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“They sacrificed...for us, we need to give them a helping hand now”: Local reasoning in Combat Veteran’s Court

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ABSTRACT

This study focuses on local reasoning in Combat Veteran’s Court in terms of its *combat veteran* clientele. The perceived nature of the client-defendants as victim/of-fenders who have paid a great price to protect us all and whose combat service is directly related to their criminality significantly alters the moral calculus in the court. This altered moral calculus *finds its way* into the institutional encounters *ad hoc*, in the local relevancies, particulars, and contingencies of the case-at-hand, and in the prospects for ‘what can happen’, given what has already occurred. Combat Veteran’s Court is working out the fundamental terms of moral identity *ad hoc*, in the circumstantiality of the case as it presents itself now. This work moves social control away from the punitive approach of traditional criminal courts, or the abstinence-or-punishment approach of most other problem-solving courts, and toward an approach that is unique to combat veterans. The court’s accomplishment of its unique operation is an analyzable *achievement*, and Garfinkel’s ‘unique adequacy requirement of methods’ is fleshed out in relation to the materials under investigation.

INTRODUCTION

This paper reports on findings from an ethnomethodological and ethnographic study of a Combat Veteran’s Court in California. The study is part of a larger project that examines how drug courts and other problem-solving courts operate (Burns and Peyrot 2003, 2008, Peyrot and Burns 2010). While much existing research investigates how problem-solving courts differ from traditional criminal courts (e.g., Boldt 2010; Castellano 2011; Mackinem and Higgins 2009; Nolan 2001, 2009; Wolff 2002), with a few exceptions (e.g., Burns and Peyrot 2003), not much research has explored what makes each kind of problem-solving court unique and distinctive in its own right. The present research addresses this

question in the context of one of the newest kinds of problem-solving courts, veteran's court. The study is informed by Harold Garfinkel's early insights into 'Shils's complaint,' and his later discussion of unique adequacy in ethnomethodological studies (Garfinkel 1996).

Over 50 years ago, Garfinkel referred to 'Shils's complaint', in connection with the (in)famous 1950's Chicago Law School Jury Project, which involved the secret bugging of jury deliberations in Wichita, Kansas by researchers from the University of Chicago and became the basis for the well-known book entitled, *The American Jury* (Kalven and Zeisel 1966). Garfinkel's account of Edward Shils's complaint regarding this jury research is quoted in the *Pulsar* paper by Garfinkel, Lynch and Livingston: "In 1954 Fred Strodtbeck was hired by the University of Chicago Law School to analyze tape recordings of jury deliberations obtained from a bugged jury room...When Strodtbeck proposed to the law school faculty that they administer Bales Interactional Process Analysis categories to study the deliberations, Shils complained, 'By using Bales Interaction Process Analysis ['IPA'] I'm sure we'll learn what about a jury's deliberations makes them a small group. But we want to know *what about their deliberations makes them a jury*'" (Garfinkel, Lynch and Livingston 1981: 133, emphasis added). At the time of Garfinkel's comment, Bales' Interaction Process Analysis (Bales 1951) was a widely used method of 'content analysis' in social psychology and a way "to reduce the hours of tape-recorded jury deliberations to a manageable, statically analyzable data base" (Lynch 1993, p. 7). However, by coding the jurors' interactions in terms of Bales' IPA categories, researchers would "lose the very phenomenon" that they proposed to examine (Garfinkel 1996, p. 7). This paper addresses 'Shils's complaint' in the context of the present study, asking what makes this a *Combat Veteran's Court*?

