

The Perfect Storm: Veterans, culture and the criminal justice system



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Justice Policy Journal • Volume 10, Number 2 (Fall)

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Abstract

In 2008 an article was published that suggested an *Emerging Storm*, relative to veteran entanglement in criminal justice, was approaching (Brown, 2008). Well, that storm appears to have hit land. The actual/ potential damage is likely to depend upon the responses of the legal system and the American public at large. There are many veterans who appear to return to the civilian culture and manage to *hold their own* without significant problems. Other veterans experience socio-cultural problems, along with psychological issues, but are able to camouflage those problems and issues. Some veterans are less fortunate and they find themselves confronting criminal charges. Some end up behind bars for extended periods of time. This article addresses the complexities associated with understanding why some veterans appear *normal* while other veterans become *entangled in our*

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criminal justice system. Specifically, we will be addressing issues related to socio-cultural differences and irregularities between civilian and military cultures, cultural competency in relation to psychology and the court system. The lack of cultural competency within the legal system results in what seems to most veterans as disrespectful and apathetic legal approaches that do not give them the respect they feel they have earned and ignores the discipline and risk to their own life they manifested while serving in war-time. Most often the cultural and core values that they had inculcated in them by military training and experience that ironically resulted in getting caught up in the legal system are simply unrecognized or ignored. It is impossible to understand psychological problems without understanding their social and cultural backgrounds. Conversely, it is also impossible to fully appreciate social or cultural phenomena without an understanding of psychological mechanisms (Fromm, 1941).

There is nothing more wicked, more disastrous, more widely destructive, more deeply tenacious, more loathsome than war... Whoever heard of a hundred thousand animals rushing together to butcher each other, as men do everywhere?

--Erasmus

Introduction

Approximately 2.2 million service members, at the end of 2012, have been deployed to Operation Enduring Freedom (OEF – Afghanistan) and Operation Iraqi Freedom (OIF – Iraq). Over 6,600 U.S. military fatalities have resulted from these wars, along with nearly 50,000 wounded military personnel (Department of Defense, 2012). Beyond the data pertaining to death and morbidity are the impending consequences of war that the American public often elects to ignore. One element of the American public that often eschews these artifacts of war is the criminal justice system.

It would be most interesting to travel back to the 16th Century and ask Erasmus about his view of today's world and the obsession with war that America has acquired over the past 100 years. Politically, Erasmus saw war as a positive tool for leaders of countries engaged in war – once war is waged the state is at the mercy of a few. It may be naive to assume that those who prefer war could ever be merciful or have the capacity to foresee post-war consequences.

It is inconceivable for many Americans that military veterans could return home only to become incarcerated in our jails and prisons. The obvious question

surfaces – *how can those who fought for freedom select a course of captivity?* Veterans do not return home with a goal of becoming captives in jails and prisons. In many cases veterans, who have been over-trained (Trained to react instantaneously without hesitation – muscle memory) by the military, return home with the skills and cultural values they acquired during their military training and subsequent experiences. Those skills and cultural values have little importance in the civilian culture. Many veterans find themselves stripped of their former civilian cultural values and social skills, and they now only possess the military skills and values that were adaptive in the military but are now at best useless and at worst maladaptive. After experiencing extended separation from a society that once encouraged and applauded their entry into the military, and later praised and celebrated their involvement in war, many veterans find themselves isolated or alone in a setting where their military-induced values and beliefs are simply obsolete or irrelevant. It is true; many veterans do end up behind bars.

Soon after the events of 9/11 the president of the United States made an attempt to reinvigorate the civilian population by telling them to *go shopping* (Bacevich, 2008). To promote his enticement for the public to go shopping, President Bush signed documents that provided money for people to buy things. In 2003 he persuaded Congress to pass the 2003 tax relief measure (Bacevich, 2013). Less than 1 percent of the American population disregarded that encouragement and instead either joined or remained in the U.S. Military. In 1973, at the end of the Vietnam War, the *draft* was abolished. Citizens would no longer be conscripted to go to war. Thus, going shopping made perfect sense to the more than 99 percent who did not serve in the military after 9/11. “The most significant development in the conduct of war in the twentieth century was the elimination of the American people from the conduct of the wars of the United States” (Lewis, 2012, 486).

Over 2.3 million U.S. service members have been deployed to combat areas in Iraq and/or Afghanistan over the past 11 years. Similarly, about 2.6 million service members served in the Vietnam War. Multiple deployments have affected personnel of regular military units as well as many reserve and National Guard units throughout the Iraq and Afghanistan wars. These multiple deployments have affected U.S. military readiness and performance with cases of posttraumatic stress (PTSD) reaching record levels (Fisher, 2013; Department of Veteran’s Affairs, 2012; Tanielian and Jaycox, 2008). In 2002, there were 133 deployed active duty military personnel who were diagnosed with PTSD, compared to 14,031 PTSD diagnoses among deployed military personnel in 2012. Between 2002 and 2012 a total of 103,792 active duty deployed military personnel were diagnosed with PTSD. Over 24,000 active duty military personnel who were not deployed were diagnosed with

PTSD during the same period of time (Fisher, 2013). The repercussion of those high PTSD levels has required many of those who have been discharged from the military to *go shopping* for attorneys to assist them in their defense in criminal courts across the country (Brown, 2014).

This article addresses multiple assimilation problems related to veterans and their attempt to navigate back into the civilian culture, with a particular focus on veteran criminal justice entanglement and incarceration – processing veterans through the criminal justice system and depositing the *remnants* into correctional facilities. One of our goals is to educate those who are directly or indirectly involved in the processing of veterans through the criminal court system in America. Direct involvement includes members of the criminalization process model of criminal justice, which include legislators, law enforcement officials, defense attorneys and prosecutors, judges, and corrections officials (Shelden, et al., forthcoming). It is the legislative body that sets the laws and rules by which the courts address in all criminal proceedings. Those who have an indirect involvement in the processing of veterans through the criminal court system include people who are outside the criminalization model. In many cases, people do not become concerned or interested in the criminalization process unless they become personally involved. If they become victims of crime, or if they are charged with a crime, or in the event they are called for jury duty, they will likely develop an interest in the process.

Shaping Public Perceptions: Myths of the Greatest Generation

One method often used to discount the remnants of war is to create myths that are either acceptable or tolerable to the public. Often, these myths suppress the true repercussions of war and replace them with artificial presentations that are contradictory to the reality of war. These myths often camouflage the impact of war on those veterans who fought in the war. They often conceal the problems that veterans encounter as they attempt to find their niche, once again, in the civilian culture. They tend to conceal the fact that the family members of veterans experience extreme hardships associated with adjustment problems that go largely unnoticed. These myths also obscure the reality that many veterans become entangled in the criminal justice system – as do many of their family members. The myths associated with the term *Greatest Generation* have (Brokaw, 1998) had a profound influence on America's perception of veterans and war, largely through the efforts and success of the work product of the culture industry (e.g., Mass

Media, Hollywood, and Politicians). This industry has glorified war and created cultural standards, absent of a social reality foundation, that have been unattainable for post-World War II veterans to reach. The victories in World War II established the *bar* by which all subsequent wars or armed conflicts involving use of U.S. military in the 20th and 21st centuries are measured.

The complete list of U.S. military interventions since World War II is much too long to include in a single article. An abbreviated list includes the Korean War, the Vietnam War, Dominican Republic Invasion, Grenada, Panama Invasion, Gulf War I, Somali Civil War, Bosnian War, Kosovo War, Afghanistan War, Iraq War, war in Pakistan, and the Libyan Civil War. Participants of these post-World War II wars have never achieved the standards of victory developed by the culture industry after World War II. Veterans who have fought and served in these subsequent wars have never really earned the recognition or respect of the American public who has been subjected to the myths of the greatest generation. One explanation is that when World War II veterans returned home they didn't complain about their symptoms of posttraumatic stress disorder or their exposure to Agent Orange or Depleted Uranium. The World War II generation of veterans did not cost the public tens of millions of dollars for prescription drugs provided by the Veterans Administration. They came home from war, got married, had children, went to work, purchased homes, enjoyed their ritual of a couple martinis for lunch or a few beers after work, and lived the *American Dream*. After all, their war ended in a clearly defined victory. World War II veterans became the centerpiece of the greatest generation.

American society often demonstrates confusion when subsequent wars produce outcomes that fail to measure up to the glorification of World War II and the portrayal of that generation's subscription to duty, honor, country, and acceptance of personal responsibility. After all, the greatest generation survived the Great Depression, developed a massive military machine, defeated Nazi Germany, Italy, and Japan, and completed achievements never before witnessed on earth (Brokaw, 1998).

In reality, however, the greatest generation continued support of the Jim Crow system in military and civilian life both during and after World War II (Alexander, 2012). Racial tensions continued. Businesses often refused to hire black workers during this period – until the War Manpower Commission would step in and exert their power (Anderson, 1981). In retaliation, white workers often held *hate strikes*, and many unions refused to allow blacks into their membership (Anderson, 1981; Moore, 1996). Child neglect and juvenile delinquency increased during the greatest generation period, and when consumer goods became absent in stores many

members of the greatest generation turned to the black market that thrived throughout World War II (Rose, 2012). Another prevailing myth associated with the greatest generation is linked to Brokaw's claim that the greatest generation was the "last generation in which, broadly speaking, marriage was a commitment and divorce was not an option (Brokaw, 1998, 231). Research reveals that marriages spiked right after World War II, but steadily declined over the following decades. Divorce rates reached an all-time high right after World War II (24 per 1,000), but declined to 15 per 1,000 in the 1950s and then increased to 40 per 1,000 in the 1970s (Shiono and Quinn, 1994). The culture industry has also failed to point out that the greatest generation produced a generation of children who grew up and became hippies and anti-war protestors throughout the Vietnam War, and created recreational drug use in the popular culture, which has resulted in decades of fighting a drug war.

The greatest generation has been applauded for fighting and winning the *good war*, where the terms duty, ideology, and patriotism are celebrated by two of the leading promoters of the greatest generation (Terkel, 1984; Brokaw, 1998). The true sense of duty embraced by soldiers, sailors, and Marines during World War II was typically demonstrated in their commitment to each other's survival in Africa, Europe, and the Pacific (Stouffer et al., 1949; Wood, 2006; Rose, 2012). Wood, who, in 1944, was severely wounded in France, presents a different view of that war, and states,

Those who lost family members or were unfortunate enough to be Japanese or other minorities, and particularly those of us who fought that war, quickly learned that World War II was about one thing and one thing only: killing (Wood, 2006: 19).

