

THE DUALITY OF FLORIDA'S CRIMINAL PRETRIAL DIVERSION  
PROGRAMS:  
A SEPARATE TREATMENT COURT FOR VETERANS

by

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## **ABSTRACT**

This thesis examines two issues facing Florida's young and fledgling Veteran Treatment Courts. First is whether or not a separate hybrid court of already existing mental health and drug courts is needed exclusively for veterans; and second, funding and efficiency of such courts as compared to traditional criminal institutions.

## **DEDICATION**

To

My beautiful, loving and patient wife Elizabeth M. Van Zandt

*Mahal Kita ko Asawa*

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## CHAPTER I: INTRODUCTION

It's not typical in the daily routine of the average citizen of the United States to wake up, go on a morning stroll and upon returning home, near their front porch, step on an improvised landmine leaving them with no legs or any recognizable genitalia. Nor is it common that a citizen goes to work and risks their freedom or life by telling their boss no when given an order to do something. What civilian faces possible death if in their employment they surrender to the competitor company across the street? A soldier, as you will find out faces losing their freedom for refusing a legal order given and laws still exist today that carry a penalty of death if their surrender endangers the lives of other troops. The trauma a soldier may face during their service is incomparable to almost anything a civilian might experience.

Psychological traumas suffered by those mentioned within this thesis were not always as identifiable or treatable as they are today. The term Post-Traumatic Stress Disorder<sup>1</sup> (PTSD) and criteria for diagnosis did not exist before the Diagnostic and Statistical Manual of Mental Disorders, III (DSM III) (Andreasen, 2004) This does not mean that the condition did not exist in the past, it just went by different names that were unique to each war.

Penny Coleman, in her book FLASHBACK, states that during the Civil War PTSD was called “. . .*irritable heart*’ or *nostalgia*’ (Coleman, 2006, p. 19). In later wars it might carry some of the following terms, *‘shell shock’*<sup>2</sup>, *‘hysteria’*, *‘neurasthenia’*, *‘war neurosis’*, *‘battle fatigue’* or *‘exhaustion.’* (Id.)

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<sup>1</sup>

<sup>2</sup> Term confirmed by an article on PTSD that examined past trauma 30 years in the past (Koponen, et al., 2002)



During the Civil War, some “cowards<sup>3</sup>” were marched in front of their fellow soldiers; blind folded and were executed by firing squads. (Coleman, 2006, p. 23) Then they were buried with little to no dignity. The whole process of execution and other punishments were, oddly enough, meant to discourage such behavior. When given the choice of risk execution by requesting discharge due to psychological injury, running or dying in battle; it seems a logical choice one might run to save their life. Executing someone because they request discharge due to having a mental condition is not the just way to deter, or arguably and effective way, to keep others from trying to leave the military. If anything it may encourage desertion over receiving a charge of cowardice. At least while running a deserter is in charge of their own fate and not that of a firing squad or the enemy’s rifle. Some of those executed were little more than boys whom may never have envisioned war beyond the glory imagined or the pay they would receive to help their families. Their innocence ignored, these poor souls substance was weighed against that of other men in war and found wanting.

Yes, as a nation, during times of war, the United States killed young men for being scared and possibly suffering from what we might now classify as PTSD<sup>4</sup>. Cowardice<sup>5</sup>, as an executable offense in the past<sup>6</sup> for those in our military, should not be confused with desertion.

The “coward”, ironically enough, had to be brave enough to face his command structure and admit to an extremely undesirable trait or, knowing full well, the ridicule, hate, possible-

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<sup>3</sup> Cowardly acts in time of war may receive the maximum penalty of death according to the Military Code of Justice 10 U.S.C. 47 § 899 Art. 99 (5).

<sup>4</sup> Shockingly it was not just those who were absent without permission or better known today as absent without leave (AWOL) or those who ran away who were executed. No, those who simply applied to leave for psychiatric reasons could face a firing squad if their command did not agree with their complaint. (Coleman, 2006, p. 23)

<sup>5</sup>See note 1

<sup>6</sup> The law still exists though there is no evidence of an execution in the past 50 years for violation this law.

banishment or in some cases, their own death that may result. Was it the anticipation of death and the unbearable anxiety that caused them to just get it over and risk banishment and or death? Unfortunately, not much data exists as to why some soldiers took this path; however, one might compare this behavior to soldiers today when veterans use law enforcement as a tool to take their own life. With such punishments as a possible deterrent to being a “coward”, was it any wonder that alcohol and other coping mechanisms would be used in the military of our past?

No one is hanged or shot while sitting upon his own coffin in front of his friends and fellow soldiers as they were in the past. That’s not to say that the military has done an about face in its treatment of soldiers who in fear of their lives, run away or cower from the enemy. The military still has the same concerns as it once did about a soldier who will not fight.

Aside from punishments for those who will not fight, the military must find more soldiers to give guns to fight with in the first place. How they go about it just may boost the future population of veterans with PTSD. In Vietnam the military actually recruited those already at risk for developing PTSD whether they knew it or not. According to Bowman, in her book *Individual Differences in Posttraumatic Response*, the intelligence level of a person may play some part in a person’s development of PTSD from exposure to a “*toxic event*”. (Bowman, 1997, p. 52)

In Vietnam, although a draft was in place, there was a need for more soldiers fighting on the battlefield. The problem was that the large portion of the population targeted was not intelligent enough to pass the exams required by the military (Coleman, 2006, p. 66), which is discussed in more detail in the section component four of this thesis.

## **Operation Enduring Freedom and Operation Iraqi Freedom Veterans**

*‘Staff Sgt. Brad Eifert circled through the woods behind his house here, holding a .45-caliber pistol. The police were out there somewhere and, one way or the other, he was ready to die . . .’*

(Goodie, 2011)

The article written by Erica Goodie, *Coming Together to Fight for a Troubled Veteran*, tells a story about a veteran who wanted to commit suicide but could not do it himself. His actions easily fall into the category of violent; however, he was his own intended victim.(Id.) The sergeant was a veteran who served in Iraq with PTSD and was admitted into a Michigan VTC after being arrested and charged with serious crimes<sup>7</sup>. The stand-offs, like that which took place between Eifert and the police, do not always end with just being tased<sup>8</sup>, Eifert was very lucky. Similar to the ending scene in the movie “*Falling Down*” the cops were dealing, in some ways similar to Eifert, with a man that had flown off the handle and had become extremely dangerous. Eifert had a gun, he was desperate and they were closing in on him. In the movie *Falling Down* the character known to the police as “D-fens” due to his license plate eventually pulled out a toy gun and committed suicide-by-cop; sergeant Eifert wanted the police to shoot him as well and attempted to provoke them to do just that.

The newest additions to the veteran population, like Sergeant Eifert, are those coming from a combined stretch of over ten years of combat that is still continuing in Iraq and Afghanistan.

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<sup>7</sup> According to the article Eifert was charged with, “. . . five counts of assault with intent to murder the officers.” (Goodie, 2011)

<sup>8</sup> Being subdued by use of a Taser.

Combat and the effects of it did not end when former President George W. Bush stood atop of the USS Abraham Lincoln and declared an end to major combat operations in Iraq. Unlike those in Operation Desert Storm (ODS) the current fight, not only overseas but for those recovering at home, is not over. Still these veterans face many of the same troubles and some new ones as those that came before them.

A resounding echo from many proponents and advocates lists PTSD<sup>9</sup> and TBI as signature wounds of Operation Iraqi Freedom (OIF)<sup>10</sup> and Operation Enduring Freedom (OEF)<sup>11</sup>. The warfare in latter portions of OIF and OEF involved the use of guerilla warfare<sup>12</sup>, insurgents<sup>13</sup>, and the use of IED's<sup>14</sup>. Due to modern media America observed a real-time glimpse of the war unlike any war before it.

