

**RESCUING SOLDIERS
OF MISFORTUNE**

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**A Full-Spectrum Approach to Veterans in the
Criminal Justice System from Arrest to Reentry**

By

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This book is dedicated to the veterans of our nation's wars who gave all they had only to be redeployed to prisons and jails because those battles never ended. These warriors are not forgotten, but rather owed the nation's most urgent support for that very sacrifice.

PREFACE

This is not a book in search of a disorder. Nor is it an attempt to explain away every veteran offender's crimes as the result of military insensitivity, combat trauma, or a rough homecoming experience. Veterans, like civilians, commit crimes for a number of reasons, many of which may have nothing to do with combat, training, or trauma—even if these are salient features within their personal histories. Neither does this book view the veteran offender as victim even though the media may sometimes portray them this way.

Rather, as military historian Clive Emsley observes, "Crime is one element of any society. If service personnel commit crime it is essentially because they are members of a society and it would be surprising if membership in the armed forces changed them in such a manner as not to reflect that society" (Emsley, 2013, p. 200). In line with the recommendations of the National Center for Post-Traumatic Stress Disorder and other mental health experts, it is difficult to make accurate generalizations about veteran offenders because they constitute a very diverse population, necessitating case-by-case examination.

Despite individual differences, far too many incarcerated veterans fall into a similar pattern: they were transformed by their military service, had no prior history of offending before enlistment, performed their duties loyally and faithfully, and have current mental health needs. To ignore them on the possibility that some nefarious inmates might lie about their service, might not truly need help, or might be motivated solely by the prospect of secondary gain completely defies the magnitude of their collective and individual sacrifice to the nation. Many in this group willingly endured a reality that included the most harrowing conditions and no promise of even surviving them. At the time of enlistment, most were not thinking about how they might benefit from disability compensation or other benefits in the future. This book concerns those veteran inmates who have failed to complete the readjustment process and who continue to wage their own personal wars to regain a sense of normalcy—those veterans who have not yet redeployed home from combat even though they have relocated to the inherently traumatizing confinement setting.

The literature on the criminalization and overrepresentation of individuals with mental illness makes an important distinction. While the criminal justice system should rightly hold those responsible for crimes that are “unrelated to symptomatic mental illness,” it should not adopt a punitive posture with inmates who suffer from mental illness “simply because of their mental disorder or lack of access to appropriate treatment” (Munetz & Griffin, 2006, p. 544; Edelman, 2018).

Jails and prisons have a tremendous opportunity either to prevent or to induce negative symptoms among incarcerated veterans with legitimate mental health needs. In the establishment of veteran-specific interventions, good screening systems, solid eligibility criteria, and stringent participation standards will help reduce the possibility of fraud, waste, and abuse. Additionally, veterans have their own laser-like precision in detecting the fakers in their midst.

Aside from identifying factors that will help those seeking to be aware of the unique problems of incarcerated veterans and those advocating for these veterans, this book will attempt to help these individuals as well as correctional professionals to understand veteran inmates and their “unique” needs, which stem from military service (Tsai, Flatley, Kaspro, Clark, & Finlay, 2017, p. 376). This book refrains from a singular blueprint for all veterans and for all modes of incarceration including jails, prisons, and alternatives to incarceration altogether. What this book shows through much research—including a historical study of past programs—is that programs must be implemented flexibly despite operational and budgetary challenges. Instead, the author draws on the forgotten past and presently obscured lessons from the few jurisdictions that have developed targeted responses to the special needs of veteran inmates.

This book should help elected officials, law enforcement, the legal system, and veterans’ advocates to develop relevant programs that do far more than simply warehouse some troublesome individuals. Eventually, more than 90 percent of individuals, including incarcerated veterans, leave prison (James, 2015, p. 1). However, if they do not have programs that are capable of meeting their needs while they are incarcerated, these returning convicts risk being recidivists and can cost their jurisdictions far more than what effective programming would have cost (James, 2015). Thus, this book provides ideas that public administrators and other leaders can use to strengthen the fabric of our society—often at a surprisingly low cost.