THE EMERGENCE OF PROBLEM-SOLVING COURTS AND THE COURT'S ACHIEVEMENT OF ITS PARTICIPATORY STATUS

In terms of the historical 'context,' what are problem-solving courts, and Combat Veteran's Courts specifically, and how did they arise? Problem-solving courts emerged out of widespread agreement that the 'drug war' and other 'get tough' criminal justice policies of the 1980's and 1990's had essentially failed: their impacts were discriminatory and fell disproportionately on people of color, the poor and other marginalized populations (Boldt 2010, Gross 2010), they were prohibitively expensive, they did not rehabilitate offenders, and they overloaded the criminal justice system at every level (Ryan 1998). In response, there has been a wave of newly implemented, potential solutions to low-level crimes in the courts, in the form of various *problem-solving* courts that have been implemented across the country at a rapid pace, starting with the original drug courts (Burns and Peyrot 2003). Not only have the number of drug courts expanded, but there has also been

the development and expansion of many other types of problem-solving courts (Heward 2007; Nolan 2009), including juvenile drug court, mental health court, dual diagnosis court, driving under the influence ('DUI') court, domestic violence court, prostitution court, homeless court, community court, re-entry court and very recently, veteran's court (Marek 2008; Gambill 2010). As of June 2013, the National Institute of Justice reported that there were over 3200 problem-solving courts operating nationally, including more than 2800 drug courts and 145 veteran's courts, with many more in the planning or implementation stage.

Problem-solving courts differ from conventional criminal courts in their greatly reduced adversarialism and *de*-emphasis of formal due process. These courts are characterized by supporters as emphasizing cooperation and collaborative decision-making by an inter-disciplinary 'team' of legal and non-legal professionals, both internal and external to the criminal justice system. Advocates argue that problem-solving courts promise a more 'holistic' approach to dispensing justice -- one that acknowledges the interconnectedness, mutual accountability, and reciprocal obligations of community members toward each other (Zehr 2002). These courts are also described by supporters as 'holistic' in that they offer therapeutic outcomes that address the often multiple and compound issues which arise for clients as 'whole persons', such as co-occurring substance abuse, mental health problems, homelessness and/or unemployment. Yet none of these general descriptions specify the court's *achievement* of its operation, or how its participatory status is practically accomplished.

D. Lawrence Wieder's early ethnographic study of residents and staff in a half-way-house for paroled drug offenders gives some guidance on how to demonstrate such an achievement. Wieder discussed the relevance of 'telling the convict code' in that setting and developed the ethnomethodological idea of rules as methods for formulating settings (Wieder 1974). He showed that reference to the maxims of the 'code' (e.g., do not interfere with other residents' interests, do not trust staff, etc.) was a consequential social practice and way of taking action and describing events in the house that often persuasively structured the sense-making. But Wieder also found that use of the code to provide for the accountability of conduct was an ongoing, contingent and situated accomplishment that could be contested or undermined in specific circumstances by those who were present and interacting in the house (Wieder 1974).

Similarly, the following data in Combat Veteran's Court shows how the court's reasoning may be challenged, and ultimately how its collaborative decision-making is practically accomplished. In the excerpt, whether the client 'relapsed' or not is in dispute. The client contends that he did not relapse or go absent without leave ('AWOL') to use drugs, but simply got separated from his chaperone when he went to use the bathroom. However, he did not report back to staff until three o'clock in the morning and the judge rejects his defense. The court characterizes the client as having issues with dishonesty (not uncommon among addicts) and orders him

to de-toxify *in custody*. In so ruling, the judge invokes the collaborative decision-making of the ‘team’ to assemble a shared account of what will count as ‘relapse’. The client resists this depiction and the custodial sanction, asserting that “the only reason” he didn’t acknowledge what happened was because he’d been prescribed de-tox medication and didn’t think it *was* a relapse:

Judge: The team has recommended that you really do need to...continue your de-tox time in custody. They’re recommending a week, so we’re going to see you back here on the 8th. We are by no means giving up on you. But without honesty, none of us can progress. So I really implore you to work very hard...

Veteran: The only reason I didn’t tell the JOC that it was a relapse is because I didn’t think it was because I was prescribed the medication and I’m de-toxing Your Honor. I’m clean...[and] continuing with treatment...