Stouffer et al. (1949), following of a study of more than one-half million soldiers in World War II, concluded that neither ideology nor patriotism were major motivating factors for soldiers in combat. The main motivations for these soldiers were unity and the bonds that soldiers formed with each other.

Soldiers, sailors, Marines, and airmen have struggled to meet public expectations of the greatest generation since World War II. Korea is best known as the *forgotten war*. Many Korean War veterans have been confronted with the question, "Was the Korean War a real war?" (Butcher, 2013). Vietnam veterans have struggled with the legacy of the My Lai incident and multiple other horrific actions that occurred during that war (Jensen-Stevenson, 1997; O'Brien, 1998; Lifton, 1998; Nelson, 2008; Turse, 2013). Gulf War I, the *short war*, lasted briefly, and the remembrances of that war have been placed on a shelf and largely ignored or forgotten unless the term Gulf War Syndrome surfaces. The on-going war in Afghanistan still plagues American society today. Like those who fought in the

Vietnam War, the current generation of veterans will have to live with the stigma that they did not really win their wars – not like the fighting men of the greatest generation who acquired unconditional surrenders from the enemy. Of course, they also must navigate through an entirely different economic system compared to their greatest generation predecessors.

Many military personnel who have experienced combat have a difficult time identifying with the glorification of war by the culture industry. War is not about glory. War is about killing. Soldiers and Marines confronting the enemy do not go to a war zone thinking about *sovereign political entities* or *nation-states* or participating in some *patriotic duty exercise*; terms and concepts that often appear in political and academic presentations and publications. Instead, they are deployed to a war zone wondering if they can fulfill the expectations and sense of responsibility to kill the enemy and win the war that were instilled during their military indoctrination and training – *will I be able to identify the enemy and kill him? Will I be killed?* However, it may not be fair to only disparage academics and politicians for disregarding the reality of war, or even the media for that matter. After all, the vast majority military manuals, including those manuals pertaining to infantry training and tactics, rarely employ the words *death* or *kill*. Military training cadres (e.g., Drill Sergeants and Drill Instructors) are the ones who are delegated the responsibility to instill those concepts in military recruits (Brown, 2010).

The Data

Most incarceration data available to social scientists are derived from official correctional facility publications or press releases. Veteran data provided by correctional facilities have an inherent problem – the data are a result of self-disclosure. There are a number of reasons why veterans would be reluctant to disclose their veteran status. One reason is linked to either embarrassment or shame – many thinking to themselves “I am a veteran and now I am in a jail cell with people I cannot identify with.” Another reason is that if the veteran is receiving VA (Veterans Administration) benefits, those benefits can/will be reduced during the veteran’s period of incarceration. An additional reason that veterans are apprehensive about disclosing veteran status at the time of incarceration is that they may be reluctant to disclose that information to correctional facility staff members, which can be linked to the prison culture itself (Irwin, 2005; 2003, Petersilia, 2003; Garland, 2001; Irwin, 1985). In other instances, where independent researchers are collecting correction institution data, there may be an issue of trust between the researcher(s) and veteran prisoners. After all, the research team members are from the civilian culture; the prisoners asked to be participants in a

study reside in the jail or prison culture. Admitting to being a veteran and any connection to crime is often difficult for the veteran as he or she has been trained in military culture that any such association is a break-down in “military discipline” and makes one an outcast from the only cultural identity they have left—the military culture. Hence, many veterans confronted with criminal charges are quite likely to be culturally homeless – they no longer fit in any culture. Finally, because correctional facilities do not have any apparent motivation or reason to collect information pertaining to incarcerated veteran data, there exists the potential for data error in the official data available.

One primary problem with relying on official data is that there is no way to confirm exactly how the data were collected. Are all prisoners, at intake, screened in the same manner? In other words, are all prisoners asked about their veteran status in the same manner? Are questions regarding veteran status asked verbally, through forms, or electronically? How are prisoners asked about their veteran status – what is the demeanor of those who are asking questions? Beyond the basic questions regarding data collection, we are confronted with the *political fallout* reality of collecting data about veterans who are incarcerated. There exists an obvious political problem: How does it look when an agency places *support the troops* bumper stickers on their vehicles, while simultaneously collects and distributes data regarding the number of veterans who are incarcerated by that agency? Is this a political contradiction? Another potential political problem is that many states benefit from the support of the pentagon for permanent military installations. While we believe these issues to be valid, like other social scientists, we are often left with two options – the first option is to disregard the data completely, while the second option is to use the data but list our concerns about the data collection process.

National Incarcerated Veteran Data

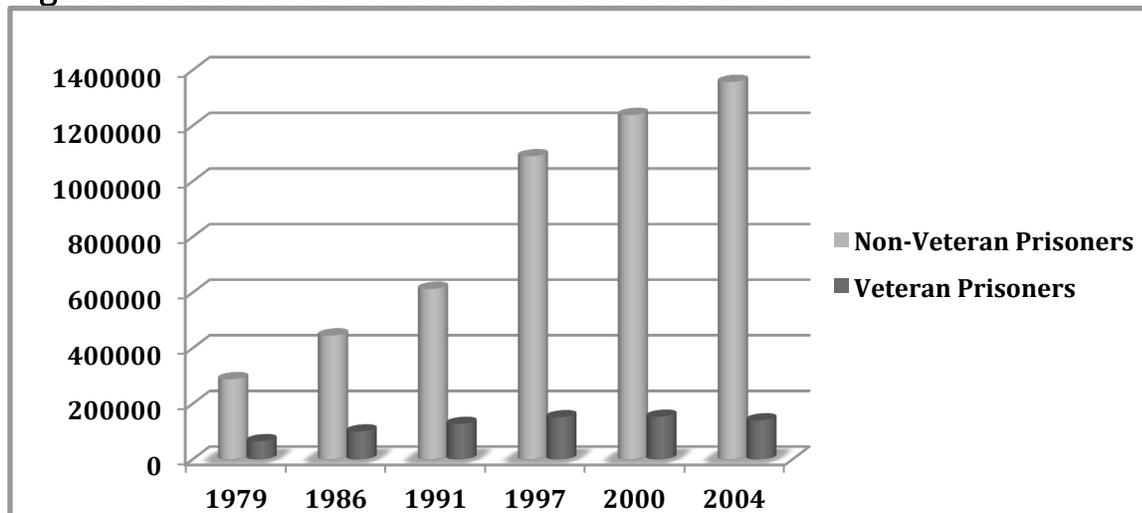
One significant problem we have with official veteran incarceration data is that we cannot account for the specific methodology used for collecting data. In other words, do each of the jurisdictional contributors (states) use the same methods when collecting incarcerated veteran data? Another problem we identified is that the most recent national data are *outdated*. In 2008 it was noted that many criminal justice agencies appeared reluctant to collect and/or record data pertaining to veterans entangled in the criminal justice system (Brown, 2008). Five years later, there appears to be little change. There has been no recent national study that focuses on veterans entangled in criminal justice. The latest national statistics, which were derived from data collected in 2004, reveal that an estimated

140,000 veterans occupied prison beds across America – making up about 10 percent of all state prisoners and approximately 9 percent of all federal prisoners. According to the Bureau of Justice Statistics, Iraq-Afghanistan veterans, in 2004, accounted for only 4 percent of veteran prisoners in both state and federal prisons (Noonan and Mumola, 2007). The total prison population for state and federal prisons was 1,497,100 in 2004 (Sourcebook of Criminal Justice Statistics, 2010).

In 1979, 6 years after the end of the Vietnam War, official data reveal there were 287,850 state prisoners throughout America (National Prisoner Statistics Bulletin, 1980), and veterans made up just under 25% (65,000) of those state prisoners (Bureau of Justice Statistics Bulletin, 1981). In 1986 there were 500,725 prisoners in state prisons and 44,408 prisoners in federal prisons with a combined prison population of 545,133 (Flanagan Jamieson, 1988). Veterans made up 20 percent (100,145) of the state prisoners in 1986 – a reflection of incarcerated veterans 10 plus years after the Vietnam War. Veterans were not counted in federal prisons until 1991 (Noonan and Mumola, 2007). In 1991 there were 739,999 prisoners in state and federal prisons (Maguire, Pastore, and Flanigan, 1993), and about 17 percent (117,231) of all state prisoners and 20 percent (10,080) of all federal prisoners reported veteran status (Noonan and Mumola, 2007).

By the year 2004 there were 1,391,261 prisoners in state and federal prisons and of these there were about 153,000 veterans (Noonan and Mumola, 2007). To date, there are no national statistics available that provide information pertaining to the number of veterans incarcerated in state and federal prisons since 2004. This lack of data since 2004 is important as it means we have no current data base for the post 9/11 veteran population other than our own Marion County data described below. To be certain, we are left with the discretion of individual states regarding the counting of veteran prisoners, as well as the Federal Bureau of Prisons methods of collecting veteran prisoner data. In most cases we assume those methods involve some sort of self-disclosure by veteran prisoners.

Based on the Bureau of Justice Statistics of incarcerated veteran data noted above, the average distance between the study dates is 4.2 years. It has now been nearly 10 years since the 2004 study released by the Bureau of Justice. While the numbers of incarcerated veterans in the official data fail to demonstrate significant increases of veteran prisoners during these periods, particularly in the years from 1991-2004, there was a significant difference in total prison populations during this period (See Figure 1).

Figure 1 Veteran/Non-Veteran Prisoners 1979-2004

Recent State Veteran Prisoner Incarceration Data

We suspect a number of factors, beyond those concerns previously noted in the collection of incarcerated veteran numbers, may influence the counting of veterans in state prisons. One explanation may be linked to the lack of cultural competence, which we will address later in this article. Another reason may be linked to the socio-economic reality within a particular jurisdiction. States with permanent military installations may have political-economic reasons for their counting of veteran prisoners as well as the system of processing veteran defendants through the criminal justice/court system. States that depend on funding and maintaining of permanent military installations may indeed have political motivations to treat or process veterans differently when compared to jurisdictions with limited or no permanent military installations. They may be more inclined, or motivated, to enact legislation that accommodates alternative sentences or diversion programs for veteran defendants. Those states with more permanent military installations may actually be more culturally competent when it comes to understanding the military culture. Lastly, it has been so long since the last official data were collected, which only goes to 2004, the data simply do not include post 9/11 veterans, and therefore ignore the reality of multiple deployments. These are certainly issues that require more comprehensive research.

