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## Oregon Criminal Defense Lawyers Association

July 2020

### Still At War: A Guide for Defenders, Prosecutors & Judges Dealing with Oregon's Veteran Defendant Crisis

#### 2020 Update

Thanks to Jesse Wm. Barton, Michael Hajarizadeh, Cindy Borders, and Dr. William Brown for providing this update

The Dedication has been supplemented with additional material.

The following chapter was completely revised:

Chapter 5, "The Relevance & Influence of Military Culture"

In addition, the following chapters have updates:

Chapter 1, "Legal Considerations: Including Performance Standards & Diversion Options"

Chapter 2, "Oregon's Veteran Defense Resource Center"

Chapter 3, "Investigation and Mitigation Services, and Veterans Justice Outreach Program"

Chapter 10, "The 'Good Soldier' Defense"

Chapter 12, "Mastering the Challenges of Representing Veterans"

Lastly, the link to the case *Porter v. McCollum* has been corrected for chapters 7 and 13.

If you note any errors that should be corrected, please forward them to Jennifer Root, OCDLA, [jroot@ocdla.org](mailto:jroot@ocdla.org).



## Dedication

In addition to the father of the modern veterans rights movement (that being World War I veteran and Oregonian Walter W. Waters), this manual is now also dedicated to U.S. Navy Senior Chief Petty Officer (SCPO) Shannon Mary Kent and her family for their contributions to servicemembers and veterans.

Born Shannon Mary Smith in Oswego, New York, to Stephen and Mary Smith, SCPO Kent followed her family's legacy of service by enlisting in the U.S. Navy in 2003. Her father and uncle were first responders at the twin towers on 9/11. Her brother is a Marine.

SCPO Kent worked as a high-level cryptologist. She was fluent in seven languages, including six dialects of Arabic, so she also served as a part-time linguist. In 2010, she received the Department of Defense Linguist of the Year Award.



U.S. Navy Senior Chief Petty Officer  
Shannon Mary Kent

SCPO Kent served multiple combat deployments, providing necessary intelligence to special operation forces (SOF) units such as Navy SEAL teams. After completing a “physically and mentally arduous [application] process,” SCPO Kent was selected to serve with a joint, special operations unit.

Following her fourth deployment in 2012, again in support of SOF units, SCPO Kent received the Defense Intelligence Agency Human Intelligence Collector of the Year Award. U.S. Senator Chuck Schumer of New York explained that SCPO Kent “was a pioneer in the [SOF] community. She was one of the first, if not the first, women to pass the course required to join Navy SEALs on missions.” As her husband, Oregonian Joe Kent explained, SCPO Kent “was a woman in SOF before there were women in SOF.”<sup>1</sup>

Shannon met Joe Kent in 2013, during a special operations training course. They married on Christmas Eve of that year, and later had two sons, Josh and Colt. During her Navy career, SCPO Kent obtained her bachelor's and master's degrees in psychology. She planned to become a Navy psychiatrist to help servicemembers with combat-related psychiatric conditions. She applied to a PhD program at the Uniformed Services University of Health Sciences. But because she was a thyroid cancer survivor,<sup>2</sup> the Navy did not allow her to matriculate.

SCPO Kent fought the Navy's rejection of her application. Ironically, the same week she received her rejection, she also received orders to deploy—this time to Syria as part of Operation Inherent Resolve in which U.S. military units, allied with Kurdish forces, sought to defeat the Islamic State of Iraq and

<sup>1</sup> From Marty Skovlund, Jr., [“The Legend of Chief Shannon Kent,”](#) *Coffee or Die Magazine* (Black Rifle Coffee Co.), May 13, 2019.

<sup>2</sup> During her deployments, SCPO Kent endured burn-pit exposure. This may have caused the cancer. Claudia Grisales, [“Family of Fallen Navy Linguist Fights Regulation That Forced Her Deployment,”](#) *Military.com*, Jan. 30, 2019.

Syria. Because she served in an all-volunteer unit, she could have declined the orders. But that was never an option SCPO Kent considered. Despite her ongoing dispute with the Navy, she prepared for her new mission, and deployed with her unit with the same dedication and zeal she had shown throughout her career.

On January 16, 2019, SCPO Kent and three colleagues were conducting operations near what was considered to be a relatively safe place in the Syrian city of Manbij. An Islamic State suicide bomber detonated a blast near SCPO Kent and her colleagues. The blast killed all four of them,<sup>3</sup> along with 11 civilians. SCPO Kent was the first female sailor to be killed in Operation Inherent Resolve.

In recognition of her outstanding work and achievements as a cryptologist and linguist, the Navy honored SCPO Kent in unprecedented fashion. She became the first enlisted female sailor in U.S. Navy history to have a memorial service at the Naval Academy's chapel in Annapolis, Maryland. About 2,000 people attended. At the service, the Navy presented SCPO Kent's family the following posthumous awards: the Bronze Star, the Purple Heart, the Defense Meritorious Service Medal, the Meritorious Service Medal, and the Combat Action Ribbon. In addition, her name was added to the National Security Agency/Central Security Service Cryptologic Memorial Wall in February 2019—marking her as only the third woman to receive this recognition.<sup>4</sup> That same year, Senator Schumer introduced an amendment to the defense authorization bill, urging the Navy to name a ship after SCPO Kent. On August 29, 2019, the Information War Training Command-Monterey dedicated its command training stage and surrounding buildings in honor of alumna SCPO Kent. The Pines Place Post Office in New York was renamed for SCPO Kent.

After SCPO Kent's death, her family continued to fight the regulation that, for health reasons, prohibited her from attending the doctoral program—even though the Navy deemed her healthy enough for deployment to a war zone. The Navy ultimately changed its policy and named the amendments after SCPO Kent.<sup>5</sup> But if those amendments had been in place at the time of her application to the PhD program, there is no question she would have been accepted.

While SCPO Kent's career was remarkable, her Oregon connection prompts her addition to this manual's dedication.

SCPO Kent was the daughter-in-law of Portland attorney Chris Kent and his wife Mary. In 1998, Chris and Mary Kent became actively involved in veteran and servicemember issues when their son Joe enlisted in the U.S. Army. He joined the Special Forces. He spent 17 years of his 20-year career on 11 combat deployments; for all those years, Chris and Mary Kent served as "blue star" parents—parents with a child serving in the military during wartime. Joe Kent retired at the rank of chief warrant officer.

In an effort to enhance its services to veterans, in 2011 the Oregon State Bar created the Lawyers for Veterans Steering Committee. The committee assumed its functions starting in 2012. The bar tapped blue star father Chris Kent as steering committee chairman. Among its various achievements, Chris Kent's committee saw to the 2013 reconstitution of the bar's Military & Veterans Law Section (which had

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<sup>3</sup> SCPO Kent's colleagues were "Americans, Jon Farmer, Scott Wirtz and Ghadir Taher, all of whom had spent most of their adult lives at war or training for it." Jane Horton & Joe Kent, "[Congress, It's Time for a Lasting Memorial to the Global War on Terror](#)," FoxNews.com, May 24, 2020.

<sup>4</sup> In his online tribute for the memorial, Joe Kent states that SCPO Kent "was the best of us, my best friend and [my] soulmate."

<sup>5</sup> Jack Howland, "[After Shannon Kent's Death Navy Amends Rule that Kept White Plains Sailor Out of Medical Program](#)," *Poughkeepsie Journal*, Feb. 15, 2019.

been deactivated in 1999). From 2013 to 2014, Chris Kent served as the first chairman of the section's executive committee. Most crucially to criminal law practitioners, without Chris Kent's leadership—first as steering committee chairman, then as executive committee chairman—*none* of the servicemember-related legislative concepts described in Chapter 1 and enacted in 2013 and 2014 ever would have seen the light of day.

SCPO Kent's death transformed an Oregon family from blue star family into "gold star" family—one with a family member who was killed in war.<sup>6</sup> In a small park just north of the Oregon Department of Veterans Affairs in Salem, a memorial honors the 142 Oregonians who gave their lives in the now nearly 19-year-old Global War on Terror. SCPO Kent was not an Oregonian, so her name is not on the memorial. But because of her connection to the Kent family—a family that has displayed such dedication to military service and veteran's rights—and in acknowledgment that the Global War on Terror is truly "global," Oregon should claim SCPO Kent as one of its own and place her name on the memorial.

