

New York State Defenders Association
**Veterans Defense Program
Activities Report**

Defending Those Who Defended Us





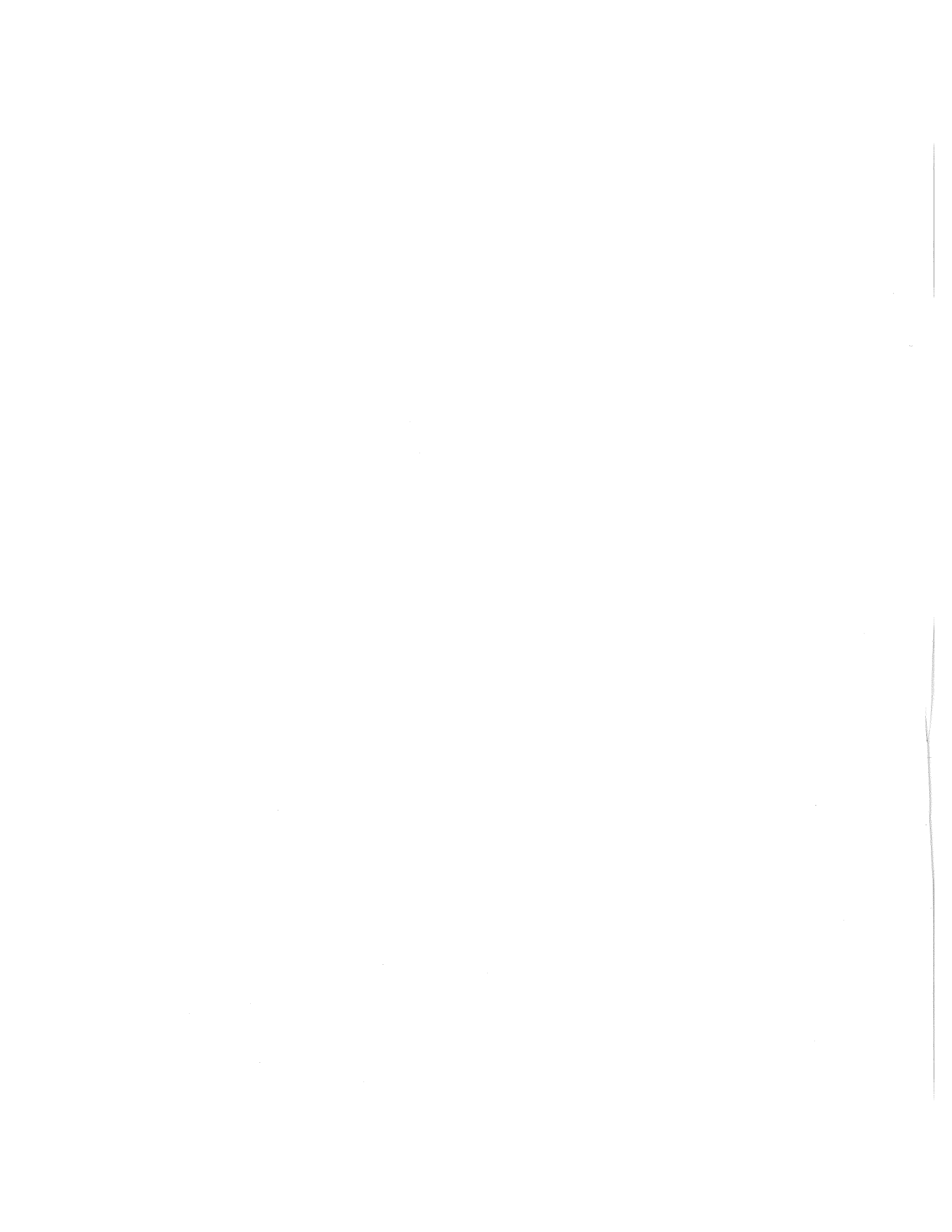
NYSDA Veterans Defense Program

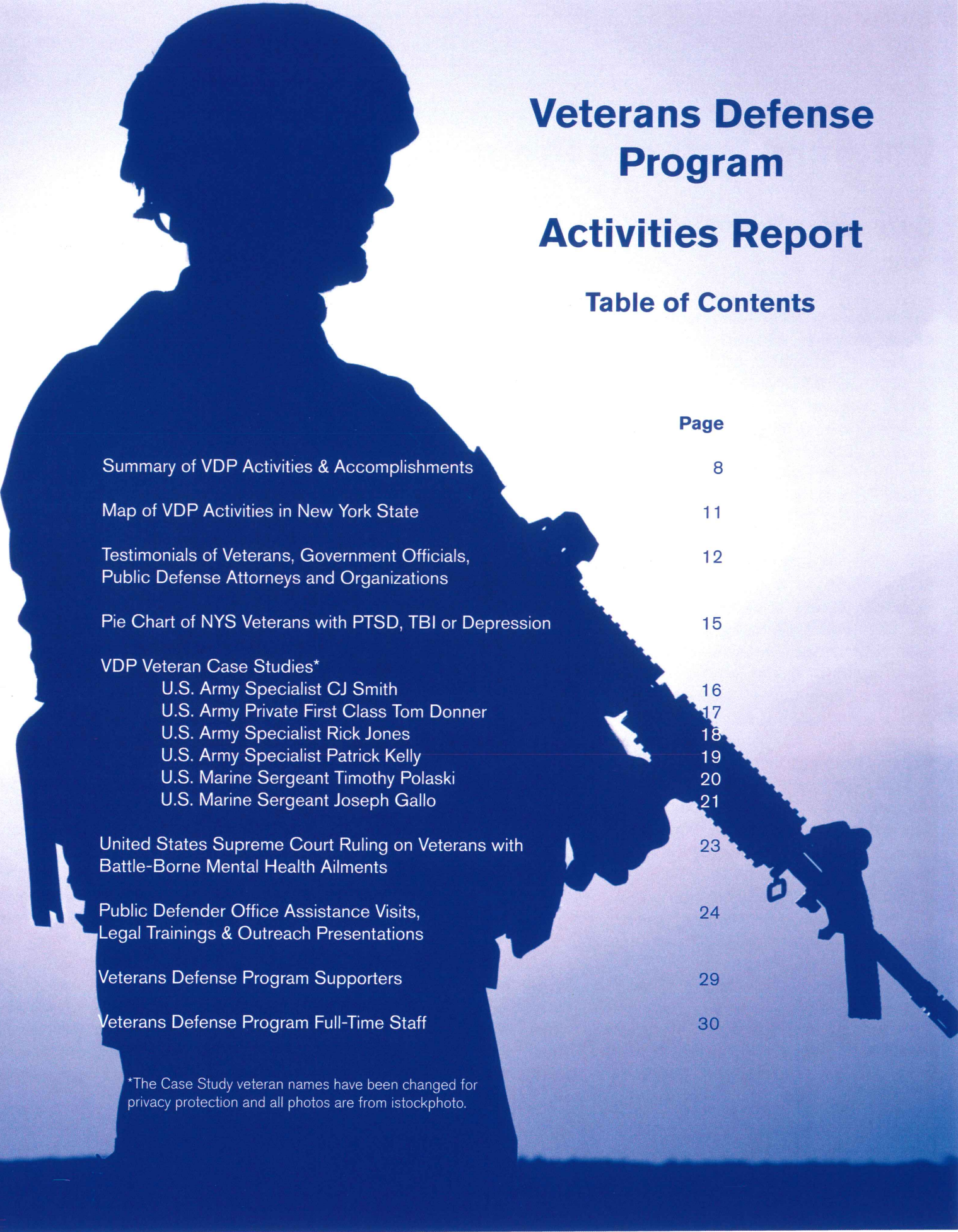
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October 2015

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Since its launch in the Spring of 2014, the VDP has assisted or trained nearly 1,000 veterans and public defenders representing veterans in New York State's criminal court and family court systems.

