



# 2019 Annual Conference

Lake Placid, New York

How Best to Serve Justice-Involved Veterans

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Presented by:

Hon. David S. Gideon

Hon. Theodore Limpert

Alison B. Fineberg, Esq.

Sky Davis

Rebecca Newton

1.0 MCLE Professional Practice

1.0 CJE

This program has been approved for credit in New York State for all attorneys including those who are Newly Admitted (less than 24 months) and administered by the Onondaga County Bar Association.



## **Hon. David S. Gideon**

The Hon. David S. Gideon currently presides as Town Justice in the Town of DeWitt, New York; a suburb of Syracuse. Judge Gideon formerly presided as an Acting City Court Judge in the Syracuse City Court. Judge Gideon graduated from Syracuse University in 1979 with a Bachelor of Science degree, with a dual major in Biology and Psychology; thereafter receiving his Juris Doctorate from Western New England College, School of Law, in 1982, where he was a member of the legal fraternity of Phi Delta Phi.

Judge Gideon is a lifelong resident of the DeWitt, New York community and most recently served as the Principal Law Clerk to the late Hon. James C. Tormey, Administrative Judge for the Fifth Judicial District. In particular, Judge Gideon is Special Counsel to the Town and Village Courts in the Fifth Judicial District, coordinating and implementing the Action Plan for the Justice Courts within the district. Judge Gideon has been instrumental in the development of the Centralized Arraignment Parts in Oneida and Onondaga counties.

Judge Gideon was admitted to the New York State Bar and the United States District Court, Northern District of New York, in 1984. Judge Gideon has served as a senior faculty member for the Office of Justice Court Support, Town and Village Court Education Program, having also appeared as a panel member in its statewide satellite broadcasts. Judge Gideon has also been an instructor for the Onondaga County Bar Association Continuing Legal Education Program.

Judge Gideon is a Past President of the Onondaga County Magistrates Association and is a past president of the New York State Magistrates Association. In 2014, Judge Gideon was the co-recipient of the Hon. Eugene W. Salisbury Magistrate of the Year Award given by the New York State Magistrates Association.

## **Hon. Theodore Limpert**

Ted Limpert has been a Syracuse City Court Judge since 2009. Since 2013 he has been the presiding Judge in Human Trafficking Court and was recently named to preside over Syracuse's Veterans Treatment Court.

Judge Limpert retired as a Colonel in the New York Air National Guard, after over 30 years of service. He had seven tours in Southwest Asia beginning with the Persian Gulf War, and including Operations Iraqi and Enduring Freedom. He was awarded the Distinguished Flying Cross with Valor device for a mission during Desert Storm. He was a member since May 1984 of Syracuse's 174<sup>th</sup> Fighter Wing and was the 138<sup>th</sup> Fighter Squadron Commander from May, 2003 to September, 2008, then becoming Deputy Operation Group Commander.

As a Fighter Pilot, he had over 2200 hours and 106 combat missions in the F-16; and, he logged nearly 800 hours in the A-10 Warthog. His last overseas deployment was a four-month tour in 2011 as Senior Air Reserve Advisor, Al Udeid Air Base, Qatar. He traveled to Afghanistan, Iraq, Kuwait, Oman and Kyrgyzstan advising deployed Reserve Airman. He was also scrambled on 9-11 to intercept an unknown aircraft and flew numerous missions over New York City in the months following the attack.

Judge Limpert was in private practice for 20 years prior to becoming a Judge, most recently as a partner in the Syracuse litigation firm Cote, Limpert & VanDyke. He is a 1981 graduate of Bucknell University (BS in Biology) and a 1988 graduate of Syracuse University College of Law, *magna cum laude*. He is married with four children and his wife, Susie, is the technology teacher at Rosary Elementary School. His children are all successful graduates of the Syracuse City Schools. Judge Limpert is a Valley Youth Lacrosse coach and is an avid pilot, runner, skier and scuba diver.

**Alison B. Fineberg, Esq.**  
**Chief Assistant District Attorney**  
**Onondaga County District Attorney's Office**

Alison Fineberg graduated Syracuse University College of Law in May 1997 and joined the Onondaga County District Attorney's Office shortly thereafter. She was assigned to the City Court bureau and handled misdemeanor cases until July 1999, when she was transferred to the Special Victims Bureau, prosecuting sexual abuse, child abuse and domestic violence cases. In July 2003, she was promoted to Deputy Bureau Chief of the Municipal Courts Bureau and was promoted to her current position of Chief of the Municipal Courts Bureau the following year. In this capacity, she oversees all local court cases in Onondaga County and supervises and trains all newly hired Assistant District Attorneys.

**Rebecca Newton** is a clinical social worker with the Albany Stratton VA Medical Center. Rebecca obtained her bachelor's degree at the University of North Carolina and completed her masters in social welfare at the University at Albany. Rebecca has been employed with the Stratton VA medical center for 7 years, during this time she has worked with the homeless, behavioral health, crisis intervention, suicide prevention and the Veterans Justice Outreach programs. The VJO Program provides pre-release outreach visits and post-release case management services. Post-release services include assessment for VA and non-VA resources including transitional housing/referrals, vocational rehabilitation referrals, substance abuse/mental health treatment/referrals, and other services based on the veteran's needs. The goal of the program is to decrease recidivism, prevent homelessness, and link veterans with services in the VA system and within their community.