Judge: I understand...but the entire team that’s working with you...all believe that there needs to be a consequence for your bad decisions [and] that continued lying, so we’ll see you back on the 8th...Turn this around! You’ve got great potential and you certainly can do it, and everybody here wants to help you do it.

Veteran: Alright, Thanks.

The decision-making achieved in this interchange *is* communitarian, but as such, it is also potentially authoritarian. What comes to count as a ‘relapse’ develops out of the situated use of the term in the interchange.

SETTING AND METHODS

The Combat Veteran’s Court in this study is located in Citrus County (pseudonym), California and operates out of the Justice Center/Superior Court of California building that was designed to house various programs to serve the combat veteran participants. Human services are provided by dozens of organizations and agencies that have offices in the court building. For example, there is a Social Security benefits office, a re-entry job training and vocational rehabilitation coordinator, a psychologist, and an outreach team of representatives from the Police Department and Public Defender’s offices, as well as housing assistance, and several non-profits that share office space in the Justice Center building.

The demographics of the court are: 9% female and 91% male, with ages of the participants ranging from 18 to over 60 years of age, with 64% of clients between 22-30 years of age. The racial composition of the court is: 9% African American, 4% Asian American, 50% Caucasian and 36% Hispanic. 63% of the veteran participants are unemployed (Citrus County Collaborative Courts Annual Report,

2012). The cases being handled by the court include driving under the influence ('DUI'), drug possession, assault, domestic violence, public intoxication, and other crimes. The program is generally a minimum of 18-months in duration, although there is a shorter track of 12 months for selected misdemeanor offenders. Client diagnoses include post-traumatic stress disorder ('PTSD'), traumatic brain injury ('TBI'), substance abuse, and other psychological disorders resulting from combat service. Clients consent to participate in the court-supervised treatment program (though it is often more of a 'coerced voluntarism' [Peyrot 1985]), enter a guilty plea, and must demonstrate a willingness to comply with the conditions of probation and community-based treatment, i.e., a 'suitability' admission criteria (Burns and Peyrot 2003).

Decisions regarding admission into the court are made collaboratively by the team, based on the applicable Penal Code law defining 'combat' (California Penal Code, section 1170.9) and based on the exercise of discretion, with consequential input provided by every member of the court team. The District Attorney considers the nature of the candidate's current criminal charge and any past criminal history. The Public Defender argues for the least restrictive and least punitive outcome. The Probation Officer determines the candidate's willingness for community-based treatment and compliance (a criteria oriented to identifying and weeding out candidates who are regarded as less likely to succeed). The Justice Outreach Coordinator obtains documentation from the Veteran's Administration ('VA') to verify that the applicant served in a 'combat theater' and documents that the person suffers from a mental condition related to their combat service. In addition, admission to the court is limited to veterans who received an Honorable Discharge from the military and thus qualify for VA benefits and services. This latter admission criterion is probably more about caseload management and access to treatment *resources* than about the suitability of any prospective client for rehabilitation.

After acceptance, an individualized treatment plan is developed and clients receive ongoing treatment and attend individual counseling sessions and group therapy meetings, regular court hearings, and weekly meetings with the Justice Outreach Coordinator and Probation Officer. Clients have frequent and random drug and alcohol testing (unless the team determines that the client does not have a substance abuse problem), and work to develop a plan for life after graduation. The Combat Veteran's Court program has a four-phase structure, with each successive stage typically becoming less burdensome as the client progresses (e.g., less frequent drug testing or court appearances). Over the course of the program, the judge follows the progress of clients and periodically observes their appearance and demeanor in court for improvement, or other changes. In order to make progress and graduate, clients are expected to adhere to the treatment regimen and all program rules and requirements and, more generally, to demonstrate self-discipline and self-change.

