready to accept a referral within the timeframe requested.³⁶

Once the attorney is in a position to accept a referral from VCAN, he or she can expect to be contacted by an ABA VCAN staff attorney with a case the attorney may choose to accept. The ABA VCAN staff attorney will have already completed extensive preparations to enable the volunteer attorney to complete the final development of the claim. Specifically, by the time the attorney receives the referral, a VCAN staff attorney has: 1) conducted an intake with the Veteran, collecting basic contact and background information, including income information for those attorneys who have income-based eligibility requirements; 2) Obtained all of the Veteran's records currently held by the VA and will have assessed the status of the Veteran's claim; and 3) Prepared a memorandum with an analysis of the claim and a recommended course of action to complete the claim for rating by the VA. When the volunteer attorney agrees to take on the Veteran's case, all of the documents described above will be electronically relayed once the attorney executes the VCAN, provided there is a VA pro bono representation agreement and power of attorney form with the Veteran.

Upon receipt of the Veteran's intake file, VA records, and the VCAN attorney's memo, the volunteer attorney will have sixty days to complete development work on the Veteran's claim. By the sixty-day deadline, the volunteer attorney will provide VCAN with all of the documents necessary to complete the Veteran's claim, along with a legal memo that explains how the evidence substantiates the Veteran's claim. As of March 27, 2015, the Veterans Benefits Administration has accredited

³⁶ See generally www.ABAVCAN.org.

335 attorneys to be part of the VCAN initiative and will evaluate its expansion in April 2015.

2. VA-Based Legal Clinics

Another effective holistic advocacy model is to embed legal services in an environment where they can have a synergistic and cross-leveraging effect. For example, Public Counsel's Center for Veteran's Advancement established a legal clinic on-site at the Salvation Army program for homeless Veterans named "Haven" on the grounds of the West L.A. Veterans Administration property. This clinic provides direct access to Veterans being served by the Salvation Army. Haven also provides support to Veterans' caseworkers in understanding both the range of legal issues that put Veterans at risk of poor outcome. Lastly, Haven shows the most effective way to connect their clients with legal resources to tackle these problems. The legal services component so enhanced the Salvation Army's services delivery model that Janice Tsao, their Executive Director, found that her staff was able to move their clients to more permanent supportive housing 30 days faster on average than without a legal partner. In addition, Ms. Tsao estimated that this was saving the Salvation Army \$20,000 per month in costs. Inner City Law Center has also established a legal clinic on site at VA facilities and utilizes pro bonos very effectively to broaden their capacity to serve Veterans.³⁷

Volunteering at a legal clinic such as this can have an incredible impact on the volunteer. For example, during an intake at a Homeless Veterans Housing program at the West Los Angeles VA, a Veteran asked the student volunteer why she was taking the time to help him. "Well, you have served our country, and I feel this is the least I can do to show my appreciation." The Veteran was so moved by her response that tears began streaming down his face. As powerfully as he was touched in that moment, the law student will be impacted even more. The law student will likely never forget the impact she had in affirming the dignity and value of a man whose experience of homelessness had left him no doubt feeling as if his nation had discarded him.

³⁷ See <http://www.innercitylaw.org/> (for more information on their programs and volunteering)

D. *Other Highly Innovative and Impressive Legal Advocacy Projects Emerging Across the Country*

1. Stateside Legal

Stateside Legal launched an ambitious and multi-faceted Veterans advocacy program that serves many states on the east coast. Their visionary leader Nan Heald has emerged as extraordinarily helpful supporting public interest attorneys looking for guidance or technical support across the country.³⁸

2. Texas Lawyers for Texas Veterans: Clinic in a Box

Texas has set the gold standard for mobilizing private attorneys to staff legal clinics in strategic settings that serve Veterans having recruited and trained hundreds of volunteers and served many thousands of Veterans. Former State Bar President Terry Tottenham led the charge and established a robust state-wide system of recruitment and placement of Veterans' legal issues with volunteer attorneys.³⁹

President Tottenham's team also developed a "Clinic in a Box," a truly remarkable resource that they make available upon request.⁴⁰ Stateside Legal provides the information on how to utilize the clinic in a box and start a new legal clinic for Veterans.⁴¹