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Legal Assistance for Over 100 Veteran Criminal Justice Cases

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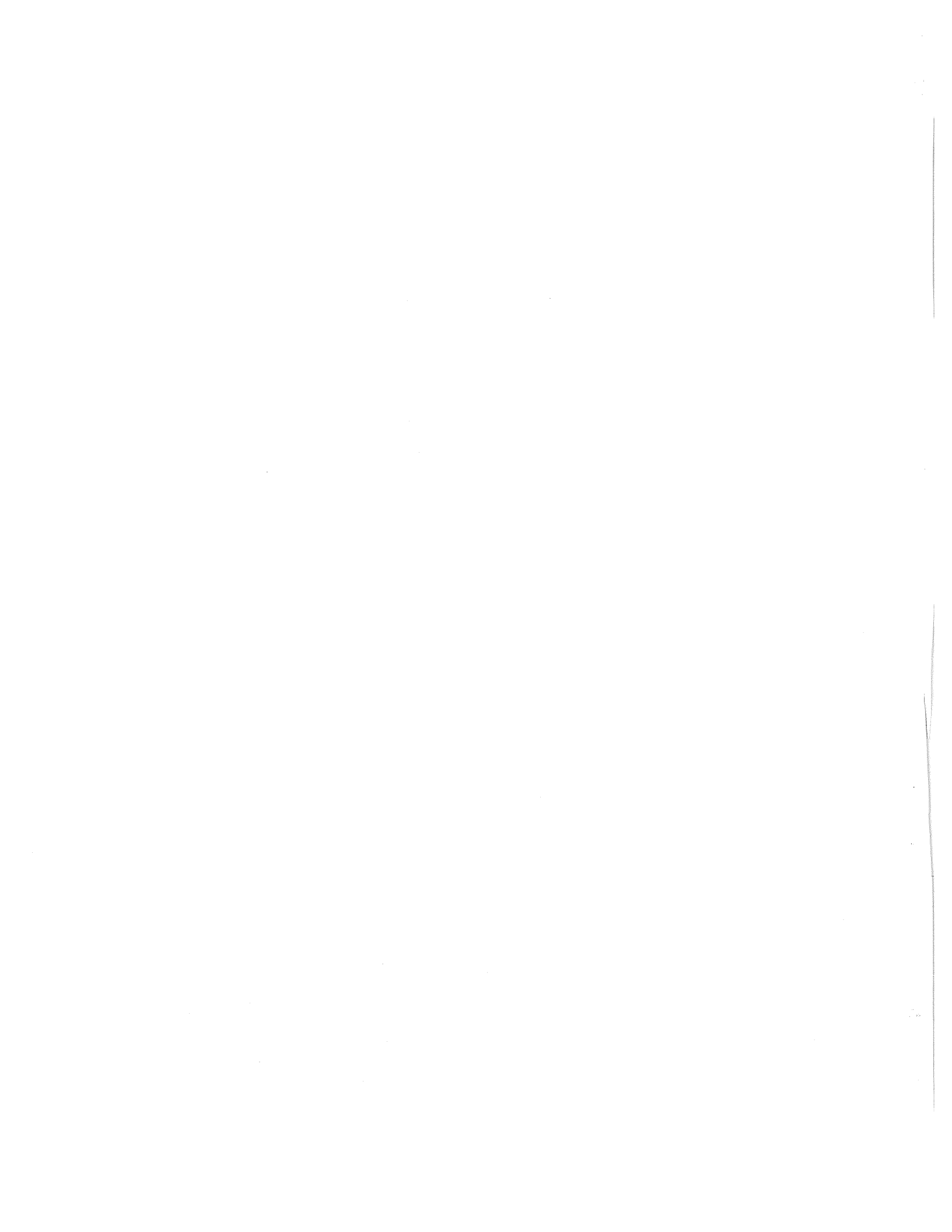