**Sky L. Peña-Davis, MA, CASAC**, has more than 25 years of experience in the field of criminal justice and addiction. In 2007 she joined the New York State Unified Court System, Office of Policy and Planning as a Regional Project Manager where she works on various statewide initiatives, including program development, project management, strategic planning, and ongoing support to drug courts and veterans' courts. She is a member of the NYS Bar Association's Committee on Veterans which creates programs for attorneys and the public on veterans' issues. She is a speaker on drug court and veterans court topics and serves on multiple associations, committees and advisory boards. Sky worked at the Center for Court Innovation and New York City Treatment Alternatives for Safer Communities. She received her bachelor's degree from John Jay College of Criminal Justice and her master's degree from Long Island University/CW Post College. She is also a New York State Credentialed Alcohol and Substance Abuse Counselor. On most weekends you can find her appreciating nature in a cabin in the woods.



## Chapter 23

# Veterans Treatment Courts

### *Judge Robert T. Russell*<sup>1</sup>

*In January of 2008, Judge Robert Russell created and began presiding over the nation's first "Veterans' Treatment Court." Judge Russell's proven results and gifted leadership have contributed greatly to the rapid expansion of the Veterans Treatment Court concept, with over 100 such courts now in operation across the nation in early 2013. Among many notable awards for his work with veterans, the National Veterans of Foreign Wars of the United States has awarded Judge Russell with the "2010 James E. Dan Zandt Citizenship Award." The National Vietnam Veterans of America awarded Judge Russell with its "2010 Achievement Medal."*

*Prior to creation of the Buffalo Veterans Treatment Court, Judge Russell created Buffalo's Drug Treatment Court in December 1995 and continues to serve as its Presiding Judge. Judge Russell is the Past Chairman of the Board of Directors of the National Association of Drug Court Professionals (NADCP) and the Past President of the New York State Association of Drug Treatment Court Professionals, Inc. He also serves on the National Advisory Board of the Judges' Criminal Justice/Mental Health Leadership Initiative (JLI).*

—Editors

## I. INTRODUCTION

*"The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive veterans of early wars were treated and appreciated by our nation."*

—George Washington

As you have realized by this point in the book, the United States has a rapidly growing population of combat veterans returning from the wars in Iraq, Afghanistan and the Global War on Terror. Predictably, these extended wars have produced a significant percentage of veterans with serious mental health and/or substance abuse issues. Many of them are now appearing in our nation's criminal courts, charged with offenses tied,

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<sup>1</sup> This chapter was written with the assistance of Catherine A. O'Connor, a student at the University of Minnesota Law School and an Intelligence Sergeant in the United States Marine Corps Reserve, who served in Iraq in 2006.

in one way or another, with those service-connected issues. Military service impacts the lives of veterans and their families in countless ways. Approximately thirty percent of veterans returning home from combat suffer from “invisible wounds,” injuries that are not visible to the eye and, as a result, often go unrecognized and unacknowledged. These injuries are post-traumatic stress disorder, traumatic brain injury, military sexual trauma, and major depression.<sup>2</sup> The trauma can come from a myriad of sources, whether the impact of a hidden roadside bomb, explosions from mortars, or less obvious sources such as the stress of long deployments and the near-continuous risk of combat that these soldiers face.

Of those suffering, fewer than half seek treatment.<sup>3</sup> Without proper care, these veterans are more prone to destructive actions that bring them into conflict with the law. Many struggle with substance abuse<sup>4</sup> and may come into court with issues ranging from drunk driving, fighting, domestic violence, or worse. These invisible wounds can also lead to longer-term problems with the veterans such as homelessness,<sup>5</sup> unemployment and strained relationships, further increasing the likelihood they will end up in our criminal justice system.

Veterans Treatment Courts can stem this tide by intervening the moment veterans come into contact with the criminal justice system. By identifying the veterans upon arrest, their needs can be assessed and a treatment program can be developed. A collaborative approach to treatment that focuses on supervision of the veteran throughout the process can reduce recidivism, thereby reducing long-term costs for taxpayers and increasing public safety, while helping our veterans lead sober, healthy, and productive lives.

## II. ESTABLISHMENT OF TREATMENT COURTS

The first Veterans Treatment Court in Buffalo, NY, evolved from out of our experience with veterans who have participated in either the Buffalo Drug Treatment Court or the Mental Health Treatment Court or both. We realized over time that veterans needed a different kind of supervision and support, increased collaboration with law enforcement and the Veterans Administration, and speedy identification and referrals of eligible veterans into treatment. We decided to transfer veterans cases, that traditionally would be sent to the Drug or Mental Health Treatment Courts, to a centralized singular calendar of all eligible veterans. We hoped this would allow us to focus on the veterans’ unique needs and to use vet-to-vet mentoring to help the veterans build and achieve healthy goals.

We established the first Veterans Treatment Court in Buffalo, New York in January, 2008 after one year of planning. It was successful beyond our expectations. Word

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2 RAND CORP., *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* 44 (2008).

3 *Id.* at 101, 103.

4 Ismene Petrakis et al., 20 *AM. J. ADDICTIONS* 185, 188 (2011) (“The rates of substance use disorders among those with mental illness ranged from 21–35%.”)