Case processing in Combat Veteran's Court is fundamentally different from what occurs in traditional criminal courts, where the judge is commonly construed as a detached and impartial, bureaucratic neutral. Problem-solving judges, by contrast, can be seen to *develop personal relationships* with each of the defendants (euphemistically called 'clients'). They craft interventions based on individualized knowledge and accumulated information about the client's progress (or regress), and serve as advocates, if not cheerleaders, for rehabilitation. The courts use a 'tough love' process of rewards and sanctions to keep clients in compliance and engaged in treatment (Burns and Peyrot 2003). Sanctions include community service, more frequent drug testing, treatment sessions or court appearances, writing an essay to explain misconduct, placement in a residential treatment facility, brief jail time or 'shock incarceration', and removal from the program with imposition of criminal sentencing, typically with harsher punishment for those who fail than for offenders who are conventionally sentenced (Boldt 2010). Rewards are also routinely distributed in problem-solving courts to give reinforcement to clients who appear to be progressing and these vary from applause, to giving tokens or gifts (like movie tickets), less frequent drug testing and/or court appearances, granting travel privileges, words of support and encouragement, advancement of phases and, ultimately graduation.

This ethnographic and ethnomethodological study of work addresses a distinctive domain of reasoning and activities in Combat Veteran's Court. The research draws on prior ethnomethodologically-informed studies of court activities, plea negotiations and responsibility attributions (Burns and Peyrot 2003; Emerson 1969; Garfinkel 1967; Holstein 1993; Lynch 1997; Peyrot 1985; Pollner 1979). The paper seeks to identify and analyze the local reasoning, interpretive activities, descriptions and categorizations, interactional practices and institutionally specific competencies that comprise the work in question (Garfinkel 1967; Garfinkel and Sacks 1970; Hester and Eglin 1997; Lynch 1997; Sacks 1974, 1979; Wieder 1974). The study pursues an ethnomethodological interest in "what local people consider meaningful [and] making their concerns accessible to readers who are unfamiliar with their social world" (Emerson, Fretz and Shaw 1995: 108). In so doing, the research adopts a stance of ethnomethodological indifference that suspends judgment on whether the self-presentations of clients are honest, the judge and court team members' interpretations are accurate, or the interventions taken are effective in accomplishing rehabilitation aims (Burns and Peyrot 2003; Garfinkel and Sacks 1970).

This research was approved by the Institutional Review Board ('IRB') at my university and utilizes a variety of data, including field notes, tape-recorded interviews and transcripts, and raw footage of filmed recordings of courtroom interactions, as well as interviews with the presiding judge, other court staff and several participants in the program. The filmed records were made by a documentary filmmaker on several of the days that I was observing in court, and I was granted

privileged access to the films by the documentary film company, which had been given access and permission to film by the judge. The availability of these filmic records made possible the close examination of the practical tasks and unfolding work activities of courtroom participants in their ‘local orderliness’ (Garfinkel 1996). In addition, the data contain documents provided by the Justice Outreach Coordinator, including the Final Report of Combat Veteran’s Court’s two-year Pilot Program (2010), several quarterly reports on the court prepared in 2009 and 2010, and the ‘Progress Report for Client’ form (used by the Probation Department). Finally, the data include media accounts of my field site court and other veteran’s courts nationwide and concerning the health-related problems of justice-involved veterans from public print and on-line newspaper sources, such as a daily legal newspaper (the *Los Angeles Daily Journal*) and other legal publications (e.g., *California Lawyer*) that were reviewed concurrently with the field research and after the fieldwork period.

Observations and interviews were conducted during 2009 and 2010. Combat Veteran’s Court met once a week for scheduled status hearings at which clients appear and their individual progress is formally assessed and sanctions or rewards are ordered. I observed a total of eleven open court sessions, lasting about two to two and a half hours each, with approximately twenty to twenty-five cases observed at each session, including three or four cases being considered for admission. The court team also assembled in ‘backstage’ meetings prior to the day’s scheduled court session to discuss each client whose case was on the docket and for such specific purposes as evaluating candidates for admission, discussing individualized treatment plans, monitoring clients’ progress and compliance and recommending specific sanctions. I did not have access to these backstage meetings.