No VTC's existed for the soldiers returning home from Vietnam and the wars before it. PTSD, as a diagnosis and its treatments were not established then either. Today troops returning from the wars in Afghanistan and Iraq may have the option in participating in some of the many VTC's

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<sup>9</sup>.Post-traumatic Stress Disorder "An anxiety disorder that occurs after a traumatic event in which a threat of serious injury or death was experienced or witnessed and to which the individual responds with intense fear, helplessness, or horror. In addition, the disorder is marked by the following symptoms occurring for more than one month and causing significant distress and/or impairment: re-experiencing the event, avoiding stimuli relating to the event, numbing of general responsiveness, and hyper arousal (American Psychiatric Association 2000). PTSD is diagnosed after symptoms have persisted for more than 30 days after exposure to a traumatic event.' (Tanielian, et al., 2008)

<sup>10</sup> "Operation Iraqi Freedom, the military operation in Iraq. Although troop buildup began in 2002, the invasion of Iraq occurred in March 2003" (Tanielian, et al., 2008)

<sup>11</sup> "Operation Enduring Freedom, the military that began in 2001 in Afghanistan (Id.)

<sup>12</sup> "Military and paramilitary operations conducted in enemy-held or hostile territory by irregular, predominantly indigenous forces. Also called GW. See also unconventional warfare." (DoD, 2012)

<sup>13</sup> "The organized use of subversion and violence by a group or movement that seeks to overthrow or force change of a governing authority. Insurgency can also refer to the group itself."(Id.)

<sup>14</sup> "A weapon that is fabricated or emplaced in an unconventional manner incorporating destructive, lethal, noxious, pyrotechnic, or incendiary chemicals designed to kill, destroy, incapacitate, harass, deny mobility, or distract. Also called IED."(Id.)

being created across the country. The main obstacle between these veterans and the VTC is funding and meeting eligibility requirements of some of the VTC's being established.

## **The First Veteran Treatment Court**

When United States veterans return home from active duty, they sometimes display scars from war. Some of them return with limbs missing and deeper, often unseen wounds which may never completely heal. These are physical manifestations of battles once fought by these brave warriors; however, many will return with wounded minds which can be hard to detect. Those with wounded minds may find themselves using alcohol and other drugs in order to suppress the demons of war that haunt many of them long after the action has ended. This possibly may lead to further problems which might compound the underlying problem and spiral out of control for some veterans. This problem has not gone unseen by pioneering adjudicators and has led to the creation of non-adversarial treatment courts throughout the United States.

The Veteran Treatment Courts (VTC) are a hybrid form of proven pre-trial diversion programs; most of which occur in state judicial systems. No evidence is brought in to determine guilt or innocence as a means to seek conviction. Instead, if selected, the defendant is given the chance to either have their charges dropped completely or some other option similar to a plea bargain is presented. The VTC's in Florida only handle misdemeanor cases or non-violent felonies. These criminal courts do not handle any potential torts associated with the defendant's alleged actions, which brought him or her to this court in the first place. Victims of the crimes committed by veterans who qualify for pre-trial diversion through the VTC might still have other avenues of approach for obtaining justice through civil courts if they so choose.

Although it is true that a person brought into a VTC, or other types of treatment courts, might get a reduced sentence or charges dropped completely; this does not mean they escape justice. For these pre-trial diversionary systems to be effective, some negative consequence must exist for failure to adhere to court orders. (Russell, 2009, p. 369) These sanctions and consequences are addressed later within the sections discussing the ten components of a VTC.

Judge Robert T. Russell (Judge Russell), created the first VTC in 2008 (Russell, 2009, p. 364). The court was created as a result of seeing a trend in his courts with many veterans entering for similar reasons involving non-violent misdemeanors as the result of substance abuse and or mental health issues (Id). Judge Russell was and is a judge whose docket includes drug and alcohol courts as well as mental health courts. The drug, alcohol and mental health courts are a form of applied therapeutic jurisprudence<sup>15</sup>

Of the many issues facing veterans, in his article on “*Veterans Treatment Court*”, Judge Russell wrote about five that are of most concern to veterans and their role within the VTC’s (Russell, 2009). The first issue affecting veterans is alcohol and substance abuse. (p. 358) The cited data from a 2003 National Survey on Drug Use and Health (Id.) stated that, “. . .56.6% of veterans had used alcohol, and 7.5% reported using heavy alcohol use in the previous month.” The alcohol use among veterans differed with the general population of nonveterans by nearly 6% (Studies, 2006)

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<sup>15</sup> “The study of the effects of law and the legal system on behavior, emotions and mental health of people; esp., a multidisciplinary examination of how law and mental health interact . . . This discipline originated in the late 1980s as an academic approach to mental-health law.” (Garner, 2009, p. 933)

The traditional approach to dealing with alcohol and drug abuse might not be as effective as treatment courts in general; because, as shown in a 2010 survey sponsored by the United States Department of Health and Human Services, those within the criminal justice populations:

. . . adults aged 18 or older who were on parole or a supervised release from jail during the past year had higher rates of illicit drug or alcohol dependence or abuse (38.2 percent) than their counterparts who were not on parole or supervised release during the past year (8.7 percent). (Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, and by RTI International, 2011)

Treatment courts, though still relatively young, have shown very low rates of recidivism as compared to the traditional court system in dealing with alcohol and drug related offenses (needs citation). However, as Judge Russell and other researchers have suggested, some veterans are unique in the criminal justice system and these unique individuals suffer from disorders related to their military service. (Russell, 2009, p. 363)

It's not so surprising that Judge Russell was on to something. One might easily associate combat and being deployed in the military with higher rates of PTSD and other consistently diagnosable mental injuries or disorders. But that is not what makes veterans unique entirely. It's the nature of the people with whom veterans can feel comfortable talking to and work through their issues that makes them unique. Soldiers are trained to do tasks methodically and trust their training will see them through difficult times. As a team they drill and practice repeatedly and gain trust in one another. What greater trust is there than trusting your life to someone and knowing they would risk their life for you?



This addresses another issue of strained relationships that the entire family of a veteran may face when they return (Id., p. 359). The when, where and for-how-longs of deployment can vary for those in military service. Recently this degree of uncertainty has expanded to parts of the armed forces that typically handled domestic security (in a military sense) such as the National Guard and the Coast Guard. During Operation Iraqi Freedom (OIF) a portion of our Coast Guard was deployed to Iraq (Hull, Thomas, & DiRenzo, 2003)

Florida has a law that allows family members to seek involuntary commitment of a person who may be a threat to themselves or others. This threat can be in the form of a mental illness and would involve the Baker Act Fla. Stat. § 394 (2011). The other, more recent involuntary confinement is that of the Marchman Act. Fla. Stat. § 397 (2011) This law allows family or friends to have someone committed involuntarily as well for observation of that condition Fla. Stat. § 397.6791 (2011). Both of these laws can be used as a form of intervention on the behalf of a person who is suffering with mental health issues or substance abuse. These laws do not require family members to intervene on behalf of the person. Sometimes a spouse may find it easier to just divorce the veteran after this form of intervention fails.

Coleman<sup>16</sup>, was married to a Vietnam veteran who had issues with excessive drug use and symptoms that would be now classified as Post Traumatic Stress Disorder. Daniel, her husband, eventually attempted suicide. She left him shortly after his first attempt and he later succeeded in his subsequent attempt to commit suicide.

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<sup>16</sup> Penny Coleman, author of Flashback, conducted extensive research into the history of PTSD and documented the stories of widows of veterans in her book Flashback. Coleman also lost her husband to suicide and claims it was the result of PTSD.

As a means of coping, Coleman researched what it is about war that changes these men. Her own shared experience combined with her research and shared stories of other surviving spouses with similar stories. She paints a clear picture about how hard it is to be a spouse of a troubled veteran who never could face what they discovered they were capable of as a result of war.

