

The Veterans Treatment Court: A New Way of Responding to Criminal Justice for Veterans

On September 29, 2009, at 12:45am, John Brown¹ having spent most of his evening drinking beers at a local watering hole, left the establishment traveling south on a back road in Kent County, Delaware in his late model truck. The roadway was wet and as Brown approached a slight bend, he hit a bump and sliding to the shoulder while correcting his vehicle, he struck an oncoming car at high speed. In the car was a young couple who were to be married in three weeks. The young man driving the car was pronounced dead at the hospital with his fiancé seriously injured. Brown was able to walk away, uninjured.

Brown was charged with Vehicular Homicide in the First Degree², a felony offense, Driving a Vehicle While Under the Influence of Alcohol (DUI)³, and Improper Lane Change⁴. Ultimately, he pled guilty to Vehicular Homicide in the First Degree and DUI. He was sentenced to five years at level V (incarceration), suspended after three years, with the first two years non-suspendable, followed by six months at a level IV (semi-incarceration), and thereafter, one year at Level III (no incarceration). The DUI charge was a first offense and he received a fine along with loss of license to drive a motor vehicle.

John Brown, known by his family and friends as Josh, took the notion of “service before self” seriously and joined the United States Marines after high school. He proudly served this nation by serving two tours in Iraq. While there he endured the horrors of combat as he saw his fellow marines, his buddies, wounded and killed. During his second tour, he was severely wounded while several of his comrades were killed in combat. He is highly decorated for his service, having received the bronze star and the purple heart. He was diagnosed with posttraumatic stress distress disorder (PTSD), having suffered a serious head injury, exhibiting behaviors such as flash backs consistent with depression and traumatic brain injury (TBI). This young man had no criminal record, yet after his

¹ The author adopts a pseudonym to identify the individual.

² Title 11 *Del. C.* § 603A.

³ Title 21 *Del. C.* § 4177.

⁴ Title 21 *Del. C.* § 4122.

second tour, he began to exhibit serious issues with PTSD and was discharged with little if no treatment for his disorder. His story is tragic, a first offender with honorable military service subjected to the traditional criminal justice system. This case represented the genesis of the need for something different to address the need of our returning veterans. As one judge reflected during the sentencing of one veteran, not all casualties of war come home in a body bag.

On any given day, veterans account for nine of every one hundred individuals incarcerated in this Nation's correctional institutions and this population is growing⁵. Although veterans are not over represented in the justice system as compared to their proportion of the United States general adult population, the numbers are significant. With over two million veterans returning from numerous deployments and conflicts, including Desert Storm, Desert Shield, Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF), combat stress exposure will increase the risk of PTSD as well as traumatic brain injury (TBI). There is an inherent belief that our service men and women who commit their lives to defend our country are owed a special consideration when they return to civilian lives. They are often broken in mind and spirit and engage in criminal activity that is quite often related to their service experience. Traditionally, we have accorded our veterans a great deal of respect and thus many jurisdictions have established the Veterans Treatment Court (VTC) to address their needs in the innovative way of a problem-solving court.

Today there are over 2,600 problem-solving courts in the United States, and a developing body of research literature to validate their effectiveness⁶. Beginning in the 1990's, new problem-solving oriented policing ideas were tested to address patterns of crime. These new policing strategies inspired new innovative justice programs to introduce new sentencing methods and address criminal behavior itself. The idea was to not just arrest, process, and adjudicate an offender, but try to reduce recidivism, improve public confidence in justice, and prevent crime before it begins.

⁵ A Consensus Report of the CMHS National GAINS Center's Forum on Combat Veterans, Trauma, and the Justice System, August 2008; <http://www.gainscenter.samhsa.gov>.

⁶ C/ West Huddleston III, Karen Freeman-Wilson, Douglas B. Marlowe, and Aaron Roussell, *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States*, National Drug Court Institute, 2005; and Berman, G., Rempel M. and Wolf, R.V. (Eds.) *Documenting Results: Research in Problem-Solving Justice*, (NY: Center for Court Innovation) 2007.