COMBAT VETERAN’S COURT AS A SPECIAL KIND OF PROBLEM-SOLVING COURT WITH A UNIQUE CLIENTELE AND TREATMENT TEAM

As more and more veterans returned home from Iraq and Afghanistan and other recent military conflicts, their combat experience and military-related traumas made it difficult for them to re-integrate into society. After risking their lives and health for our country, reports indicated that veterans came home with *particular kinds of disorders*: post-traumatic stress disorder (‘PTSD’), traumatic brain injury (‘TBI’), high rates of substance abuse, military sexual trauma, and other serious mental problems. These problems were frequently exacerbated by repeated deployments and prolonged combat exposure (Gaskell 2009a and 2009b; RAND 2008). As a result, combat veterans often suffered from chronic pain and were prescribed opiates and other powerful and addictive pain-killers. Returning veterans also often had difficulty obtaining necessary physical and mental health care. Thus, many experienced unmet treatment needs (Markon 2011) and developed

substance abuse disorders and addictions related to their efforts to ‘self-medicate’ (RAND 2008).

Until 2008, military veterans who were charged with a crime were tried in the same court as any other criminal defendant. But after acknowledging the unique experience of veterans, especially those who served in combat, and how war can impact the mind, the criminal justice system created special courts for veterans. The first specialty court to deal exclusively with veterans opened in Buffalo, New York in January, 2008 (Russell 2009). The interest and willingness of judges and court administrators to implement a specialized, alternative court for veterans reflected a unique understanding of the social meaning and moral status of being a justice-involved veteran/combat veteran. The social esteem accorded to persons with veteran/combat veteran status, the similar problems and issues they faced, and the cause of their criminality being located in their military combat served to *mitigate against* a fully punitive response. Instead, it suggested the reasonableness and moral justification for treating combat veterans together in a separate, non-adversarial court forum oriented to providing services and facilitating their recovery and re-integration into society, as the Combat Veteran’s Court judge explains in the following excerpt:

We as a society owe it to our veterans to do everything we can to help them overcome the problems that resulted from their military service...We can’t allow them to struggle and keep intersecting with criminal justice, and be treated...by sending them off to jails and prisons and punitive responses. That’s inhumane. They sacrificed who they were for us, we need to give them a helping hand now and provide them with reasonable supportive services, so that they can be returned to our community as healthy, productive, happy human beings (Interview with Judge, 2010).

These comments indicate that the court responds to its clientele as people to whom credit and the obligations of the state are owed and as persons the court “worries about.” This understanding of the nature of the veteran court’s clientele differs greatly from the conventional view of common criminals as freely willed, rational actors who are worthy of blame and proportionate punishment.

The judge in Combat Veteran’s Court operates as the leader or hub of the court ‘team’ and its activities -- a ‘therapeutic administrator’ -- who coordinates numerous community-based services in attempt to address the client’s various presenting problems and needs. The Combat Veteran’s Court is itself a partnership with the U.S. Department of Veterans Affairs’ Healthcare System, which provides treatment resources for the clients. The judge makes use of these and other available institutional resources to *divert* clients out of jail or prison and into community-based treatment and services.

