

A Separate Peace

Specialized courts for war veterans work wonders. But why stop at veterans?

By Dahlia Lithwick

Posted Thursday, Feb. 11, 2010, at 1:33 PM ET

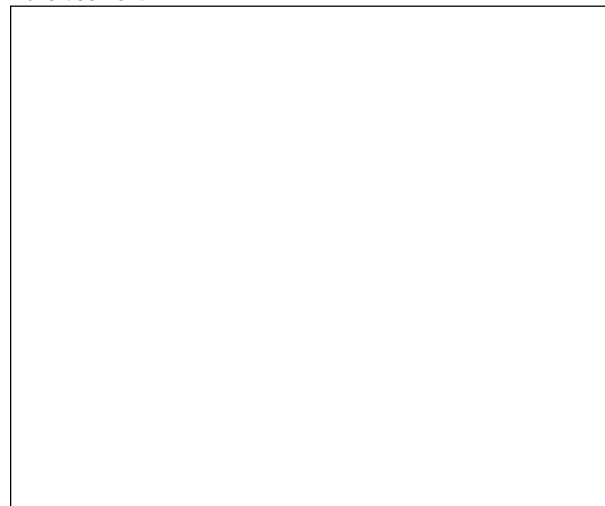
The problem is hardly a new one: Veterans return from war having seen and survived unspeakable things, then try to adjust to civilian life with inadequate resources and support. Depending on the study you read, somewhere between 20 percent and 50 percent of Iraq and Afghanistan war veterans are suffering from post-traumatic stress and other mental disorders. Fifty percent of veterans with PTSD or major depression don't seek mental health care, and those who do don't always receive the kind of care they need. The results of these systemic failures are increased instances of rape, assault, addiction, and other criminal acts that can tangle up veterans in the criminal courts. The Department of Veterans Affairs estimates that veterans account for 10 percent of the people with criminal records.

Veterans are also disproportionately among the country's homeless. The V.A. estimates that 131,000 veterans are homeless each night. (One of every 10 homeless veterans under the age of 45 is a woman, often with a child.) And if you are homeless, it's likely that you will quickly amass fines and citations for s

uch trivial offenses as sleeping in public. If you can't pay those fines, you develop a record that makes finding housing and jobs close to impossible. Whether you find yourself in court for minor offenses or major ones, the best place to deal with issues of homelessness, addiction, or PTSD is not jail. Thus the country's first "veterans' courts" were born.

The first veterans' court was launched in Buffalo, N.Y., in January 2008 by Judge Robert Russell. His program was based on the various "problem-solving" courts around the country, ranging from specialized drug courts (first launched in 1989) to mental health and domestic violence courts. Drug courts, for instance, integrate treatment with justice-system case management and closely supervise and monitor participants; studies show that they have decreased recidivism rates

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as well as the cost of incarceration. In recent testimony before the House Veterans Affairs Committee, Russell testified that his program teams veterans guilty of nonviolent felony or misdemeanor offenses with volunteer veteran mentors, requiring them to adhere to a strict schedule of rehabilitation programs and court appearances. One hundred twenty veterans are enrolled in the Buffalo program, and 90 percent of graduates have successfully completed the program. The recidivism rate is zero. Since the Buffalo experiment launched, 22 other cities and counties have created their own veterans courts along similar lines, and the Senate is looking at legislation introduced by John Kerry and Lisa Murkowski to fund more veterans' courts for nonviolent offenders.

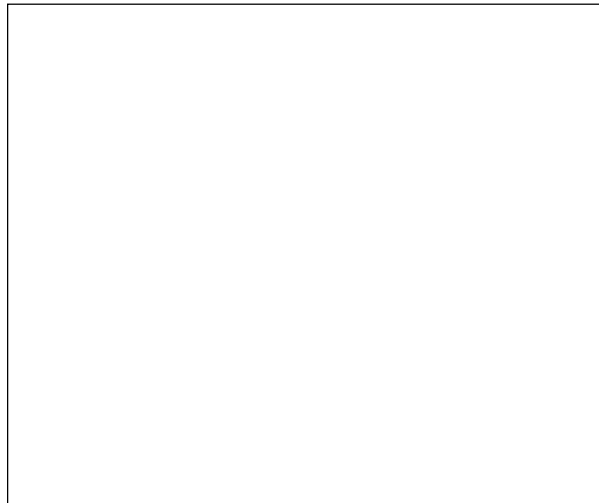
Whether these courts will actually serve violent offenders or only nonviolent ones is already a thorny issue for legislators and judges. The Buffalo court, for instance, handles chiefly nonviolent offenses. But that may not solve the problems in Colorado Springs, Colo., where, according to a recent article about veterans courts, 15 former GIs have been arrested in connection to a dozen murders over the past five years. These are guys who have never been involved in the criminal justice system in their lives. They come home from war profoundly

different men.