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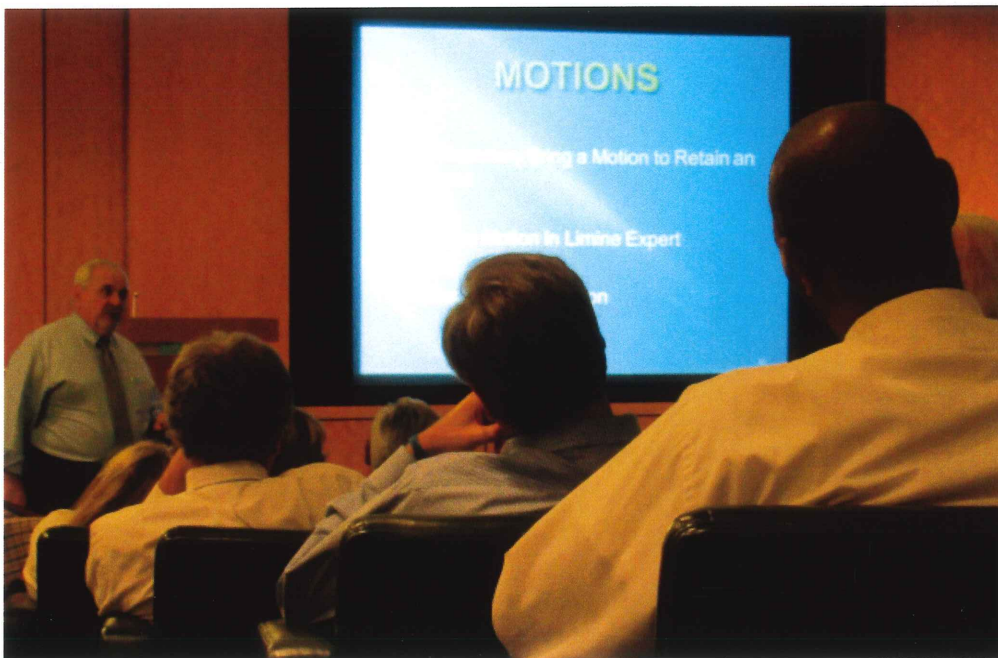
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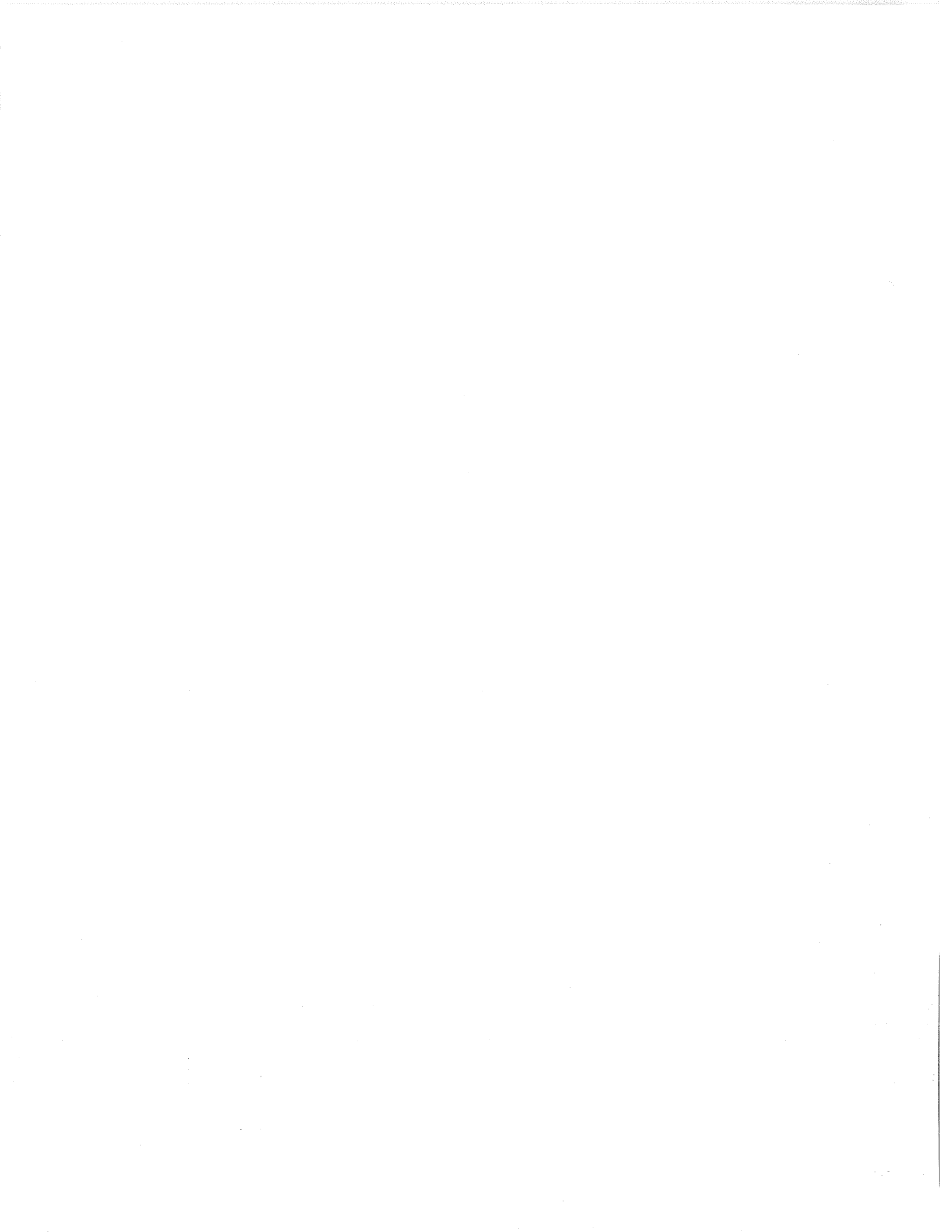