Until then, in Oregon her recognition is in this publication. Along with Walter W. Waters, this manual is dedicated to Senior Chief Petty Officer Shannon Mary Kent and to her family.

Jesse Wm. Barton<sup>7\*</sup>  
July 2020

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<sup>6</sup> Joe Kent, as a single father, continues to champion causes to honor SCPO Kent's legacy, such as advocating congressional passage of the Global War on Terrorism Memorial Location Act. He also is an occasional contributor on national defense and veterans issues, to [FoxNews.com](#), *Newsweek*, CNN, and other media outlets.

<sup>7</sup> \* Jennelle Meeks Barton contributed to this dedication.



# Chapter 1—Legal Considerations: Including Performance Standards & Diversion Options

## (2020 Update)

*Pages 1- to -2: Part I, which is headed The “Servicemember” Concept, should be supplemented with the following:*

Page 1 of the original edition of this manual states that the criminal code has a single, technical legal definition of the term “servicemember.” But owing to the passage of House Bill 2462 (enrolled as Oregon Laws 2019, chapter 86), the term now has **two** different definitions, which apply in different situations.

As explained in the original manual, the original definition of “servicemember,” which is **codified at ORS 135.881(4)**, excludes veterans who received bad conduct or dishonorable discharges. But the HB 2462 definition, which is codified at ORS 135.985(1), states: “As used in this [bill], ‘servicemember’ means a person who is a member, or who served as a member, of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard.”

As seen, the ORS 135.985(1) definition’s introductory phrase, “[a]s used in this” bill, limits the definition’s application to HB 2462’s other provisions. Moreover, ORS 135.985(1)’s definition of “servicemember” includes anyone who (i) is serving in the military; or (ii) has served in the military (a veteran), **regardless of discharge type**. Thus, ORS 135.985(1)’s definition is broader definition than ORS 135.881(4)’s definition. **Even veterans who received bad conduct or dishonorable discharges are entitled to treatment under HB 2462’s provisions**, which are discussed in these updates.

*Page 1-2: Insert at the following at the very end of the page’s last paragraph:*

These diversion programs include veteran treatment courts (in those counties that have such courts <sup>1</sup>). The original manual’s Chapter 15 discusses veteran treatment courts in detail.

*Page 1-8: Insert the end of the page’s last sentence:*

For information about legal prohibitions on treating military service as an **aggravating** factor, see part V of this chapter update.

Moreover, in [Pike v. Cain](#), 303 Or App 624, \_\_\_ P3d \_\_\_ (2020), the Court of Appeals addressed trial counsel’s failure to secure a mitigated sentence. The court concluded that counsel failed to provide constitutionally adequate and effective legal assistance. The updates to chapters 10 and 12 discuss Pike in detail.

*Page 1-9: The link to Porter v. McCollum on this page fails. For a working link, click [here](#).*

Also on page 1-9, insert at the very bottom of the page:

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<sup>1</sup> Presently, the following counties have veteran treatment courts: Marion, Lane, Klamath, Malheur, Washington, and Columbia.

## V. House Bill 2462 (2019)

At the request of the Oregon State Bar's Military & Veterans Law Section, the 2019 Legislative Assembly considered and unanimously enacted House Bill 2462 (enrolled as Oregon Laws 2019, chapter 86). The bill had only one section. It is codified at ORS 135.985, and states:

(1) As used in this section, "servicemember" means a person who is a member, or who served as a member, of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard.

(2) At the time of arraignment on a criminal charge, the court shall inform the defendant that the defendant's status as a servicemember may make the defendant eligible for treatment programs, diversion, specialty courts or mitigated sentencing, and that the defendant may obtain information about these options by consulting with the defendant's attorney.

(3) In a criminal proceeding the defendant's attorney may, with the permission of the defendant, notify the court that the defendant is a servicemember.

(4) The fact that a defendant is a servicemember may not be used as an aggravating factor in determining the defendant's sentence.

The bill has no special effective date, so it applies beginning January 1, 2020. ORS 171.022.

As previously explained in this update, ORS 135.985(1)'s definition of "servicemember" applies exclusively to HB 2462's provisions. Moreover, ORS 135.985(1)'s definition is broader than ORS 135.881(4)'s definition, which excludes veterans who received bad conduct or dishonorable discharges. The ORS 135.985(1) definition includes anyone who (i) is serving in the military; or (ii) has served in the military (a veteran), **regardless of discharge type**. Thus, even veterans who received bad conduct or dishonorable discharges are entitled to treatment under HB 2462's three other provisions.

ORS 135.985(2) requires courts, at arraignment, to notify all defendants that treatment programs, diversion programs, specialty courts, or sentence mitigation are available to servicemember defendants. These notification requirements encompass (or may encompass) the policies and programs, discussed in the main chapters of this manual, which are applicable in servicemember cases.

The policies that ORS 135.985(2) encompass also may include the bar performance standards discussed in Chapter 1 of this manual, which defense counsel should meet. These include Standard 2.2, items 6.a.2 and 6.a.3, which state: "During an initial interview with the client, a lawyer should . . . obtain information concerning . . . the client's history of service in the military and the client's physical and mental health, educational and military services records." If defense counsel consistently comply with this standard, they should know if their clients are servicemembers.

This leads to ORS 135.985(3). It permits trial counsel to notify courts of his or her client's servicemember status, **if** the client consents. *Id.* In a situation where counsel uses the client's servicemember status as part of a defense and/or mitigation strategy, consent will have been given, and the court will have been notified of the client's servicemember status. If counsel made no such use of the client's servicemember status, counsel would need to obtain the client's express consent, in order to notify the court of the client's status.



Providing this information may facilitate the development of correctional policies and programs beneficial to servicemembers. The Oregon Judicial Department is in the process of modifying the uniform judgment of conviction and sentence in various ways, including by adding to it something like a “checkbox” for identifying which convicted defendants are servicemembers. The Criminal Justice Commission obtains copies of all judgments, which its analytical staff use to generate databases about the nature of defendants, their convictions, and their sentences. Including servicemember status in the databases eventually will enable CJC staff to track such things as the numbers of servicemembers imprisoned, genders of convicted servicemembers, and types of crimes of conviction and sentences incurred by servicemembers. This information then could be used to develop policies and programs beneficial to servicemembers.

HB 2462’s last provision, ORS 135.985(4), prohibits courts from using a defendant’s servicemember status as an aggravating factor at sentencing. This subsection is important for two reasons.

First, in its original form, the legislation that created the military service mitigating factor, Senate Bill 124 (enrolled as Oregon Laws 2013, chapter 331), codified at ORS 137.090(2)(a); **OAR 213-008-0002(1)(a)(J)**, could have been construed as allowing a court to treat a defendant’s military service as an aggravating factor. **House amendments to the bill** eliminated this possibility. See *Owens v. Maas*, 323 Or 430, 442-44, 918 P2d 808 (1996) (history of bill drafts are persuasive in determining legislative intent). The amendments thereby prohibit using a veteran defendant’s military service as an aggravating factor **if** he were a “servicemember” under ORS 135.881(4)’s **narrower** definition of the term. On the other hand, if a veteran defendant’s discharge type excluded him from the ORS 135.881(4) definition, SB 124 could **allow** using his military service as an aggravating factor.

But that possibility ended when HB 2462 took effect on January 1, 2020. Owing to the bill’s broader definition of “servicemember,” ORS 135.985(1), which includes veterans of **all** discharge type, ORS 135.985(4) universally prohibits using a veteran defendant’s military service as an aggravating factor.

The second reason ORS 135.985(4) is important stems from the fact that some prosecutors have sought to use servicemember status of an aggravating factor, or at least to oppose mitigation. For example, in *Pike v. Cain* (which is discussed in detail in the Chapter 10 and 12 updates), the prosecutor—**without** objection from defense counsel—opposed mitigation on the ground that the servicemember “should be held to a higher standard than what a normal civilian would be.”<sup>2</sup> ORS 135.985(4) should make clear that in cases sentenced on or after HB 2462’s effective date, this type of argument is forbidden.