5 VANESSA WILLIAMSON & ERIN MULHALL, *IRAQ & AFGHANISTAN VETERANS OF AM.*, *INVISIBLE WOUNDS: PSYCHOLOGICAL AND NEUROLOGICAL INJURIES CONFRONT A NEW GENERATION OF VETERANS* 10 (2009).

quickly spread. Today, the number of Veterans Treatment Courts is growing exponentially. By 2010, there were 24 operational courts in the United States.<sup>6</sup> A year later, the number had grown to 80 and as of mid-2012 there were 97 Veteran Treatment Courts with an additional 200 being planned. The courts are located throughout the United States, from Alaska<sup>7</sup> to Maine,<sup>8</sup> and are have even gone being considered overseas, with propose three Veterans Treatment Courts in Great Britain.

## A. Drug and Mental Health Court Model

Veterans Treatment Courts have only been in existence since 2008 so we do not have any data on their long-term success rates, but there is significant historical evidence that the general treatment court model works. Drug Courts and Mental Health Courts have been shown to reduce crime by an average of 7 to 14%<sup>9</sup> and we believe these numbers will also reflect the long-term success of Veterans Treatment Courts.

### 1. Drug Courts

Alternative treatments are not a new phenomenon in the United States. Veterans Courts are built upon the experience of over twenty years of experience with Drug Courts. The first Drug Court was started in 1989 and since that time, over 2300 Drug Courts have been created.<sup>10</sup> These courts target criminal offenders who have drug addiction and dependency problems and they focus on ongoing monitoring of court participants, abstinence, and sanctions to reinforce the court-imposed requirements.<sup>11</sup> The intensive court supervision includes mandatory drug testing, substance-abuse treatment, and other social services as an alternative to adjudication or incarceration. We decided to base our Veterans Courts in part on the Drug Court model because the Drug Court model has been proven to work.<sup>12</sup> “[T]he majority of studies observed reductions in re-offending among the Drug Court participants relative to the comparison participants,” who were sentenced to traditional correctional options.<sup>13</sup> Within the different models of Drug Courts, those with more strict accountability standards have been more effective than those with looser standards. The key to effective rehabilitative sentencing lies in the accountability

6 Posting of Kate Hoyt, A Second Chance: Veterans Treatment Courts, Veterans Affairs,

<http://www.blogs.va.gov/VAntage/2018/a-second-chance-veterans-treatment-courts> (Mar. 30, 2011).

7 Alaska Court System, Anchorage Veterans Court, Nov. 2011, <http://courts.alaska.gov/forms/pub-121.pdf>

8 Donna Brown, *Veterans Treatment Courts a Step Forward*, BANGOR DAILY NEWS, Mar. 26, 2012, <http://bangordailynews.com/2012/03/26/opinion/contributors/veterans-treatment-courts-a-step-forward/>.

9 *Drug Court Review*, VII NAT'L DRUG CT. INST. 177 (2010).

10 Sean Clark et al., *Development of Veterans Treatment Courts: Local and Legislative Initiatives*, in VII DRUG CT. REV. 171, 175 (2010).

11 *Id.*

12 U.S. GOV'T ACCOUNTABILITY OFF., PUB. NO. GAO-12-53, ADULT DRUG COURTS: STUDIES SHOW COURTS REDUCE RECIDIVISM, BUT DOJ COULD ENHANCE FUTURE PERFORMANCE MEASURE REVISION EFFORT 24 (2011). (Percentages of drug-court program participants re-arrested were lower than for comparison group members by 6 to 26 percentage points. Drug court participants who completed their program had re-arrest rates 12 to 58 percentage points below those of the comparison group.), available at <http://www.gao.gov/assets/590/586793.pdf>.

13 David B. Wilson, Ojmarrh Mitchell, & Doris L. MacKenzie, *A Systematic Review of Drug Court Effects on Recidivism*, 2 J. EXPERIMENTAL CRIMINOLOGY 459, 479 (2006).

of the person that is the subject of the treatment, and the communication between the treatment body and the body maintaining accountability.

The nature of the Drug Court model also appears to affect the court's effectiveness. Diversion and post-adjudication drug court models that either dismissed charges or expunged a conviction from an offender's record upon graduation appeared more effective than courts with mixed approaches and no uniform incentive for the completion of the court's requirements. A clear set of judicial contingencies can increase the amount of treatment received. A Drug Court that uses a single model with a standard incentive structure may be more effective in communicating these contingencies and their certainty to the offender.<sup>14</sup> We have used these lessons and have aimed to apply uniform incentives for our veterans courts as well.

The punishment and reward system used for all alternative treatment courts is based on adherence to the program. This is known as "operant conditioning" and has four necessary parameters to be successful. The first is certainty. This is the most important factor, and requires that sanctions or rewards be applied every time there is an infraction or achievement. Social scientists express this as a ratio with very concrete policy consequences, "for example, if Drug Court clients are sanctioned every time they fail to attend a treatment session, then the ratio of infractions to sanctions would be 1:1 . . . the scientific evidence is unambiguous that the smaller the ratio, the more powerful the effects for initiating a new behavior or stopping an old behavior."<sup>15</sup>

The second parameter is celerity, the temporal immediacy of the sanction or reward upon an infraction or achievement. Studies have shown increased efficacy the more often the drug court meets, as often as bi-weekly for those with the most serious drug history or anti-social predispositions.<sup>16</sup>