The approach in this book spans the post-World War I period to the present to show programs that promote successful readjustment from military service and treatment of combat and operational stress injuries *during confinement*. To strike a proper balance, the author also considers responses to the leading objections about veteran-specific interventions. At its core, this pub-

lication seeks to eliminate the guesswork from the formulation of responses to a special population. The aim is to identify responses that are verifiable and can be replicated by others.

One of the major challenges facing correctional institutions has been identification of inmates who are veterans (Edelman, 2018). Because many veterans conceal their identities for fear of losing benefits or shame at the fact of arrest (Rosenthal & McGuire, 2013), the inability to quantify this group with any degree of certainty has traditionally limited options for addressing the problem of incarcerated veterans. Requests for military records could take months to obtain, if they were even available. Correctional administrators had to contend with the possibility that “fakers” would attempt to gain benefits if they offered programs without the capability of verifying veteran status.

In 1990, during congressional hearings on the readjustment and mental health needs of incarcerated veterans, J. Michael Quinlan, Director of the Federal Bureau of Prisons, emphasized the need for a system to conduct computer matching of inmates with databases at the Department of Veterans Affairs (Quinlan, 1990, p. 20). The hearings underscored the fact that it was difficult to identify veterans and their needs for veteran-specific services because of the lack of methods to confirm the veteran status of inmates.

After decades of concern and confusion, as a part of the Department of Veterans Affairs (Veterans Administration) intensified outreach efforts, on April 25, 2012, personnel at the Homeless Program Office developed a computerized system to quickly scan their own systems for confirmation of veteran status. The program, called the Veterans Reentry Search Service (VRSS), requires only a Social Security number to access basic information about veterans’ military records. To protect the information, prison administrators obtain basic confirmation of veteran status while Veterans Administration personnel simultaneously receive a more detailed output including the character of the veteran’s discharge and other facts about the nature of an inmate’s military service and experiences (U.S. Department of Veterans Affairs, 2015).

The Veterans Administration fielded the VRSS in the state correctional systems of California, Iowa, and Maryland to determine how accurately the system could account for veterans within the institutions. Surprisingly, while California prisons had estimated their veteran population at 2.7 percent based on inmate self-identification, the results of the VRSS computer matching revealed more than double the amount—roughly 7.9 percent (J. McGuire, personal communication, December 30, 2013). In California’s example, the computerized search identified more than 5,000 previously not accounted for veteran inmates.

In the Middlesex County House of Correction, use of VRSS revealed more than 50 incarcerated veterans when most thought only a handful exist-

ed (Edelman, 2018, p. 67). Identification of this substantial population led the sheriff to develop a support group, then a separate Housing Unit for Military Veterans (HUMV) dorm to respond to these inmates' service-related needs (Edelman, 2018, pp. 67–68). The VRSS program is now available in several correctional systems, and VA specialists have encouraged correctional professionals to use the system to provide services that will assist veterans in their readjustment to society.

While the VRSS program offers a relatively new capability for jails and prisons to identify veteran inmates, it poses a more daunting question—*what do to with them once identified!* Based on research on the topics of military service, combat, and criminal behavior, inevitably some portion of veterans in the offender population—perhaps quite small but still very significant—have dire needs to complete the process of readjusting to society after discharge from the military. Others—in another distinct subpopulation—have legitimate needs for treatment to address lingering operational stress injuries such as Posttraumatic Stress Disorder (PTSD) and mild Traumatic Brain Injury (TBI).

For these combat-traumatized veterans, especially, there is a lingering question of how suitable correctional facilities are to address their specific needs. While the VRSS program offers new ability to confirm inmates' veteran status, it does not provide any means for the Veterans Administration to overcome 38 C.F.R. § 17.38, a regulatory ban against offering any in- or outpatient medical treatment services to an inmate (Schaffer, 2016). Undoubtedly, with the use of the VRSS program, there will be new pressure on correctional professionals to address the population of “forgotten warriors” who occupy their cells and dorms, but there is little Veterans Administration corresponding assistance in addressing these inmates' needs during the period of incarceration, aside from transitional planning for the period of reentry.