Delaware joins the ranks of over 160 courts which have established Veterans Treatment Courts since 2008. The court is unique. Our mission is to successfully rehabilitate veterans with substance abuse and mental health issues charged with certain felonies and misdemeanors by diverting them from the traditional criminal justice system and providing them with the tools they need to lead productive and law-abiding lives. The court operates on the problem solving model of jurisprudence with the focus on treatment and rehabilitation as opposed to sanctioned prison methods of confinement. The judge is the key component since the role of the judiciary is to be involved in the continuing process of rehabilitation until graduation.

The objectives and goals of the VTC are:

1. Promptly identify and assist justice-involved veterans with mental health issues and/or substance abuse issues in accessing appropriate treatment and ancillary services.
2. Reduce recidivism of justice-involved veterans.
3. Improve and insure public safety.
4. Increase collaboration and information sharing between the courts, law enforcement, and treatment providers to include mental health agencies.
5. Heighten awareness of the specialized needs of justice-involved veterans such as homelessness, unemployment, and adapting to civilian life.

The VTC focuses on rehabilitation rather than incarceration to address the root causes of criminal behavior.

The VTC operates in close partnership with the Delaware Attorney General Office, the Office of the Public Defender, the Treatment Access Center, and Department of Probation and Parole. The role of our partners is non-adversarial - we work toward the common goal of rehabilitation in a therapeutic way. The Court is a voluntary commitment by the veteran and with consent of the victim. The Court has two tracts, a diversion or pre-plea program and a post-adjudication or probation tract. One of the reasons this Court is considered unique, is the specialization in addressing the issues with justice-involved veterans in close partnership with the Department of Veterans Affairs (VA) to provide rehabilitation, mental health, and substance abuse treatment services.

Under current protocols, we consider non-violent felonies, all misdemeanors but exclude all serious felonies, and sexual crimes from our jurisdiction. Any

person who has had military service, whether they qualify for VA benefits or not, may be considered for entry. All are considered veterans for the VTC. We have an assigned Deputy Attorney General and Public Defender in each county who screen for offenders in cooperation with all of our police agencies. All applicants must undergo an appropriate risk assessment prior to entering. The VA, through the Department of Veterans Affairs, Wilmington VA Medical Center (VAMC), has assigned a special veteran outreach specialist (VJO) to assist and coordinate VA benefits for these individuals. The VAMC has agreed with the Superior Court of Delaware to provide both substance abuse and mental health treatment for qualified veterans in the VTC with the Court's supervision. Once information is received by our Court, our specially assigned case managers for each county will verify eligibility for the VTC. Our Court has intercourt coordination with other courts such as Justice of the Peace, Court of Common Pleas, and Family Court. Many cases can be transferred to the VTC directly. Since many of our cases can involve family issues with domestic violence, we require victim support for the entrant's successful entry and successful outcome. In many cases it is crucial that we identify the troubled veterans in time to perhaps avoid results that occurred in the Brown case. One improvement has been the amendment to the standard summons used by our law enforcement officials. We now have a check box on the computerized ticket (DELJIS E-Ticket) which the Delaware State Police and other police agencies use. This information will identify the violator and will alert law enforcement that a veteran is involved. Depending on the nature of the offense, police have the opportunity to identify potential veterans who may have combat stress injuries. These injuries are often a precursor to serious trauma induced brain disorders and knowing the signs is helpful to our first responders - our police. Recently, Delaware has developed specialized training, called Crisis Intervention Team (CIT) training, to address this issue. To date, the Department of Safety and Homeland Security has offered this training to over 80% of the police agencies in Delaware.