The team in Combat Veteran’s Court consists of the judge (‘J’), the district attorney (‘DA’), the public defender (‘PD’), the justice outreach coordinator (‘JOC’),

the probation officer ('PO'), treatment providers, counselors and various community 'partners' and 'mentors' (e.g., local colleges and churches). While many of these team members are a familiar part of other problem-solving courts (e.g., the judge, district attorney, public defender, probation officer, and treatment providers and counselors), there are also several newly invented positions which are unique to Combat Veteran's Court, including the Justice Outreach Coordinator ('JOC'), who is essentially a case and care manager funded by the Veteran's Administration. In addition, each combat veteran client is matched with a volunteer *combat veteran mentor* from the Veteran's Peer Specialist Program ('VPS'). The mentor, who is informally known as a 'battle buddy', usually comes from the same branch of the military and/or has suffered similar issues or problems to those of the client and overcome them. The mentor is expected to keep in regular contact with their client and empathetically guide them through the court program, providing support and useful counsel when needed. Thus, clients are embedded in a community of volunteer combat veteran mentors and fellow combat veteran clients who are used *therapeutically* to accomplish the client's engagement in and completion of treatment. These institutional features make Combat Veteran's Court very different from regular criminal courts and also distinct from other problem-solving courts.

The clientele of Combat Veteran's Court are almost all male and share a distinctive military culture and training that emphasizes rules, authority and structure. The combat veteran clients have been through the same war-related traumas and share similar diagnoses. Their combat experience is very difficult for ordinary civilians to grasp and generates a camaraderie of peer support, mutual trust and understanding. The combat veteran clients know each other and are often in the same therapy group. They come to court for regular appearances, sit together in the audience section of the courtroom and watch each other's hearings with the judge. Fellow combat veterans are also sometimes invoked by the court in the interactions as 'local precedent' for a particular response or intervention.

Like other problem-solving courts, Combat Veteran's Court addresses a particular clientele with a distinctive kind of problem or set of problems. But unlike clients in drug court who must remain drug-free throughout the program, combat veterans clients are typically *required* to take prescribed medications to manage their chronic physical pain and/or mental disorders. This often complicates determinations of drug misuse and relapse by clients in Combat Veteran's Court. Also in contrast to clients in drug court, who have all committed a substance abuse-related offense, clients in Combat Veteran's Court have committed a wide variety of misdemeanor and felony offenses, including non-violent and some violent crimes. Finally, different from clients in most other problem-solving courts, clients in Combat Veteran's Court are required to be first-time offenders who have no prior criminal record or criminal justice involvement before returning home from combat. In terms of the reasoning of the court, the substance abuse, mental health

and other problems of the clientele are the *result of their combat* and are directly linked to their criminal offending, as the judge suggests in the following excerpt:

One of the things we do is look at a person's history before they served our country. If they have no intersection at all with criminal justice, then we would conclude that their intersection now is a result of probably PTSD, TBI, and of course substance abuse...

The court aims to produce significant self-change in the clientele by addressing these types of problems which are perceived to underlie the clients' poor choices and criminal conduct.

'Self-change' in the recovery process has previously been studied by social constructionists in several organizational settings, including Alcoholics Anonymous, battered women's shelters, and recovery programs for violent offenders in prison (e.g., Fox 2001; Loseke 1989; Pollner and Stein 2001). Such constructionist research considers how these self-change programs create individuals who attribute a certain kind of moral *subjectivity* to themselves (Rose 1996). However, following Lynch's early work on 'interactional troublemakers', instead of addressing self-change as *subjectively* problematic, the present research considers the 'self' as "a social and normative construct as much as an internal province of operations" (Lynch 1983: 162).

In the local reasoning of Combat Veteran's Court, the 'selves' of the clients are at stake. Thus, the supervision, monitoring and control of clients is *extensive and intensive*, with regular mandatory appearances in court and their frequent participation in sometimes intense face-to-face interactions with the judge. Clients in Combat Veteran's Court are rendered responsible and accountable for their conduct and choices *in the court's institutional terms* through individualized treatment regimens and the imposition of sanctions. Court professionals and the combat veterans going through the self-change program *work* to get other people, *here and now*, to see the individual client as being a particular sort of person or 'self'. And, that local structuring of 'self' organizes and constrains the local reasoning and activities in court. In essence, Combat Veteran's Court is playing out the fundamental terms of moral identity and doing it *ad hoc*, in the circumstantiality of the case-at-hand as it presents itself now, akin to the *ad hocing* practices described by Garfinkel, where coders of clinic records worked to achieve a fit between what could be read in the records and the singular state of patient affairs and history which the coding sheet formulated (Garfinkel 1967).