Eighteen states were randomly selected in an effort to identify the present percentage of incarcerated veterans in state prisons within those selected jurisdictions. The average incarceration rate among the 18 selected states is 409 per 100,000 residents. The average percentage of state veteran prisoners, among these 18 states, is 7.09% of the total prison population. Had we not included the

two states with the highest percentage of incarcerated veterans – Oregon (19.1%) and Nevada (11.3%) – the average percentage of incarcerated veterans would have been 6.08%. The average number of state veteran prisoners per 100,000 veteran residents in the 18 states is 367. Oregon has the highest rate of incarcerated veteran prisoners per 100,000 veteran residents (817), followed by Texas (656), and Nevada (608). Those states with the lowest number of incarcerated veterans per 100,000 veteran residents are Connecticut (133), Minnesota (170), and California (176). Among these states, California has the highest number of veterans in the general population (1,844,803), followed by Texas (1,675,689), and Florida (1,543,496). Oregon and Nevada are among the states with the lowest number of veterans in their general populations – Oregon (328,138 veterans), Nevada (228,393 veterans). (See Table 1).

In the random selection process to acquire over one-third of all states in America, we found several states that did not keep track of the number of incarcerated veterans in their prison system, such as Hawaii and Idaho. Other states, such as Illinois would not respond to our request for incarcerated veteran data. In a request of information regarding the latest number of incarcerated veterans in Texas, we received the following response:

After reviewing our records, we have determined that the OOG has no information responsive to your request. Please note that to the extent it is applicable to your request, the OOG is not required to prepare answers to questions when responding to a public information request under the PIA (Sternier, Assistant General Counsel, Office of the Governor, 2013). However, we did obtain data from the Texas Criminal Justice Coalition (Renaud, 2013).

Table 1 Percentage of Incarcerated Veterans and the Number of incarcerated Veterans per 100,000 Veterans Residing in Selected States

State	Incarceration Rates: Persons in Prison per 100,000	Number Of Veterans in the State	Percentage of State Prisoners with Veteran Status	Number of Veterans in Prison Per 100,000 Veterans
Arizona	724	531,910	5.9%	513
California	320	1,844,803	2.7%	176
Colorado	348	395,613	9.2%	405
Connecticut	350	215,316	2.3%	133
Florida	533	1,543,496	6.4%	415
Georgia	567	776,205	4.8%	341
Kansas	337	226,916	8.2%	352
Minnesota	176	369,295	6.7%	170
North Carolina	396	771,654	5.7%	277
Nevada	458	228,393	11.3%	608
New York	282	918,093	4.5%	270
Ohio	433	899,615	6.8%	375
Oregon	375	328,138	19.1%	817
South Carolina	495	421,525	5.3%	286
Texas	545	1,675,689	8.0%	656
Virginia	369	837,051	6.7%	237
Washington	261	607,501	7.1%	206
Wisconsin	395	418,461	7.0%	376

One possible explanation for the high veteran incarceration rate in Oregon might be potential depression caused by long rainy seasons during the winter and spring months, but that is not an option given that there is typically more rain during these seasons in Washington; a state with a veteran incarceration rate of 7.1%. The most likely explanation for Oregon's high veteran incarceration rate is linked to the legal system itself and the practices of district attorney offices throughout that state. Another possible explanation may be that the data collection process might be better. In 2010, Oregon passed Senate Bill 999 (Oregon

Legislative Assembly, 2010). This bill provides for diversion options for veteran defendants who have received an honorable discharge, general discharge (under honorable conditions), or less than honorable discharges. The problem with Senate Bill 999 is that prosecutors are given full discretion on when the bill may be applied – judges have no discretion to make the bill applicable in criminal cases. To date, we are aware of only a couple of veteran criminal cases in Oregon where Senate Bill 999 has been applied. Another explanation for the outcome of veteran defendant cases could be linked to the quality of their legal representation during the court process. Veterans themselves often do not either see or want their status as a veteran known. Certainly it is our experience that in many cases there is often at least one key player in the criminal justice system that does not know or want to consider veteran status as important to achieving a “just” outcome. We are not suggesting that veteran status is always a component of mitigation or part of defense. It is not. For example, the Fort Hood shootings appear to us to be a political statement not an issue about veterans or military culture. Given the frequency of cases where veteran status is important to pre-trial negotiations, mental defenses, and/or sentencing mitigation, a knowledge of veteran status and military culture, as well as psychiatric diagnosis (PTSD, TBI, etc.) is critical in order to achieve the goals of American jurisprudence—a *Just* outcome.

Criminal Defense Attorneys and Veteran Clients

In 2013, Pacific Policy and Research⁵ conducted a telephone survey of all criminal defense attorneys in Oregon, with the approval of the Oregon Criminal Defense Lawyer Association (OCDLA), listed as members of the OCDLA. The purpose of conducting the survey was to identify the number of attorneys who represented veteran clients, approximate number of veterans they had defended over the past year, characteristics of their veteran clients, defense strategies and resources that were available, knowledge of existing legislation that pertained to veteran defendants, familiarity of military documentation and the codes used in those documents, the use of expert witnesses, and their suggestions for providing additional/needed resources.

Over 1,000 defense attorneys, or their offices, were contacted, but only 96 attorneys participated in the survey. In some cases attorneys personally refused to participate in the survey, while most of the participation rejection came from office

⁵ Pacific Policy and Research is a research firm that was created to conduct research specifically related to criminal justice issues, with an emphasis on corrections and the court system. It is based in Vancouver, WA.

personnel who refused to connect us with attorneys in the office. This may be a result of the attorney office culture, where office personnel are required to protect attorney's busy schedules. Among the 96 attorneys who did participate 54 (56.3%) said they had defended veteran clients over the past year.

The approximate number of veteran defendants represented by the 54 participating attorneys over the past year was 239. Over 77% (42) of the attorneys who had represented veteran defendants over the past year said their veteran clients had been deployed to a combat zone. More than two-thirds Over 68% (37) said their veteran cases involved misdemeanors, while 72% (39) said their veteran clients were charged with felonies. Over 24% (13) said their veteran client cases involved both felony and misdemeanor charges.

Over 35% (19) of the attorneys who had represented veterans over the past year said they had veteran clients who were receiving VA benefits for mental health issues, and 74% (40) said they had veteran clients who had been diagnosed with PTSD, and over 33% (18) had represented veteran clients who had been diagnosed with TBI (Traumatic Brain Injury). Over 85% (46) of the attorneys said that they had veteran cases where alcohol was a factor compared to 43% who said they had veteran cases where illegal substances were involved. Nearly 13% (7) said that prescription drugs were factors in veteran cases they had defended. Less than 17% (9) of the attorneys said they had used expert witnesses (Psychologist, Sociologist, Pharmacologist, etc.) in veteran cases they had over the past year. Only 11% (6) of the attorneys said that veterans they had represented had "Other Than Honorable Discharges."

About 70% (67) of the all 96 participating attorneys said that military experience was relevant in the pretrial or trial stages of legal proceedings of veteran defendants. Over 81% (78) of all attorneys who participated in the survey said that military experience was relevant in the mitigation/sentencing stages of veteran cases. Less than 44% (42) asked a new client if he or she had served in the military. About 41% (39) said they were familiar with the process of obtaining military records for veteran clients, while 47% (45) said they were familiar with the process of acquiring VA records for veteran clients. Very few attorneys said that they were familiar with the codes contained in military and VA records.

Only 47% if all participating attorneys were familiar with Senate Bill 999. Only 6 attorneys said they had ever attempted using Senate Bill 999 in a veteran case, and none had ever been successful in their attempt.

Most of the participating attorneys who responded to questions related to available resources said resource availability for defending veteran defendants

would be found at the Veterans Administration, OCDLA (Oregon Criminal Defense Lawyers Association), or through expert witnesses. Over 41% (40) of the respondents had no response to questions related to available resources for defending veteran clients. When asked questions regarding responsibility to provide necessary resources for attorneys representing veteran defendants, over 25% assigned responsibility to the VA, 12.5% said the state bar, and 11% said the defense attorney should provide or search for resources. Over 38% of the participants had no suggestions regarding who should be providing resources.

It must be noted that included in the social reality of defending veteran clients, most veterans are indigent defendants. The social reality for attorneys representing these indigent defendants is that there is limited funding and options. Moreover, there are limited resources, training, and cultural competence awareness for many attorneys in Oregon. We suspect that many defense attorneys representing veteran defendants likely are confronted with similar problems or situations.

Marion County Jail Studies – Salem, Oregon⁶

Oregon's official jail booking records reveal that from 2010 thru 2012 over 20,000 veterans were booked into Oregon's county jails. During each of these years a number of counties did not provide veteran status information when submitting their booking data. In 2011, the state of Oregon booked 172,763 individuals into its county jails. The five largest counties in Oregon booked 96,840 individuals into their county jails during 2011, which includes 4,095 (4.2%) veterans. These counties have a combined veteran population of approximately 172,754 veterans. Marion County is the fifth largest county in the state of Oregon with population of approximately 319,985, which includes approximately 26,584 veterans. In 2011, official data indicate that Marion County Jail booked 13,981 individuals into its county jail. Among those individuals who were booked into the Marion County jail 1,024 were reported to be veterans (Oregon Sheriff's Jail Command Council, 2013). Consistent with our concerns about official data collection by agencies, the Oregon county booking data were collected using self-reporting methods in a setting that does not necessarily promote confidence or the assurance of anonymity for veterans. Nevertheless, these are the data available for public consumption.

⁶ Pacific Policy and Research conducted two studies of the Marion County Jail located at Salem, Oregon, the capital of Oregon. The first study was conducted in July 2007 and the Second study was conducted in December 2011.

