

Veterans and the Justice System: The Next Forensic Frontier

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On most days in the United States, stories appear in the media related to American soldiers who are deployed overseas. We know that the conflicts in Iraq and Afghanistan are like none other that our soldiers have experienced. With multiple tours of duty and exposure to events that may involve suicide bombers and improvised explosive devices, these soldiers return with an array of experiences and sequelae that may change their lives forever. In forensic settings, traditional screening questions related to military background (e.g., Have you ever seen combat? What type of discharge did you receive from the military?) take into account only a narrow portion of a veteran's background and do not capture the impact on today's veterans of serving in the military. Forensic training also does not generally include special attention to veterans. In this editorial, I offer information to suggest that it is increasingly critical for forensic psychiatrists to develop skills and knowledge related to veterans. I attempt to highlight areas that should be understood and considered when assessing a veteran in a forensic context and offer background information for forensic mental health professionals related to recent initiatives that have evolved to assist veterans in the criminal justice system.

Overview of the Veteran-Forensic Psychiatry Interface

In their review of psychiatry and the military, Ritchie and colleagues¹ suggest that there are important domains in which forensic professionals should

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be expert when working with forensic cases related to the military. Their review focuses in part on active-duty military forensic psychiatry. For veterans returning from duty, similar themes emerge. For example, on an individual level, criminal justice involvement of returning veterans raises interesting questions related to criminal responsibility and aid in sentencing evaluations. On the civil forensic and consultation side of the ledger, assessments of compensation and pension evaluations, fitness for duty, and clinical consultations related to suicide and violence risk assessment continue to require attention in the research and clinical literature. From a cross-agency and systems perspective, veteran-specific jail diversion, specialty courts, correctional psychiatry, and prison re-entry activities are garnering attention, and resources are being devoted to their development. In this vein, it is important for forensic mental health professionals to have a current understanding of evolving veteran-focused interagency activities at the interface of the criminal justice and mental health systems, where veterans are often encountered.

To provide meaning to the veteran-forensic interface, it is useful to examine individual clinical concerns that are increasingly recognized in returning veterans and current systems-based responses to them. Some background related to these themes is provided in the sections that follow.

Veterans, Invisible Wounds of War, and Co-occurring Disorders

In a 2008 Rand Corporation report that has received much public attention, it was noted that since October 2001, almost 1.64 million U.S. troops have been deployed for Operation Iraqi Freedom (OIF; Iraq) and Operation Enduring Freedom (OEF; Afghanistan).² The report highlights the invisible

wounds of war, relating to the psychological aftermath of these military initiatives. The two main invisible psychiatric and neurological areas of concern are posttraumatic stress disorder (PTSD) and traumatic brain injury (TBI).

Data are also emerging about the importance of recognizing that the co-occurring conditions of substance abuse and mental health problems are often a major obstacle to full functioning of returning veterans. Male veterans aged 18 to 25 are more likely than older male veterans to have had co-occurring serious mental illness and a substance use disorder.⁵ A study of approximately 300,000 soldiers who returned after deployment for OIF/OEF demonstrated elevated rates of mental health problems compared with soldiers returning from other conflicts.⁴ In a study of soldiers who were surveyed after deployment and screened again, approximately 6 months later, 27 to 35 percent reported symptoms placing them at mental health risk, including symptoms of PTSD, depression, alcohol misuse, and suicidal ideation, as well as self-reported aggression.⁵ Seal and colleagues⁶ reported that among a group of OIF/OEF veterans seen at VA facilities, 27 percent had three or more mental health diagnoses, including depressive disorders, PTSD, and substance use disorders. Traumatic brain injury and posttraumatic stress disorder in veterans also commonly occur together and can be difficult to distinguish,⁷ and both can be associated with co-occurring substance use disorders.

Thus, there is a growing recognition of the clinical and research attention needed to gain a better understanding of the prevalence and phenomenology of mental health, neuropsychiatric, and substance use conditions among veterans.