<sup>2</sup>The Court of Appeals’s opinion does not mention this statement. However, the statement is found on page 10 of the sentencing transcript in *State v. Pike*, Marion County Case No. 14C4403502 (the precursor case to *Pike v. Cain*).

It also is important to note that defendant Pike was sentenced before January 1, 2020, so before ORS 135.985(4)’s express prohibition on using military service to aggravate punishment took effect. But Pike then was on active duty military service, so he was a “servicemember” **under ORS 135.881(4)’s narrower definition**. Because he fell within that narrower definition, the history of SB 124 reflects that the prosecutor’s argument violated the bill’s legislative intent.



## Chapter 2— Oregon’s Veterans Defense Resource Center (2020 Update)<sup>1\*</sup>

Page 2-5: *Replace the first sentence of the first paragraph of G. Veterans Treatment Court with the following:*

There are currently six counties that offer Veterans Treatment Courts, those being Marion, Lane, Klamath, Malheur, Washington, and Columbia.

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<sup>1\*</sup> Information provided by Michael Hajarizadeh, the current director of the Veterans Defense Resource Center.



# Chapter 3— Investigation and Mitigation Services, and Veterans Justice Outreach Program

## (2020 Update)

The following materials were prepared by Chapter 3 author **Cindy Borders**, describing cases where proper investigations were conducted and used by trial counsel, to achieve positive outcomes.

### Sample Case Studies

1. “DB” served two combat tours in Iraq. He was charged with first-degree assault in one case and criminal mischief in another. Investigation obtained his military records. They noted that DB served two long tours in Iraq as a “sapper” (a combat engineer), and DB was exposed to blasts from 56 improvised explosive devices. VA records disclosed that owing to PTSD with dementia, DB was retired at age 35 from the U.S. Army, as a sergeant. After one and a half years of trips to the state hospital, extensive evaluations, interviews with fellow soldiers who disclosed the number of explosions was closer to 500 (including training explosions), and the victim learning of DB’s military history and injuries, the criminal mischief charge was dismissed at the victim’s request. The assault charge also was dismissed, after the court learned the same information. To date, DB has had no more interactions with the legal system.
2. “BM” served one combat tour in Iraq. He was charged with many crimes, including attempted aggravated murder of a state trooper and attempting to elude. Investigation established that on the anniversary of his first sergeant’s arrest for war crimes, BM was suffering a blackout when he committed the acts that resulted in the charges. Numerous police agencies engaged in a high-speed chase to arrest BM. Police stopped him by using “tack stripping,” shot BM in the side, and tased him while he begged police to kill him. After speaking with family members and people he had served with, and after learning of his medivac to Germany from Iraq after being found in a fetal position after a patrol, the case was successfully settled for probation with the blessing of the state trooper. BM was admitted to the Roseburg VA hospital for intensive in-patient drug and alcohol and PTSD treatment. To date, BM has had no more interactions with the legal system, has purchased a home, and is a successful entrepreneur.
3. “JD” is a veteran of the first Gulf War, as part of the initial invasion. While in Iraq he suffered extensive exposure to burn pits. Investigation showed JD had a history of alcohol abuse and erratic behavior. He was arrested at a bar for harassment and pled out at arraignment. This behavior was due to an anniversary of JD’s wife’s suicide. His behavior continued to deteriorate. Several days later he was arrested again, after viciously assaulting his neighbor. After obtaining his military records and speaking with various people, the case was pled in such a way that JD received a non-jail sentence. He then entered treatment and is doing very well.
4. “VD” served a difficult enlistment tour in the Army, although he never was deployed to a combat or hazardous-duty zone. VD was charged with various drug crimes and being the leader of a theft ring. The charges were negotiated, resulting in a sentence of probation. VD now is working full-time in construction.



# Chapter 5—The Relevance & Influence of Military Culture

## (2020 Update)

*The following, authored by **William Brown, PhD**,<sup>1</sup> is a comprehensive modification of the manual's original chapter 5, which Dr. Brown also authored.*

### Introduction

Two elements germane to the comprehensive understanding of veteran defendant behavior, typically viewed as criminal behavior/conduct, are culture and re-acculturation. A comprehensive understanding of both concepts can aid in the explanation of why, as in the clear majority of cases, a veteran defendant with no previous criminal history, and no or very limited non-judicial punishment while serving in the military, now faces criminal charges in his or her post-military life.

Culture is a combination of experience, beliefs, values, attitudes, meanings, hierarchies, religion, roles, and other knowledge acquired by a group of people and passed on to future generations through communication and habit. Culture also provides a means of navigation whereby people's behaviors, beliefs, and values are generally transmitted and accepted by the majority, which become accepted factors by members of a specific culture. Culture is the sum total of the learned behavior of a group of people, generally considered to be the tradition of that people and transmitted across generations. Culture is a collective programming of the mind that distinguishes the members of one group or category of people from another. Often, it is culture that dictates social behavior (Triandis, 1994).

In many, if not most cultures, members do not feel, think, or act the same as members belonging to other cultural groups or cultures. Social science does not endorse standards that enable viewing one cultural group as better or worse than any other cultural group. Surveying distinctions in culture between differing groups and societies assumes the position of cultural relativism. When studying differences between cultures, one must be judgment free and concentrate on explaining why the viewpoints and practices of one culture are different from those of other cultures. The antithesis to cultural relativism is cultural ethnocentrism, which assumes that one culture is superior to another. In numerous instances, there are those who assume their own culture is superior to others, because that is how they have been “programmed” to think. Cultural ethnocentrism is much easier to practice—ignore the causal factors associated with other cultures because, after all, “my” culture is the one that is superior. Since “my” culture is superior, why must I become familiar with the underlying factors associated with “your” culture?

Acculturation occurs when one enters a new cultural environment, which requires a change or alteration in beliefs or traditional practices that were common in the previous cultural environment. Re-acculturation refers to adjustment of one's heritage culture after having lived in another culture for an extended period. Thus, re-acculturation requires the individual to go through the same acculturation process when one returns to his or her original culture (Berry, et al, 1987; Adelman, 1988).

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<sup>1</sup> William Brown, PhD, is a sociologist who has provided sociological evaluations for veteran defendants across the country. He served two combat tours in Vietnam, as an infantryman in the U.S. Army's 173<sup>rd</sup> Airborne Brigade.

Acculturation and re-acculturation often mandate that the individual making the cultural change consider the values germane to his or her original or previous culture and measure those values with the values of their most recent or previous culture (Hogg, 1987). Several issues surface during both the acculturation and re-acculturation process. First and foremost are the contradictions or differences in values and morals germane to the cultures that the individual is exposed to (Oberg, 1960; Martin, 1984). This chapter update discusses the differences, and often contradictions, between civilian and military cultures in American society.

The hallmark of American culture appears to be individualism. Americans are typically programmed to perceive themselves as separate individuals responsible for their own destinies, and the outcomes of their own lives are of paramount concern. Americans are members of a tight-knit culture that, in many instances, does not share responsibility for the outcomes of other individuals who are not members of their group or their culture. For example, in America, it is common to assume that those who become wealthy are individuals who worked hard to acquire their success, while those who live in poverty are considered losers who failed to live up to their responsibility to work hard and become successful.

Military culture, on the other hand, promotes the idea that “we” are more important than “I/me.” Group survival is perceived as most important—the individual is responsible for the success of the group or unit. The successful completion of the unit’s mission is of utmost importance. In basic training (or “boot camp”), group punishment is a common practice when one or more recruits or trainees fail to meet set standards. The purpose of group punishment is to promote the perception that all members of the training unit accept the notion that everyone is responsible for everyone else. In military culture, the success of the group—not the individual—is evaluated and graded.<sup>2</sup> For example, some military units, following their return from a combat zone, encourage or even require unit members to accompany other members when they go on leave into civilian communities. This demonstrates the military’s mandate for individuals to assume responsibility for the welfare of other members of their unit. This mandate has the potential to produce significant problems for veterans re-acculturating back into civilian culture (Searle and Ward, 1990).

### **The Military Culture and Total Institution**

A total institution is a place of residence and work where significant numbers of like-situated individuals who are isolated from the wider society for a substantial period lead an enclosed, formally administered life (Goffman, 1961). Common characteristics relevant to any total institution include:

- All components of an individual’s life occur in the same place or setting.
- Large numbers of people are treated the same or nearly the same.
- All stages of the individual’s day and night are tightly scheduled and monitored.
- All participants are required to accept and adapt to the total institution’s cultural expectations and standards.