Daniel had a friend named Bobby, they were both drafted at the same time and both served in Vietnam; however, after the war Daniel was not able to share with him anymore than he did with his wife about his experience there. This might be a reason the mentor factor within Buffalo's VTC model is such an important component strategy. Mentors provide someone with a common background but the relationship is other than typical friendship; these aren't your drinking buddies.

Bobby did offer one tid-bit of rationale as to why people change during war. He is quoted as having said the following about his own mindset going into war:

'Can I do this? I will do it! I'll kill somebody if I have to. I'll kill somebody I don't even know. I'm going over and I'm coming home. . .I'll go over and do whatever I have to do to survive. I'll be the worse person in the world, because if I am second worst, I will die. So I gotta be the worst person there is. I'll kill them. I'll fucking kill them. No question man, I'll chew their faces off. That guy back there, he doesn't exist anymore. He's dead. But the new guy, he's coming home no matter what.' (Coleman, 2006, p. 160)

Our courts are dealing now with the "new guy" as well as their families. Once discharged, a huge part of their lives become our responsibility. This sort of "detachment" is all too common among soldiers who go off to war. For some like Bobby there is a justification as to why he had to

become the way he did to survive. People like Daniel, and others like him, have represented a minority portion of the military veteran population that are difficult to treat due to their individualistic response to trauma.

Coleman's book is also a collection of stories of other veteran spouses who have lost their loved ones to suicide as a result of the war in Vietnam. Daniel used marijuana in excessive amounts as a self-medicating<sup>17</sup> coping mechanism; Judy states that Ben had used drugs and alcohol as well shortly after returning home (Id. at pp. 58-60). Some evidence of what troubled Ben was found in letters discovered by his surviving wife Judy. In one letter Ben wrote, “. . . *We're the only ones that get anything done permanently. We kill people. Good-Bye, Ben*' (Id.) The letter was about his witnessing a group of “Sea Bee's<sup>18</sup>” constructing bridges and road repeatedly in Vietnam only to have them destroyed by the enemy and rebuilt again.(Id. at p. 58)

Coleman writes from her conversation with Judy that Ben went to therapy, took medication for his illness and had even contacted the VA and received a disability rating of 10 percent.(Id. p. 59) Ben took his own life in 1994 in a hotel room.

There are others wives with similar accounts throughout Coleman's book. Each having a common theme of drug and alcohol abuse as a means to attempt to self-treat their PTSD. One will never know if the VTC could have helped Daniel or Ben. However the VTC can provide a

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<sup>17</sup> Self medication

<sup>18</sup> Sea Bee's are a specialized group of construction sailors that were utilized greatly in the Pacific during World War II to set up air bases on secured islands in a short period of time.

means of intervention when their families cannot. That intervention might take some of the burden off their shoulders and help ease the strain on them.

Though not directly relating to the courts but more to the strain on relationships veterans are in; the issue would not be addressed completely without mentioning that many families face strains even before the soldier returns home. During war families are separated from their loved ones as they are sent off to fight. These days, through the availability of the internet, communication is made easier through various video calling programs, instant messengers and email but is hardly a substitution for having your loved one close.

For this issue, veterans remain largely unique as compared to most of the population. The only other comparable portion of the population, that which has certain freedoms restricted forcing them to be away from their families for extended periods of time are those of convicts while serving out their sentences and those who are awaiting trial.

Currently, enlisting in the United States military is a process, which is voluntary. During tough economic times it can be a form of employment to provide income when other available avenues of employment are unforeseeable in the near future.

Many more VTC's are being created all around the nation. Some courts almost adopt the framework established by Judge Russell. Those that already have a drug, alcohol and mental health court system (DAMHC) tend to follow Judge Russell's model and as of yet have not had many legal challenges. Other courts and legislatures attempt to create a hybrid of this model for good reason. Some of their reasons may include Constitutional conflicts within their respective states and lack of existing DAMHC's. It's when legal professionals attempt to incorporate

politics and attempt to fix something that is not broken that conflict begins to arise. This is not to say there are other issues that face VTC's by way of public perception; however, that will be discussed later in Chapter two of this thesis.

This writer takes the position that justice should be equal for all people under the authority of any state court and federal court within the United States and its territories. Not only are treatment courts effective, they are just. With the complex nature of modern law it is important that public perception of the legal system be a positive one. Fairness is paramount when dealing with two or more different classification of people. This should always be in mind when creating a treatment court that excludes a large portion of the population from participating in.

Many of the VTC's have legislation moving to officially establish the court through codification within existing statutes. Florida has yet to do so, though there has been research by committees in both the House and Senate of Florida's Legislature.

### **When Veteran Treatment Courts Run Into Conflict**

If a particular VTC court is not careful, it can create an unjust duality system of courts; where one excessively considers a veteran's mental health issue over that of a citizen with similarly situated circumstances<sup>19</sup>. The main difference being that one citizen served in the military and the other did not. Although there are higher rates of PTSD among veterans versus the general population; citizens can be victims of PTSD but do not have the benefit of the VA backing them.

Even among veterans there is a bias in dealing with PTSD. Bradley A. Fink, describes this roadblock when veterans apply for benefits:

. . . [T]he two situations are treated quite differently. For example, in this hypothetical situation, when each veteran applies for VA benefits years after service after being diagnosed with post-traumatic stress disorder, each would need to present evidence supporting the fact that an in-service "stressor" occurred. VA applies the presumption of occurrence to the infantryman's statements because combat is consistent with the conditions of his service. VA, however, does not apply the same presumption to the mechanic's statements because mechanics are not often involved in combat. (Fink, 2010)

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<sup>19</sup> A citizen of non veteran status that of no fault of their own is a victim of a crime or crimes in which PTSD resulted. Also to be considered are veterans of other countries who later become citizens here who carries very similar PTSD burdens.

It can be argued that the mechanic may not have been prepared and that all the tools of his trade, both physical and mental skill sets, may not prepare him for the trauma that a combat soldier faces.

The last war that the United States fought that involved traditional rows and columns of soldiers on an open battle field could arguably be that of the American Civil War. Battle lines are hazy and not as distinguishable as in the past. In modern times with the advent of military aircraft, those far away from any established border of a warring nation may be hit with little warning. So why is it that the VA treats these individuals differently?

The simple conclusion that can be drawn is tradition, culture and bias. The military expects the combat soldier to be courageous and hold their line in the face of danger. Not every soldier faces the enemy on the front line. Sometimes the enemy can sneak behind the lines and involve soldiers who would have otherwise never experience combat. Because soldier's in non-combat roles can become involved in armed conflict. The practice should be that if any soldier is to be forced to show that they do indeed suffer from an "in-service" related form of PTSD and not something non-service related; then all should be made to do so.

What if the best way to treat PTSD is to focus on the disorder and not the drug and alcohol use? In a study done in 2010 such a conundrum was presented. In a study comprised of 353 women found that treating the PTSD before the alcohol or drug abuse led to less abuse. (Hien, et al., 2009) Even though the VTC's approach is supposed to be non-adversarial, as previously mentioned one of the major components is to screen for

drugs and alcohol usage by the participants and sanction them when they fail to meet these standards. This is a complete “about-face” to this recent study.

If the goal for the VTC is to rehabilitate veteran offenders and while at the same time holding them accountable for their actions; a court cannot just allow someone to continue to abuse alcohol and drugs while in its program. Although the study focused on women with Post-Traumatic Response Disorder it would be worth to study further among their male counterparts. How this affects the court is not certain and is to be debated on a level that this thesis cannot approach. However, one possible solution might address how sanctions for failing the abstinence testing versus committing acts of violence or showing disrespect to the court.

Currently every judge presiding over a Florida VTC is a veteran. Judge Maney is a retired Brigadier General whose last deployment was in Afghanistan in 2005. A recent court established in Broward County features a judge who once had a history of alcohol abuse while in the military. Lastly, Judge Boras, of the 15<sup>th</sup> Judicial Circuit in Palm Beach County is also a veteran who presides over that jurisdiction’s VTC.