The third parameter is magnitude, or the severity of the punishment or the degree of reward offered for each infraction or achievement. Surprisingly, more is not always better. "Evidence reveals that sanctions tend to be least effective at the lowest and highest magnitudes *and most effective in the moderate range.*"<sup>17</sup> The most successful Drug Courts have been those that have a wide and creative range of punishments and rewards that allow systematic ratcheting of response to participant behavior rather than the simple options of probation or maximum prison time.<sup>18</sup>

The final parameter is fairness of the process, based on the participant's perception of how the first three parameters are applied. Perception of fairness depends on whether the participants feel they (a) had a fair opportunity to voice their side of the story, (b) were treated in an equivalent manner to similar people in similar circumstances, and (c) were accorded respect and dignity throughout the process."<sup>19</sup>

Several additional factors have been shown to contribute to the success of drug treatment courts. This includes the amount of communication between the court and

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14 *Id.* at 480.

15 Douglas B. Marlowe, *Strategies for Administering Rewards and Sanctions*, DRUG COURTS, 317, 319 (JAMES E. LESSENGER & GLADE F. ROPER, eds., 2007).

16 *Id.* at 321.

17 *Id.* at 322 (*emphasis added*).

18 *Id.* at 322–23.

19 *Id.* at 324.

the treatment provider and the type of treatment the provider utilizes.<sup>20</sup> Communication between the court and the treatment provider provides tangible benefits because with enhanced supervision, the participant takes the program more seriously.<sup>21</sup> Also, the court can detect failures in the program and the individual's failures early and can hold all parties accountable and better influence the type of treatment needed for the individual.<sup>22</sup> The type of treatment utilized is also influential, as programs based on cognitive-behavioral psychological principles and programs that address criminal thinking directly are more effective compared with other programs.<sup>23</sup> We have had the benefit of these lessons learned and incorporated them when we created the Veterans Treatment Court.

## 2. Mental Health Courts

Drug Courts opened the door to the creation of Mental Health Treatment Courts, which similarly focus on monitoring participants and connecting participants with treatment services tailored to meet their individual needs.<sup>24</sup> Treatment plans created for participants in these courts must be more individualized and flexible than Drug Courts because of the wide array of mental illnesses.<sup>25</sup> Since many veterans are suffering from mental illness as a result of their military service, Veterans Treatment Courts are run very much like Mental Health Treatment Courts, with the added support of the VA and veteran mentors.

Like Drug Courts, a Mental Health Court participant is assigned to treatment professionals and a system of sanctions and rewards are available to ensure compliance with the plan, with a focus on good-faith efforts in treatment sessions. Participants are also assigned a case manager or advocate whose primary objective is to coordinate and supervise the treatment plan.<sup>26</sup> Unlike Drug Courts, where success can be measured simply in length of sobriety, Mental Health Courts either measure the length of time successfully attending treatment or threshold levels of stability.<sup>27</sup> This requires closer monitoring and the use of more advanced treatment professionals, such as psychologists, to be able to assess the participant's progress as an individual.

Mental Health Courts have also been very effective at reducing recidivism with those who graduate from the treatment program. For example, the Clark County Court in Nevada has determined that participants were four times less likely to be arrested one year after enrollment in the program compared to the year prior.<sup>28</sup> A study of the San Francisco mental health court found that "the likelihood of mental health court participants being charged with any new crime was 26% lower . . . and the likelihood of . . . being charged with new *violent* crimes was 55% lower than that of comparable individuals who

20 Wilson, Mitchell & MacKenzie, *supra* note 14, at 480.

21 *Id.*

22 *Id.*

23 *Id.* at 481.

24 DRUG CT. REV., *supra* note 10, at 176.

25 *Id.*

26 RICHARD SCHNEIDER, HY BLOOM & MARK HEEREMA, MENTAL HEALTH COURTS: DECRIMINALIZING THE MENTALLY ILL 80 (2007).

27 *Id.* at 83.

28 RISDON N. SLATE & W. WESLEY JOHNSON, CRIMINALIZATION OF MENTAL ILLNESS: CRISIS AND OPPORTUNITY FOR THE JUSTICE SYSTEM 156 (2008).

received treatment as usual.”<sup>29</sup> A North Carolina study similarly showed that “two years after defendants exit the court, the proportion of defendants rearrested and the mean number of re-arrests [was] significantly lower than in the two years before their mental health court entry.”<sup>30</sup> The mental health court participants’ reduced recidivism *two years* after graduating from the program shows that the staying power of this treatment is significant even after the participants are removed from the supervision of the treatment court.

After evaluating the successes of Drug Court and Mental Health Courts, it was clear that veterans suffering from substance abuse and mental health issues could be helped by an alternative treatment program. Veterans Courts may prove even more successful than Drug or Mental Health Courts because not only do veterans have the proven ability to follow directions and lead a law-abiding lifestyle as proven through their military service, but they have a unique brotherhood and sisterhood with other veterans and the volunteer veteran mentors provide an important network of support to help the veteran succeed in the program – and in life.

## **B. The Buffalo Veterans Treatment Court —Planning and Creation**

Over the years as Operation Iraqi Freedom and Operation Enduring Freedom continued, I noticed more and more veterans were coming through my courtroom, specifically in the Drug and Mental Health Treatment Courts. It became apparent that traditional treatment courts were limited in fully serving the veteran population. Veterans derive from a unique culture and have unique experiences and needs that were not being met. I also noticed that the veterans had positive reactions to the veterans who were working in the court: Jack O’Connor, who served with the Army’s 82<sup>nd</sup> Airborne, and the late Hank Pirowski, who served as a Marine in Vietnam. When I matched a discouraged veteran with veterans O’Connor and Pirowski, right away after a brief meeting the veteran’s behavior had totally changed. He stood erect and gave more open responses. That’s where we got the idea to set aside a day just for veterans.