3. John Marshall Law School Veterans Legal Center

Perhaps the most remarkable initiative to provide legal support to Veterans evolved from John Marshall Law School in Chicago. Three students who were combat Veterans approached their Dean and informed him that they wanted to start a legal clinic that served Veterans. He told them to "come back when you raise \$100,000 and we'll talk!"⁴²

Within a month, they stunned the Dean by reporting they have found a financial sponsor willing to contribute the \$100,000 seed money. Just a few years later, the school has established the Veterans Legal Center and it is simply magnificent. It consists of nearly the entire first floor of one wing of the law school and offers PTSD-sensitive color schemes in an area set aside for private intakes. Across the hall is a room filled with

³⁸ See <http://statesidelegal.org/> (for more information about their diverse areas of service and support and for information about volunteer opportunities).

³⁹ See <http://www.tltxv.org/Program.aspx> (for more information or if you are a Texas attorney interested in volunteering).

⁴⁰ See <http://statesidelegal.org/how-start-legal-clinic-clinic-box>.

⁴¹ *Id.*

⁴² John Marshall Law School, *Veterans Legal Support Center & Clinic*, <http://www.jmls.edu/veterans/> (last visited May 5, 2015)

computers and workstations for students to write briefs in support of Veterans claims and legal issues under the supervision of the program director and/or pro bono attorneys they helped accredit to advocate for Veterans benefits. The program has recruited more than 300 pro bono attorneys and provides a magnificent training experience for countless law students while assisting hundreds of Veterans.⁴³

4. Army OneSource

While not a legal services organization, Army OneSource has been especially proactive and a dynamic leader in recognizing the need to partner with public interest attorneys to provide ongoing trainings to lawyers to better serve Veterans, promote the Veteran Court model, and make legal services more accessible to Veterans nationally.⁴⁴ Lilly Coniglio and Monica Pelaez have been particularly excellent resources to Public Counsel and the ABA Veterans advocacy groups. They sponsor joint trainings and webinars with lawyers serving Veterans and their families and have established a rich database of training videos.⁴⁵

5. Veterans Court Programs

California has a statute, California Penal Code Section 1170.9, which empowers any judge to authorize alternative sentencing for Veterans with service connected disabilities.⁴⁶ As a result, Public Counsel has conducted outreach to educate rural judges and jurisdictions about this statute and also on ways to connect with the Regional Veterans Justice Outreach (“VJO”) social workers assigned to empower them to connect Veterans with appropriate treatment. Moreover, Veterans nonprofits such as Volunteers of America (“VOA”), U.S. Vets, and New Directions provide supportive and rehabilitative housing options to Veterans. These organizations have also been able to open statewide referral mechanisms that expand alternative sentencing options for courts.

Recently, the Community Mental Health Journal released the first published study on Veterans Treatment Court and the results are outstanding.⁴⁷ Researchers from the Ohio Department of Mental Health and Addiction Services tracked eighty-six Veterans involved with

⁴³ See <http://www.jmls.edu/veterans/> (for more information or to volunteer).

⁴⁴ See <http://www.myarmyonesource.com/default.aspx> (for more information about their diverse programs).

⁴⁵ *Id.*

⁴⁶ CAL. PENAL CODE § 1170.9 (2009).

⁴⁷ Kraig J. Knudsen & Scott Wingenfeld, *A Specialized Treatment Court for Veterans with Trauma Exposure: Implications for the Field*, COMM. MENT. HEALTH. J. (Feb. 15, 2015).