As more information begins to flow to the public through the media, a demographic of veteran vs. non-veteran judges could cause an issue with public perception of these courts. It is not requirement anywhere that a VTC judge also be a military veteran presiding. In fact, Judge Russell, a non-veteran, created the very first VTC.

This is not to say that the judges in these courts are not fit or are somehow incapable of separating their connection and own personal history from that of the cases they deal



with. In theory, any judge can offer invaluable assistance to those veterans who participate in their courts. The concern however, is that as the number courts begin to grow in number and the current veteran- only trend of judges presiding over these courts continues; public support through their legislature may present funding issues to these courts.

Arguably the most controversial VTC docket that seems to show an excessive amount of favoritism to veterans, is headed by a non-veteran. One judge in Orange County, California, takes the VTC model into an area that courts based on the Buffalo model does not specifically. Judge Wendy Lindley has allowed a violent felony offender to participate in her court as reported in the web publication of Stripes<sup>20</sup> (McCloskey, 2010). It is reported that the participant<sup>21</sup> for no real reason, committed assault and battery with brass knuckles on a man at least 10 years his senior (Id.). The defendant caused an estimated amount of over fourteen thousand dollars' worth of medical damage to the victim (Id.).

It is not clear from the article if the aforementioned participant was out of jail the entire time during the course of his involvement with the court. The article does state however that most do avoid jail if; “ . . . *they plead guilty to their crimes and adhere to a strict probation program focused on intensive treatment of their underlying issues . . .*”(Id.). Once the participant finished he avoided jail time completely and was in college.(Id.)

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<sup>20</sup> Stripes.com is the web publication of the Independent Newspaper Stars and Stripes which has reported news concerning United States Military issues for over 70 years.

The Judge said in the article that, *'These guys went off to war and as a result of their service were damaged, and our job is to restore them to who they were.'*(Id.) This quote should be of concern to those people residing in this jurisdiction because it seems the quote has the tone of suggesting that the court should take both a civil-plaintiff approach of making whole some injury done by the state; and still act as a judiciary.

In this article it was reported that the prosecutor objected to the brass-knuckled-marine's admittance into the Orange County VTC.(Id.) In that article the Orange County VTC prosecutor said it best when quoted as having said, *'While it is true that the victim does not bring the suit in criminal cases; the state does.'*(Id.) The article mentioned one case that was the opinion of the court as being too violent for the court to handle was one where a veteran shook a baby. This denial of admission into the Orange County VTC raises a few questions. What is the difference between shaking babies and obliterating someone's face with brass knuckles with no provocation? How about hitting a spouse when they tried to intervene and pour liquor down a drain of the kitchen sink?; a DUI defendant running away from his demons at 90 mph crashing into the side of a school bus? For each of these hypotheticals you might encounter a veteran in the defendant's chair with PTSD.

The non-adversarial approach is a key component of these types of courts when dealing with a participant. That last noun is the important to the understanding of the purpose of the non-adversarial approach. If the applicant becomes a participant over the objections of a crucial part of the team is that a controversial moment. When one party opposes this

action and puts it in the record; an adverse action occurs in an environment that by design is supposed to be non-adversarial. The cause that created the effect might be avoided if there first existed a standard by which a participant might be admitted under a violent setting that all parties agree to. A contract between that of the prosecutorial community and that of the defense orchestrated by the judge would be an effective measure by which to avoid these pitfalls.

This is not to say this Judge and others like her are wrong just for including alleged violent felony offenders within their pretrial system. The argument is not that the community might somehow be better off if this defendant faced trial. If the participant won his case in state criminal court and walked away, a prime chance at rehabilitation, treatment and possibly a better life as a result might be missed entirely.

Legislators, it seems, are often in a hurry to throw their support behind a bill with the name of a child whose tragic story the media just happens to take an interest in. Before too long if this trend continues we may have to name the bills similar to that of sequel movie titles such as "Hailey II" and some subtitle like "The Tragedy Trunk" Act .

Judges do not have that luxury of jumping on something only when the media wind blows it their way. Tailoring VTC's to fit the unique needs, funding and other problems pose a difficult task for Judges. It has been the focus of this thesis that the Buffalo VTC model and its blueprint should be closely adhered to when at all possible. That is not to say that it is perfect, just that it is the model that most research supports.

## **CHAPTER II: ANALYSIS OF THE KEY COMPONENTS OF DRUG TREATMENT COURTS ESTABLISHED BY JUDGE RUSSELL**

Within this chapter an analysis is made of the ten components of the Buffalo VTC and as to why they might be effective not just for Florida but for other VTC's as well.

Judge Russell's article on Veteran Courts points out that no two drug courts are exactly the same. He foresees the courts of different jurisdictions making changes to this model as well. What's important about this article is that he offers some rationale, with logical progression, as to why his court is structured the way it is. Although not a detailed blue-print on the how-to's it is more than just a vacation brochure.

Judge Russell continues to travel the country and hosts seminars and educational forums to train other judicial pioneers and court staff from across the country. His components are at the center of such training and it is the opinion of this thesis that they are critical, if at least instrumental, to the success of a VTC.

### **Component One: One and One Makes One**

The first component is, “*Veterans Treatment Court integrates alcohol, drug treatment,[sic] and mental health services with justice system case processing.*”(Id.) This component depends on using resources already in place in jurisdictions with already existing treatment courts. This is important for two reasons; first, because court staff and other officers of the court will have a familiar set of skills that will offset some of the training costs; second, a working relationship with medical and mental health professionals dealing with abuse will already be established with the court.

In Florida, the trend is to use Judges who are veterans themselves to administer the docket. As veterans they are familiar with issues that face veterans and will have at least some working knowledge of dealing with the VA. This however is not to say that non- veterans judges, combined with their teams can provide the same level of professionalism and support as their veteran counterparts.

## **Component Two: There's no "adversarial-approach" in the word Team**

The Second Component states, "*Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.*"(Id.) Making the choice to go into the program is a voluntary one. The prosecution and defense act more like a team than rivals tied in with the judge acting as more of a coach than a cheer-captain or referee.

The defendant is considered a participant once selected and agrees to the terms. Each court will have a different selection process and its method is not binding on any of the other veteran treatment courts in existence. Almost all of the courts are in jurisdictions where the judges are elected officials. Absent some legislative statute or some rule from a higher court most of the direction exists with the judge presiding over the docket and the chief administrating judge for that jurisdiction.

The judge's rule is still law and although a part of a team, the coach makes the final call on the plays. This structure is not without potential for controversy when the rules of the game are not established before the starting whistle is blown. Although not reported thus far in the Buffalo VTC, at least one court has taken it upon itself to include an offender even after the prosecutor was opposed to the decision.

Clear lines need to be defined as to when this non-adversarial approach begins and ends. In the aforementioned incident, the decision was quoted to be based on a feeling or something someone envisioned of the participant's future if they were to be a part of the program (McCloskey, 2010). Feelings and visions-of-the-future should never be a justifiable argument in the selection process of these candidates. An educated-guess or even an emotional-response type of cherry-picking of

participants for a veteran court may increase the risk of bias, prejudice and or harm the perception by the public of justice within the their system. A standard should be applied and adhered to if a court expects to gain funding from any politically connected source<sup>22</sup>

It is the opinion of this writer that a violent felony charge that causes any significant physical or lasting mental damage to another person should be barred admission into a VTC without the prior and expressed approval of the prosecutor; or some detailed standard created by the court; or through legislative intent upon forming a statute for that specific purpose.

The admission of a violent felony offender into a VTC is not unlike that of a scientific experiment. The hypothesis being that a violent offender, under the supervision of the court, may pose no threat to society both during the VTC program. The violent felony is not the only participant or variable in this experiment, members of the public under the court's jurisdiction are potentially participants as well. The only participant who would not be giving consent under this experiment would be the public if the prosecutor opposes this experiment. Although not unlawful, it is the opinion of this writer that an experiment without such informed consent is unethical when there is risk of harm to the public.