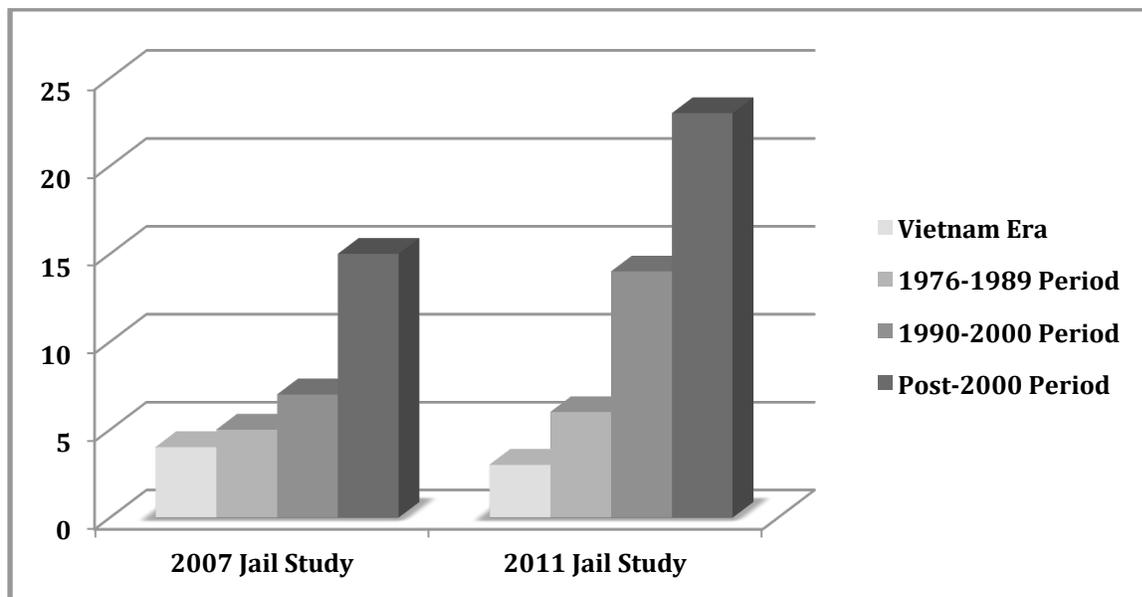
The following data were obtained from two surveys (2007 and 2011) conducted at the Marion County Jail in Salem, Oregon. We place significantly more confidence in the data collected in the Marion County Jail studies, as opposed to official data related to veteran incarceration. This confidence is based on the fact that it is longitudinal and that the methodology, regardless of its actual strengths and weaknesses, is at least known to us. It also includes data on war experiences that is lacking in other data. This confidence is also based on a number of questions contained in the survey instrument that requires knowledge, on the part of the participant, regarding the military culture, coding, and other specifics that are most likely beyond the knowledge base of those who have not served in the military. The instruments used during both surveys were subjected to the approval of a Public Safety Committee, which includes representatives from the County Commissioners, the District Attorney offices, judicial representatives, and the Sheriff's office in Marion County. It was agreed that the data would be collected anonymously and that no information contained in the survey instruments could be traced to participating prisoners. In both surveys, all prisoners in the county jail were given an opportunity to participate in the study with the knowledge that their responses to questions would be anonymous. The research team in both surveys provided assistance, when needed, to translate and/or explain questions contained in the survey. Jail staff members were not allowed to touch, review, or read completed survey instruments. In the 2007 survey resulted in 565 completed survey instruments, reflecting an 87 percent participant response rate. The 2011 survey produced 467 completed survey instruments reflecting an 89.8% response rate. We recognize the weakness of not having official documentation that corroborates the veteran's responses to question that were asked in the survey instrument – however, such a method would erase the anonymity assurances provided for each veteran participant.

Comparing data from the 2007 and 2011 studies, the percentage of incarcerated veterans nearly doubled – from 5.49 percent (2007) to 9.85 percent (2011). Nearly 68 percent (21) of the veteran prisoners in the 2007 study said they had experienced some level of combat during their military service, compared to 69.5 percent of the veteran participants in the 2011 study who also indicated they had experienced some level of combat.⁷ Not only did the percentage of incarcerated veterans increase but also changes in the periods of military service are noteworthy. Vietnam War era incarcerated veterans, along with veteran prisoners

⁷ One veteran participant, in the 2011 study, replied that although he had served in a combat area he had never been exposed to combat. However, this veteran participant answered that he had witnessed dead bodies or human remains.

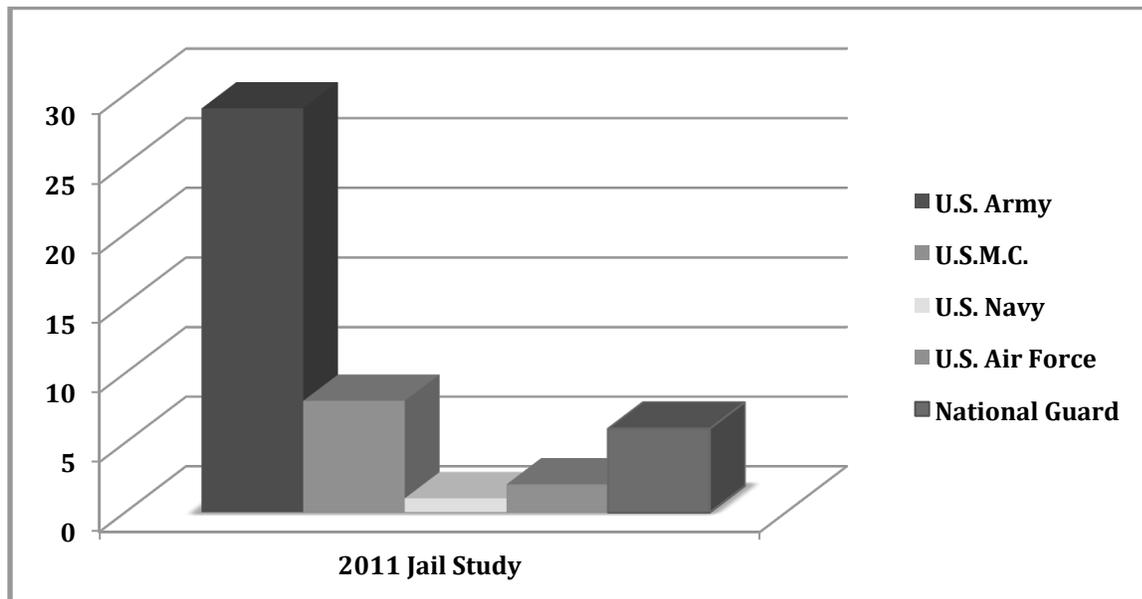
who served in the military during the 1976 to 1989 period declined in the 2011 study. The 2011 study reveals that the number of veteran prisoners who served in the military during 1990-2000 and the post-2000 military service periods increased. The largest increase was among those veteran prisoners who served between 1990 and 2000, which includes Gulf War I veterans – an increase of nearly 8 percent from the 2007 study to the 2011 study. The increase among Iraq/Afghanistan incarcerated veterans, during the same research periods was 1.6 percent (See Figure 2.)

Figure 2 Period of Military Service: Marion County Jail Studies (2007 and 2011)



Data from the 2007 study reveal that 38.7 percent (12) veteran prisoners had reached the rank of Non-Commissioned Officer during their military service, compared to 41.3 percent (19) among veteran prisoners in the 2011 study who had reached Non-Commissioned Officer rank.⁸ Neither study identified a Commissioned Officer. Data collected in the 2011 study found that among the veteran participants over 80 percent (37) had served in either the U.S. Army or U.S. Marine Corps, while 6.5 percent (3) had served in the U.S. Navy or Air Force. Just over 13 percent (6) had served in the National Guard, which includes 5 veterans who had served in the Oregon National Guard (See Figure 3).

⁸ The enlisted rank of E-5 and above in the military is considered non-commissioned officer status. However, in the U.S. Army and the U.S. Marine Corps the rank of corporal (E-4) is also considered non-commissioned officer status.

Figure 3 Branch of Military Service: Marion County Jail Study (2011)

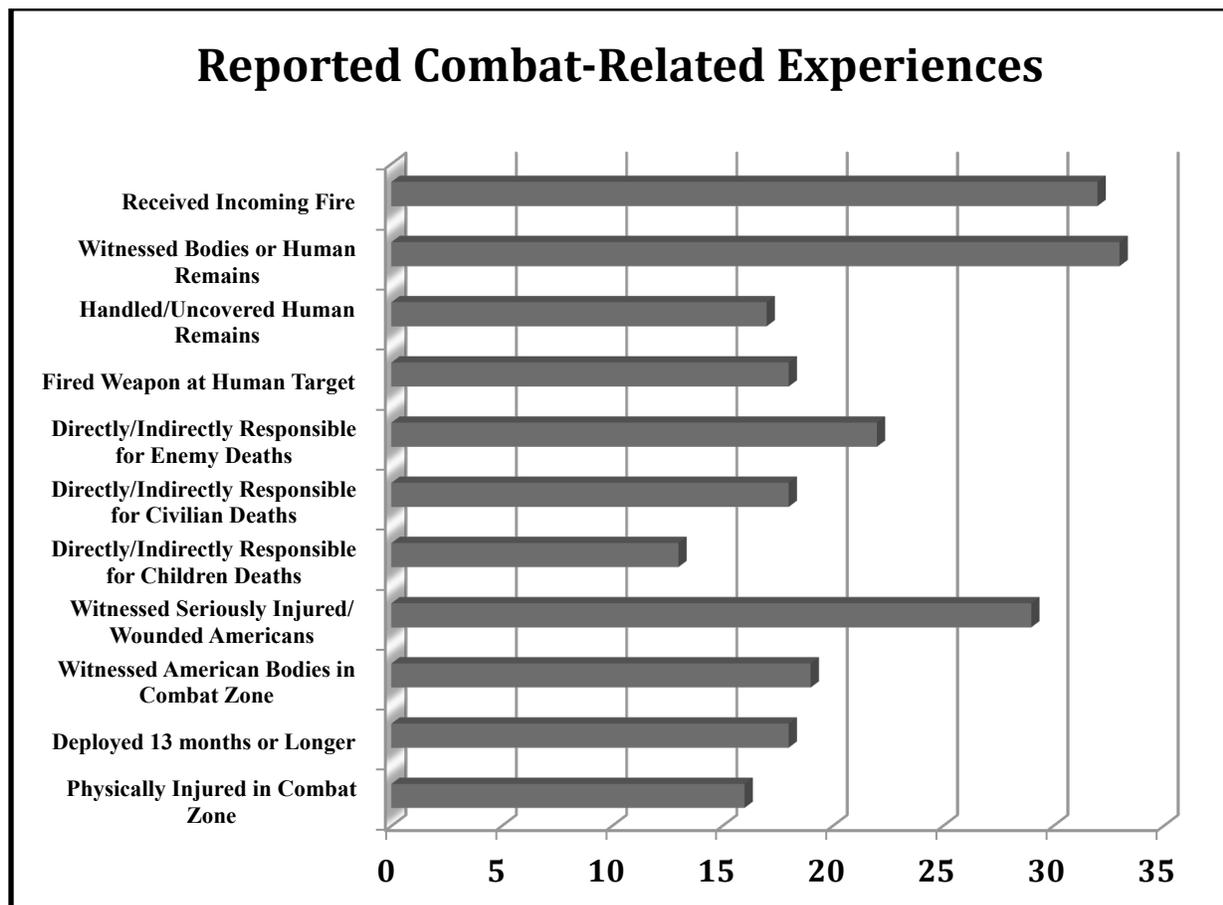
Veteran prisoners in the 2007 study were asked if they had served in infantry or support units during their military service. Over 45 percent (14) of the veteran prisoners responded that they had served in infantry units, while the remaining veteran prisoners served in units that provided support for infantry units. The 2011 Marion County Jail study expanded the research focus on military experiences. Given the differences in combat operations during recent years, for example convoy duties that now expose many military personnel to I.E.D.'s (Improvised Explosive Devices), variables related to combat exposure were also expanded in the 2011 study. Of the 33 veteran participants who had been deployed to combat areas, over 60 percent (20) served in infantry units, 15.2 percent (5) served in engineer units, 3 percent (1) served in an armor unit, 15.2 percent (5) served in transportation, and 6.1 percent (2) served in other support type units. All of these participants revealed the correct numerical code that reflected their M.O.S. (Military Occupational Specialty).⁹