Veterans Treatment Court, all of whom were diagnosed with PTSD.⁴⁸ They found that 89.5% remained arrest-free during their time in the program and concluded that the Veterans participating in Veterans Treatment Court experienced significant improvement with depression, PTSD, and substance abuse as well as with critical social issues including housing, emotional wellbeing, relationships, and overall functioning.⁴⁹ The study further concluded that mentoring from volunteer Veterans is particularly effective.⁵⁰

Veterans who received mentoring not only experienced better clinical outcomes, but they also reported feeling more socially connected. The study states, "Veterans reported better treatment outcomes and quality of life over time when involved in the Vet Court."⁵¹ The study also indicates:

"When provided programs and services that fostered recovery, Veterans improved markedly on all study measures. Veterans particularly improved when provided a combination of trauma-specific treatment, peer mentor services, and medication. The importance of trauma-specific therapy and positive peer role models may be important for veterans with combat exposure who have re-integrated into a society unfamiliar with the struggles associated with combat experience."⁵²

All Veterans Court models apply principles of therapeutic, collaborative and restorative justice in which community based treatment options are exhausted as the most likely vehicle to achieve the goals of true rehabilitation, recovery, and reintegration into the community. The Veterans Courts have also saved courts money. For example, the project director of the first Veterans Treatment Court in Buffalo, New York states that the total cost of each Veteran going through the Veterans Treatment Court program costs \$2,700 in comparison to the \$30,000 to \$32,000 spent per year on Veterans going through the traditional court system.⁵³ Furthermore, treatment programs for Veterans are primarily federally funded. Therefore, Veterans Courts leverage significant federal dollars and dramatically decrease costs associated with jails, prisons, or

⁴⁸ *Ibid.*

⁴⁹ *Ibid at 2.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Id.*

⁵³ Amanda Ruggeri, *New Courts Give Troubled Veterans a Second Chance*, U.S. NEWS, Apr. 3, 2009 available at <http://www.usnews.com/news/national/articles/2009/04/03/new-courts-give-troubled-veterans-a-second-chance>.

other programs funded by state and local government. Judge Stephen Manley has already presented remarkable data on the cost savings of his program in Santa Clara. In 2008, Judge Manley saved 168,851 prison days through his various community courts for a net cost savings of \$7,269,517.⁵⁴

6. Components of a Nationwide Veterans Treatment Court Model

This court model has emerged as a unique force and effectively breaks this cycle by extricating these individuals from jails and diverting them to community or VA based treatment alternatives where their underlying mental instability and trauma are addressed with intensive treatment and peer support. This model is thriving thanks in large part to the VA's willingness to fund VJO social workers. VJO's are assigned across the nation to VA hospitals to link their rehabilitative and housing resources to the courts thereby providing a vehicle whereby the courts can provide community based treatment options as an alternative to jail.

The Veterans Court Program is a collaboration of all the traditional criminal justice practitioners enriched with a team of community based treatment providers who work together to devise the best plan for recovery and positive outcomes for each participant. This team-based decision making model strives to holistically provide the full continuum of services necessary to help the Veteran achieve full recovery and normalcy and eliminate the risk of recidivism. The team must agree on the parameters of which cases will be heard and how they will be resolved. The overriding goal of the Veterans Court Program is to provide the participants a fresh start and help remove obstacles that would interfere with this. This fresh start reconciles each participant's successful completion of program activities against their outstanding cases.

The Veterans Court Program removes major obstacles posed by potential criminal convictions and their consequences that can otherwise confound the individual's efforts to reclaim normalcy and return to their families and communities as healthful contributing members. Concomitantly, by facilitating recovery and wellness, these courts provide the community with greater assurance of lower recidivism as well as public safety and order.

To counteract the effect of criminal cases that push homeless defendants further outside society, this court combines a progressive plea

⁵⁴ See Dorothy Korber, 'A Courtroom Unlike Any Other': Santa Clara County's Parolee Reentry Court is a Case Study in Reducing Prison Recidivism, CALIFORNIA SENATE OFFICE OF OVERSIGHT AND OUTCOMES (June 1, 2011).

bargain system, an alternative sentencing structure, and community-based shelter program activities to address a range of misdemeanor and felony offenses. These courts expand access to justice, reduce court costs, and help Veterans reintegrate into society and lead productive lives.