That's why Robert Alvarez, a psychotherapist with the Wounded Warrior program at Fort Carson, recently told a Denver newspaper that it's a mistake to carve the most violent offenders out of the proposed veterans court in Colorado: "The violent offenders need help more than anybody. ... [T]he very skills these people are taught to follow in combat are the skills that are a risk at home. They're trained to react instantly to a threat, because if not, people die." So as we continue to create specialized courts for our war veterans, one question worth probing is how it makes sense to give special services to those with the least to lose while withholding special services from those with the worst problems.

The bigger issue with the veterans' court has been raised by some local chapters of

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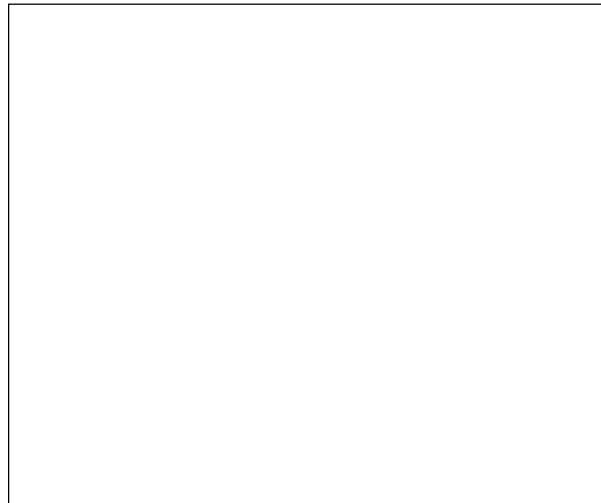
the ACLU, which object to the creation of a unique legal class of criminals based on their status as veterans. Thus Lee Rowland of the American Civil Liberties Union of Nevada opposed the proposed state veterans court because it provided "an automatic free pass based on military status to certain criminal defense rights that others don't have."

Mark Silverstein, legal director of the Colorado ACLU, raised similar objections to the veterans court initiative there, explaining that the legal category of "veteran" is both too broad and too narrow, sweeping in both Vietnam and World War II veterans, who have very different experiences, while excluding nonveterans who also suffer from PTSD but aren't eligible for any special courts. He wondered, "Should the criminal justice system take into account PTSD when it arises from military service but disregard it when it stems from different but nevertheless horrific life experiences?" Nobody actually opposes veterans' courts, and it's difficult to speak out against them. But as Silverstein suggests, if we are finally doing away with "lock 'em up and throw away the key" justice for some classes of people with mental health problems and addictions, shouldn't we do so for everyone?

Perhaps the inevitable conclusion here is

the one nobody wants to say out loud: We have known for years that treatment works better than incarceration when it comes to criminal defendants with drug and mental-health problems. Close supervision and monitoring work better than casting our most vulnerable citizens adrift or tossing them into overcrowded jails with inadequate resources. Nobody would argue that veterans don't deserve special treatment for their brave service. But the fact that veterans courts seem to work as well as they do suggests a more fundamental lesson about correcting what's broken in the criminal justice system. Whether we really want to go down the road of creating first- and second-class criminal court systems and whether we can truly draw any principled line between special judicial treatment for nonviolent veterans but not the violent ones are not easy political questions. They are thorny legal ones. You don't have to oppose veterans' court

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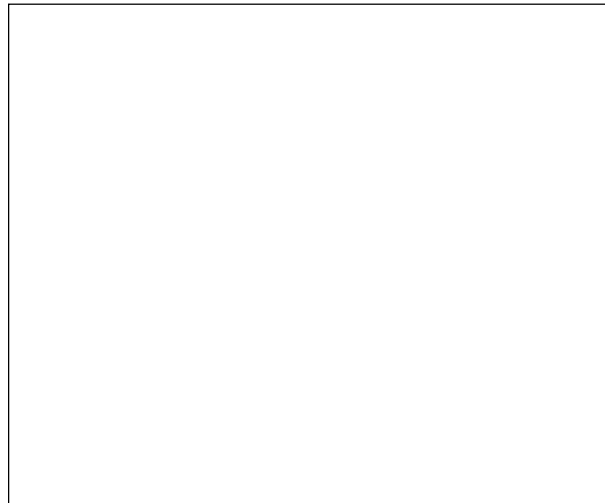
to want that type of justice for all.

A version of this piece appears in this week's Newsweek.

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