Specific questions related to combat experiences were addressed in the 2011 Marion County Jail study. Among the 32 veterans in the 2011 study who replied they had been exposed to combat, all indicated they had been at a location where they received incoming fire, and that they had witnessed dead bodies or human remains. Over one-half (17) of these veterans replied they had handled or uncovered human remains. Over 56 percent (18) said they had fired a weapon at a

⁹ It is extremely rare for a veteran to forget his/her M.O.S. or occupational code.

human target, and 68.8 percent (22) said they were either directly or indirectly responsible for the death of an enemy combatant. Indirect responsibility comes from being present or being a member of a unit engaged in a conflict that resulted in an enemy fatality. One significant problem with such an admission is that at the time it was rather easy to identify the victim as the enemy – even though the enemy did not possess a weapon. After returning home, many veterans question the validity of enemy classification. This was particularly the case in many of the Iraq and Afghanistan veteran participants. More than 56 percent (18) of the veterans indicated they felt either directly or indirectly responsible for the death of civilians, while over 34 percent (13) said they were directly or indirectly responsible for the death of children in the war zone. Nearly 88 percent (29) revealed they had witnessed seriously wounded or injured Americans, and 57.6 percent (19) had witnessed or seen American bodies in a combat zone. Over 56 percent (18) indicated they had spent 13 months or longer in a combat zone, and 48.5 percent (16) said they had sustained a physical injury serving in a combat zone (See Figure 4).

Figure 4 Reported Combat-Related Experiences: Marion County Jail Study (2011)



Only one veteran participant had been subjected to any disciplinary action during deployment to a combat area. Sadly, only 10 (30.3%) veteran participants who had been deployed to combat areas indicated that the military provided reintegration support prior to their discharge. Most veterans who responded that they had received reintegration support from the military described the support as handing out some brochures or telling them how to fill out a resume.

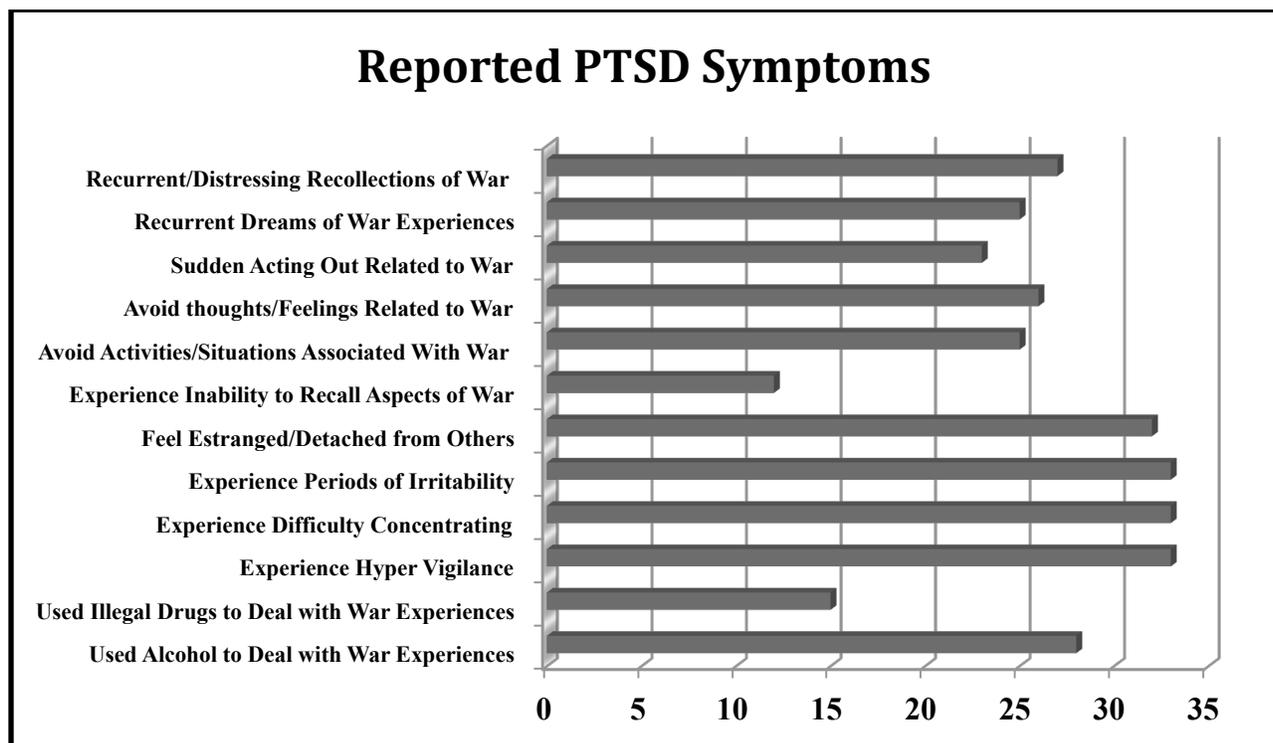
Relative to the post-military experiences of these veteran participants who had been deployed to combat areas, three-fourths indicated they had experienced problems developing relationships and almost 90 percent responded they had problems maintaining relationships. Over 90% said that they preferred being alone. All 33 veteran participants who had been deployed revealed that being in crowded areas made them feel uncomfortable. All but one of these participants reported that they had problems trusting civilians. Only one of these participants disclosed currently being in a serious relationship.

Relative to PTSD, many participants who had been deployed to combat areas revealed they had experienced symptoms of PTSD – per those symptoms listed in DSM IV (Diagnostic and Statistical Manual of Mental Disorders, 2002, 463-468)¹⁰. Among those veterans who had disclosed that they had been exposed to combat the majority had experienced recurrent/distressing recollections of war and admitted having recurrent dreams of their war experiences. Nearly 70 percent (23) answered that they had experienced sudden acting out or feelings related to the deployment experiences after leaving the military. Over three-fourths of these veterans indicated they had attempted to avoid thoughts or feeling acquired during deployment, and revealed they try avoiding activities or situations associated with experiences that were traumatic during their deployment(s). More than one-third indicated they experienced inability to recall important aspects of their war experiences. All but one of the participants felt estranged or detached from others and every veteran participants who had deployed to combat areas experienced periods of irritability and had difficulty concentrating at some point in time since leaving the military. All veteran participants who had been deployed had experienced hyper vigilance since returning to the civilian culture. Over 45 percent (15) had used illegal drugs to reduce their thoughts about war experiences compared to 85 percent who used alcohol to reduce thoughts of war experiences (See Figure 5).

¹⁰ We are aware of the recent release of DSM-V in 2013, however because of some problems associated with the content of this DSM edition, we decide to limit our references to DSM-IV (2002) until appropriate corrections have been made.

Although 25 (80.7%) veterans in the 2007 study said they had applied for some type of VA benefits, only 13 (41.9%) had ever received benefits. The benefits applied for and received include education and medical. Data from the 2011 study reveal that a much smaller percentage of veteran participants had applied for VA benefits, while a larger portion of those who did apply actually received benefits from the VA. Most of the veterans who had not applied for benefits said they were not comfortable with the *wait time* required for appointments and felt they would *probably be rejected for benefits anyway*. Among the 2011 study veteran participants, fewer than 35 percent (16) had applied for VA benefits and over 94 percent (15) of those veterans had received benefits. All 15 veterans who applied for some sort of medical assistance had been successful. Only 3 veterans had applied for, and received, education benefits. Among the 15 veterans who applied for mental health assistance, seven (46.7%) said they received adequate assistance – in the form of limited counseling and medication. Many of the remaining veterans who applied for mental health benefits indicated that *waiting to get an appointment or talking with someone who didn't seem to care was too frustrating*. Six veterans revealed they often substituted alcohol in place of their prescription drugs. Fourteen participants noted the VA had diagnosed them with PTSD, or had treated them for PTSD, but only 3 had actually been granted disability compensation for PTSD.

Figure 5 Reported Symptoms of PTSD: Marion County Jail Study (2011)



All of the participating veterans in the 2007 survey said they had received honorable discharges from the military, compared to 89 percent (41) of the veterans in the 2011 study who received honorable discharges. Among the 5 veterans who received less than honorable discharges, three had failed drug tests, one had a problem with alcohol, and the other veteran had engaged in an illegal activity. After 12 years of continuous war, the longest period of war in American history, there are more military personnel discharged with less than honorable discharges than in any time in recent history. Moreover, the military personnel hit the hardest are those who have extensive combat exposure. Many of these cases were found to be PTSD or TBI (Traumatic Brain Injury) related (Philipps, 2013). The 2011 data, regarding those veterans who did not receive honorable discharges, may reveal a more recent practice adopted by the U.S. Army, whereby soldiers who are facing court martial proceedings are offered an option – under Chapter 10 – to resign from the military and receive a less than honorable discharge. While defense money is saved (reduction in court martials) and some soldiers avoid the possibility of incarceration, soldiers who agree to this option relinquish any rights to benefits and treatment. A number of veteran courts across the country refuse to accept veterans who have less than honorable discharges (Baldwin, 2013).