E.R.S.

INTRODUCTION

Since 2008 when I developed a specialized court for military veterans after seeing increasing numbers making appearances in my mental health court, many developments have occurred across the nation. After ten years, it is estimated that 461 veterans treatment courts exist with many others in the planning stages. Although not all 50 states and territories have a dedicated program, well over 40 states do. Even in those jurisdictions which lack veterans treatment courts, they may have other programs tailored to the special needs of this population. As only one example, research by Major Evan Seamone reveals a veterans dorm in the state of Nebraska, as one of at least 80 similar dorms operating nationally (likely more by the time of this publication), even though Nebraska does not have a dedicated veterans treatment court.

With a novel perspective on criminal justice, Seamone suggests that nationwide veteran-specific programs in the criminal justice system—including first-responders trained in crisis communication with former military personnel and the nascent veterans traffic court operating as a first of its kind in Suffolk County, New York—represent a compromise between the military and civilian society. It is a tacit agreement that civilian society, while lacking expertise in the nuances of veteran culture and mental health needs, has shouldered the responsibility of aiding in the readjustment process. Seamone argues that, sometimes, veterans may require aid from the criminal justice system for completing the readjustment process when stubbornness, stigma, delayed onset of symptoms, or any number of other factors leave the veteran unable to recognize maladaptive methods he or she has adopted to cope with trauma symptoms or impaired perception of potential threats. Seamone makes the point, as I regularly witness along with other Veterans Treatment Court judges, that it often takes the back seat of a police car for a veteran to understand the need for help and the ineffectiveness of self-initiated responses.

Seamone's book, *Rescuing Soldiers of Misfortune: A Full-Spectrum Approach to Veterans in the Criminal Justice System from Arrest to Reentry*, presents the most comprehensive evaluation to date of the manner in which military veterans

and active duty service members find themselves in conflict with the law and, correspondingly how the entire justice system can function as a seamless web to address the underlying conditions that contribute to veteran offending. Drawing on vital but obscured lessons from the past to supplement current innovative practices, Seamone demonstrates that many precedents exist for the civilian criminal justice system to respond to veterans in a manner that stresses accountability while offering opportunities for treatment and adjustment that had not been available before justice involvement.

This book, which represents years of research and experience serving as a military lawyer in both prosecution and defense, is an important reference for a variety of readers, including: law enforcement and first responders, corrections professionals, mental health providers, lawyers, judges, and anyone who desires to understand the challenges faced by military veterans in conflict with the law. Seamone provides expert information to assess individual veteran offenders who may have identical records, but very, very different personal experiences related to their service. Whether a given veteran is still in the military, left only days ago, or has been separated for decades, this book considers various factors that will promote veterans' recovery and aid in their readjustment to civilian society.

While some have criticized veteran-specific programming, Seamone clarifies the major differences between former military members and nonmilitary offenders who may have their own pressing mental health needs. First, having gone through basic training, which totally transforms a recruit from a civilian into a warrior, the veteran's military experience cements very different cultural values and assumptions that will stay with veterans for their lifetimes. Justice involvement may result from the conflict between these military values and civilian society's divergent expectations and cultural norms. Seamone provides a roadmap demonstrating how justice involvement offers unmatched opportunities for veterans to evaluate the manner in which deeply-held beliefs have contributed to or shaped behavior. Second, the vast majority of justice-involved veterans (roughly 80%) will have eligibility for benefits administered by the Veterans Administration even though many may have never used such benefits. Connecting veterans to benefits they rightfully earned, and helping veterans obtain upgrades of their discharge characterizations if they were separated less-than-honorably, can raise the quality of a veteran's life through housing and healthcare while reducing recidivism.