### **Component Three: Where did they put my paperwork?**

The third component is, “*Eligible participants are identified early and promptly placed in the Veteran Treatment Court program*” (Id.) Judge Russell continues to mention how the criminal justice system can use the traumatic nature of the arrest to make it hard for the arrestee to deny there is a problem and hard to say they do not need treatment.

One area of concern that Major Evan R. Seamone brings to light in his article is that eligibility into a VTC might be influenced by the participants’ eligibility to receive veteran benefits (Seamone, 2011, p. 32). If a VTC is to exclude a veteran, albeit dishonorably discharged, that VTC may be doing greater harm to the former soldier. Remember that running away from the enemy, even after seeing your friend’s head blown clean off, is not permissible. The maximum punishment for desertion is still listed as death<sup>23</sup> another possible punishment is being dishonorably discharged for desertion. (10 U.S.C. 47 § 899 Art. 99(1)-(2),(9)) If one of the factors touted about the unique nature of the veterans is the level and unmatched prevalence of PTSD among veterans and the need to treat it; would an advocate of a VTC not be at odds with the very foundation upon which the argument for a having veteran treatment courts?; It most certainly would be. By turning their backs on veterans purely based on discharge, a VTC would be aiding and encouraging the same behavior that can lead to substance abuse which the court seeks to cure. A provision should exist that the nature of the discharge be determined if such an eligibility is to be a factor.

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<sup>23</sup> Although not practiced today in the modern military.



At least one court<sup>24</sup> has taken it upon itself to exclude anyone but those who have received an honorable discharge from the military and that court. Those veterans with a honorable discharge are eligible to receive aid applicable to their condition(s) from the VA, those with less than honorable distinction may find it difficult to get this aid. Because of the automatic exclusion of less-than-honorable discharge veterans, the Dallas VTC and any other that uses this strict criterion, fails to meet the needs of those of a vulnerable portion of the veteran population

Mistakes can be made when one is inputting data from one media into another media<sup>25</sup>, sometimes stretching decades into the past. According to the United States Census Bureau Quick Fact section, there are an estimated 22,652,496 veterans<sup>26</sup> in our country. That's a lot of paper work to maintain and it is foreseeable, if at least a remote possibility, that a file can be become lost, misplaced or be inaccurate. This is not to say that the VA does not take steps to ensure the safety of it's stored information but merely that a possibility exists that errors might be made to the detriment of a veteran who desperately needs treatment. If there were one thousand of such errors made out of more than twenty two million files that would equate to an error rate of barely above 4 thousandth of a percent. Though this figure is not scientific it is a liberal estimate used to make a point. Even if the accuracy rate of data maintained by the VA is high and for the sake of argument they have over a ninety nine point nine, nine, six accuracy rating (errors only occurring

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<sup>24</sup> The Dallas Veteran treatment Court (Seamone, 2011, p. 32 See note 91)

<sup>25</sup> Data entry takes many forms often when sensitive data is concerned the input is done by hand by typing the data into a database. Other instances call for the the use of OCR scanning which uses a scanner and a computer program to change printed text into digital text for file archiving.

<sup>26</sup> The Definition applied by the United States Census concerning what it deems is a veteran is as follows: "*Veterans are men and women who have served . . .but are not currently serving, on active duty in the U.S. Army, Navy, Air Force, Marine Corps, or the Coast Guard. . . . U.S. Merchant Marine during World War II. . . [and] National Guard or Reserves are classified as veterans only if they were ever called or ordered to active duty. . .not counting the 4-6 months for initial training or yearly summer camps. . .*"

in t around one thousand files out of over twenty two million) that would still mean one thousand veterans would need some form of intervention. For a homeless veteran a VTC might be the best way to help point the veteran in the right direction.

According to Major Seamon it was the policy of the Dallas VTC to exclude such applicants with a discharge other than honorable; It should be noted that the Buffalo VTC is very aware of the issues some veterans face and mentions it in its policy manual on page thirteen:

THE FEDERAL OFFICE OF VETERANS AFFAIRS HANDLES PENSION, DISABILITY BENEFITS AND DOES CORRECTIONS ON ERRORS ON DD214S.A WORKER FROM THIS OFFICE HAS JUST BEEN ASSIGNED TO THE COURT AND SITS NEXT TO THE VA HOSPITAL REPRESENTATIVE.

THERE HAVE BEEN MANY INSTANCES OF DEFENDENTS WHO HAVE PROBLEMS GETTING THEIR DISABILITY OF PENSION BENEFITS.EVEN MORE PROBLEMS EXIST WITH INCORRECT DISCHARGE PAPERS WHICH WILL CAUSE PROBLEMS WITH APPLYING FOR THESE BENEFITS.

A solution to this paperwork problem might be to still recognize the inclusion of the applicant into a drug and mental health court while still having access to the mentor system for the veteran. Additional training can be considered for the mentors in dealing with those veterans with less than honorable discharge. Provisions should be made for the ability to transfer a veteran back into the VTC if the team resolves issues with the veteran's paperwork.

If a team can help a veteran with clerical errors or even help them on the path to the appeals process; then that court will truly be a court that meets its purpose to helping a unique portion of our population that is in need of care.

This is where the federal government needs to step up and take responsibility. This burden cannot be left to that of local state, circuit, county or city courts. The Federal Government would serve their veterans appropriately if they, create grants to directly aid VTC's for the sole purpose of helping veterans who might under special circumstances, receive benefits even after receiving a discharge for anything less than honorable; or, to investigate and appeal upon the veteran's behalf any errors in their record keeping them from receiving their entitled benefits.

#### **Component Four: Services Offered By A Veteran Treatment Court**

The Fourth Component, “*The Veterans Treatment Court provides access to a continuum of alcohol, drug, mental health and other related treatment and rehabilitation services.*” (Russell, 2009, p. 366). This is the treatment component and this is where the court tries to address common problems faced by veterans in the justice system. Problems identified by his court include; “*Alcohol and Substance Abuse. . . .Homelessness. . . .Strained Relationships . . . .Unemployment [and] Mental Health.*”(Id., pp. 358-360)

According to a recent national survey recognized by the Veterans Administration, being a chronically homeless vet<sup>27</sup> means very likely (84.5%) to see jail time. (100,000 Homes Campaign, 2012). So this would be a major concern to any Veteran Treatment Court. This is especially true for those jurisdictions with high numbers of homelessness. Florida has become one of a few destinations for the majority of New York’s unwanted homeless population. New York actually buys one-way plane tickets for their homeless population. Florida was the state<sup>28</sup> that had the most destinations listed that were picked by the homeless according to the New York Times. (Bosman, 2009, p. A1)

Being a homeless veteran in Orlando is almost certainly going to land you in jail due to the many ordinances cities have imposed upon them. Orlando, a city that is a future home to one of Florida’s next Veteran Treatment Courts,<sup>29</sup> is not very homeless-friendly and this is evident in its many homeless-targeting ordinances. Orlando has created numerous ordinances that can put a homeless veteran at odds with the justice system while residing in that city. Orlando City Codes

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<sup>27</sup> Veteran homeless populations living < 2yrs homeless data indicates 71.4% rate of being placed into jail.

<sup>28</sup> Puerto Rico is not a State; It is a territory of the United States

<sup>29</sup> See: <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/veterans-treatment-courts>

such as §43.87 (1) (f) which is known to residents as the “blue square ordinance” is one of the more restricting of those city codes to be mentioned. This ordinance establishes a few “zones” around the city which have in the past been painted blue. Many of these zones have now faded and are still enforced by the police. This is an ordinance to attempt to limit the occurrence of pan handling in the downtown district of Orlando.