Veterans at the Intersection of the Criminal Justice System

Data are lacking on how many veterans come before the courts or are arrested, yet statistics that are often cited from most recent studies demonstrate that 90,000 inmates released annually from U.S. jails are veterans, with 70 percent held in jails for nonviolent crimes.^{8,9} Although recent reports have demonstrated a slight decline in the overall number and percentage of veterans housed in jails and prisons, in 2004, approximately 10 percent of persons in state and federal prisons (for a total of 140,000) had a history of military service.¹⁰

It is important to recognize that veterans may encounter the criminal justice system for reasons that are multifactorial. The invisible wounds of war and the prevalence of co-occurring disorders among veterans are important to consider as potentially contributory variables. For some veterans, there is concern that a battle-minded mentality may lead to actions upon return to civilian life that can result in arrest and incarceration. For example, erratic and defensive driving, which can be adaptive in Iraq to avoid improvised explosive devices, can lead to motor vehicle charges in the United States. Also, subtle and overt symptom expression can result in behavioral outputs that lead to police involvement. One common example is when the irritability associated with PTSD and TBI contributes to a domestic incident. Evaluations of veterans in forensic contexts, ranging from mitigation in sentencing to recommendations for service systems in treatment settings involving veteran offenders, can be better informed by considering the impact of co-occurring disorders on behavior. By increasing their knowledge of the recent related literature, forensic mental health professionals can provide more informed assessments.

Once a veteran is in the criminal justice system, treatment and management approaches should incorporate the unique aspects of the veteran's history. Suicide risk among veterans in general has received widespread media attention. Specific to broader forensic practice, Wortzel and colleagues¹¹ noted that incarcerated veterans face a level of suicide risk that may be higher than one might expect for veterans or inmates separately. Thus, they argue for a need to better characterize the suicide risk of the veteran inmate population.¹¹ Given the report of increased tendencies toward aggression as one of the symptoms that arise after deployment,⁵ the need for a better understanding and assessment of the risk of violence among veterans is an evolving area that warrants further study.

Veterans and Forensics From a Systems Perspective: Diversion and Re-entry Programs

With the recognition of the high prevalence of incarcerated veterans, the notion of diverting them from the criminal justice system has become an expanding national agenda. In Buffalo, New York, Justice Robert Russell started the first Veterans' Treatment Court, which was modeled after traditional

drug courts.¹² Such courts are increasing in number across the United States. Over time, reports containing data that show the effectiveness and impact of these specialty courts for veterans are likely to emerge.

On the federal level, the Substance Abuse and Mental Health Services Administration (SAMHSA) has also recognized the need to respond to veterans in the justice system.¹³ For years, SAMHSA had been offering federal dollars to fund general mental health jail diversion activities such as police and court-based diversion programs, and, in 2008, awarded service grants to six states that went on to develop diversionary services with specific focus on veterans with co-occurring disorders and trauma histories.¹⁴ These jail diversion and trauma recovery funding streams with priority given to veterans have now expanded to 13 states.

Congress has recognized the critical importance of understanding the special needs of veterans in the criminal justice system and, in 2001, passed a law mandating the Veterans Health Administration (VHA) to develop a coordinated plan with the Under Secretary for Health for veterans at risk of homelessness who are released from incarceration.¹⁵ This mandate contributed to the development of the VHA Health Care for Re-entry Veterans (HCRV) program.

A decade ago, Stovall and colleagues¹⁶ described a program that identified homeless, mentally ill veterans in an urban jail to provide an enhanced system of services for them on release. Recent efforts have attached significantly increased federal funding to meet the housing needs of veterans, as seen in the distribution of thousands of U.S. Housing and Urban Development Veterans Administration housing vouchers.¹⁷ These services are critical for homeless veterans, including those who are being released from criminal justice settings, many of whom face compounded challenges related to co-occurring disorders that need focused treatment.

In addition, in response to the desire to attend to veterans in the criminal justice system, the Department of Veterans Affairs has embarked on a major initiative to hire Veterans Justice Outreach (VJO) specialists whose role it is to help veterans with mental health and substance use difficulties that have resulted in involvement with the criminal justice system. Specifically, the VJO specialists, often social workers or persons with a mental health background,

are assigned to target three of the intercept points identified in the Sequential Intercept model¹⁸ as possible points of intervention and diversion: at the juncture of law enforcement and emergency services; at initial detention in jail and initial court hearings; and at jail, court, and forensic evaluations, and forensic commitments.⁸ Forensic psychiatrists and mental health professionals may have opportunities to work at any of these points with the VJO specialists. When doing so, it is important to be familiar with this initiative and to consider its impact on forensics-related services.