I will turn to this volume as a ready resource for the practical knowledge it imparts and salute Major Seamone for mightily enriching the limited scholarship in this area. The book delivers on its objective to make the justice system smarter along all points of the spectrum of justice involvement from arrest to reentry. While we may never reach every veteran entangled in

the criminal justice system, the guidance in this volume will amplify current attempts to finally end veterans' personal wars that rage on after their return to the community.

Honorable Robert T. Russell, Jr.
Presiding Judge
Erie County Veterans Treatment Court

DISCLAIMER

The views expressed in this book are solely those of the author and do not represent the positions of, and are not endorsed by, the Department of Defense, the Department of Veterans Affairs, or any other public agency.

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In particular, my heartfelt thanks extend to Jim McGuire, Sean Clark, Joel Rosenthal, and Jessica Blue-Howells of the Veterans Health Administration Justice Programs, an organization responsible for forging new and vital connections between incarcerated veterans, the courts, and various service providers. Thank you as well to Dr. Shoba Sreenivasan for insights on the readjustment of veteran offenders. I owe special gratitude to Ruthanne Gordon, who assisted me in obtaining the original court records from the litigation that led to the development of the Pennsylvania Department of Corrections' ground-breaking Vietnam Veteran Combat PTSD treatment program, after the files had been lost at the National Archives. For their historical perspectives on Pennsylvania's program, I appreciate the help of Otis Nash and Dr. Edward Flournoy.

A necessary component of this book was the current state of Crisis Intervention (team) Training programs to prepare first-responders (including correctional staff) for engagements with veterans in crisis. To this end, I am grateful for the unique insights of Dr. Amy Watson, retired Chicago police lieutenant Jeff Murphy, and Memphis Veterans Administration psychologist Thomas M. Kirchberg. Beyond this, the book's insights on the establishment of veterans' organizations and veterans dormitories in jails and prisons would not have been possible without the assistance of those who have been integral in the development and operation of such programs.

During the research for this book, I was extremely fortunate to benefit from the insights of Susan Verbecke and Jim Strollo, who innovated for de-

cares within the New York Department of Correctional Services Veterans Residential Therapeutic Program, shortly after the program was established. No other veteran-specific programs such as theirs has managed to survive for so long. Their determination and dedication to the program surely explains why the program serves as a virtual center of excellence for other programs wishing to gain priceless insights on correctional programming. In addition, my gratitude also extends to Gregory Crawford and his team from the National Institute of Corrections (NIC), including Mr. Bernard Edelman, who offered me an unparalleled opportunity to contribute to NIC's efforts to promote the development of specialized housing units in jails across the nation.

For their insights on the establishment of the Muscogee County Veterans Dorm, I give my sincere thanks to former Sheriff John Darr and Reverend Neil Richardson, both of whom have demonstrated the benefits of developing targeted housing programs for veterans. To Gary Cranor and Sandra Womack of Texas' Mark W. Stiles Unit, you have my unending appreciation for insight on the fifteen-year evolution of the Vietnam Veterans of America chapter there. I also thank Warden Greg Hershberger of the Roxbury Correctional Institution for allowing me to visit the facility and Corporal John Worgul for his priceless insights on sponsorship of the Incarcerated Veterans of Roxbury, an exceptional organization that has found a new way to channel the energies of incarcerated veterans in continued service to the community.

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Chapter 1

COMPONENTS OF VETERANS' READJUSTMENT

Renewed Concern for Veteran Offenders

On August 17, 2017, a watershed moment occurred for veterans across the United States. Under Secretary of Defense Anthony M. Kurta issued a memorandum and accompanying guidance for the special boards that decide on petitions to upgrade military discharge characterizations (Kurta, 2017). The full five-page document, including its enclosure, appears in the Appendix to this chapter. The Kurta Memorandum articulated, for the first time, factors that would mitigate less-than-honorable military discharge characterizations based on misconduct where a veteran suffered from Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), other “mental health condition[s],” or had experienced sexual assault or sexual harassment while in Service (Kurta, 2017, p. 1, ¶ 6).