Other ordinances such as §18A.09 purpose is painfully obvious; target the homeless who congregate in Lake Eola in large numbers.<sup>30</sup> Subsections (a)-(g), (k), (o) and (s) of the this code makes every day actions of the homeless unlawful in a city park or a city recreational facility.(Id.) Those subsections are as follows:

- (a) Lie or otherwise be in a horizontal position on a park bench where prohibited by signs.
- (b) Sleep at any time during the hours from sunset to sunrise of the following day.
- (c) Construct any hut, shanty, or other shelter.
- (d) Cook foodstuffs except where facilities for such preparations are provided by the City.
- (e) Set or stoke a fire except where appropriate facilities are provided by the City.
- (f) Discharge or deposit human wastes, except in toilet facilities provided by the City.
- (g) Dig holes or otherwise disturb the natural surface of the ground.

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<sup>30</sup> A City Public Park which encircles Lake Eola located in the heart of Downtown Orlando

(k) Kill, injure, harm, capture, chase, poison, or remove any wildlife, animal, bird, or touch, break, remove, or relocate any bird egg located above, upon or under park grounds.

....

(o) Sleep or otherwise be or remain in any bushes, shrubs, or other foliage where prohibited by signs.

....

(s) Bathe or otherwise be or remain in a water fountain and/or reservoir.(Id.)

These ordinances will put the homeless and the veterans among them at odds with the City of Orlando and that could bring them in contact with the future VTC of the Ninth Judicial Circuit Court of Florida. If one were to observe the police or park officials at Lake Eola it will be evident that the enforcement of these ordinances are directed at the homeless and not someone laying under a shade tree having a picnic.

Wooden benches have been modified in Lake Eola with iron loops, used as armrests, which actually are barriers to detour the homeless from sleeping there at night.<sup>31</sup> The installation of these armrests happened under Mayor Buddy Dyer who has consistently targeted the homeless and as a result, the veterans among them.

Fortunately for this cities' suffering homeless veteran population, the T. Patt Maney Veterans' Treatment Intervention Act also known as Fla, S.B. 922 has been passed. This act will create an amendment to chapter the drug court section of the 2012 Florida Statutes.(Id.) With the future

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<sup>31</sup> It is modification was done in haste because poor planning was used. Each wooden bench was ruined as the result of drilling past the bench's treated exterior subjecting it to rot from unintended exposure to the elements.

creation of a VTC in the Ninth Judicial Circuit of Florida the laws that once so viciously targeted the homeless population may now actually help the veterans by being introduced to the therapeutic nature of a VTC. Might then the city see the value of aiding in the creation of other treatment courts in handling those issues of non-veteran homeless? One can only hope.

**Component Five: No extra credit for failing this test**

Judge Russell's Key Component Five for Veteran Treatment Courts is about collecting data to determine progress by way of testing for substance and alcohol abuse, "*Abstinence is monitored by frequent alcohol and other drug testing*" (Russell, 2009, p. 366).

As mentioned before, these components are borrowed from a Department of Justice Publication concerning drug courts.(Id.) This component is verbatim to that of a drug court. No one is treated differently concerning what this component seeks to accomplish in both sets of courts; veterans and non-veterans must submit to a series of random drug and alcohol tests. Funding of veterans aforementioned in Chapter 1's "Where Veteran treatment Courts Run Into Conflict section. A court might have to find funding elsewhere if they admit applicants with a less than honorable discharge.

### **Component Six: You're not going to win unless you submit**

To a VTC participant the path to recovery might seem like a frightening maze once they enter. Around every corner is there a drug test or a probation officer checking up on me? They may think they have found a shortcut only to find a strong sturdy wall put into place by the judge. This maze is a living breathing work of an effort coordinated by a team of experts.

The sixth component is “*A coordinated strategy governs Veterans Treatment Court to participants’ compliance.*” (Russell, 2009, p. 366) It’s this and the component that precedes this one which should be of concern to the defense before advising their client about entering the treatment court. They should be advised exactly what it is they are getting themselves into. Without a trial they face similar tasks to that of someone who has been convicted. The main difference is that through compliance it can get easier. For those who do not comply, they face even greater scrutiny from the court which may include jail time and other negative reinforcement tools accessible by the court.

For those who do not comply, the court can tighten its restrictions leaving few options for the participant until they either comply or become re-arrested and continue to the path of traditional prosecution. The Cook County VTC, like that of many VTC’s has the participant sign a contract and it provides for the veteran to submit to many of the same criteria as the Buffalo model.

All information is shared between the VTC which is vastly different than traditional courts. The participant’s life while in the program is an open book to the VTC team. There is no subpoena to be filled by the prosecutor if the participant wishes to remain in the program. The applicant



simply has to submit to the TC's procedures and put their trust in the team and follow instructions given by just about any member within the VTC team as required by their contract.

As far as Cook County VTC is concerned submitting to the drug and alcohol tests involves less intrusive forms of testing than that of extracting blood as noted in the contract in Appendix B of this document. The participant must submit to urine and breathalyzer testing during the program when requested to do so. The entire process is monitored by the judge and the participant is frequently called before the judge in order to gauge their compliance.

### **Component Seven: You're to report to the CO's office at 0700 Soldier**

Component Seven might conjure up memories of some late 1990 movie involving some rag-tag bunch of inner city school kids gaining a new tough, but loving football coach. This approach uses direct techniques of applied therapeutic jurisprudence by which the Coach deals with the mental and substance abuse plaguing the participant while at the same time coordinating measures and sanctions to ensure that the participant is held accountable for non-compliance on any level.

Component Seven States, “*Ongoing interaction with each veteran is essential.*”(Id.); like it or not they will be getting increased attention from the judge and the VTC team. Before too long the judge will not need to look down at his docket to determine the name of the person before him. Once in the VTC, it becomes personal, this setting would not be entirely unfamiliar to a former soldier who dealt with answering to someone who had a major impact on their life and provided structure similar to that of a C.O. or and X.O. within their military past.<sup>32</sup> From the judge they will receive orders each step of the way that they must accomplish in order to be promoted to the next level of the program.

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<sup>32</sup> C.O means Commanding Officer; the commanding officer is the officer who is the highest-ranking officer in a particular unit. The X.O. is the Executive officer, 2<sup>nd</sup> in command.

### **Component Eight: Data makes all the difference**

*“Monitoring and evaluation measures achievement of program goals and program effectiveness”* (Russell, 2009, p. 367), is the Eighth component and marks a change in the direction of the remaining components, though no less important than the previous components to the success of the VTC.

This is an administrative component of the key components to a Veteran Treatment Court. One major issue to the VTC is the sustainability of the court. The effectiveness of the court to run efficiently is important for the survival of the court as well as it is to the treatment of the participant. For the program to work as Judge Russell explains there must be “. . .*accurate information about program progress.*”(Id.)

This component as the Judge explains is also essential to gain data so that the court can be modified based on the data it collects.(Id.) Essentially this component allows the court to evolve in a scientific manner. The court can form a hypothesis as to how a new addition to the program might work. This component can not only provide the data from which a hypothesis is formed but also to record the data of the newly formed hypothesis.

An example that closely resembles the scientific method, is as follows<sup>33</sup>:

1. Might this court be effective in allowing violent felony offenders into the program?

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<sup>33</sup> This thesis takes the position that the all important “Should Something Be Done?” question should be asked before “Can Something Be Done?” question is ever used to form a hypothesis when dealing with issues that may have a remote possibility of affecting someone negatively.

2. Collect data gained by following component eight of the model provided by Judge Russell.
3. If the data suggests that there are misdemeanor violent offenders who have successfully completed the program then form a hypothesis.(If not a hypothesis can be made as to why not).
4. Test Hypothesis (again collecting data by using component eight)
5. Depending on the results the court may either create a theory and apply it or decide to proceed further.

Results can then be published and reviewed by the legal community to determine if such theories can be applied elsewhere.