THE DISTINCTIVE NATURE OF VIOLENCE BY COMBAT VETERANS

Central to the local reasoning in the court is a distinctive understanding of the nature of *veteran's crime* and *veteran's violence* as not just another run-of-the-mill

crime or another run-of-the-mill violent crime. Admission decisions in cases of violence involve *discretionary assessments* of the circumstances of the crime and the nature of the violence in the given case. The decision to admit some violent offenders reflects the idea is that a candidate's worthiness for treatment should not be based on the kind of crime committed, but rather on whether a combat-related mental health disorder was at the root of their violent criminal offending. The Combat Veteran's Court generally does not accept cases involving what is determined to be 'serious assault' (compare Emerson 1994), sexual assault, or crimes where the offender used a deadly weapon. In addition, registered sex offenders and those convicted as drug dealers are precluded by law from participating (Lum 2014: 8).

It is not surprising that the violent crimes committed by combat veterans are construed very differently from the way violent crimes are otherwise understood by participants in the criminal justice system. In the local reasoning of the court, the military itself is responsible for training combat veterans to be violent in the first place, as the judge explains in discussing her admission decisions in the following data:

[Unlike some veteran's courts], I *do* take violent clients...in [my] veteran's court. I believe that these individuals have been *trained to be killing machines*...and they've been in an environment where they need to react first and think later, or they lose their lives. When they come back to us and try to reintegrate into society, [and] at the same time...they're dealing with their post traumatic stress disorder,...they've seen children die and buddies die and been shot at so much, and perhaps they have traumatic brain injury as well...All these issues...make it hard to hold a job, hard to get along with others in the first place, and then they start drinking and using drugs to try to deal with their pain...and their disappointments and ...they intersect with criminal justice...

For the client/defendants, such local reasoning serves to rewrite the terms of their moral agency, away from that of a violent and/or crazy offender and into someone who was damaged in service to us all and to whom compassion, empathy and the resources of the state are owed.

'LOCAL PRECEDENT' FOR SUCCESS IN SELF-TRANSFORMATION

Combat veteran clients who are making good progress are sometimes used by the judge as role models for other combat veterans who are relapsing or regressing, to show them that recovery and self-transformation is possible. Reminiscent of Melvin Pollner's work (1979) in *Traffic Court* on managing 'local precedence' and the retrospective-prospective relations among a series of cases, the judge in the next data uses her accumulated experience with what has happened in 'similar cases'

in the past as ‘local precedent.’ The court invokes this precedent as the basis for predicting what will likely happen down the line in the case-at-hand. The judge describes the combat veteran before her as someone who previously denied relapse (just like the client in the preceding case), but who is now “back on track”:

Judge: How are you doing Eddie [pseudonym]? ... Everyone says you’re back on track.

Veteran: I am.

Judge: Good. So maybe that’s a guy you need to talk to... over there [indicating the client whose case was previously called who denied relapse].

Veteran: (Laughter) Yeah, I’ve heard that same excuse—it just doesn’t work.

Judge: So, Bruce [pseudonym, referring to the client in the earlier case who denied relapse], are you listening to what Eddie’s saying? Because he’s another one who tested dirty, and at first he said ‘no, no, no’. And you know, when he accepted that he does have a problem with opiates his life, he really started to change. And that’s all we’re hoping for with you.