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<sup>2</sup> *Editor’s note.* An exceptional example of this evaluation and grading involves the conduct of a unit from the Oregon Army National Guard’s 2nd Battalion, 162 Infantry Regiment. As chronicled in John R. Bruning, *The Devil’s Sandbox: With the 2nd Battalion, 162nd Infantry at War in Iraq* (2006), the battalion was deployed to Iraq from 2004 to 2005. One of the platoons from the battalion’s Bravo Company, that being 2nd Platoon, was removed from the company and attached to the regular Army’s 1st Cavalry Division. The platoon then fought in the 21-day Second Battle of Fallujah. As a unit, the platoon served at a level of superiority the equivalent of which would earn an individual the nation’s second highest decoration, the Distinguished Service Cross. For their superior unit action, 2nd Platoon was awarded the Presidential Unit Citation—“the highest decoration that can be bestowed on a U.S. military unit.” See Bennett Hall, “[Local Guard Unit Wins Presidential Citation](#),” *Corvallis Gazette-Times*, Jan. 5, 2011.



Military institutions throughout the world subscribe to these characteristics (Brown, 2010). Therefore, a military institution exists as a total institution, so is, by definition, a “military total institution” (MTI).

The MTI begins with a collection of standards that must be congregated and upheld. They are measured and evaluated at specific intervals. The first benchmark is the recruitment and selection process.

The goal during recruitment is to identify and enlist recruits who will most likely adopt and adapt to the MTI culture and philosophy. War often necessitates the lowering of standards to meet the manpower requirements of the MTI. This often results in the induction of those who demonstrate less than complete willingness to adopt and adapt to the institution’s culture and philosophy. One of the most significant goals of military training is to produce military personnel who will respond to orders without question, and will perform their assigned duties in an exemplary manner. The military attempts to accomplish this through repetitive training that emphasizes compliance without question or hesitation, and through demonstrable discipline.

Research that has focused on the instructor’s role in education and training in military settings (Bamberger and Hasgall, 1995), and research on the process of assimilation into the military through training (Zurcher, 2007; Brown (2008), has addressed the MTI’s influence on veterans’ transition back into civilian culture and veterans entangled in the criminal justice system.<sup>3</sup>

An MTI requires complete control of the recruit’s entire being, including replacement of the recruit’s civilian cultural beliefs and responses. Until the recruit’s contractual agreement expires (as when discharged), being absent without leave (AWOL) or deserting becomes, short of death, the only options available for recruits or military personnel to escape the restrictions set forth by the MTI. The MTI requires modification of the thought processes of its civilian inductees to meet the needs and goals of the military. Principles and values acceptable within the civilian environment are generally not beneficial to the military milieu. On the other hand, a good soldier’s principles, which are artifacts of the MTI, are not always favorable to the civilian environment (Brown, 2008).

Regimentation, esprit de corps, and strict discipline are inherent within all branches of the military and within individual Military Occupational Specialties (MOS)—classifications which occur within each branch of the military. Competition is promoted among the different branches and the units or subsets within individual branches, and is encouraged through controlled opposition. Rigorous competition promotes the goals of all military systems. After all, the goal of the military is to defeat the enemy.

Four indispensable factors maintain the foundation of the MTI—obedience, discipline, survival, and sacrifice.

- Obedience requires military personnel to accept the command of authority without hesitation or question. Submission to obedience is measured in the degree of willingness to obey orders. The greater the obedience

<sup>3</sup> The editor’s note on page 5-3 of the main volume’s Chapter 5 explains:

“Although Dr. Brown has been qualified to testify as an expert on military culture in various courts, including some in Oregon, defense counsel should expect the state to mount OEC 702–based challenges to the admissibility of his testimony at a trial. A sample Motion to Admit Expert Testimony on Military Culture & Total Institution is provided for defense counsel use in the appendices as Appendix A and in storage here.

“Legally, counsel should face these challenges only when seeking to call a military culture expert as a trial witness. But as Chapter 12 further explains, if counsel seeks to use the expert solely for purposes of ‘plea negotiations and sentencing hearings,’ counsel should not face these challenges. This is because in those settings ‘OEC 702 does not apply[.]’”

demonstrated by subordinates, the greater the likelihood superiors will successfully complete their assigned missions and demonstrate their own level of obedience to their superiors.

- Discipline is crucial to the perfection of the recruit's mental faculties and moral character. High levels of discipline are obtained through repetitive training whereby the trainee's reaction to circumstances portrayed during military training becomes second nature (Caputo, 1977).
- Survival is the means, requiring individual commitment, to ensure the continuation of life. Survival is vital to the successful completion of the military's mission. Dead soldiers cannot fight or carry out their orders. Dead soldiers are unable to protect other soldiers. A soldier who cannot survive places the remainder of his or her unit in jeopardy. Survival augments the probability of success of the military mission.
- Finally, there is sacrifice, which requires the soldier to surrender something of value to ensure that something else of value is maintained or secured. As recruits are integrated into the MTI, they are required to sacrifice their own individuality. During the training process, sacrificing one's own life is portrayed as an honorable act. This segment of training and indoctrination prepares soldiers, who may later be confronted with life or death situations, to willingly make the ultimate sacrifice—their life.

Recruits are placed in stressful situations where they are forced to make decisions. Punishment is generally more severe for those recruits who cannot or will not “make a decision.” The logic is that a bad decision is better than no decision. In other words, a trainee is likely to be punished more severely for **not** reacting instantaneously, as opposed to making a bad decision but reacting instantaneously.

Physical training is one of the most exhausting components of a recruit's training. The army requires all recruits to successfully complete the parallel bars exercise in a rigidly prescribed period. Drill sergeants must ensure that all members of their platoons complete the parallel bars exercise satisfactorily within a prescribed timeframe. If a recruit is unable or unwilling to meet the required standards of this exercise, drill sergeants frequently resort to profanity and physical humiliation of the trainee to enhance the likelihood of success for the trainee and other members of the platoon on the physical training course.<sup>4</sup>

Trainees are conditioned to select the “fight” as opposed to the “flight” option, when confronted with dangerous or stressful circumstances. Recruits are trained to respond instantly and aggressively to all perceived or real dangerous circumstances or confrontations.<sup>5</sup> Failure to comply typically results in punishment ranging from individual humiliation to physical exploitation. Drawing from the knowledge of general deterrence, some recruits are subjected to severe forms of punishment to ensure compliance by other recruits in the unit. Recruits who are unable or unwilling to comply are often expelled—discharged less than honorably (Brown, 2008; Brown and Stanulis, 2014; Brown, Stanulis, Weitzel, and Rodgers, 2015).

Weapons training, with emphasis on defensive and offensive response, is a primary function of military training. For those trained extensively in the use of weapons, the more likely will weapons be used instantly in a time of threat. A threat is often defined as a perception of an individual and therefore is contingent upon being perceived by a given individual. An individual trained to react instantaneously to a perceived threat is highly likely to respond. For many military personnel, resorting to the use of a

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<sup>4</sup> As a former U.S. Army Drill Sergeant, I confronted recruits who were not adequately performing their required tasks. I was required to condition them to perform satisfactorily by increasing their level of stress through humiliation, which would increase their physical ability and eliminate any inclination of hesitation in a combat situation.

<sup>5</sup> Perceptions of what is and is not a dangerous situation are often based on past or anticipated dangers or risks. Individuals are different and so are their perceptions.

weapon is like a professional table tennis player who reacts automatically when an opponent hits the ball. Training in hand-to-hand combat produces similar responses. Hand-to-hand combat training emphasizes the importance of spontaneous response when confronted with a threatening situation. Hesitating to fire a weapon or to respond physically to a threat, real or perceived, can result in the loss of life and the demise of the MTI's mission of defeating the enemy.

Recruits trained in combat arms MOS classifications must demonstrate high levels of obedience and discipline. They must develop skills to ensure their own survival and the survival of others in their units. They must recognize the importance and develop the willingness to make sacrifices to ensure that the MTI's goals and mission—to defeat the enemy—are met.