### **1. Building Vital Partnerships**

We initially set up a meeting with the VA hospital in Buffalo to see what assistance it could provide. The hospital agreed to place a Behavioral Health Supervisor and a secure VA computer in the courtroom so veterans could immediately be checked for benefit eligibility and clinical appointments could be made on-site. Subsequently, the VA Benefit Affairs Department also placed a Benefit Specialist in court to provide access for veterans to inquire about benefits earned, or to submit claims for benefits earned based on the veterans military service. We also joined together with veterans advocates organizations including Vietnam Veterans of America, Veterans of Foreign Wars, Paralyzed Veterans of America, Order of the Purple Heart, AMVETS, and other organization including W.N.Y. Veterans Project, the Buffalo Police Department, the Buffalo Veteran’s Administration

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29 Dale E. McNeil & Renée L. Binder, *Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence*, 164 AM. J. PSYCHIATRY, 1395, 1401 (2007) (emphasis added).

30 Virginia A. Hiday & Bradley Ray, *Arrests Two Years After Exiting a Well-Established Mental Health Court*, 61 PSYCHIATRIC SERVS. 463, 467 (2010).

Health Care System, the Buffalo Criminal Courts, the Buffalo Drug and Mental Health Treatment Courts, Erie County Pre-Trial Services and Court Outreach Unit Referral to Treatment Services (C.O.U.R.T.S. Program). We also recruited mentors, all volunteers and veterans who were dedicated to the support and care of other veterans.

Another important partner is the VA's Veterans Justice Outreach (VJO) Initiative, whose mission is to reach out to the criminal courts at the same time the criminal courts are beginning to reach out to the VA. The VJO program is tasked with educating the legal system, law enforcement, and jails on unique issues facing today's veterans. Once veterans enter the legal system, VJO specialists help them avoid unnecessary incarceration through integration into VA substance and mental health treatment programs.

## ***2. Structure of the Buffalo Veterans Treatment Court***

The Buffalo Veterans Treatment Court we created is a voluntary program that connects veterans with services that can provide substance abuse, alcoholism and mental health treatment. This treatment is coupled with academic or vocational skills improvement, and active assistance with residential, outpatient and/or transitional services leading to job placement and job retention.

The process identifies veterans upon arrest. The veterans are then assessed for eligibility and referred to the Veterans Treatment Court. Veterans may enter the program at multiple stages of the criminal justice process including pre-disposition, post disposition, and as probation violation cases. Pre-disposition cases are typically dismissed or resolved by a non-criminal disposition upon successful completion of Veterans Treatment Court. Many cases involve veterans that are required to plead guilty to the charges against them but their sentences are stayed pending completion of the program. Upon successful completion, typically they may be allowed to withdraw their plea of guilt and have their charges dismissed or resolved by a non-criminal disposition. Other cases involve participation in Veterans Treatment Court as an alternative to incarceration or re-sentencing to Veterans Treatment Court as a result of a violation of probation. Upon referral to the court, the veterans are then linked with services that meet their individual needs. A VA liaison works with the veterans to obtain releases of information, facilitate linkage for services, and works with the courts to provide status reports regarding the veteran participant's treatment, results of toxicology reports, appointments, case management and, if need-be, crisis management. The Federal Office of Veterans Benefit Affairs also works with the veterans to ensure he or she is receiving pension or disability, if warranted, and works to correct any errors on the veteran's Certificate of Release or Discharge from Active Duty, DD-214, which can affect benefit eligibility. The court's staff and volunteer veteran mentors then assist the veteran with finding an array of stabilization services. This can include obtaining emergency financial assistance, counseling services, employment and skills training, safe housing, and other supportive services. The mentors act as friends to the veteran. They are the participants' coaches and support throughout the process.

During their time in the treatment court, which is typically between 12 and 18 months, participants come in for regular status hearings. Their treatment plans and conditions of treatment are reviewed and adjusted as necessary. Rewards are offered for adherence to court conditions and, if needed, sanctions are given for non-adherence.

We do not have a scale or chart for how many chances a participant receives before he or she is removed from the program but, instead, situations are evaluated on a case-by-case basis, and look at the participant's level of commitment to the program. Individuals taking part in this program are going through challenges of mental health issues or addiction issues or both. The program takes patience and courage on behalf of everyone involved, as well as a great amount of oversight. The sanctions and rewards can work to motivate the participants to stay focused on what they need to do to become and remain healthy and sober.<sup>31</sup> Upon successful completion of the program, many will have their records wiped clean

### **C. Structuring the Veterans Treatment Courts**

There are a significant number of factors to consider when determining how to structure a Veterans Court and various current Veterans Courts have used a number of different models. They vary with respect to types of veterans eligible, types of crimes eligible, procedural posture when entering into the program, and results upon completion of the program.