The significance of Under Secretary Kurta’s memorandum was open to debate. For many veterans who had attempted to upgrade their discharges for decades to no avail, Kurta’s guidance seemed well-intentioned, but little different from previous efforts to recognize the impact of “invisible” war wounds. In the 1970s, President Jimmy Carter attempted to grant discharge upgrades for Vietnam veterans as a form of a Special Discharge Review program. These efforts failed because Congress enacted legislation to prevent this act of mercy from impacting VA benefit determinations. Congress, in fact, further forbade advertising of the program and optimal outreach (Kidder, 1978).

In 2014, in response to lawsuits premised on statistics demonstrating a trend of denials of PTSD-afflicted Vietnam veterans’ discharge upgrade requests (Paznoikas, 2014), Defense Secretary Chuck Hagel issued guidance inviting the boards to exercise more meaningful consideration of these claims. The basis was that PTSD diagnoses did not exist until the 1980 *DSM III* and available military records from the war years often lacked “substan-

tive information concerning medical conditions” (Hagel, 2014, p. 2). Secretary Hagel instructed that discharge review boards should give “special consideration” to later PTSD diagnoses as well as service-related records revealing “one or more [PTSD] symptoms” (Hagel, 2014, Attachment, p. 1).

Evident in the filing of additional class action law suits against the Department of Defense (DoD), the boards apparently did not take this guidance to heart (McCarthy, 2017). In 2016, Under Secretary Brad Carson formalized Secretary Hagel’s guidance and reminded boards that the Hagel Memorandum’s standards “remain[e]d exceptionally important” and directed that the boards “renew and re-double . . . efforts” to apply Secretary Hagel’s standards (Carson, 2016, p. 1). Given this chain of failed policies, for some veterans, there were few guarantees that Kurta’s Memorandum would be any different.

Other commentators recognized important differences in Kurta’s new standards. Homeless Rights Attorney Neha Chiaramonte (2018), for example, hailed the Kurta Memo as a “monumental shift in the law [that] has dramatically changed the lives of many service members.” The Connecticut Veterans Legal Center, which authors a popular discharge upgrade manual, recently updated its guidance to reflect Kurta’s standards. It indicates how the Memorandum “expands the liberal consideration protections stated by the Hagel and Carson Memos, broadening the pool of applicable veterans to those suffering from ‘mental health conditions’ rather than just PTSD or TBI,” accounts for symptoms of military sexual trauma and sexual harassment, and “expand[s] all three memos’ coverage to all discharge characterizations, not just other than honorable” (2018, p. 3). Kristofer Goldsmith, a veterans’ advocate who practiced for a decade in the area of veterans’ benefits after his own tour, marveled that the Kurta Memorandum is “filled with signals that there may yet be hope for veterans who have been unfairly suffering the effects of [stigmatizing less-than-honorable discharges]” (Wentling, 2017). Undoubtedly, another important difference was Under Secretary Kurta’s expansion of the guidance beyond Secretary Hagel’s focus on Vietnam-era veterans (2014) to *all* veterans (Kurta, 2017; Chiaramonte, 2018).

The Kurta Memorandum is monumental for a different reason entirely. Less-than-honorable discharges, especially those falling in the categories of Undesirable or Other-Than-Honorable, arise from the military’s finding that the veteran engaged in unlawful behavior. The Kurta Memo thus represents the clearest and most direct official recognition of the connection between traumatizing events occurring during military service and subsequent criminal offending while in the military.

The sixth paragraph of the Kurta Memorandum observes: “Evidence of misconduct, including any misconduct underlying a veteran’s discharge, may be evidence of a mental health condition, including PTSD; TBI; or of

behavior consistent with experiencing sexual assault or sexual harassment” (2017, Attachment p. 1 ¶ 6). It condemns traditional skepticism of self-serving diagnoses long after military service and directs the boards to give liberal and favorable consideration to private and Veterans Affairs’ mental health diagnoses made “years” after military service because “[i]nvisible wounds . . . are some of the most difficult cases to review and there are frequently limited records for the boards to consider” (Kurta, 2017, p. 1).