For many veterans, particularly those who served in combat, their military experiences are embedded for life. The experiences acquired in the military become part of the baggage many veterans will carry as they navigate through their transition process back into civilian culture. Many are not aware of that baggage until they become unemployed, homeless, involved in a domestic violence situation at home, or entangled in the criminal justice system. Many veterans will become discontented with civilians. In some cases, mere apathy, demonstrated by those who do not share similar military-service backgrounds, serves as a trigger for veterans with post-traumatic stress disorder (PTSD).<sup>6</sup> The MTI influence provides the tactical means to respond, often instantaneously. Their inability to sustain meaningful relationships and their inability to control the rage they sometimes feel—often an artifact of combat exposure—increases the likelihood that many of these veterans will experience criminal justice confrontations.

Following release from the military, the veteran does not experience extraction or deprogramming of the military-installed mental “software.” Obviously, some veterans have been successful in the deprogramming. Others have not been so successful. Many veterans are not even aware that the acculturation process they participated in during their military experience altered their former thought processes. Scores of veterans assume that being discharged from the military will have no effect on their re-acculturation process back into civilian society. For some, this may be true. For others, particularly those who have experienced traumatizing events, PTSD and the remnants of their military re-acculturation process will serve as a filter for those life experiences (Brown, 2008; Brown, 2011).

Since 2008, I have conducted research starting with veteran defendants I had worked with and extending that research to veterans who were not defendants at the time I interviewed them. Although I have had defendants who have not deployed to recognized combat areas, only those defendants who have deployed to combat areas are included in this update (n=145). This includes 137 male veteran defendants and eight female veteran defendants in jurisdictions across the U.S. Their combat deployments were verified by their DD-214s, which are the official documentation of their discharges. I interviewed 300 veterans, who were “veteran non-defendants”—i.e., veterans who were **not** subject to criminal prosecution—in more than 20 states across the country.

All of these veterans have deployed to recognized combat areas. They included 251 men and 49 women. All of the veteran **non**-defendant participants were required to produce a photo identification (usually a driver's license) and a copy of their DD-214s. All participants were assured anonymity.<sup>7</sup>

<sup>6</sup> Veterans can learn to control their responses to these triggering mechanisms through treatment.

<sup>7</sup> The data presented in Chapter 5 of the main volume of this manual included 78 veteran defendants, including two female defendants, and 162 veteran non-defendants, which included 28 female veteran participants, for a total of 240 veterans. These data have been presented in numerous publications, including *The Attorney's Guide to Defend Veterans in Criminal Court* (Brockton D. Hunter & Ryan C. Else, eds., 2014) in a chapter titled, “Spinning the Bottle: A Comparative Analysis of Veteran Defendants & Veterans Not Entangled in Criminal Justice.”

The questions contained in the interviews were the same questions I asked veteran defendants—i.e., veterans who **were** subject to criminal prosecution—except veteran non-defendants were not asked questions regarding instant offenses. The questions ranged from questions about pre-military history (e.g., alcohol/substance abuse, education, family, hobbies, relationships, juvenile/criminal histories, etc.), to military history (e.g., branch of service, training experiences, permanent duty station assignments, deployment experiences, alcohol/substance abuse, relationships, judicial and non-judicial punishments, type of discharge, etc.), to post-military history (e.g., employment, continued education, relationships, alcohol/substance abuse, problems following discharge from military service, illegal behavior, criminal justice encounters or other significant events).

After careful analysis of all the data, I could identify one primary difference: veteran defendants were caught, whereas many of the veteran non-defendants had engaged in behaviors that clearly met the criteria of criminal behavior but were not caught. Many of those unreported behaviors included domestic violence, alcohol and drug-related offenses, assault, and so forth.

The common thread between both groups is that all veterans had been exposed to the military culture, and most had experienced problems in the re-acculturation process into civilian culture (Brown, 2014).

Neither the military nor the federal Department of Veterans Affairs (VA) planned to contact these veterans after discharge to learn how they were doing. For many, past military re-socialization will contaminate their return to the civilian social landscape. They will be forced to make decisions. Which cultural “software program” will they rely on to make decisions? One program provides one set of options, while the other provides a completely different set of options. The answer is, of course, no one knows, not even the veteran.

Many members of civilian society ask a common question related to veterans, “Why don’t they just get over it?” Many veterans repeatedly relive past experiences. One explanation for this repetitive reliving of past experiences is that the veteran was not provided adequate treatment to help resolve problems acquired during military service. Another explanation is that cultural incompetence supersedes any interest in attempting to understand the plight of veterans returning home from war. It is ludicrous to assume that one who has never served in the military, or was never deployed to a combat zone, can fully comprehend the problems of veterans re-acculturing back into the civilian environment (Brown, Stanulis, Weitzel, and Rodgers, 2015).

## **Military Experience: Presenting Research Data**

A veteran defendant’s military experiences should not and cannot be ignored if there is any desire to explain why a veteran acted or did not act in a manner relative to the allegations in instant offenses. From a sociological position, individuals are the totality of their life experiences. For many veterans, the experiences they encountered in the military **displace** the totality of all other experiences.

The data presented later in this update strongly suggest there is little doubt that the military experiences of both groups played a key role influencing the behavior and demeanor of these veterans as they pursued re-acculturation back into civilian life.

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Moreover, an editor’s note on page 5-6 of the main volume of this manual explains that I first analyzed my findings from these interviews in *From War Zones to Jail: Veteran Reintegration Problems*, 8 *Justice Policy Journal*, Spring 2011.

Nearly 80 percent of the veterans in both groups indicated they joined the military either to “serve their country” or “do something with their life.” Fewer than 7 percent said they joined the military for future education benefits, while 2.9 percent joined the military for employment reasons. Just over 5 percent joined the military because of the 9/11 incident. More than 63 percent of the veterans joined the military between the ages of 17 and 21, while 30.6 percent were 22 to 25 years old when they joined. Only 8.1 percent of the veterans were under the age of 21 at the time of their discharge, while more than 62 percent were between the ages of 22 to 30 years old. Most of the veteran defendants and veteran participants served in either the U.S. Army or U.S. Marine Corps. See Table 1.

**TABLE 1: Branch of Military Service**

VETERAN CLASSIFICATION	U.S. ARMY	U.S. MARINE CORPS	U.S. NAVY	U.S. AIR-FORCE	TOTAL
Veteran Defendants	68.3% (99)	28.9% (42)	1.4% (2)	1.4% (2)	100% (145)
Veteran Non-Defendants	70.3% (211)	25.3% (76)	2.7% (8)	1.7% (5)	100% (300)
Total	69.6% (310)	26.5% (118)	2.3% (10)	1.6% (7)	100% (445)

When asked about the primary thing they learned in basic training (“boot camp”), more than 28 percent answered “weapons proficiency,” followed by “defeat or kill the enemy” (25.2 percent) and “protect my buddies” (24.1 percent). More than 78 percent said most of their initial military training focused on physical and weapons training. More than 97 percent of the participants said that the cadence content, used for drill and physical exercise, centered on a combination of killing the enemy, dehumanizing the enemy, glorification of killing, and the degradation of civilians and civilian culture. Veterans were asked what they felt was their primary function in the military following completion of basic training. More than 72 percent said their function was either to “kill the enemy” or “protect their buddies.”

More than 80 percent of both veteran defendants and veteran non-defendants had deployed to Iraq or Afghanistan. About 10 percent of veterans in both groups served in both Iraq and Afghanistan. Just over 4 percent of both veteran groups had deployed during Gulf War I, while 3.1 percent had served in Vietnam. Nearly 40 percent of the veteran defendants and veteran non-defendants had deployed to a combat area two times. Just over 23 percent had deployed to combat areas three or more times. The most recent generation of veterans were more likely to have served multiple deployments to a combat area. However, veterans who began service after 2011 were less likely to have deployed to a combat area more than one time when compared to Iraq and Afghanistan veterans who served before 2011. More than 60 percent of veteran defendants and veteran participants served in the infantry or other combat arms MOS positions during their first deployment to a combat area.<sup>8</sup> See Table 2.

<sup>8</sup> Many veterans with more than one deployment continued to serve in the infantry or other combat MOS positions.