### **Component Nine: Granted, Education Is Needed**

*“Continuing interdisciplinary education promotes effective Veterans Treatment Court planning, implementation and operation.”* (Russell, 2009, p. 367)

To make an educated guess, use data, form-and-test hypothesis, and create theory one must be committed to continual education. Education takes money, lots of it and this is where alternative sources of funding must be gained by the court. According to a VTC fact sheet, supplied by the whitehouse.gov site, grants are available for the training and education of these courts. (Office Of National Drug Control Policy, 2010, p. 2)

The Office of National Drug Control Policy, under the White House, created an initiative to help advance the Veteran Treatment Court system by creating a series of grants that allows selected courts to gain training towards the establishment of VTC's in their jurisdiction. The Fact Sheet says the following about the grants:

In an effort to replicate the success of the first Veterans Courts, an initiative has been launched to help more communities establish Veterans Courts. The 2010 Veterans Treatment Court Planning Initiative (VTCPI) constitutes the first Veterans Treatment Court training program in the Nation. The VTCPI curriculum is a collaborative effort of the Bureau of Justice Assistance (BJA), the Department of Veterans Affairs, the National Drug Court Institute (NDCI), and numerous Veterans Treatment Court professionals. (Office Of National Drug Control Policy, 2010)

Orlando was one of the cities awarded the grant in 2010. However no VTC is currently operating in Orlando today. A possible reason for this may stem from the nationally covered murder trial of Casey Anthony, of which the Chief Judge replaced the former judge during a lengthy and highly publicized trial.

Education is indeed important but one factor that must be considered when establishing the court is, “do we have the time, resources and willingness of the judiciary and important staff and mentors associated with this program?” If the answer is no it will fail component nine.

### **Component Ten: Making Networks Work For Veterans**

It is this component, as the opinion of this writer which is the most important to not only the veteran treatment court system success and the veteran; but to soldiers, military justice and society itself. Component Ten is, “*Forging partnerships among the Veterans Treatment Court, the VA, public agencies, and community-based organizations generates local support and enhances the Veterans Treatment Court’s effectiveness.*” (Russell, 2009)

One additional caveat is that the above component may be missing one invaluable group and that is the Military Justice System (MJS). Major Seamone brilliantly links the problem with the Military’s legal system and issues concerning the military justice, PTSD, TBI and court-martials stemming from them leading to less than honorable discharges. (Seamone, 2011, pp. 31-34)

## CHAPTER III: THE FLORIDA COURTS

### Florida's First Veteran Treatment Courts

In 2009, Okaloosa County was the first County to approve funding for a Veterans' Treatment Court (OCVTC) in Florida. (Security, Veteran's Court, 2010) This court is headed by a former Brigadier General, Judge Patt Maney. (Pudlow, 2009) A docket created by Judge Maney for veterans among the area's homeless. (Id.) This docket differed from the one established by Judge Russell in that the screening was not done shortly after the arrest of the individuals. Instead the process was open, voluntary and used targeted advertising to attract the participants. One of the prosecutors, Steven Nixon, took a cautious yet optimistic approach to the docket in saying:

There were those who just walked in and wanted, basically, a freebie withhold on their miscellaneous pending charges, and they got it. But there were others who really did need a hand with things well beyond their own understanding and control, and we were able to solve a lot of problems. (Id.)

The original Okaloosa County version of VTC differed from the model established in Buffalo, New York, in that it advertised to the homeless population in order to attract veterans who might not have otherwise turned themselves in. *"Posters went up downtown and news spread through the homeless persons' grapevine. Judge Maney made sure to mention it whenever a homeless person stood before him in court."* (Id.)

From this court a bill named the Pat T. Mane was inspired, according to Pudlow's article, which would have created a statewide system of VTC's in Florida. A few versions of the bill originally failed in message or committee before the end of the 2011 session. However, Senate Bill 138



passed on March 7, 2012; the bill will become law once signed by the governor. Florida's VTC's will be codified and approved by all three branches of Florida's government.

Once signed into law future Fla. Stat. §921.00242 (2012) and other amended statutes<sup>34</sup> requires several things of the veteran before admission into a pretrial diversionary program. "*First, the person must, allege[s] that the offense resulted from a posttraumatic stress disorder, or have psychological problems stemming from service in a combat theater in the United States military [to be qualified for] a hearing on that issue before sentencing.*" (Id.) The Yemeni port which the USS Cole was bombed by terrorists in later 2000 was not a combat theater. According to this statute any sailor or marine who suffered from PTSD as a result of that attack would not be given access to the VTC's of Florida according to this statute.

Given the state of the world we live in, an American soldier, marine, airman or sailor is a target no matter where they are. If they are attacked in such a manner that they develop PTSD, TBI or some other qualifying disorder because they were simply a member of the United States Military; this statute should address them as well.

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<sup>34</sup> See Fla.SB. 138

## Future Courts

The treatment courts are indeed a form of intervention as has been shown. For troubled individuals regardless if it is a veteran court, a drug treatment court or mental health court; these courts can be the last be a last chance for some. When a person acts outside expected societal norms they can find themselves in the criminal justice system. When such behavior is attributed to something beyond their control something needs to be done.

Florida's legislature has attempted to aid families, friends, police and medical personnel in the treatment of people in need of intervention for issues of abuse or mental illness. A recent effort is that of the Marchman Act (Robertson, 2011). Chapter 397 of the 2011 Florida Statutes deals with substance abuse and state mandated services associated with it. §397, Fla. Stat. (2011).

Within this chapter is the codification of the first drug treatment court system. Id. at 397.334.

Part 1 of the statute gives each county the ability to fund a drug court in its jurisdiction:

Each county may fund a treatment-based drug court program under which persons in the justice system assessed with a substance abuse problem will be processed in such a manner as to appropriately address the severity of the identified substance abuse problem through treatment services tailored to the individual needs of the participant. . . Id. at 397.344 (1)

The same drug court principles that Judge Russell tweaked to fit his VTC are also found within Florida's Drug Court Statute<sup>35</sup>.

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<sup>35</sup> See §397.344(4)(a)-(j), Fla. Stat. (2011)

One problem Florida faces, as well as courts across the nation is that these courts need the specialized training in dealing with the Veterans Administration. With a growing veteran population in Florida of almost 8.9%, Florida is the second largest home, by sheer population, to veterans in the United States. If the state were to shoulder these costs alone, the burden would be great and unjust to the tax payers of Florida. War is a shared responsibility for every state within the union but some states deal with the aftermath on a greater level than others. The Federal government can help with funding of these courts and take some of the burden off of Floridians

With almost 8.9% of the population being veteran it would be unfair to say that the psychiatric and psychological professions of Florida do not possess an understanding of the ailments affecting the veteran population. Indeed private practitioners handle PTSD and other mental health issues of veterans and civilians alike. However, the Veteran Administration medical system primary clients are veterans. Day in and day out they see only veterans and no one comes closer to understanding the needs of veterans than they can.

VTC's, are new and no long-term data exists of their success and many sources of the short term data comes from advocates and proponents of the court. There are unbiased measures and statistics available for the drug courts already existing in Florida that might be comparable.

As cited within the Florida State Senate Interim Report 2011-131:

‘National research has shown that drug courts can reduce the future criminal activity of offenders;

Effective drug court programs can help reduce prison admissions and state costs;

Over a three year follow-up period, offenders who successfully completed post-adjudicator courts in Florida were 8- percent less likely to go to prison than the matched comparison group. . .’ (Security, Veteran's Court, 2010, pp. 6-7)

One important point to make is that VTC costs are further reduced as the result of networks, skill sets and funding through the VA, as previously mentioned in this thesis. An argument in support of establishing VTC’s in Florida is valid if the claim that, “veterans being unique and they face issues that traditional drug courts cannot address” however, estimates should be conservative and cautious when comparing the perceived costs of VTC as compared to Drug Courts.