The important lessons from these surveys include the doubling of the percentage of veterans in a few year period of time. This finding confirms our view that the 2004 national data is simply not relevant to understanding the scope of the problem of today's veterans in the legal system. The association of combat experiences, PTSD symptoms, alcohol use, and involvement in the criminal justice system in the veterans group is compelling and provides support for the predictions made by Brown five years ago (Brown, 2008) Lastly, the multiple variables identified in this study emphasize the need to approach veterans in the criminal justice system in a culturally competent inter-disciplinary approach.

Veteran Courts

It is important to draw attention to the new *style* of courts developed and initiated to service veteran defendants entangled in the criminal justice system. These courts have become popularized under the banner that they will provide assistance and support for veterans entangled in criminal justice, while simultaneously promoting public safety. In most instances, only prosecutors are allowed to select those veterans who qualify for veteran court services, with the outcome that only the most minor veteran defendant cases will ever reach the veteran court.

Veterans Courts are sometimes modeled after the mental health courts. Mental health courts often follow the principles of therapeutic jurisprudence (Winick and Wexler, 2003). One aspect of therapeutic jurisprudence uses a *Dynamic Risk Management* approach that facilitates the conversion from prediction to prevention. Often, a simple plan involving proactive monitoring can be very effective. A good example of how this can work is the mental health court that began operation in Vancouver, Washington in the year 2000, where recidivism rates among defendants with mental health issues declined significantly after employing a Dynamic Risk Management model (Herinckx, 2003).

In many cases the veteran courts are simply *backend approaches*. Often, the permanent criminal history is established by the time they reach the court. Moreover, many of these courts are attempts to replicate drug and alcohol courts. When veterans with alcohol or drug dependency problems fail the requirements of the veteran courts they end up incarcerated. When PTSD or TBI is an issue, the situation is often compounded (Fitzpatrick and Velazquez, 2011). However, the common perception of veteran courts is that the court works hand-in-hand with veteran support organizations and agencies (e.g., the VA) to provide needed treatment for veterans on the dockets of these courts (Gates and MacVicar, 2011). The problem we see with this common view is if the veteran support organizations and agencies are antidotes for the problem, why weren't they able to prevent the veteran's situation from escalating to a criminal justice issue in the first place?

Several months ago an anonymous veteran approached us with concerns regarding the Veterans Docket in Marion County, Oregon. He indicated that during his visit and observation of the courtroom and the court proceedings, as a veteran, he felt belittled by the glorification of World War II veterans and the absence of any reference to all subsequent veteran populations. In his view, the courtroom decorum depreciated all younger generations of veteran defendants. Subsequently, all of the authors of this article attended at least one session of the Marion County Veterans Docket. Our visit confirmed many of the concerns of the anonymous veteran. As one of our authors (Farnsworth) stated, "The courtroom appeared to be designed to look like a World War II wartime museum. The walls were covered with a collection of uniforms, medals, a gun holster, and photographs – all from World War II." At the beginning of each proceeding everyone in the courtroom was required to stand up and pledge allegiance to the flag, which was followed by a series of film clips of military personnel reciting military phrases or scenes from movies portraying the heroics of World War II soldiers. The *treatment team*, sitting in the jury box, included one representative from the VA, a representative from the Oregon Department of Veteran Affairs, a probation officer,

a sheriff's deputy, and other individuals. No psychologist serves on the treatment team.

Veterans who observe all the comments related to the symbolism reflecting only World War II artifacts are likely to conclude that only World War II vets are the *true heroes*. Rather than simply monitoring the proceedings the treatment team members make comments and criticize the veteran defendants as they see fit – serving as treatment providers rather than facilitators. Veteran participants were very reluctant to address any issues, as it would possibly jeopardize them.

The Marion County Veterans Docket began in late 2012. The estimated number of veterans to be processed through the court was between 15 and 18 for the first year of operation, and eventually increasing the caseload to 50-80 veterans per year. It was acknowledged that the county's District Attorney's office would select those veteran defendants who were suitable for the docket (Marion County Public Safety Coordinating Committee, 2012). Relative to the aforementioned 2011 Marion County Jail study and the 2011 veteran booking data, diverting 80 veterans per year to the Marion County Veterans Docket would accommodate less than 8 percent of all veterans booked into that jail during the year. To be fair, the rates of recidivism and effectiveness of the court is unknown at this point. To be certain, other veteran courts exist in Oregon. For example, the Veterans' Court in Klamath Falls has been in operation for several years now and they report a very low recidivism rate among veteran defendants who have been on their court docket.

There appears to be little interest in the root causes of the veteran defendant's behavior, and even less concern regarding the military cultural artifacts that contribute to the shaping of that behavior. This seems to apply to the Marion County Veterans Docket and other criminal courts across the country.

The reason for addressing these issues is not to merely criticize the good faith efforts made by existing institutions that have attempted to deal with veterans' issues. Rather the point is that in the absence of cultural knowledge and competence good faith efforts can result in well-meaning attempts that will fail at best and at worst cause further damage by being seen by veterans as tone deaf to their needs and another example in which the larger society really doesn't care. The whole point of this article is to ensure cultural knowledge and competence in those who deal with, evaluate, and make decisions about veterans in the legal (and real) world. This concern was demonstrated in a 2011 decision by a federal judge during sentencing, where the judge recognized the influence of military culture, as well as the fact that the federal prison system did not provide adequate treatment for veterans.

We are concerned that Veterans Courts may not recognize the complexity of the problem. For example, science has identified alcohol abuse to be caused by PTSD, yet the focus is often on alcohol abuse alone. It seems unlikely that a *treatment team* that has no doctor or psychologist on it may not be aware of this type of issue. Further, Courts that attempt to *treat* rather than just refer to treatment and monitor that treatment to ensure that is both appropriate (i.e. dual diagnosis treatment of PTSD and Alcohol Abuse) and complied with, run the risk of *prescribing* inappropriate and/or harmful treatment. This issue is not merely academic - recently one of the authors (Stanulis) had advised the Court that the proposed intervention would not address the underlying causal issue of PTSD/TBI and that by not addressing these issues the veteran was at high risk to commit suicide. The recommendation was ignored and six months later the veteran dropped out of the Court ordered program and attempted suicide. He now faces Court sanctions and a felony conviction for not completing what we deem to be an inappropriate treatment program. Courts and treatment teams without training and licensure that "treat" can cause harm as interventions that do not work can be more than merely ineffective—they can literally kill the patient.

The Culture War – Civilian v. Military Culture

In the 19th century Edward B. Tylor, an early pioneer of anthropology, published a book, titled *Primitive Culture*. He described culture as a full range of learned patterns of human behavior, which include knowledge, art, law, beliefs, morals, customs, and all other capabilities and habits learned by people in society. While culture is necessary for human survival it is also quite fragile – it frequently changes. Culture exists not only in our minds, but also in our language, government, social structures, and all other material objects are products of culture (Tylor, 2010/1871). Hofstede defines culture as the "collective programming of the mind, which distinguishes the members of one group or category of people from another" (Hofstede, 1991, 5). Culture has also been defined as a collection of values, beliefs, and assorted material objects that form our way of life. Culture influences the way we think, act, and what we possess materially (Soyinka, 1991).

Cultural relativism and ethnocentrism are two concepts relative to the study or analysis of culture. Cultural relativism refers to the significance of evaluating or studying a culture by that culture's own standards. Ethnocentrism, the contradiction of cultural relativism refers to the evaluation of another culture by relying on the cultural standards of the evaluator. Discounting or excluding the values, beliefs, and material objects germane to the military culture, relative to

veteran defendants in the civilian courtroom, is an example of practicing ethnocentrism.

Individuals tend to occupy functional social roles relative to the group (or culture) to which he or she belongs, and other members of the group typically agree on particular expectations concerning the individual's acceptable behavior in that group. An individual's social role is a combination of the individual's role category and role expectations or role behaviors. An individual's expected role or role behavior in American society can be based on the individual's age, sex, ethnicity, education, or socio-economic status. In the civilian culture there are specific expectations of how a particular individual should act or behave. Some of these expectations are altered between subcultures within the broader cultural boundaries, while some expectations are carried over into multiple subcultures. The expectations set forth in all cultures are based on the values and beliefs of that culture.

In the broader American culture, there is a general expectation that individuals who witness a crime must report the offense to the proper authorities. Of course, everyone does not comply with this expectation, but nevertheless it exists. Law enforcement officials have been sworn to uphold the law, but the subculture of policing has maintained a code of silence in many cases where law enforcement officials are reluctant to report violations committed by other law enforcement officials. In the prison subculture, particularly the inmate culture, prisoners who witness an offense are expected to *keep it to themselves and not report it to the prison officials*. Prison officials draft rules that require prisoners to report any offenses to the proper authorities. Similar to the aforementioned compliance failure in the broader American culture, all prisoners do not comply with this cultural rule.

Variations in values and beliefs from one subculture to another often determine that subculture's standards for acceptable behavior. Civilians often incur *adjustment problems* when they are hauled away from the civilian culture and sentenced to prison. These cultural adjustment problems also appear when civilians enter the military. Civilians who become prisoners and are then released often incur adjustment problems when they attempt to find their former social roles outside the prison walls. The same can be said for military personnel who try to find their former civilian roles after discharge. American culture typically inculcates the value that its members, when confronted with a potential threat, must think first before they respond. Contrary to the civilian culture, the military culture teaches recruits to instantaneously react to a potential or perceived threat. They are taught that failure to react could result in their own injury or death or the

injury or death of other military members. Depending upon the levels and types of training military personnel receive, coupled with the actual military experiences they encounter, making adjustments to the rigors of the civilian culture can be extremely difficult for many veterans. As noted in a Center for Strategic and International Studies (CSIS) report (2000),

A military culture by definition must differ significantly from civilian culture in a democratic society, a fact recognized in U.S. Law and supported by the Supreme Court. Because the driving imperative behind military culture is the unique responsibility to fight and win the nation's wars, basic individual freedoms in the military are often curtailed for the sake of good order and discipline, and the armed forces reserve the right to dictate strict rules of behavior that would be clearly inappropriate for a civilian employer (CSIS, 2000, p. 7).