TABLE 2: Primary MOS (Military Occupational Specialty) Duties During First Deployment to a Combat Area

PRIMARY MOS DUTIES FIRST DEPLOYMENT	VETERAN DEFENDANTS	VETERAN NON-DEFENDANTS	TOTAL
Infantry	49.0% (71)	46.6 (140)	47.4% (211)
Other Combat Arms	16.5% (24)	17.3% (52)	17.1% (76)
Technical	3.5% (5)	4.4% (13)	4.1% (18)
Medical	7.5% (11)	8.4% (25)	8.1% (36)
Transport	13.1% (19)	12.6% (38)	12.8% (57)
Clerical	2.1% (3)	1.7% (5)	1.7% (8)
Military Police	6.2% (9)	8.0% (24)	7.4% (33)
Other	2.1% (3)	1.0% (3)	1.4% (6)
Total	100% (145)	100% (300)	100% (445)

Numerous variables related to combat exposure were included in the interview schedule. One of those variables includes morale. More than 94 percent of the veterans from both groups said their morale was either high or very high at the beginning of their first deployment. However, among those veterans who deployed more than one time to a combat area, only 66.1 percent described their morale as high or very high at the beginning of their later deployments. When asked about their overall perception of locals in the combat area they had deployed to, only 1.6 percent said they viewed locals as good. More than 35 percent of the participants said they viewed locals as less than human, while 33.9 percent said they had no feelings either way in regard to the locals. More than 21 percent said they had no overall impression of locals other than anger. Nearly 87 percent of all participants indicated they had experienced being attacked or ambushed by the enemy, which include improvised explosive device (IED) detonations. Nearly 89 percent said they had been in positions where they received incoming enemy fire, which included mortar attacks, IED attacks, and small arms fire.

About 38 percent said they had fired a weapon directly at an enemy combatant, while 34.8 percent said they were directly or indirectly responsible for the death of an enemy combatant.<sup>9</sup> Many veterans noted that it was very difficult to differentiate between the enemy and a non-combatant. As one veteran noted, “If they were dead, they were the enemy.” More than 66 percent of the veterans who witnessed enemy casualties said they had no emotion or thoughts. Just over 21 percent of the veterans said they had been either directly or indirectly responsible for the death of a civilian. After witnessing civilian casualties, 43.1

<sup>9</sup> There is a distinction between direct and indirect participation. An example of direct participation would be to fire one’s weapon directly at a human target. Calling in an airstrike or artillery rounds is an example of indirect participation. Some veterans consider simply being in a unit that produced casualties made them indirectly responsible for those casualties or deaths.

percent said they had no emotion or thoughts about civilian casualties, while 10 percent felt remorse or regret, 11.3 percent felt sadness, and 15.1 percent felt empathy. More than 13 percent felt angry after witnessing civilian casualties. More than 21 percent of the veterans claimed direct or indirect responsibility for the death of civilians, and almost 13 percent said they were directly or indirectly responsible for the deaths of children. More than 88 percent of the veterans in both groups said they had witnessed dead bodies or human remains, and 21.3 percent said they had participated in the handling or uncovering of human remains. About 82 percent had witnessed the death or serious injury of an American. More than 40 percent said they personally knew an American who had been seriously wounded/injured in combat, while more than 16 percent said they personally knew an American who had been killed in combat.

While combat exposure clearly has the potential to influence the re-acculturation process of veterans following their discharge from the military, the research I have conducted indicates that the participant's exposure to and indoctrination into military culture has the biggest impact on the re-acculturation process, which is often amplified by the branch of service and the veteran's MOS. Those veterans who participated in infantry indoctrination and training were more likely to experience the most difficulty re-acculturating into civilian society. More than 92 percent of both groups served in either the Army or the Marine Corps. More than 72 percent of both groups had an infantry or other combat arms MOS (e.g., artillery, armor, cavalry, combat engineer, etc.).

In my search for similarities and differences between the two groups, I found very few differences between veteran defendants and veteran non-defendants. I made inquiries about their training experiences. The clear majority of both groups took the training they received in the military very seriously. Nearly all indicated that the training made significant changes in their perceptions of the military and of civilian society. Most indicated that the military training increased their support for military culture values, while decreasing their regard and respect for civilian culture values. In part, their disrespect for civilian cultural values may be a reflection of their indoctrination to military values.

Veterans were asked to describe their subscription to the values of loyalty, duty, respect, selfless service, honor, integrity, and personal courage that are germane, in one form or another, to all branches of military service. The vast majority of veterans indicated that their subscription to these values increased significantly during training. Most veterans indicated their experiences in a combat zone enhanced the importance of these values, and they maintained their subscription to these values as they re-acculturated back into the civilian culture. One problem, experienced by most veterans, is that the meanings of these terms were not aligned with the meanings in the civilian culture. Many veterans noted that while the civilian culture claims to subscribe to these values, the civilian subscription often seems superficial. These cultural definition contradictions were found to have impacts on variables relative to the veteran's ability to develop and maintain relationships, get along with people, properly use alcohol, obtain employment, etc.

## Post-Military Experiences

Many veterans often practice some form of self-isolation. Veterans were asked about their ability to develop and maintain relationships before entering and after leaving the military. Significant distinctions were found. The majority of veterans had no problem developing or maintaining relationships before entering the military. *See* Tables 3 and 5. The vast majority of veterans experienced problems developing and maintaining relationships when they returned home from the military. *See* Tables 4 and 6. More than 73 percent of the veterans said they got along with people either well or very well before entering the military. *See* Table 7. But after discharge, only 10.1 percent described their ability to get along with people as either good or very good—a decline of more than 63 percent. *See* Table 8.

TABLE 3: Ability to Develop Relationships (Pre-Military)

VETERAN CLASSIFICATION	VERY GOOD	GOOD	AVERAGE	NOT VERY GOOD	POOR	TOTAL
Veteran Defendants	20.0% (29)	38.6% (56)	27.6% (40)	9.7% (14)	4.1% (6)	100% 145
Veteran Participants	22.7% (68)	40.0% (120)	29.0% (87)	6.0% (18)	2.3% (7)	100% 300
Total	21.8% (97)	39.6% (176)	28.5% (127)	7.2% (32)	2.9% (13)	100% (445)

TABLE 4: Ability to Develop Relationships (Post-Military)

VETERAN CLASSIFICATION	VERY GOOD	GOOD	AVERAGE	NOT VERY GOOD	POOR	TOTAL
Veteran Defendants	4.8% (7)	6.2% (9)	39.3% (57)	33.1% (48)	16.6% (24)	100% 145
Veteran Non-Defendants	5.7% (17)	5.0% (15)	40.3% (121)	33.0% (99)	16.0% (48)	100% 300
Total	5.4% (24)	5.4% (24)	40.0% (178)	33.0% (147)	16.2% (72)	100% (445)

TABLE 5: Ability to Maintain Relationships (Pre-Military)

VETERAN CLASSIFICATION	VERY GOOD	GOOD	AVERAGE	NOT VERY GOOD	POOR	TOTAL
Veteran Defendants	28.3% (41)	43.5% (63)	19.3% (28)	6.2% (9)	2.7% (4)	100% 145
Veteran Non-Defendants	27.6% (83)	45.0% (135)	19.7% (59)	6.0% (18)	1.7% (5)	100% 300
Total	27.9% (124)	44.5% (198)	19.5% (87)	6.1% (27)	2.0% (9)	100% (445)



TABLE 6: Ability to Maintain Relationships (Post-Military)

VETERAN CLASSIFICATION	VERY GOOD	GOOD	AVERAGE	NOT VERY GOOD	POOR	TOTAL
Veteran Defendants	18.6% (27)	44.8% (65)	34.5% (50)	1.4% (2)	0.7% (1)	100% 145
Veteran Non-Defendants	19.3% (58)	44.7% (134)	35.0% (105)	1.0% (3)	0.0% (0)	100% 300
Total	19.1% (85)	44.7% (199)	34.9% (155)	1.1% (5)	0.2% (1)	100% (445)

TABLE 7: Ability to Get Along with People in General (Pre-Military)

VETERAN CLASSIFICATION	VERY GOOD	GOOD	AVERAGE	NOT VERY GOOD	POOR	TOTAL
Veteran Defendants	30.3% (44)	45.5% (66)	14.5% (21)	7.6% (11)	2.1% (3)	100% 145
Veteran Non-Defendants	27.6% (83)	45.0% (135)	19.7% (59)	6.0% (18)	1.7% (5)	100% 300
Total	28.5% (127)	45.2% (201)	18.0% (80)	6.5% (29)	1.8% (8)	100% (445)

TABLE 8: Ability to Get Along with People in General (Post-Military)

VETERAN CLASSIFICATION	VERY GOOD	GOOD	AVERAGE	NOT VERY GOOD	POOR	TOTAL
Veteran Defendants	4.2% (6)	5.5% (8)	40.0% (58)	37.9% (55)	12.4% (18)	100% 145
Veteran Non-Defendants	4.3% (13)	6.0% (18)	39.3% (118)	39.7% (119)	10.7% (32)	100% 300
Total	4.3% (19)	5.8% (26)	39.6% (176)	39.1% (174)	11.2% (50)	100% (445)

These data strongly support the notion that military experiences have had a profound impact on the re-acculturation processes of many veterans.