#### **1. Eligible Offenses**

With respect to eligibility, the Buffalo court and many others accept all veterans with a clinical diagnosis of serious and persistent mental health disease, or drug or alcohol addiction. We believe all veterans should be eligible because all veterans deserve special consideration for their willingness to serve and defend their nation. Other courts restrict eligibility to only veterans who have deployed to a combat zone, only veterans who qualify for services at the VHA, or only those with certain mental health or substance abuse diagnoses.<sup>32</sup>

The types of crimes that determine eligibility vary widely, but no Veterans Court accepts very serious violent crimes such as rape or murder. The Buffalo Veterans Treatment Court will hear any non-violent felony or misdemeanor committed by a veteran. These are often charges of driving while intoxicated, theft offenses, or drug possession offenses. Violent offenses are evaluated on a case-by-case basis with the District Attorney's office. For example, some domestic violence-related issues may be eligible for the Veterans Treatment Court where the spouse and other directly-affected family members are asking for help for the veteran. In determining eligibility for these defendants, it's a matter of distinguishing those whose behavior has changed related to their service, compared with those with a predisposition for domestic violence. Symptoms associated with injury from combat such as post-traumatic stress disorder or traumatic brain injury can manifest in outbursts of anger. This is wholly separate from those who commit domestic violence prior to entering the service and then continue after they leave.

Other courts take different routes. The Veterans Treatment Court in Los Angeles, for example, only accepts veterans facing felony charges,<sup>33</sup> and others accept violent

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31 For more information on the process, see Cheryl Corley, *Judge: Keep Vets Out of Jail*, NPR, June 18, 2008, <http://www.npr.org/templates/story/story.php?storyId=91633166>.

32 *Id.*

33 Nicole Santa Cruz, *O.C.'s Combat Veterans Court Helps Ex-Warriors Fix Their Lives*, L.A. TIMES, Mar. 26, 2012, <http://articles.latimes.com/2012/mar/26/local/la-me-oc-veterans-court-20120326>.

offenders with other significant caveats and checks, taking into account such things as the degree of violence, the offender's prior record, and the victim's view.<sup>34</sup> Judge Wendy Lindley of California's Orange County Combat Veterans Court, which accepts violent cases other than murder or sexual assault, makes the strong argument that "if our goal is to protect our communities and make them a safer place, then why wouldn't we take cases of violence?"<sup>35</sup>

## 2. Incentives

As mentioned above, the Buffalo court requires many participants to plead guilty and their sentences are stayed pending completion of the program. There is some evidence that requiring a plea of guilty or no-contest often produces better long-term results. The participants do better in the system and graduate more often than individuals who are put into diversionary status.<sup>36</sup> It's a "kind of a stick [because] you know what's going to happen to you if you don't do well."<sup>37</sup> This is consistent with the finding from Drug Courts, discussed above, that the certainty of a sanction or reward is the most important factor in the court's effectiveness as the veteran-defendant is assured that there is already a conviction that will be levied upon him or her if they fail in the Veterans Court.<sup>38</sup> The difficulty with requiring a guilty plea is that court records on the internet can have long-standing consequences, even if the charge is eventually dismissed. As a result, others believe veterans would be better served in a diversion program, which would have the added benefit of incentivizing participation in the program since some veterans who are given the choice between a long, court-ordered treatment program and a jail sentence will opt for the jail sentence.

The result of successful completion of the veterans treatment program ranges from completely removing the charge from the veteran's record, as we do in Buffalo, to a case-by-case determination of a more favorable disposition of the case. In California, for example, convictions for crimes of violence and driving while intoxicated remain on the record after graduation whereas in Minnesota participants receive a better disposition in exchange for their cooperation and success in the program. In some cases this might result in a complete dismissal, or a lesser charge.<sup>39</sup>

## 3. Treatment

No matter which type of Veterans Treatment Court is created, the most important factor is that participants receive the medical and/or psychological care they require and any other assistance they need to stay out of trouble and lead productive lives.

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34 William H. McMichael, *The Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets*, ABA J., Nov. 1, 2011, [http://www.abajournal.com/magazine/article/the\\_battle\\_on\\_the\\_home\\_front\\_special\\_courts\\_turn\\_to\\_vets\\_to\\_help\\_other\\_vets/](http://www.abajournal.com/magazine/article/the_battle_on_the_home_front_special_courts_turn_to_vets_to_help_other_vets/).

35 *Id.*

36 *Id.*

37 *Id.*

38 Douglas B. Marlowe, *Strategies for Administering Rewards and Sanctions*, DRUG COURTS, 317, 319 (James E. Lessenger & Glade F. Roper, eds., 2007).

39 Mador, *supra* note 2.

### III. RESULTS AND RECIDIVISM

Jack O'Connor, our mentor coordinator, often says that my role is analogous to that of a commanding officer for the veteran participants and the mentors act much like non-commissioned officers who make sure orders are carried out. Military people have proven through their service that they are comfortable with structure, capable of following directions, and their ability to do so provides yet another reason to give them this opportunity. When participants come in for their periodic status reviews, they share with me not only how their treatment is progressing, but also about their employment, their families, and other updates in their lives. One of the participants even brought in an essay he had written for one of his college classes where he received a 97%. He graciously allowed me to keep the essay, which I have to this day. The importance of these personal connections and the work of the mentors with the participants cannot be overestimated. Mentors are, without a doubt, a large part of the reason Veterans Courts and other treatment courts have been so successful.