The findings of the Florida State Senate Committee on Military Affairs and Domestic Security(CMADS) for their October, 2010 Interim report are as follows:

Veterans are not overrepresented in the justice system;

Veterans, particularly those returning from Operations Enduring Freedom and Iraqi Freedom, are exhibiting significant numbers of cases of post traumatic stress disorder, traumatic brain injury, depression, substance use or abuse, or co-occurrence of these conditions;

Behaviors that were an asset in a combat theater can lead to undesirable involvement with the criminal justice system in a veteran’s post-service civilian life;

Veterans who do find themselves involved in the justice system often present mental health and substance use and abuse conditions or loss of cognitive function ability that can be treated;

Veterans' courts are being established nationwide as a means of channeling veterans in the justice system into treatment programs in an effort to preclude further justice system involvement;

Veterans' courts are using previously established drug and mental health courts as a model;

Veterans' courts have an advantage over drug and mental health courts in that the majority of veterans who have committed criminal offenses are likely eligible for treatment services provided and funded by the U. S. Department of Veterans Affairs;

Other specialty courts similar to veterans' courts such as drug courts have been successful in habilitating individuals out of the criminal justice system and reducing incarceration costs to governments; and Programs are beginning to emerge in Florida which is leading to the establishment of veterans' courts and jail diversion for veteran (Id. at 7).

The report's conclusion called for an evaluation of the two courts already existing in Florida. It wanted the legislature to use the data gained from these courts to consider the possibility of establishing a system like that of the drug courts, statewide. ( Id.)

## CONCLUSION

Veteran Treatment Courts are no longer just an experiment within the justice system. They are a possible solution to troubles facing a specific portion of the population with unique needs and differences. The building and studies of these courts have just begun and shall continue as they evolve.

Because each state has its own judicial structure and authority, many variations are being formed compared to that of the first VTC. Some are similar to that of the first Buffalo model while others have created major differences from that of the first VTC. The intentions and emotions behind these courts are indeed honorable but without the proper standards they can become unpredictable and create controversy.

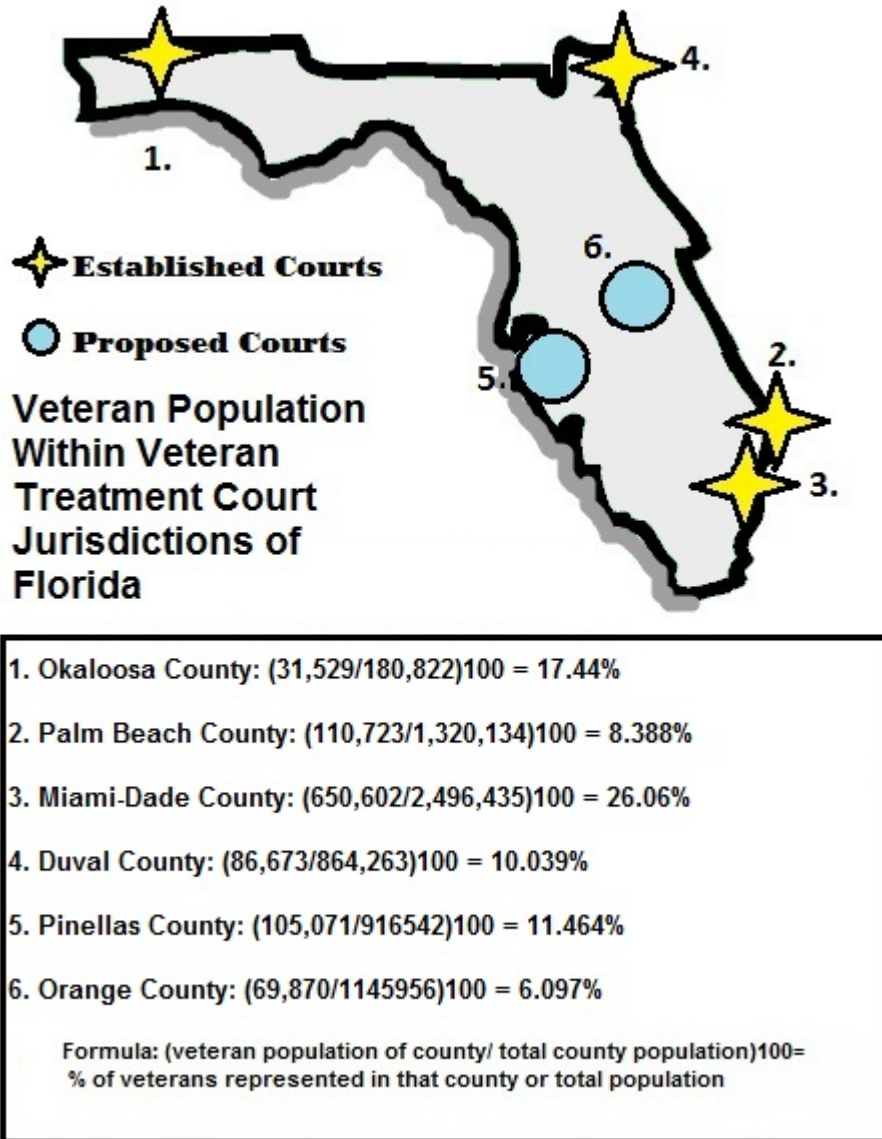
Florida's VTCs might soon be falling short of their true potential. The attempt by Florida's legislature to create a statute which would codify the existence of VTC's potentially leaves many veterans ineligible for admission to these courts. The term *combat theater* is what creates this division between veterans. It is that provision that makes the future Florida VTC's unlike that of other VTC's which seek to use the discharge status of troops as a means to determine eligibility. Florida's VTC is vague and provides little definition or guidance as to what *combat theater* means to Florida Law. This provision might be challenged due to its vagueness when determining eligibility. Also, the statute is unclear as to how the courts will obtain funding if the court admits a veteran with any type of discharge that the VA would not cover treatment for.

The T. Patt Maney statute leaves plenty for the courts to interpret concerning the types of veterans they may admit into their dockets. If Florida's legislature intends to provide relief

through the courts for its veterans, it will need to reassess not only the term *combat theater* but also the conditions in which veterans might be eligible for these courts and the funding that is needed or not needed due to those conditions.

It's the hope and goal of this thesis that some light be shed on the injustice of the few who are excluded from these courts and that therapeutic jurisprudence be recognized equally across all systems of justice and not for those politically popular at any given time.

**APPENDIX: MAP OF FLORIDA’S CURRENT AND FUTURE VETERAN  
TREATMENT COURTS WITH DATA**



Source: <http://quickfacts.census.gov/qfd/states/12000.html>  
 Data obtained: 03/18/2012

Figure 1: Veteran Population Within VTC Jurisdictions. By David R. Van Zandt



Appendix: A

# Buffalo Veterans Treatment Court Eligibility Questionnaire

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Last 4#s of Social Security \_\_\_\_\_

1. Did you ever serve in the U.S. Armed Forces?  
 Yes  
 No



2. Did you ever serve in the U.S. National Guard or Reserves?  
 Yes  
 No

3. In what Branch(es) of the Armed Forces did you serve?  
 Army (including Army National Guard or Reserve)  
 Navy (including Reserve)  
 Marine Corps (including Reserve)  
 Air force (including Air National Guard and Reserve)  
 Coast Guard (including Reserve)  
 Other – Specify \_\_\_\_\_



4. When did you first enter the Armed Forces?  
Month: \_\_\_\_\_ Year: \_\_\_\_\_

5. When you were last discharged?  
Month: \_\_\_\_\_ Year: \_\_\_\_\_



6. Altogether, how much time did you serve in the Armed Forces  
# of Years \_\_\_\_\_  
# of Months \_\_\_\_\_  
# of Days \_\_\_\_\_



7. What type of Discharge did you receive?  
 Honorable  
 General (Honorable Conditions)  
 General (Without Honorable Conditions)  
 Other than Honorable  
 Bad Conduct  
 Dishonorable  
 Other – Specify \_\_\_\_\_  
 Don't Know

7. Have you ever Received Services at the VA Hospital?  
 Yes  
 No



Figure 2: VTC Questionnaire (Buffalo Veterans Treatment Court, 2012)



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