Another variable addressed in this study was alcohol use/abuse. There is often a perception that many veterans who demonstrate post-military alcohol problems are extensions of family alcohol patterns, or that the veterans demonstrated alcohol abuse problems before entering the military. But only 14.8 percent of veterans indicated their father had alcohol problems, compared to 5.6 percent who revealed their mother had alcohol problems as they were growing up. Only 7 percent of veterans said that a sibling had alcohol problems before entering the military. Just over 4 percent of veterans said they have never consumed alcohol. Only 1.4 percent of veterans said they had an alcohol problem before entering the military, while only three veterans said they had received alcohol counseling before joining the military. While 14.1 percent of veterans said they never drank alcohol before entering the military, more than 60 percent of the veterans described their pre-military frequency of alcohol use as rarely or occasionally. *See* Table 9. More than 96 percent of veteran defendants and 95.7 percent of veteran non-defendants said they used alcohol while serving in the military. Their primary motivation for drinking alcohol was entertainment, followed by “It was just something we did.” Only 12.9 percent of veterans described their frequency for using alcohol as “once in a while,” while 52.9 percent described alcohol use frequency as “regularly.” *See* Table 10. While serving in the military, only 6.1 percent of veterans said they were disciplined for using alcohol. More than 31 percent of veterans said their use of alcohol increased after leaving the military, compared to 7 percent who said their use of alcohol decreased. More than 50 percent of veterans said their post-military use of alcohol increased when they found themselves under pressure. Regardless of their motivation, every veteran (95.5 percent) who drank alcohol while serving in the military said they drank alcohol after leaving the military. The most frequent answer, as to why they now use alcohol, was to relax (27.4 percent). *See* Table 11. Veterans were asked if, following their discharge from the military, they had ever consumed alcohol to the point of experiencing a blackout. Nearly 32 percent answered yes. More than 36 percent of the veteran defendants answered yes, compared to 29.6 percent of veteran non-defendant participants.

**TABLE 9: Before Entering the Military, How Often Did You Use Alcohol?**

PRE-MILITARY FREQUENCY USE OF ALCOHOL	VETERAN DEFENDANTS	VETERAN NON- DEFENDANTS	TOTAL
Never	13.6% (19)	14.3% (41)	14.1% (60)
Rarely	11.4% (16)	10.5% (30)	10.8% (46)
Occasionally	49.3% (69)	53.3% (153)	51.9% (222)
Regularly	15.0% (21)	13.6% (39)	14.1% (60)
Quite Frequently	10.7% (15)	8.3% (24)	9.1% (39)
Total	100% (140)	100% (287)	100% (427)

TABLE 10: While Serving in the Military, How Often Did You Use Alcohol?

MILITARY FREQUENCY USE OF ALCOHOL	VETERAN DEFENDANTS	VETERAN NON- DEFENDANTS	TOTAL
Once in a while	12.9% (18)	13.2% (38)	13.1% (56)
Regularly	52.9% (74)	54.0% (155)	53.6% (229)
Frequently	22.1% (31)	21.3% (61)	21.6% (92)
Very Frequently	12.1% (17)	11.5% (33)	11.7% (50)
Total	100% (140)	100% (287)	100% (427)

TABLE 11: What is the Primary Reason that You Use Alcohol Following Discharge from the Military?

PRIMARY REASON YOU NOW USE ALCOHOL	VETERAN DEFENDANTS	VETERAN NON- DEFENDANTS	TOTAL
To Relax	28.6% (40)	26.8% (77)	27.4% (117)
To Have a Good Time	6.4% (9)	7.7% (22)	7.3% (31)
To Socialize	12.1% (17)	13.2% (38)	12.9% (55)
To Help Me Sleep	25.7% (36)	24.4% (70)	24.8% (106)
To Deal with Night- mares	21.4% (30)	21.9% (63)	21.7% (93)
Other	5.7% (8)	5.9% (17)	5.9% (25)
Total	100% (140)	100% (287)	100% (427)

Turning now to illegal behavior provides a comparison of self-reports of illegal behavior during participants' pre-military histories. Only 12 veterans ever served time in a juvenile facility (2.7 percent). On the other hand, 83.4 percent of participants said that before entering the military, they had engaged in some form of illegal behavior. See Table 12. The participants said that while they engaged in these behaviors, either no one reported these behaviors to authorities or, if the behaviors were reported, there were no arrests or detentions.

TABLE 12: Most Serious Illegal Behavior (Pre-Military)

DATA SOURCE	PERSON OFFENSE <sup>1</sup>	PROPERTY OFFENSE	DRUG OFFENSE	STATUS OFFENSE <sup>2</sup>	TOTAL
Veteran Defendants	13.7% (17)	17.7% (22)	11.3% (14)	57.3% (71)	100% (124)
Veteran Non-Defendants	13.0% (32)	19.0% (47)	10.9% (27)	57.1% (141)	100% (247)
Total	13.2% (49)	18.6% (69)	11.1% (41)	57.1% (212)	100% (371)

<sup>1</sup> A “person offense” is considered one that caused injury or had the potential of causing injury to another person.

<sup>2</sup> Includes underage alcohol use.

While serving in the military, 5.5 percent of the veteran defendants and 4.7 percent of the veteran non-defendants received some form of non-judicial punishment. Only three veterans, which includes two veteran defendants and one veteran non-defendant, were subjected to court martial.

Turning to post-military illegal behavior among the veterans in both groups, the percentage of veterans who engaged in person-offense activities increased significantly. Much of the person-offense behavior included activities associated with domestic violence and “barroom” altercations. The alcohol-related activities, as were many of the drug-related activities, were related to the increased use of alcohol/drugs and the motivational changes in why these veterans used alcohol after their discharge: to manage anxiety and depression.

One area that receives little coverage is the re-acculturation problems confronting **female** veterans. All of the female veteran defendants reflected in the data contained in this update were subjected to some form of military sexual assault while serving in the military. There were three common characteristics associated with these female veterans. Before their entanglement in the criminal justice system, each one lived alone, each one had a cat, and each one preferred to go grocery shopping late at night, when there would be fewer people in the grocery stores. Many of the female veterans also indicated they shared similar post-military living habits. Like their male counterparts, many female veterans have difficulty identifying with civilians following their discharge from the military. Those females who were subjected to some form of

TABLE 13: Most Serious Illegal Behavior (Post-Military)

VETERAN CLASSIFICATION	PERSON OFFENSE	PROPERTY OFFENSE	DRUG RELATED OFFENSE	ALCOHOL RELATED OFFENSE	TOTAL
Veteran Defendants	14.3% (2)	28.6% (4)	57.1% (8)	100% (14)	89.0% (129)
Veteran Non-Defendants	18.5% (5)	18.5% (5)	81.5% (17)	100% (27)	86.0% (258)
Total	17.1% (7)	21.9% (9)	61.0% (25)	100% (41)	85.8% (382)

military sexual assault are reluctant to develop relationships with male veterans. Because the female veteran population is relatively small compared to the male veteran population, it is more difficult to develop relationships with other female veterans.

Although there are numerous additional variables related to veteran re-acculturation problems, these are just a few that appear most consistent between the two groups of veterans referred to above. Interestingly, these variables are also related to moral injury (see Chapter 8 of the main volume of this manual). Many of these variables pertain to PTSD and TBI. *See* Chapters 6 and 12 of the main volume of this manual. Understandably, these variables may sometimes be difficult for attorneys to get on the record, but they nevertheless are related to the veteran's post-military re-acculturation process.