Confronting the courts are the distinct differences between the military and civilian cultures, and the influence these two cultures have had on veteran defendants. In order to achieve a just and fair sentence the court has an obligation to sentence the defendant within the guidelines of the legal system but the court may also recognize, within the law, the role of culture and its influence on the defendant, which would assist the court in considering the character of the veteran defendant as well as the need and prescription to enhance or protect the public's safety.

In Oregon, the legislature recently passed Senate Bill 124, which enables judges to consider, for mitigating purposes, the veteran defendant's military history and experiences – which of course, are shaped by the military culture. As previously noted, U.S. law and the U.S. Supreme Court have acknowledged the distinction between military and civilian cultures. While some courts may not see the relevance of military culture in criminal cases involving veterans – it is. In *Porter v. McCollum* the U.S. Supreme Court (2009) recognized the importance of Porter's military experiences and argued that his military experiences were relevant to the court. Those experiences were components of the military culture. Additionally, recognizing the impact of military service fulfilled by veterans, the 9th Circuit Court (2011) argued that because of that service veterans have a right to treatment. Again, this is a recognized cultural issue.¹¹

¹¹ There are numerous publications that relate to military culture. Edward Wood (2006) writes about the manipulation of soldiers in the military culture during World War II. Philip Caputo (1977) discusses the cultural transition difficulties entering the Marine Corps in the early 1960s. Goff, et al, (1982) write about the cultural differences for African American soldiers during the Vietnam War, and how the military often used different standards for different *colors*. Santoli (1981) discusses the experiences of nearly three-dozen Vietnam veterans who experienced and often struggled within

To understand military culture and the effect it has on military personnel one must consider the Military Total Institution (MTI), which has a profound influence in the installation/indoctrination, administering, monitoring, and enforcing the artifacts of military culture. Eving Goffman (1961) introduced the total institution concept to the discipline of sociology. Although he focused extensively on mental institutions and prisons, Goffman also applied this concept to the military barracks environment. Since that time the idea that the military is indeed a total institution has been applied to military education (Bamberger and Hasgall, 1995), assimilation through military training (Zurcher, 2007), the influence of veterans reintegrating back into the civilian culture (Brown, 2008), and the association between the military total institution and criminal behavior (Brown, 2010, 2013, 2014).

All branches of the military, regardless of international boundaries, are characteristic of and subscribe to the Military Total Institution (MTI), which mandates total and complete control of the military service member's entire being (Brown, 2010). The MTI process actually begins with recruitment – identification and recruitment those who are most likely to conform to the rigors of the MTI, which typically include younger individuals who have not been overly *contaminated* with civilian cultural artifacts. However, as wars progress, recruiting quotas require exceptions to those aforementioned preferences (Brown, 2013). Once recruitment is completed, the MTI engages in the training process of its selected recruits. The initial aspect of military training begins with the extraction of the recruit's civilian culture values, beliefs, and behavioral responses; replacing them with military culture values, beliefs, and acceptable behavioral responses. During the training process the recruit must comply with all of those military cultural aspects until the individual's military contractual obligation expires (discharge), or in the event of his or her death. Principles and values acceptable within the civilian environment are generally not beneficial to the military milieu. On the other hand, a good soldier's

the military culture. Lynda Van Devanter (1983) describes her experiences within the military culture serving as an Army Nurse in Vietnam and, equally important, the transitional problems she encountered when she returned home. Jessica Goodell (2011) discusses her experiences, and the experiences of others she served with, while serving in the Marine Corps, and how she adjusted and performed when she was assigned to the Mortuary Affairs Platoon in Iraq. She also talks about the problems she encountered making the transition from the U.S.M.C. back to the civilian culture. Retired Colonel, Charles W. Hoge, MD (2010), discusses many of the problems service members experience associated with transitioning from war and the military culture to the civilian culture. These publications are extremely enlightening of the military culture but they rarely shed light on the problem of veterans who are entangled in the criminal justice system – an entanglement often resulting from the cultural war between the military and civilian cultures.

principles, which are artifacts of the MTI, are not always favorable to the civilian environment (Brown, 2008).

Those who have not been exposed to the MTI or the military culture sometimes have difficulty appreciating the effectiveness of the principles. This is why it is crucial for those involved in the processing of veteran defendants to be culturally competent.

Cultural Competence in Evaluating Veterans in the Legal System

The issue of military training and culture is critical in understanding how the symptoms of PTSD will express themselves in the veteran population. As the DSM IV-TR notes,

The cultural formulation provides a systematic review of the individuals' cultural background, the role of the cultural context in the expression and evaluation of symptoms and dysfunction, and the effect that the cultural differences may have on the relationship between the individual and the clinician (DSM IV, p. 897).

In the legal context, the issue of cultural differences effect on relationships includes of course the veterans' relationship with the District Attorney, his own attorney, and the Judge. Yet all too often the issue of military training and culture is simply ignored as "not relevant" by the prosecutor who charges, the veterans own defense attorney, and the Judge. Two of our authors, Brown and Stanulis, who often testify as expert witnesses in veteran criminal cases, have often been challenged to explain the relevance of military culture, training and experience to the criminal justice system by defense attorneys, district attorneys, and both State and Federal judges. During testimony this can often be difficult as any testimony is elicited by questions, which may not allow for the effective communication on these issues. It also can be greatly affected by lack of cultural competence by the most powerful force in the Court—the judge. For example, in one case the judge said testimony would be irrelevant because he knew about war from watching movies.

The issue of culture and behavior is now taking on new meaning with the study of what has been termed epigenetics. Epigenetics is the study of gene expression and change in genetic activity as a function of cultural milieu. While many view genetics as destiny, new research has clearly demonstrated that cultural and environmental features can quickly and dramatically alter genetic activity. For

example, killer bees raised in honeybee hives show dramatic decrease in both aggressive behavior and the genetic activity in genes associated with aggression, while honey bees raised by killer bees show the opposite effect (Le Conte, et al., 2011; Wheeler, et al., 2013).

While epigenetics may not be seen as relevant to the Court, research suggests that it might be quite relevant to the issue of ensuring appropriate treatment for veterans. For example, epigenetic changes have been postulated as the mechanism by which children of veterans get symptoms of PTSD (O'Brien, 2004). Further there is research (e.g., Heinzelmann and Gill, 2013; Yehuda and Bierer, 2009; Zovkic and Sweatt, 2013) suggesting the PTSD may cause epigenetic changes in veterans that result in major physical health problems. While it is beyond the scope of this article to review this literature, it is mentioned to again illustrate the effect of culture on not only behavior but also on genetics and evolution as well.

Of great concern in the world of the veteran is how inability to re-enter civilian culture often leads to social isolation. Research has long indicated that social isolation leads to changes in immune system and hence to greater risk of disease. Epigenetics suggests that this is not simply a psychological factor but rather the result of changes in gene expression. Further the military culture may well result in not only behavioral changes, but also in genetic changes that require successful experiences in the return to civilian life in order to change genetic activity again back into a more "civilian friendly" mode. If this is true, epigenetics may account for at least some of the difficulty in re-entry, and make social isolation a risk factor for disease and criminal behavior. This also suggests that veterans who do not cross back into the "civilian culture" may not reap the benefits of epigenetic activity. In this model, adaptive behavior for combat such as hyper-vigilance and hyper-arousal may lead to epigenetic changes that require significant non-military cultural experience to reverse as well as account for behaviors that lead to criminal charges such as the aggressive and irritable behavior. At a minimum, not being able to function is likely to lead to social isolation and increased risk of disease. The well-known association of PTSD to physical disease such as heart conditions in this model is to some degree a function of epigenetic changes (Florian and Spengler, 2013; Heinzelmann and Gill, 2013).

Even if the veteran is evaluated, he/she is unlikely to be evaluated beyond the symptom descriptions found in the DSM. Few mental health practitioners even think in terms of the military as a unique culture with profound effects on the formation of and reporting of PTSD and as a potent force in the relationship between the veteran and the evaluating mental health practitioner. While there is some isolated recognition of the fact that military culture does not support the

reporting of PTSD, and that such reporting is seen as a career killer (e.g., the efforts by the Army to change the name of PTSD to Posttraumatic Stress Injury), the profound depth and breadth of the effect of military culture and training on mental health reporting, symptoms, and treatment is rarely recognized because of the simple fact of a cultural bias—namely the lack of recognition that the military is in and of itself a unique culture that like any culture has its own sub-cultures. These subcultures include branch of service, rank, and MOS, as well as the more traditional ethnic cultures. In addition, many practitioners do not understand that the veteran no longer automatically becomes a member of *civilian culture* again simply because of discharge.

This lack of recognition of the profound effects of military culture is the product of the fact that only 1% of Americans now serve in the military. It also reflects our belief that returning from war requires only a period of “reentry” or “re-integration” rather than accept the truth that the military culture purposefully removes the civilian from the soldier in order to meet its military goals. Hence, vets do not reintegrate, but rather become individuals without a cultural home. Upon discharge, they lose their cultural home of their unit and branch, and no longer have any way to understand and interact with the civilian culture. Perhaps the best example of the lack of cultural awareness can be found in the court system that will explicitly reject testimony about veterans training and culture as “not relevant” to the Courts’ purposes. The military does have a unique culture and sub-cultures that are not only relevant but also necessary to understand and explain a veteran’s symptoms and behavior in the military and civilian world.

The DSM IV has recognized the importance of culture in the formation of mental health symptoms. DSM IV-TR describes *culture bound syndromes* as “locality specific patterns of aberrant behavior and troubling experiences that may or may not be linked to a specific DSM IV diagnostic category.” It also notes “aberrant behavior that might be sorted by a diagnostician using a DSM IV into several categories may be included in a single folk category, and presentations that might be considered by a diagnostician using DSM IV as belonging to a single category, may be sorted into several categories by an indigenous clinician” (DSM IV, 2002, p. 898). This can lead to both over and under diagnosing if cultural issues and syndromes are not taken into account. The DSM IV concept of *culture bound syndromes as locality specific* ignores the fact that culture could also be *experience specific* patterns of behavior. This can lead the clinician to overlook the *military culture* as significant. This same problem can be seen in the concept of *culture competence* as being limited to ethnic or geographic locations. Ethnicity and geography are only two of many important aspects of culture.