The progressing client’s ‘same excuse’ formulation of the earlier client refers to local understandings about the typical behavior of ‘addicts,’ i.e., a ‘category bound’ activity (Sacks 1974; 1979), “expectably done by persons who are the incumbents of particular categories” (Hester and Eglin 1997: 5). This formulation is immediately upgraded by the judge adding, “he’s another one who tested dirty, and at first he said ‘no, no, no’”. In the moral economy of Combat Veteran’s Court, a client who acknowledges his relapse and set-backs exhibits a self that is of a higher moral status than a client who offers excuses and remains in ‘denial’ (Rosenhan 1973; Szasz 1963).

Such moral sorting of clients orients to the retrospective, prospective and contingent features of the case, to make sense of what has previously happened and, in light of that, to demonstrate what can be done now. As for ‘Eddie’, the client who’s ‘turned it around’ and becomes a virtual poster boy for redemption, one wonders, what if *he* falls off the wagon? The specter of ‘ritual degradation’ is still there, hanging in the shadows, and is occasionally pointed to (Garfinkel 1956).

PRODUCING FAILURE: “YOU THREW AWAY ALL THE INFORMATION WE WERE PROVIDING YOU WITH TO HAVE A BETTER LIFE”

Adversarialism and formal due process are typically minimized in Combat Veteran’s Court, even when a client relapses or violates another program requirement, especially early in the program. However, sometimes the court professionals collectively decide to remove a client from the program because of a dramatic or

extreme event that clearly demonstrates that all efforts to produce self-change have failed. At such a point, the client is given his ‘day in court’ and full adversarial airing of grievances. For example, the client in the following excerpt is being dismissed from the program after being arrested for driving under the influence (‘DUI’). He happens to be the oldest combat veteran in the program (in his sixties) and comes from a different war than the other clients (the Vietnam war), which perhaps limited his ability to benefit from peer support provided by the court institution. The interchange has a ‘last straw’ quality (Emerson 1981) as the client is brought into the courtroom wearing jail attire and is sternly sentenced by the judge to 180 days in jail and five years probation:

Judge: [To client] ... You’re not going to get back in this court. You committed an act that violated public safety. Your decision [and] your bad choices ... [are] stunning. You’re the very first person to get terminated. You are terminated because you violated the safety rights of others... You drove while under the influence ... with a prior DUI and license suspension within 10 years. [I’m sentencing you to] five years in formal probation and 180 days in County jail... Completely irresponsible... You threw away all the information we were providing you with to have a better life. You need to learn to be accountable and responsible for your actions and choices ... I truly wish you the best. I am very sad we have come to this point.

This client’s ‘problems’ are not going to be solved in the Combat Veteran’s Court. But even when kicking the client out of the program, the caring judge expresses collective regret that she has no alternative and offers the now former client best wishes and general guidance for the future [“you need to learn to be accountable and responsible for your actions and choices”].

CONCLUSION

The *dual status* of justice-involved combat veterans as both victims and offenders who have paid a great price to protect us all gives *credit* to the clients and significantly alters the moral calculus of offender culpability and accountability in Combat Veteran’s Court. This altered calculus *finds its way* into the institutional encounters *ad hoc*, in the local relevancies, particulars, and contingencies of the case-at-hand, and in the prospects for ‘what can happen’, given what has already occurred. The institutional encounter serves to *hash-out* what will count as an ‘offense’, ‘relapse’, or ‘dangerous violent offender’, thereby establishing the fundamental terms of moral identity.

Like other problem-solving courts, Combat Veteran's Court is a system of responsibility and accountability that dispenses justice, not social work. Local reasoning in the court about who the clients *really are* and the kind of caring and compassionate justice they deserve moves social control away from the punitive approach of traditional criminal courts, or the abstinence-or-punishment approach of most other problem-solving courts, and toward an approach that is unique to combat veterans. The court's accomplishment of its unique operation is an analyzable *achievement*, demonstrated in the contingent detail of developing and competent courses of practical action. This helps us respond to 'Shils's complaint' in the context of Combat Veteran's Court and enhances our understanding of how Garfinkel's 'unique adequacy requirement' can be fleshed out in relation to the materials under investigation.

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