If the veteran selects the diversion track, after consulting with his lawyer and with the approval of the DAG, he is interviewed by the VJO and is scheduled to enter the VTC. The Court reviews what is involved with a careful colloquy on the waiver of important trial rights and deferral of the charges. The veteran must be evaluated for treatment by the VA or by a TASC provider if no VA benefits are available. There will be an expectation that the regimen will be at least 6 to 18 months, and frequently the treatment will continue after graduation. The veteran appears in Court for a status conference, usually once a month, with frequency of visits dependent on the veteran's issues. We monitor his progress and penalize the

veteran if he is not making a bona fide effort. Once the veteran graduates, the charges deferred will be dismissed at a formal ceremony with a certificate and the passing of our special challenge coin. Our Court has a Memorandum of Understanding (MOU) with the State of Delaware, Department of Safety and Homeland Security, Office Of Highway Safety to allow veterans who complete the VTC program with their driver's license revoked or suspended to complete the rehabilitative services required pursuant to 21 Del. C. § 4177D under the auspices of VAMC to avoid the sometimes costly courses required. This is a truly welcomed Federal-State cooperative achievement for the unemployed and occasional homeless veterans who are caught up in the criminal justice system and have completed our program successfully.

Men and women in the United States military endure high costs of service. While some of these costs are immediate and obvious, like personal injury, other costs to their mental health are not always visible. A national survey in 2003 on drug use health found that 56% of veterans had used alcohol and 7.5% reported heavy alcohol use in the previous month.⁷ There is a higher use of marijuana by veterans than non-veterans as well. Studies show that veterans have a higher need of treatment for illicit drug use, but only 20 % actually receive treatment.⁸

Homelessness is a huge issue with veterans as well. An estimated 23% of the entire homeless population in the United States is veterans. Within the veteran population itself, roughly 45% suffer from mental illness with half of those also suffering with a substance abuse problem.⁹ Veterans suffer from homelessness in a pronounced way not generally seen in the rest of the homeless population. This is particularly true for veterans of the Gulf wars. In 2005, the Bureau of Labor

⁷ Office of Applied Studies, Substance Abuse And Mental Health Services Admin., The National Survey of Drug Use and Health Report: Alcohol Use and Alcohol-Related Behaviors Among Veterans 1-2 (2005), available at <http://www.oas.samhsa.gov/2k5/vetsAlc/vetAlc.pdf>.

⁸ Office of Applied Studies, Substance Abuse and Mental Health Services Admin., The National Survey of Drug Use and Health Report: Substance Abuse, Dependence, and Treatment Among Veterans 2 (2005). Also see the same study for the National Survey of Drug Use Report: Illicit Drug Use Among Veterans 1 (2002), available at <http://www.oas.samhsa.gov/2k2/vetsDU/vetsDU.pdf>.

⁹National Coalition for Homeless Veterans, Background and Statistics: Most Often Asked Questions Concerning Homeless Veterans, <http://www.nchv.org/background.cfm>. [Hereinafter National Coalition for Homeless Veterans.]

Statistics calculated an unemployment rate of 18.7% for Gulf War era veterans aged eighteen to twenty-four years old.¹⁰ We frequently face this issue in the VTC.

These problems are compounded by co-morbid conditions in our veteran population. Approximately 30 percent of the justice-involved veterans in our VTC system experience symptoms of two or more disorders simultaneously. There is no doubt that the psychological health of our fighting men and women are in decline as a result of over 20 years of warfare. We are experiencing the result in our justice system today and this is a primary reason for developing a viable VTC in Delaware and in the nation. The Department of Defense Task Force on Mental Health in 2007 has determined that our current system of treatment for physiological health is “insufficient in meeting the needs of service members and their families”.¹¹