Different versions of Veterans Courts are emerging. Some utilize a “Veterans’ docket” as part of a regular criminal court while others integrate the Veterans Court docket into a full blown Community Court. A Community Court sets up a community services center and connects participants with the array of social services, mental health, substance abuse treatment, employment supports, and other counseling services that share space right down the hall. Retired Judge Wendy Lindley, who established the Santa Ana Veterans Court, was the architect of such a full-service Community Court. This model holds Veterans Court sessions every Tuesday. Currently, Judge Joseph Perez presides over these sessions. This Court was selected as one of the nation’s top five “Mentor Courts” because of its excellence in embodying best practices and innovations.

Veterans Courts are a growing movement in America. Justice for Vets, along with the ABA, has been crucial to promote the Veterans Court model. The VA has also done exceptional work to support alternative sentencing. The California Department of Veterans Affairs has also emerged as a leader in supporting Veterans Courts.

The Los Angeles Veterans Court also demonstrates the role that financial supporters can play. New Directions is “a licensed, long-term drug and alcohol treatment program founded by formerly homeless Veterans [which has] provided food, shelter, support and rehabilitation to clients since 1992.”⁵⁵ Through a grant from the Iraq Afghanistan Deployment Impact Fund of the California Community Foundation, New Directions plays an important role in generating momentum for the Court and in guiding its development.

7. Integrating Family Jurisprudence into the Veteran Treatment Court Model to Help Keep Veterans’ Family’s Intact and Healthy

Renato Izquieta, a stellar attorney with the Legal Aid Society of Orange County, is pioneering an innovative holistic prevention and rehabilitation project that would integrate family jurisprudence to Veterans Treatment Courts with the goal of strengthening and invigorating the family unit. The program is also designed to project a

⁵⁵ *Programs and Services*, NEW DIRECTIONS FOR VETERANS, http://www.newdirectionsinc.org/about_programs_services.html (2015).

family from dissolution when a Veteran may act out as a result of PTSD or TBI.

According to the National Institute for PTSD, a Veteran diagnosed with PTSD is twice as likely to perpetrate violence within the family as is an adult with PTSD who has not had combat exposure.⁵⁶ Once violence has occurred within the family, the consequences are far-reaching. PTSD affects the mental health of all members of the family, as well as their economic stability.

A court's orders for a permanent restraining order stemming from domestic violence charges against a Veteran with PTSD can be irreversible and affect the Veteran's future employment prospects and housing options. Many Veterans already experience acute housing and employment problems and struggle with unemployment rates significantly higher than the general population. In May 2012, the unemployment rate for new Veterans was 12.7%, 4% higher than the national average.⁵⁷ Further, as of January 2011, 14% of all homeless people in the United States were Veterans.⁵⁸ A new framework for understanding and preventing domestic violence within Veterans' families is vital, as is a better method of rehabilitation once violence has occurred.

Renato Izquieta's innovative project provides direct assistance and representation to Veterans with PTSD who are facing permanent restraining orders from family members by instituting a court mandated program (the "Program") that allows for a temporary restraining order ("TRO") to remain in place while the Veteran is able to receive the psychological care he or she needs. The conditions of the Program would include, but not remain limited to, psychological services in accord with the VA Long Beach Healthcare System, as well as periodic judicial review of the Veteran's progress. The Program would continue to provide protection for the victim of abuse through maintenance of the TRO, periodic consultation with the victim to ensure program effectiveness, and allow the Veteran with PTSD to get psychological and rehabilitative care. The long-term effects of a permanent restraining

⁵⁶ *Id.*

⁵⁷ See also Rick Little & Nikola Alenkin, *Overcoming Barriers to Employment for Veterans: Current Trends and Practical Approaches*, USC CENTER FOR INNOVATION AND RESEARCH ON VETERANS & MILITARY FAMILIES (CIR) (August 2011) available at http://cir.usc.edu/wp-content/uploads/2013/10/2011-08-CIR-Policy-Brief_Overcoming-Barriers_R.Little-N.Alenkin.pdf (for more information on unemployment trends).

⁵⁸ *The 2011 Point-in-Time Estimates of Homelessness: Supplement to the Annual Homeless Assessment Report*, THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT, December 2011, available at https://www.hudexchange.info/resources/documents/PIT-HIC_Supplemental_AHARReport.pdf

order would be avoided, thereby increasing the likelihood that the Veteran will find future employment, and thus be able to contribute emotionally and financially to the family in the future.