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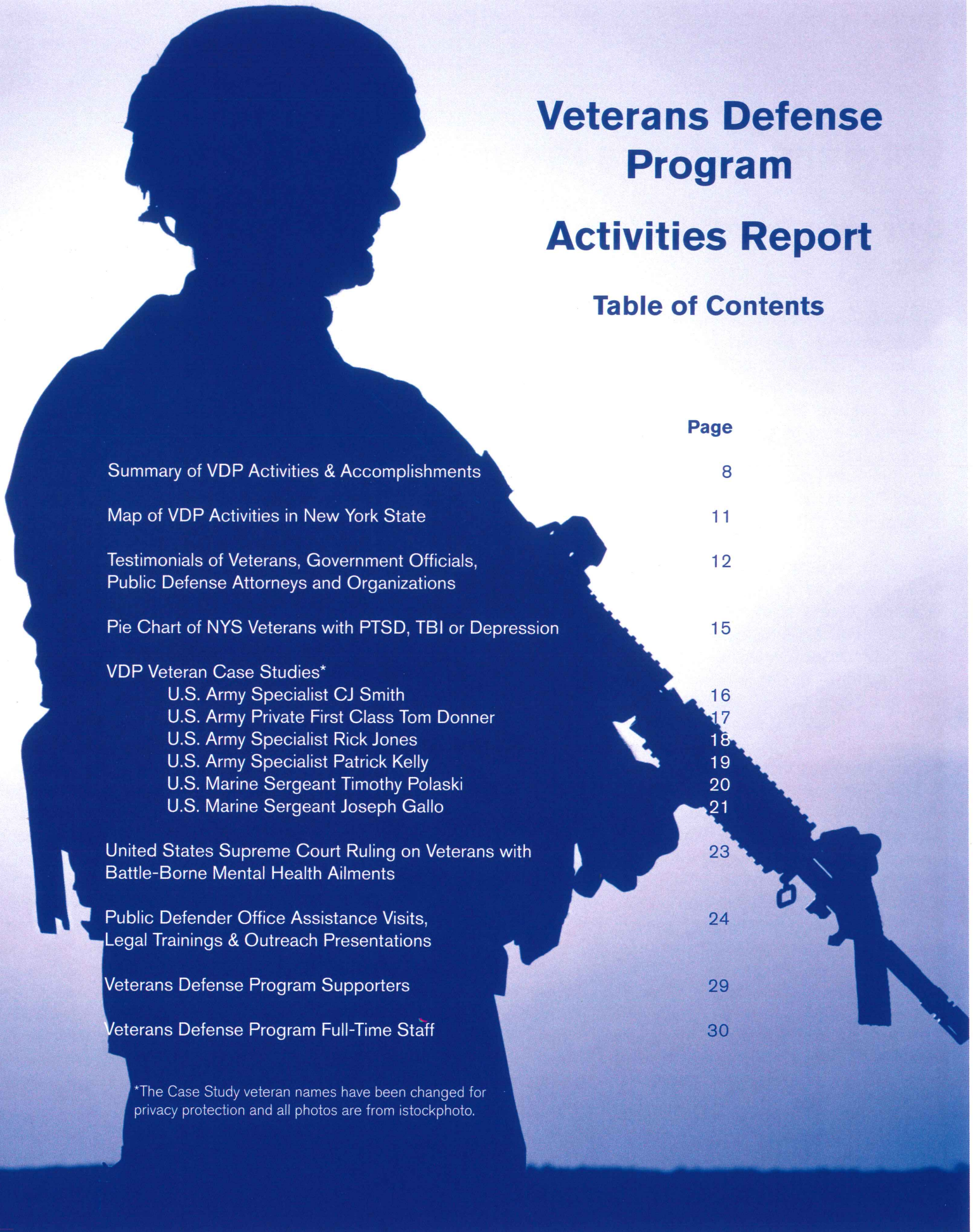
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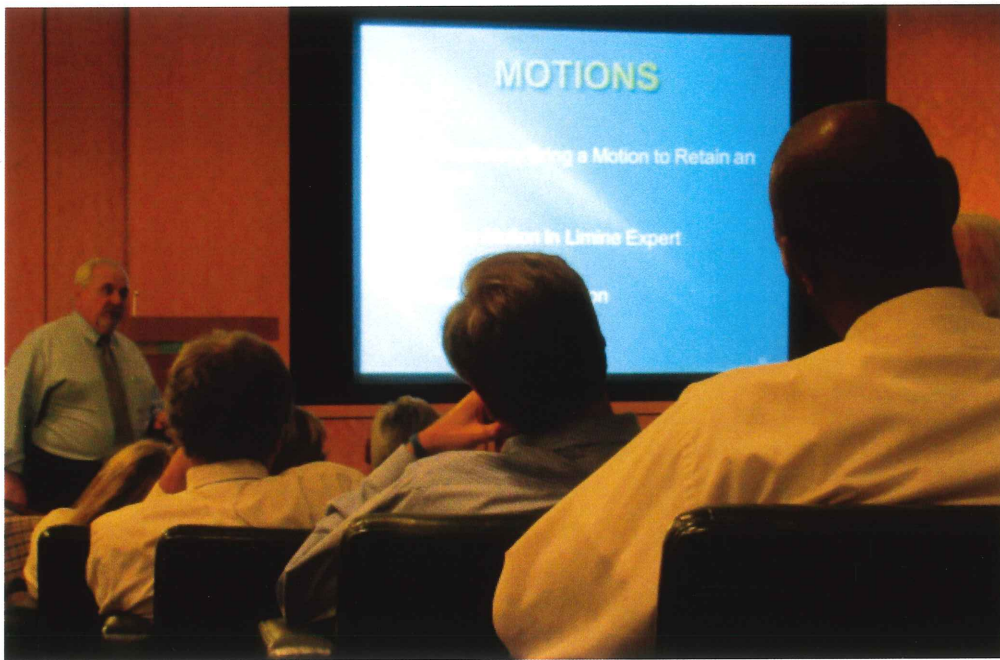
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... the VDP has assisted or trained nearly 1,000 veterans and public defenders representing veterans in New York State's criminal court and family court systems.