As of 2011, there have been 71 graduates of the Veterans Treatment Court in Buffalo and, of those, we have had a zero percent recidivism rate. Similarly, the Veterans Treatment Court in San Jose, founded by my friend, Judge Stephen Manley, has had 72 graduates since it started in 2008 and from those, there have only been a handful of new convictions. Nationally, as of late 2011, early statistics showed that 75% of defendants who finish the program are not rearrested for the next two years.<sup>40</sup> In addition to drastically lowered recidivism rates, graduates of Buffalo's Veterans Treatment Court have experienced drastic, positive life changes. They are clean and sober and actively addressing any mental-health needs. All of them are either employed or pursuing further education. Many have been able to mend strained relationships with family and friends, and those who were homeless have all been able to attain stable housing.

### IV. CHALLENGES OF VETERANS COURTS

Veterans Courts are a work in progress. There are several challenges that face the courts, including those who oppose a separate program for veterans, challenges of obtaining funding, and getting through the "warrior mentality" that many veterans have that causes them to be reluctant to admit they have a problem and hesitant to accept treatment.

#### A. Policy Challenges

There will always be those who argue that using a collaborative approach for veterans in the criminal justice system is a "get out of jail free" card. But that is not what Veterans Courts do. They provide an alternative to punishment, mandate treatment and close supervision, and hold the veterans to strict requirements. The result is, hopefully, that public safety is increased, the veteran will not re-offend, and he or she can become a functioning member of society instead of continuing to suffer the invisible wounds of war. The program is by no means a free pass for participants. It is a demanding and dif-

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40 McMichael, *supra* note 34.

ficult program. One veteran in the program in Tulsa, Oklahoma, described the processes he is required to follow in the court as “a very hard program.”<sup>41</sup> He undergoes counseling, works with a volunteer veteran mentor, auto-tests for sobriety three times a day, and regularly attends Alcoholics Anonymous meetings.<sup>42</sup>

Detractors also argue that the Veterans Treatment Courts create two different systems.<sup>43</sup> What we have seen, though, is that problem-solving courts are much better equipped to address the issues of these veterans. Most jails and prison do not have the appropriate substance abuse, chemical dependency, and mental health treatment programs to help the problems that plague so many veterans in the criminal justice system. The strongest argument, however, comes from the statistics that show these courts help reduce recidivism, and they help participants lead sober, healthy, and productive lives.

## B. Funding Challenges

All courts have budget constraints that limit the number of programs that can be created. Veterans Courts are a wise use of limited state or local funds because they can work to save taxpayers substantial amounts of money. In addition to helping participants turn their lives around, Drug Courts, for example, are proven to save nearly \$27 for every dollar invested.<sup>44</sup> Veterans Courts will likely see similar savings from reducing the amount of money spent to keep inmates locked up, as Drug Courts have done in spending an average of one-tenth as much on treatment compared with imprisonment.<sup>45</sup> This is in addition to the fact that untreated mental health problems and addiction can lead to additional crimes, which even further increases costs.

Some courts have found ways to work around a lack of funding. All of the judges who work in Pennsylvania’s Veterans Courts are managing them on top of their current calendar of cases. They, like Buffalo and many other courts, use volunteer mentors to help the effort. For a number of courts the only federal assistance received is from the Veteran’s Administration, which works with the courts to provide mental health treatment, job training and other services.<sup>46</sup>

When addressing funding concerns, perhaps the most important point is that, unlike Drug and Mental Health Courts, in which the local jurisdiction is picking up the tab for their participants’ treatment, the vast majority of Veterans Court participants receive their treatment through the federally-funded VA system. This factor makes Veterans Courts particularly attractive in an area of shrinking state and local budgets.

The impact of creating a Veterans Court on court budgets will vary depending upon the size of the veteran population the court serves, the specific design and components

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41 *Id.*

42 *Id.*

43 *Id.*

44 National Association of Drug Court Professionals, <http://www.nadcp.org/learn/facts-and-figures> (last visited Apr. 3, 2012).

45 *Drug Courts Save Lives and Money*, VIRGINIAN-PILOT, Apr. 21, 2009, <http://hamptonroads.com/2009/04/drug-courts-save-lives-and-money>.

46 Erika Beras, *Push for Federal Funding for Veterans Courts Starts in Pennsylvania*, 90.5. ESSENTIAL PUB. RADIO, Mar. 26, 2012,

<http://www.essentialpublicradio.org/story/2012-03-26/push-federal-funding-veterans-courts-starts-pennsylvania-10579>.

of the court, and the resources already available or those needed. For example, Buffalo's Veterans Treatment Court did not have any additional funding to implement the program and to operate its first year. The Buffalo court was able to keep cost relatively minimal during that first year by using existing Drug and Mental-Health Courts staff and resources that were already funded and available. In addition, the peer-mentor program, which is a major component of Buffalo's Veterans Treatment Court, is staffed completely by volunteers.

Many programs rely in their first year or years on existing funding and resources. Additional resources may be available through the U.S. Department of Justice Adult Drug Court Discretionary Grant Program or a Bureau of Justice Assistance Drug Court grant. The Justice Department's Bureau of Justice Assistance (BJA) provides money for a five-day team training of court officials by the National Drug Court Institute at one of four mentor court sites—Buffalo, Tulsa, and Orange and Santa Clara counties in California. The Substance Abuse and Mental Health Service Administration (SAMHSA) provides funding for the mentor courts' administrative training costs and provides travel stipends for one-day training visits.<sup>47</sup>

The 2010 Veterans Treatment Court Planning Initiative (VTCPI) constitutes the first Veterans Treatment Court training program in the nation. The VTCPI curriculum is a collaborative effort of the BJA, the Department of Veterans Affairs, the National Drug Court Institute (NDCI), and numerous Veterans Treatment Court professionals.<sup>48</sup> VTCPI grants have been awarded to many communities and amounts are based on the communities' veteran populations, problems among these populations, and other factors.