Our veteran clients are supervised by our Department of Probation and Parole since we place them on a form of pretrial supervision at Level III if diversion, or, if they are post adjudication, Level III.¹² The veteran reports to the Court on a monthly basis for the Court to monitor their progress. The status hearings are important to maintain close contact with the veteran with “hands on” judicial involvement by the Judge. The Deputy Attorney General, Public Defender and VJO all weigh in with recommendations for treatment, with reports reviewed from the treatment providers through the VJO, and, if appropriate, TASC. The veteran’s progress is reviewed and, if they are doing well, they are appropriately recognized. If they are not doing well, or not cooperative, they may be sanctioned. Should the veterans not be successful, they may be terminated from the program. This entails a possible bench trial where all that will be considered is the police report. We call this a stipulated trial. During all proceedings the veteran is represented by counsel. Upon entry, and after an appropriate colloquy from the Court, the veterans waive their trial rights with the acknowledgment that the contents of the police report are true and correct. The Court will only examine the

¹⁰ U.S. Department of Labor, Bureau of Labor Statistics, Employment Situation of Veterans: August 2005, at 2 (2006).

¹¹ Department of Defense Task Force on Mental Health, An Achievable Vision: Report of the Department of Defense Task Force on Mental Health at ES-1(2007). See <http://www.health.mil/dhb.mhtf/MHTF-Report-Final.pdf>.

¹² We generally place the VTC enrollee at Level III supervision on Probation, or on Level III Pretrial Supervision whenever possible.

police report to determine if all of the elements of the crimes deferred by the Court have been met beyond a reasonable doubt. If the veteran is on the probation track, he may be found in violation and resentenced accordingly.

Another key component of the VTC process is a unique mentorship program. Our mentors are part of the strong support team that assists our veterans. Our experiences have shown that veterans are more likely to respond favorably to treatment if another veteran, having shared similar military experiences, is appointed to act as a mentor. It appears that having a fellow veteran conversing with the justice-involved veteran helps to relax and ease the tension that many have when they appear at status conferences. We also know that the more successful veteran treatment programs have a mentorship component. It became clear during our start up in 2011 that we would have a greater chance of success with a strong mentorship program in place. Our chances for success are greatly improved when a veteran remains in treatment with active peer mentor support. They assist in encouraging sobriety and law-abiding behavior. Our volunteer mentors are trained at annual seminars and selected by mentor coordinators in each county. The coordinators appear for each session and they make the assignment at the time of entry. The mentors serve as an important resource for the veterans in an “as-needed” support role; they do not replace counselors, clinicians, or act as substitute probation officers. They do not report to the court, period. They must be generally familiar with veteran affairs service and veterans community resources. In my view, they are crucial to the success of the program. For more information, I encourage you to visit our [VTC web site](#). The mission of the mentor program, like the court, is to “leave no veteran behind”. To follow that mission, they offer assistance, help with problems, and support them in ways so that the veteran has the best possible chance to make the adjustment to civilian life.

Our veteran participants are not given a “free ride out of Dodge”. They are, of course, treated with respect, but are expected to live up to the challenge. They must complete the program with commitment. They may only graduate when they have a stable living arrangement, completed the treatment for substance abuse or made other progress in addressing other conditions. If not completed, they have taken the necessary steps for improving their lives with medical approval. They may be sanctioned for non-attendance at treatment and status conferences as well as testing positive for illegal and unauthorized substances. They are expected to

adhere to all Court ordered plans as well as respect military customs in Court.¹³ It is truly amazing how military culture can assist the veteran in the recovery process itself. A visit to any of our Courts will demonstrate the respect we engender by having the participants provide a description of their honored service with the Court thanking them for their service.

In closing, while we follow best practices in our Court with trained and committed personnel, comprehensive data on the VTC is not yet available. Regardless, I believe we are having a positive impact on recidivism and offender rehabilitation. We help to reduce the prison population and get treatment to the individual faster. Our veterans deserve no less. We will continue to experiment to test problem-solving principles wherever resources and collaboration allow us to do so.

¹³ The VTC populates the court with all personnel - the judge, staff, and bailiff - having military service or who have family with military service to relate to the veteran offender.