When cultural competence is applied to veterans however the issue of military culture in and of itself is ignored. In fact, when NAMI (National Alliance on Mental Health) talks of PTSD and culture it discusses it solely in terms of *ethnic minority* effects on rates of and reporting of PTSD symptoms (Duckworth, 2011). While ethnic group prior to service may be a risk factor, the military culture per se is indoctrinated into every soldier regardless of pre-military ethnicity.

The military has unique “beliefs, norms, values and language” as can be seen in the core values of the military and the widespread use military acronyms. In addition, there are multiple sub-cultures within the military that are related to branch, rank, and MOS. Officers are not to fraternize with the troops, Navy seals are tougher than anyone in the air force, and the National Guard are *wannabees* are but some simple examples of how an entire picture and reputation of an individual can be defined. Just as saying *Ivy League* conjures up an entire socio-economic portrait of an individual, a simple MOS acronym does the same in the military. Further, the experiences of the military can alter the civilian perception of the Military in profound ways. The best example is the *greatest generation* who of course did not suffer from PTSD because the cause was just and they were made of better stuff than the Vietnam vets who were “baby killers” who used drugs to justify war crimes and hence could allegedly be spit on at airports. Never mind that WWII vets lit up the suicide hotline at the National Veterans Foundation when Saving Private Ryan was on network TV. And of course the taking of *war trophies* (body parts of dead Japanese soldiers) is conveniently ignored.

What is universally misunderstood is the fact that military training has one and only one goal—to make for an efficient fighting force whose job is kill the enemy whenever that enemy is defined by politics and ordered to die by politics. The idea of killing as a mere “job” is fundamentally at odds with civilian values and morals, and profoundly shapes the psychological consequences of inflicting death. To do so requires developing reactions that will later be symptoms of PTSD as healthy and necessary adaptations to the “job skills” of the soldier. Numbing includes de-humanizing the enemy, seeing death as just a job, and reacting to death as *it don't mean nothing* in the jargon of Vietnam vets (Brown, 2005). Hyper-arousal is self-protective as it detects threats to self and unit survival and adrenal rush is necessary to complete the job. Over-training so that lethal force is mere *muscle memory* done without thinking is a valued in the culture as it makes the job easier and more efficient, and it eliminates moral reasoning and judgment because moral thinking is not conducive to battle field survival. To further make the distinction between civilian and military thinking and culture, killing becomes re-defined.

Civilians do not want to know, but military culture and efficiency requires re-valuing the act of killing itself—not “war is killing and killing is fun.”

So what occurs in military training and culture is a systematic elimination of and re-defining of life and death, skills, and individual and group values. A person who carefully plans and practices how to kill and goes on to kill a single or multiple individual kills more in the civil world is a serial killer and is culturally reviled, while the same process in the military is called mission planning and execution and is rewarded with medals and acclaim as heroic and necessary. Emotional numbing, hyper-vigilance, and avoidance of moral reason is prized in one culture and condemned in the other. Most importantly, military culture prizes and wants there to be no psychological cost to war as this results in “degradation” of the fighting unit. This results in the individual soldier being taught that it is weak, embarrassing and shameful as well as a bad career move to admit to any symptoms or moral qualms. More importantly, he is taught that there are culturally sanctioned means to manage any emotional turmoil. These range from de-humanization, emotional numbing, to use of alcohol and the prestige attached to mission success to cope with war.

Upon discharge what does the former military service member have left? The soldier is told to re-enter a society whose cultural influence was systematically stripped away by military training that does not want to know his experiences except in ghoulish ways such as how many did you kill. The military survival skills that were trained to the fine edge of muscle memory are now liabilities. The soldier is numb, morally troubled and injured, hyper-vigilant and hyper-aroused. He is shown little respect; his MOS does not transfer to the civilian world (and if it does he must start from scratch as his military training is not transferable for licensing or certification in the civilian world). The veteran’s civilian culture values and beliefs have been systematically trained out of him. The veteran experiences the fact he is expendable as the military may discharge him for drinking even though drinking is an integral component of the military culture. The soldier may get discharged as a *personality disorder*. Even if he is honorably discharged, while being a stranger in the civilian culture, he will have to wait a year or so for his VA benefits to be considered/awarded. He often wonders why he fought so civilians can worry about what to him are trivial pursuits. He will be caught between being alone and anonymous or intrusively questioned about how many of the enemy did he kill. His adaptive skills are now re-labeled as PTSD and result in profound personal and legal problems.

Cultural competence in PTSD requires knowledge of the military culture in order to understand what symptoms will occur and how they will be expressed. Examples

include that while most trauma victims do not want to re-traumatized so avoid returning to where the trauma occurred, soldiers want to re-deploy because then PTSD is adaptive not mal-adaptive and the military culture provides better support while deployed and still a member of the military relative to the civilian culture and environment. To a vet, guns are *teddy bears* and a source of anxiety relief. This is not naturally the case in the civilian culture, particularly after the naval yard shootings where a vet with a gun can be perceived as a threat. A culturally competent clinician will know to ask about guns and use the number and placement of guns as a means to gauge progress or lack of progress. The irritability and aggressiveness of PTSD will not be seen as power and control issues when it results in domestic violence. Alcohol and drug use patterns will be carefully assessed.

The DSM IV TR devotes Appendix I (page 897-898) to the issue of Cultural Formulation and Glossary of Culture Bound Syndromes (p 898-903). The Outline for Cultural Formulation states “the cultural formulation provides a systematic review of the individuals’ cultural background, the role of the cultural context in the expression and evaluation of symptoms and dysfunction, and the effect that the cultural differences may have on the relationship between the individual and the clinician. (DSM IV, 2002, p 897). In the legal context, the issue of cultural differences effect on relationships includes of course the veterans’ relationship with the DA, his own attorney and the Judge. Yet the issue of cultural differences between the military and the civilian world is over-looked, the veteran is presumed to now be a civilian, and the legal world relies on its stereotypes of the military in addressing the veteran. These stereotypes range from insulting (one Judge who told a vet that he knew what war was like from watching movies) to simply wrong (Brown, 2008: 10). The military’s most frequent cultural idioms to express distress, gun ownership and alcohol abuse, can be seen as evidence of out-of control desire for violence rather than need for security (gun ownership) or lack of discipline (alcohol abuse). Worst of all, is the simple statement to a vet, often by his own attorney, that his military identity, experience, and culture are simply “not relevant.”

The point of all of this is that a culturally competent evaluation requires a multi-disciplinary approach in most instances as few individuals can address military training, culture, and the effect it has on the ways the military culturally shapes idioms of distress and psychiatric disorder. Without a thorough understanding of the pre-military, military, and post-military culture experiences and training, a psychological or neuropsychological evaluation of a vet in the legal system is not a cultural competent evaluation. It is imperative that the Courts become educated to both the necessity and relevance of this type of multi-disciplinary approach.

Conclusion

Our purpose for writing this article has been to educate the reader regarding the extent of the problems experienced by veterans who leave the military culture and return to the civilian culture, and the importance of integrating a multidisciplinary scientific approach to explaining, understanding, and responding to veterans and veteran criminality. Our multidisciplinary approach prescription/recommendation includes Anthropology, Epidemiology, Epigenetics, Psychology, Pharmacology, Sociology, Toxicology, and other related disciplines that can contribute to an information base that will enable a comprehensive understanding of veterans and their behavior. To be sure, we are not suggesting that every case requires all of these specialties. What we are suggesting that at a minimum a cultural competent evaluation requires an evaluation of pre-military, military, and post-military cultural influences as well as a cultural competent psychological evaluation.

There exists a vague recognition that veterans are different than non-veterans. That difference is, for the most part, a political distinction – not a scientifically based distinction. In our current civilian culture veterans are often defined as *individuals who served their country in the military and returned to the civilian community – thank you for your service*. Many veterans, particularly those who served in combat zones, did not serve their country – instead they served to assist and protect their buddies. *Welcome back* or *welcome home* is a much-preferred tribute to their military service for many if not most veterans. We assume the position that political recognition falls short of promoting cultural competence regarding veterans entering and functioning in the civilian culture.

As expert witnesses in numerous veteran criminal cases, Brown and Stanulis concur that one of the primary problems prevalent in many courts regarding veteran defendants is that judges often are unaware of the cultural influences that veterans have been exposed to. Instead, they often only consider the psychiatric or psychological diagnoses regarding veteran defendants. We hope this article attributes to the fostering of cultural competence in multiple segments of the civilian culture – including the criminal justice system.

There are two areas related to military culture that we have not addressed – not because these areas are not important but because they would require considerable discussion. The first cultural area, which receives little attention, is the impact of military culture on the families of service members and veterans. More than two-thirds of active duty and reserve officers and over half of enlisted military personnel are married (Institute of Medicine, 2013). Most studies that address military families tend to focus on married male members of the military – perhaps because females only make up about 15 percent of the U.S. military. Service

members with children but who are unmarried or without a partner are typically omitted from these studies. Yet, single parent families make up over 5 percent of the military population, and female members of the military represent the majority of these single parent families (Hosek, 2011). Research substantiates the notion that many military children experience higher levels of anxiety when compared to children without military parents. Research also demonstrates that children with military parent(s) who have been deployed are prone to entanglement in the juvenile justice system, and increased incidents of child mistreatment by the non-deployed parent (Hosek, 2011; Chandler, 2010; Gibbs et al., 2007). More research is needed that focuses on the children of veterans. Another area of importance is the military justice system. Similar to many courts in the civilian culture, military court martial proceedings ignore the role of military culture, military training, PTSD, TBI, and other relevant factors associated with an individual's behavior. We purposely refrain from elaborating on these topics because they are topics for another article.

The goal of this article has always been to communicate that in order for the Criminal Justice system to reach its goal of providing Justice for all, cultural competence is required. We are concerned that the Justice system lacks data as to how many veterans are in the system and information as to what the unique problems of veterans are and how to address these problems to achieve Justice and ensure the veteran does not remain in the system. In our roles as scientists, the lack of data is frustrating and we are attempting to fix this knowledge deficit. In our role as expert witnesses, in which we form an opinion and then provide that opinion to assist the System in achieving the "just" outcome, the lack of data and lack of cultural competence is at times quite frustrating.

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