## **Sociological Explanations**

Many in the legal system do not understand why it is important to apply the science of sociology to address legal problems. This is understandable, because the legal system and sociology are differently focused and have different and distinct methodologies.

Sociology is the scientific study of social life, social changes, and the social causes and consequences of human behavior. The focus is on the analysis of group structures, organizations and institutions, and societies with an emphasis on explaining how individuals respond and interact within these settings. In short, from a sociological perspective, human behavior is a product of social factors and social influences. Sociology can assist the legal system to understand criminal behavior and solve problems. Sociology serves a crucial role in analyzing and explaining the civilian re-acculturation process for veterans.

A sociological evaluation helps explain individual and social changes veterans experience by examining their pre-military and post-military histories, while controlling for their military experiences and combat exposures within the context of the MTI. This type of evaluation enables an understanding of the influence the MTI has on post-military behavior and experiences of veterans who become entangled in the legal system. Such an evaluation is useful for mitigation either pre- or post-trial, and assists the trier of fact when determining guilt or innocence based on the effect social experiences and influences acquired within the MTI environment had on the defendant's behavior and state of mind at the time of the alleged crime. Furthermore, a comprehensive understanding of the MTI influence at the time of the instant offense provides a context to consider the role PTSD may have played in the instant offense by understanding the content and dynamics of military training and other military experiences. The inclusion of a veteran defendant's sociological background in the evaluation is at the core of formulating a Dynamic Risk Assessment and Management Plan that improves compliance and assists in making sentencing and case management recommendations.

A sociological evaluation of veteran defendants appears to work best when applied within the context of a multidisciplinary team approach. Just as a psychological evaluation is often insufficient when addressing sociological issues for the defense of veterans, a sociological evaluation does not specifically incorporate psychological issues. A combination of the disciplines of psychology and sociology can provide a more comprehensive explanation of the veteran's behavior, responses, motivation, and so forth in criminal allegations.

## Conclusion

Sociology is but one of a number of social science disciplines beneficial to the understanding of veterans, specifically veterans entangled in criminal justice. Over the years, I have worked on defense teams with private investigator Cindy Borders (author of Chapter 3 of the main volume of this manual) and neuropsychologist Dr. Robert Stanulis (author of Chapter 6 of the main volume of this manual). We have worked together on numerous cases, ranging from drunk driving to capital murder.

Looking back at these cases, there are a number of veteran defendants whose cases were reduced to lesser charges—many of which resulted in the defendants receiving treatment as opposed to incarceration, including through diversion programs. In all but one case, these veterans have become, and remain, productive citizens. Even in the one case where the veteran was again charged with a criminal offense, the probation officer had failed to follow our suggestions relative to treatment. In a number of cases we worked, the veteran defendant was sent to the state hospital rather than prison. One of these cases involved murder, another attempted murder, and another armed robbery. We have had cases where the veteran defendant was sentenced to prison, but our work was most useful for sentencing mitigation purposes.

It is important to note that attorneys assigned to cases involving veteran defendants should create a defense team that understands veterans, and the distinction between civilian and military culture. The attorneys need to understand the veteran defendant's re-acculturation experiences and problems. It is also crucial for attorneys to understand the importance of obtaining the veteran defendant's military and VA records, with the most important military record being the veteran's DD-214—which can be viewed as the “DNA” or “thumbprint” of the veteran during his or her military service.

Veteran defendants need a defense team that demonstrates an understanding of the cultural distinctions between military and civilian environments. The team must acquire military and VA records quickly and explore treatment programs available to veterans (offered by the VA at no expense to the state) in the early stages of the case. Veteran defendants do not require special treatment as much as they require the defense team to consider all aspects of their life experiences and possible outcomes in order to provide a thorough defense.

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## Chapter 7— Impact of Warzone Deployment (2020 Update)

Page 7-7: The link to *Porter v. McCollum* on this page fails. For a working link, click [here](#).



## Chapter 10—The “Good Soldier” Defense (2020 Update)

In *Pike v. Cain*, 303 Or App 624, \_\_\_ P3d \_\_\_ (2020), the Court of Appeals, without explicitly citing it, relied on the “good soldier defense” (as well as Mitigating Factor J) to hold that trial counsel failed to provide constitutionally adequate and effective legal assistance.

There, the petitioner was an active duty soldier stationed at Joint Base Lewis/McChord in Washington State, but he was off duty and spending time in Oregon. He got into an altercation, which ended with him pleading guilty to second-degree assault. He faced a 70-month “Measure 11” prison sentence. But he was eligible for application of the “exit door,” see ORS 137.712, which would allow him to be sentenced to a lesser, Guidelines term, including to probation. At the sentencing hearing, trial counsel called petitioner’s platoon sergeant who “testified in support of petitioner’s case for probation. The sergeant stated that petitioner was a ‘good soldier,’ who ‘excelled above his peers,’ and who, prior to the assault, was up for a promotion to sergeant.” 303 Or App at 629 (emphasis added).

Unfortunately, trial counsel otherwise failed to investigate and present evidence of petitioner’s “good soldier” service in the military. Relatedly, counsel failed to rely on Mitigating Factor J to seek a mitigated departure from Measure 11 sentencing. The sentencing court denied the defense request for “exit door” treatment, and imposed the 70-month sentence.

Owing to those failures, the petitioner sought post-conviction relief, which the post-conviction court denied. But the Court of Appeals reversed, explaining that it

conclude[d] that...petitioner is entitled to a new sentencing hearing because his trial counsel’s decision not to further develop the evidence of petitioner’s military service, and his failure to argue for a [mitigated] departure under...OAR 213-008-0002(1)(a)(J) based on petitioner’s servicemember status, did not comport with constitutional standards.

*Pike*, 303 Or App at 627.

The court then “remand[ed] with instructions to grant post-conviction relief on petitioner’s claim that trial counsel was inadequate and ineffective for failing to investigate and develop further evidence pertaining to petitioner’s military service.” *Id.*



# Chapter 12—Mastering the Challenges of Representing Veterans (2020 Update)

*Page 12-17: The links to Porter v. McCollum found on this page, as well as on pages 12-18 and 12-31, all fail. For a working link, click here.*

*Also on page 12-17, insert immediately after the page's last paragraph:*

In *Pike v. Cain*, 303 Or App 624, \_\_\_ P3d \_\_\_ (2020), the Court of Appeals relied on Mitigating Factor J (as well as the “good soldier defense,” although without explicitly citing it) to hold that at sentencing, trial counsel failed to provide constitutionally adequate and effective legal assistance.

There, the petitioner was an active duty soldier stationed at Joint Base Lewis/McChord in Washington State, but he was off duty and spending time in Oregon. He got into an altercation, which ended with him pleading guilty to second-degree assault. He faced a 70-month “Measure 11” prison sentence. He was eligible for application of the “exit door,” see ORS 137.712, which would allow him to be sentenced to a lesser, Guidelines term, including to probation. At the sentencing hearing, trial counsel called petitioner’s platoon sergeant who “testified in support of petitioner’s case for probation. The sergeant stated that petitioner was a ‘good soldier,’ who ‘excelled above his peers,’ and who, prior to the assault, was up for a promotion to sergeant.” 303 Or App at 629 (emphasis added).

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Owing to counsel’s failures, the petitioner sought post-conviction relief, which the post-conviction court denied. But the Court of Appeals reversed, explaining that it

conclude[d] that...petitioner is entitled to a new sentencing hearing because his trial counsel’s decision not to further develop the evidence of petitioner’s military service, and his failure to argue for a [mitigated] departure under...OAR 213-008-0002(1)(a)(J) based on petitioner’s servicemember status, did not comport with constitutional standards.

*Pike*, 303 Or App at 627.

The court then “remand[ed] with instructions to grant post-conviction relief on petitioner’s claim that trial counsel was inadequate and ineffective for failing to investigate and develop further evidence pertaining to petitioner’s military service.” *Id.*



# Chapter 13— Defending Veterans in Federal Court (2020 Update)

Page 13-6: The link to *Porter v. McCollum* on this page fails. For a working link, click [here](#).