Veterans and Forensic Evaluations: Considerations Related to Individual Veterans

As noted at the outset, a full evaluation and an understanding of the unique clinical and social backgrounds of veterans can provide for the most informed quality forensic evaluation. Some may view a sympathetic perspective on veterans engaged in criminal conduct as an apologist's approach to unlawful behavior. In forensic assessments of veterans, just as with assessments of all individuals, however, each case warrants an effort to strive for objectivity with a careful and informed review of the data available before offering a forensic opinion. In the forensic evaluation of a child, knowledge of the home situation is needed for the psychiatrist to understand how the child reacts in the world, and an evaluation of an insanity acquittee who exhibits psychosis should include a careful analysis of the events surrounding the crime. So, too, does a veteran need an informed assessment with a sophisticated approach to gaining the best understanding of the mental health presentation and the totality of circumstances that have brought the veteran into the justice system.

In the criminal forensic arena, an understanding of the experiences of the combat veteran and the sequelae of deployment can have an impact on the opinions offered in forensic assessments. For example, Giardino¹⁹ suggested that the impact of post-traumatic stress disorder and traumatic brain injury is sufficiently mitigating to avoid a potential death penalty sentence.

In civil contexts, compensation and pension evaluations require a careful review of disability-related claims for veterans. The VHA has established requirements for qualified examiners of compensation and pension matters.²⁰ Forensic evaluators may be

more likely to add unique experience and training to an assessment that ideally takes into account forensic disability evaluation practices.²¹ Their experience may be helpful, especially in complex cases. Forensic civil assessments of veterans and military personnel have also grown to involve several unique elements, such as the examination of personal injury claims among prisoners of war.²²

Given the unique elements of military and veteran-related forensic assessments that have emerged and are likely to continue to emerge,²³ forensic professionals need an up-to-date sense of veterans' and related matters that includes current knowledge about TBI, PTSD, co-occurring disorders, and the impact of multiple deployments, as well as the more social and cultural aspects of returning veterans that are reported in the literature (see, for example, Hosek and colleagues²⁴).

Summary and Conclusions

Traditional forensic training involves exposure to the legal regulation of psychiatric practice, elements of correctional psychiatry, and treatment in forensic settings and, except for specific military programs, generally emphasizes forensic evaluations in civilian (criminal and civil) contexts. Especially at this time, there is a growing recognition of the unique clinical challenges of veterans, the likelihood and risk of veterans' involvement in the criminal justice system, and the need for forensic assessment and treatment that show a better understanding of veterans' needs. Focused and thoughtful attention to the mental health needs of veterans, in this author's opinion, represents the next frontier of forensic practice.

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References

1. Ritchie EC, Benedek D, Malone R, *et al*: Psychiatry and the military: an update. *Psychiatr Clin North Am* 29:695–707, 2006
2. Tanielian T, Jaycox LH: *Invisible wounds of war: psychological and cognitive injuries, their consequences, and services to assist recovery*. Santa Monica, CA: Rand Corp., 2008
3. Substance Abuse and Mental Health Services Administration: *National Survey on Drug Use and Health, Male Veterans With Co-Occurring Serious Mental Illness and a Substance Use Disorder*, November 11, 2004. Washington, DC: Substance Abuse and Mental Health Services Administration. Available at <http://www.oas.samhsa.gov>. Accessed March 3, 2010