### **C. Overcoming the “Warrior Mentality”**

The “warrior mentality” is a big obstacle to overcome with respect to the veteran's willingness to seek treatment. Many people who served in the military, especially those from earlier generations, perceive that treatment may be for the weak. We're working to change that paradigm and teach veterans that it takes courage and strength of a warrior to ask for help. The Veteran Court model provides a community of warriors in which the veteran can be comfortable in overcoming this stigma and their service-related mental health or chemical dependency problems.

## **V. FUTURE OF VETERANS COURTS**

As legislators see the success of Veterans Courts and courts push for their creations, a number of bills have been introduced at the federal and state level to provide funding for them.

A number of states have passed legislation to promote Veterans Treatment Courts or veterans assistance. Colorado, Illinois, Nevada, Texas, and Virginia are examples of states that have passed legislation calling for the statewide establishment of Veterans

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47 McMichael, *supra* note 34.

48 National Drug Court Institute, Veterans Treatment Court Planning Initiative, <http://www.ndci.org/training/design-drug-court/veterans-treatment-court-planning-initiative> (last visited Apr. 9, 2012).

Treatment Courts.<sup>49</sup> California, Minnesota, and Oregon are among the states that have passed legislation that permits judges to order treatment, instead of prison, for veterans suffering from combat - related mental health disorders.<sup>50</sup>

## VI. CONCLUSION

Alternative treatment programs have clearly been proven to work. As more and more Veterans Treatment Courts are established in the United States, veterans will be able to get the individualized treatment they need to address their post-traumatic stress disorder, traumatic brain injury, depression, and substance abuse issues caused by their service. These programs will keep our veterans out of prison and help them regain or remain productive members of society while in the long run saving money for taxpayers and better-protecting public safety.

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49 COLO. REV. STAT. ANN. §§ 13-3-101, 13-5-144 (West); ILL. COMP. STAT. ANN. CH. 730 § 167 (West); TEX. HEALTH & SAFETY CODE ANN. § 617.001 (West); VA. CODE ANN. § 2.2-2001.1 (West).

50 CAL. PENAL CODE § 1170.9 (West); MINN.STAT. § 609.115, Subd. 10 (2008) (providing for a special process at sentencing if the defendant is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist); OR. REV. STAT. ANN. § 135.886(3) (West).

## TEN KEY COMPONENTS OF VETERANS TREATMENT COURTS

Veterans Treatment Court is a hybrid Drug and Mental Health Treatment Court. In structuring the Veterans Treatment Court, we have adopted the Department of Justice's Ten Key Components of Drug Courts, in conjunction with the ten essential elements of Mental Health Courts, with slight modifications:

**Key Component #1: Integrate alcohol, drug treatment, and mental health services with justice system case processing.** A team approach is required to promote sobriety, recovery, and stability.

**Key Component #2: Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.** In Veterans Courts, prosecutor and defense counsel shed their traditional adversarial courtroom relationship and work together as a team.

**Key Component #3: Eligible participants are identified early and promptly placed in the Veterans Treatment Court program.**

**Key Component #4: Veterans Treatment Court provide access to a continuum of alcohol, drug, mental health and other related treatment and rehabilitation services.** Many times issues such as mental illness and addiction co-occur with homelessness, unemployment, and family problems. Here, the veteran peer mentors are essential to support the veteran, improving the chances for sobriety and law-abiding behavior.

**Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing.**

**Key Component #6: A coordinated strategy governs Veterans Treatment Court responses to participants' compliance.** Veterans Treatment Court rewards veterans accomplishments, success, and commitment to their program as well as responds to noncompliance.

**Key Component #7: Ongoing judicial interaction with each Veteran is essential.** Ongoing judicial supervision also communicates to veterans that someone in authority cares about them and is closely watching what they do.

**Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.** Management and monitoring systems provide timely and accurate information about program progress. Program monitoring provides oversight and periodic measurements of the program's performance against its stated goals and objectives. Information and conclusions developed from periodic monitoring reports, process evaluation activities, and longitudinal evaluation studies may be used to modify program

**Key Component #9: Continuing interdisciplinary education promotes effective Veterans Treatment Court planning, implementation, and operations.** Education and training programs help maintain a high level of professionalism, provide a forum for solidifying relationships among criminal justice, Veteran Administration, veteran volunteer mentors, and treatment personnel, and promote a spirit of commitment and collaboration.

**Key Component #10: Forging partnerships among Veterans Treatment Court, Veterans Administration, public agencies, and community-based organizations generates local support and enhances Veteran Treatment Court effectiveness.** Because of its unique position in the criminal justice system, Veterans Treatment Court is well suited to develop coalitions among private community-based organizations, public criminal justice agencies, the Veteran Administration, veterans and veterans families support organizations, and alcohol and other drug and mental health treatment delivery systems. Forming such coalitions expands the continuum of services available to Veterans Treatment.