“Evidence of misconduct, including any misconduct underlying a veteran’s discharge, may be evidence of a mental health condition, including PTSD; TBI; or of behavior consistent with experiencing sexual assault or sexual harassment.”

Under Secretary of Defense A. M. Kurta (2017, p. 1, ¶ 6)

The combined effect of this new guidance marks not only the recognition, but codification of a presumption that military misconduct is attributable to service-connected mental health conditions. At the most general level, Under Secretary Kurta’s presumption can properly be considered part of a broader consensus—a “paradigm shift” (Schaffer, 2016, p. 293; Trojano, Christopher, Pinals, Harnish, & Smelson, 2017, p. 409), a “sea change” (Seamone et al., 2018a, p. 140), and an “emergent nationwide effort to reduce mass incarceration and better address the root cause of criminal behavior through treatment and supervision” (Robinson & Tate, 2016, p. 26)—that has grown since attacks of 9/11 and in response to America’s longest wars.

The Kurta Memorandum represents the DoD’s adoption of the same principles that underlie veteran-specific responses across the range of civilian criminal involvement, from specially trained police officers to veterans treatment courts, specialized housing units for veterans in prisons and jails, and veteran reentry courts. Collectively, all of these innovations, endorsed most prominently during America’s present “forever wars” in Iraq and Afghanistan (*New York Times* Editorial Board, 2017), recognize the instrumental value of treating the underlying mental health condition and aiding in post-service readjustment rather than using a traditional punitive approach.

With the exception of a single federal veterans treatment court at Fort Hood, Texas, that has enrolled military members (Robinson & Tate, 2016, p. 24), the active duty military has largely rejected the civilian justice system’s successful approach to its own offenders (Seamone, 2011; Seamone et al., 2018a). The recent innovations in the civilian sector have occurred at such

a widespread and accelerated pace across the nation that off-the-shelf models now exist to assist law enforcement, correctional administrators, prosecutors, judges, and other members of the civilian criminal justice system to develop effective veteran-specific interventions that improve communities by linking veterans to much-needed benefits and resources that they rightfully earned (Seamone et al., 2018a). Although some have criticized the lack of evidence-based and longitudinal data regarding these different models, current trends, combined with historical lessons provide a firm enough foundation for planning and implementation (Edelman, 2018).

The Critical Role of Military Culture in Criminal Offending

During different periods of war in society, scholars concluded that military service transformed veterans into very different people when they returned from combat (e.g., Bryant, 1979). However, family members, spouses, partners, and significant others who knew the veterans prior to their entry into the military have routinely observed the dramatic and all-encompassing transformation of civilian into warrior after the completion of basic combat training and before exposure to the horrors of war. As Blum, the brother of an Army Ranger trainee, observed, “[t]he moment the infantry recruit walks down the cinder-block path from his childhood home at 0430 hours and enters a recruiting sergeant’s car via the passenger-side door, he crosses over into a new plane of existence” (2017, p. 34). In the process of “making” a marine, sailor, soldier, or airman, recruits are taught by drill instructors to despise and doubt their prior civilian routines, ambitions, and behaviors, and to embrace a new military culture that prioritizes entirely different values that are necessary to meet the military’s purpose (Holyfield, 2011).

Blum correctly identifies that basic training is “a carefully calibrated process” in which “[r]ecruits are both habituated to violence and acculturated into a new family with radically different standards of behavior” (2017, p. 44). The book *Khaki-Collar Crime*, written by a former Army combat veteran, alludes to the manner in which

[c]ivilian value systems and military value systems are often antithetical, and the average civilian may well be disaffected to the point of immobility at the prospect of violence and mayhem, killing and/or being killed, and the necessity for blind obedience to orders from superiors. The civilian must be converted into that which he was not—a warrior with warlike proclivities. (Bryant, 1979, p. 55)

This new military culture indoctrinates a sense of “violent and aggressive behavior” in which “[t]oughness’ and aggressiveness are highly favored characteristics and are often equated with ‘leadership’” (Bryant, 1979, p. 53).