The project also introduces holistic services to the Veteran as well as to their family so that all of their various civil legal issues can be addressed. These issues would include other related family law issues, guardianships, Veteran's benefits, consumer bankruptcy, Internal Revenue Service ("IRS") tax, and other civil matters. By addressing the civil legal needs, the Veteran can have a higher success rate towards their self-sufficiency and independence and toward healthy family reunification.

Mr. Izquieta aspires to create an exhaustive report and analysis of the implementation of the program within the Orange County court system, which would be supplied to the ABA as well as legal services organizations across the United States to promote program replication.

8. Mentoring Components Invigorate the Veteran Court Model

Many, if not all, Veterans Courts utilize mentors to provide added support for the participants. The mentors are typically from the same branch of service and have combat exposure. Many have histories of recovery which enable them to recognize danger signals as they check in on the veteran's progress with their treatment regimen. Peer-to-peer support groups have proven quite effective to break down the walls of denial when a sense of being superhuman interferes with a combat Veteran's very real need for therapy and healing. The mentor can play a key role in reinforcing the therapeutic goals and discipline that is vital for the Veterans to achieve full recovery.

Retired Judge Wendy Lindley established the nation's first Combat Veterans Treatment Community Court in Santa Ana, California, and built a model that utilizes mentors very proactively to keep the Veterans on her docket out of trouble and on track.⁵⁹ One of her great accomplishments was to recruit California Court of Appeals Justice Eileen Moore, a Vietnam era army nurse who served in combat, to mentor the female Veterans who are served by Judge Lindley's amazing community court.⁶⁰

⁵⁹ Interview with Superior Court Judge Wendy Lindley by Paul Freese, Dec. 2014.

⁶⁰ Gabrielle Gonzalez, *Mentors preparing for Veterans Treatment Court*, HERALD ARGUS, March 14, 2014, available at <http://heraldargus.com/articles/2014/03/14/news/local/doc53222eebc6c16830906019.txt>

9. VTC's Utilization of Challenge Coins

When a soldier or marine performs a valorous deed in combat, their commanding officer will often award a "Challenge Coin" in recognition of their courage. If the service-member presents this coin at a bar and his buddies don't have one to present as well they must buy him a drink. Now, Veterans Courts use Challenge Coins in a completely different fashion. The Courts award them to Veterans who were struggling with addictive disorders when they complete rehabilitation. This Challenge Coin reminds them of the hard work they underwent to get back on their feet again if they are feeling an impulse to relapse.

10. Practice Pointers

If you are a public interest attorney interested in helping commence a Veterans Court in your jurisdiction, I highly commend reaching out to local Bar Foundations. For example, the California Bar Foundation recognizes the justice gap that affected returning Veterans in rural areas and gave a multi-year grant to Public Counsel to enable us to reach out to attorneys and the judiciary in remote areas to educate them about the Veteran Court model and also introduce them to the Veteran Justice Outreach worker with regional responsibility for their area.⁶¹ Part of the rural outreach strategy to raise awareness of Veterans Treatment Courts and diversionary options is advocating with the Department of Motor Vehicles in the hope that they will include a notice of these statutory options on the section of their website that addresses veterans' rights and resources. In addition we are creating posters that we hope to have placed at DMV offices as they experience high volumes of veterans traffic. We succeeded in helping provide technical support that resulted in Lancaster establishing their Veterans Court, and we are presently working to achieve the same result in Kern County, another rural area with many returning war Veterans.

V. CONCLUSION

This article has highlighted some of the valiant and innovative efforts lawyers and judges who have dedicated themselves to ensure improved access to justice to our returning combat heroes. It has also provided practical suggestions for ways individuals can contribute, whether the person is a lawyer, law student, social worker, or judge. We

⁶¹ For more information on California Bar Foundation's grants program that supports emerging best practices and innovative advocacy models, please see <http://www.calbarfoundation.org/grants.html>.

must all join forces with ever-increasing vigor to ensure that we fulfill our nation's promise to "leave no one behind."