4. Hoge CW, Auchterlonie JL, Milliken CS: Mental health problems, use of mental health services, and attrition from military service after returning from deployment to Iraq or Afghanistan. *JAMA* 295:1023–32, 2006
5. Milliken CS, Auchterlonie JL, Hoge CW: Longitudinal assessment of mental health problems among active and reserve component soldiers returning from the Iraq War. *JAMA* 298:2141–48, 2007
6. Seal KH, Bertenthal D, Miner CR, *et al*: Bringing the war back home: mental health disorders among 103,788 US veterans returning from Iraq and Afghanistan seen at Department of Veterans Affairs facilities. *Arch Intern Med* 167:476–82, 2007
7. Hill JJ 3rd, Mobo BH Jr, Cullen MR: Separating deployment-related traumatic brain injury and posttraumatic stress disorder in veterans: preliminary findings from the Veterans Affairs traumatic brain injury screening program. *Am J Phys Med Rehabil* 88:605–14, 2009
8. Kussman MJ: Under Secretary for Health's Information Letter: Information and Recommendations for Services Provided by VHA Facilities to Veterans in the Criminal Justice System. Washington, DC: Department of Veterans Affairs, Veterans Health Administration, April 30, 2009. Available at http://www1.va.gov/vhapublications/viewpublication.asp?pub_id=2019. Accessed March 21, 2010
9. United States Department of Justice, Bureau of Justice Statistics: *Survey of Inmates in Local Jails, 2002*. U.S. Department of Commerce, Bureau of the Census. Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2006
10. Noonan ME, Mumola CJ: *Veterans in State and Federal Prison, 2004*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics Special Report, April 29, 2007. Available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=808>. Accessed March 21, 2010
11. Wortzel HS, Binswanger IA, Anderson CA, *et al*: Suicide among incarcerated veterans. *J Am Acad Psychiatry Law* 37: 82–91, 2009
12. National Association for Drug Court Professionals (NADCP): *Veterans Treatment Courts: Giving our Heroes at Home the Help They've Earned, 2009*. Washington, DC: NADCP. Available at <http://www.nadcp.org/learn/veterans-treatment-court>. Accessed March 21, 2010
13. Center for Mental Health Services National GAINS Center: *Responding to the Needs of Justice-Involved Combat Veterans With Service-Related Trauma and Mental Health Conditions: A Consensus Report of the CMHS National GAINS Center's Forum on Combat Veterans, Trauma, and the Justice System, 2008*. Washington, DC: Substance Abuse and Mental Health Services Administration. Available at http://www.gainscenter.samhsa.gov/text/veterans/responding_to_needs_8_08.asp. Accessed March 21, 2010
14. Substance Abuse and Mental Health Services Administration (SAMHSA): *SAMHSA Awards \$12 Million in Grants for Jail Diversion and Trauma Recovery With Priority to Veterans*. News release, October 9, 2010. Available at <http://www.samhsa.gov/newsroom/advisories/0810090800.aspx>. Accessed March 21, 2010
15. Homeless Veterans Comprehensive Assistance Act of 2001, Pub. Law No. 107-95, § 2022 (2001). Available at <http://www.smith4nj.com/laws/107-95.pdf>. Accessed March 21, 2010
16. Stovall JG, Cloninger L, Appleby L: Identifying homeless mentally ill veterans in jail: a preliminary report. *J Am Acad Psychiatry Law* 25:311–15, 1997
17. National Coalition for Homeless Veterans: *HUD-VASH Voucher Allocations Announced, July 16, 2009*. Available at http://www.nchv.org/news_article.cfm?id=565. Accessed March 21, 2010

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18. Munetz MR, Griffin PA: Use of the sequential intercept model as an approach to decriminalization of people with serious mental illness. *Psychiatr Serv* 57:544–9, 2006
19. Giardino AE: Combat veterans, mental health issues, and the death penalty: addressing the impact of post-traumatic stress disorder and traumatic brain injury. *Fordham L Rev* 77:2955–95, 2009
20. Department of Veterans Affairs: VHA Directive 2006-013, 2006. Qualifications for Examiners Performing Compensation and Pension (C&P) Mental Disorder Examinations, 2006; Available at http://www1.va.gov/VHAPublications/ViewPublication.asp?pub_ID=1391. Accessed March 21, 2010
21. Gold LH, Anfang SA, Drukteinis AM, *et al*: AAPL practice guideline for the forensic evaluation of psychiatric disability. *J Am Acad Psychiatry Law* 36:S3–S50, 2008
22. Levin AP, Gold LH, Onorato AA: POWs versus torturers: forensic evaluation of military personnel. *J Am Acad Psychiatry Law* 37:316–28, 2009
23. Wettstein R: Commentary: forensic evaluation of military personnel. *J Am Acad Psychiatry Law* 37:329–31, 2009
24. Hosek J, Kavanagh J, Miller L: How deployments affect service members. Santa Monica, CA: RAND Corporation, MG-432-RC, 2006. Available at <http://www.rand.org/pubs/monographs/MG432>. Accessed March 21, 2010