- For CJ Smith, the VDP's direct representation resulted in the young Afghanistan-deployed Army soldier with PTSD finally having his day in court. CJ will have a hearing this Fall and an opportunity for treatment and justice after being held in jail for almost two years pre-trial for a first-time offense of residential burglary.
- Roger Ford, an Army Military Police veteran, suffered from survivor's guilt, severe anxiety and depression resulting from four of his unit members all being killed in action in Iraq. The VDP's direct representation led to a dismissal of a felony charge and an adjournment in contemplation of dismissal for a misdemeanor, relating to an incident where police alleged he misidentified himself as an active service member. After the court appearance, the VDP staff escorted Roger to a Veterans Center, where he is now receiving assistance with his mental health issues.

■ **Chief Public Defender Assistance Visits:** Office visits were conducted with Chief Defenders at eleven county Public Defense Programs to train, educate and advise staff on the issues surrounding the representation of veterans in family and criminal court, and to assist them in connecting with service programs for veteran clients.

- **Public Defender Backup Support:** The VDP served as a day-to-day backup resource for attorneys in 120 county-based public defender offices, legal aid agencies, and assigned counsel offices, and for individual veterans and their families.



Training Public Defenders

VDP Director Gary Horton speaks at a Westchester County training in September 2015.

This was the best training I have ever attended.

– Public Defender

in New York State through twelve national, statewide and regional training workshops and conferences. The trainings often provided Continuing Legal Education (CLE) credits for attorneys. The trainings received rave reviews with one seasoned public defense attorney stating, “This was the best training I have ever attended.” The VDP is also planning to institute training presentations in the near future on a secure YouTube website which will be accessible and free for public defense attorneys.

Education & Research for Justice-Involved Veterans

■ **VDP Outreach Meetings:** The VDP legal staff traveled throughout the state to meet with 26 organizations working on public defense, criminal justice and family court veteran issues, such as Bronx Defenders, Brooklyn Defender Services, Harlem Vet Center, American Legion, Chief Defender Association, Syracuse Law School Veterans Clinic, Veterans

of Foreign Wars, Bar Associations, and Veterans Outreach Center. The VDP provided information on its programs, trainings and resources, and surveyed groups about any needs they have to best serve justice-involved veterans and service members.

■ **Veteran Treatment Court Visits:** The VDP visited four major Veteran Treatment Courts (VTCs) to meet the Judges and staff and gauge the vitality, effectiveness and procedures of these courts. The VDP visited the City of Buffalo VTC, Monroe County VTC, Niagara County VTC, and Albany County VTC. The VTCs take a therapeutic jurisprudence or treatment-oriented approach, and utilize the important support of veteran mentors. Operating in less than a third of New York State counties, the VTCs largely focus on misdemeanor crimes. The VDP seeks the same treatment-oriented approach in more serious cases in the criminal courts for veterans and service members suffering from battle-borne mental health ailments.

- **Assisted Defense Counsel by providing substantial help on 104 veteran cases**, including both criminal and family court cases. Seventy-four cases have been closed.

- For Patrick Kelly, an Afghanistan-deployed Army medic facing burglary and weapons charges, the VDP provided a mitigation memorandum outlining the sources and effects of his severe PTSD. Patrick was facing a five year state prison sentence. As a result of the VDP's mitigation efforts, the prosecution offered probation. At the hearing, the court concluded, "Mr. Kelly, heal, integrate, become whole again, as you provided a great service to this country. We are thankful for that and want this wonderful disposition for you." The VDP succeeded in obtaining justice for Patrick, helping him to once again be a productive member of society.

- For Joe Gallo, the court agreed with the VDP's mitigation request and undertook a therapeutic approach, sentencing this Army Sergeant to PTSD and drug abuse treatment. Joe suffered for years from undiagnosed PTSD and now is able to heal from his Iraq experience, and return to his family.

- **Assisted Defense Counsel by conducting 117 veteran client interviews** across the state. A majority of the interviews were done by the VDP attorneys, either in the case of direct representation or

... the court concluded,
 "Mr. Kelly, heal, integrate,
 become whole again,
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 service to this country.
 We are thankful for that
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for purposes of preparing a Mitigation Memorandum. In some cases, the veteran client's public defense attorney joined the interview. Some clients were seen on multiple occasions.

- **Assisted Defense Counsel by writing important case-specific legal documents**, including nine in-depth Mitigation Memoranda, three Bail Release Memoranda and a Motion to Dismiss in the Interest of Justice.

- **Responded to over 150 veterans by providing expert referrals and/or information** on legal rights, benefits, VA procedures, health and other services.

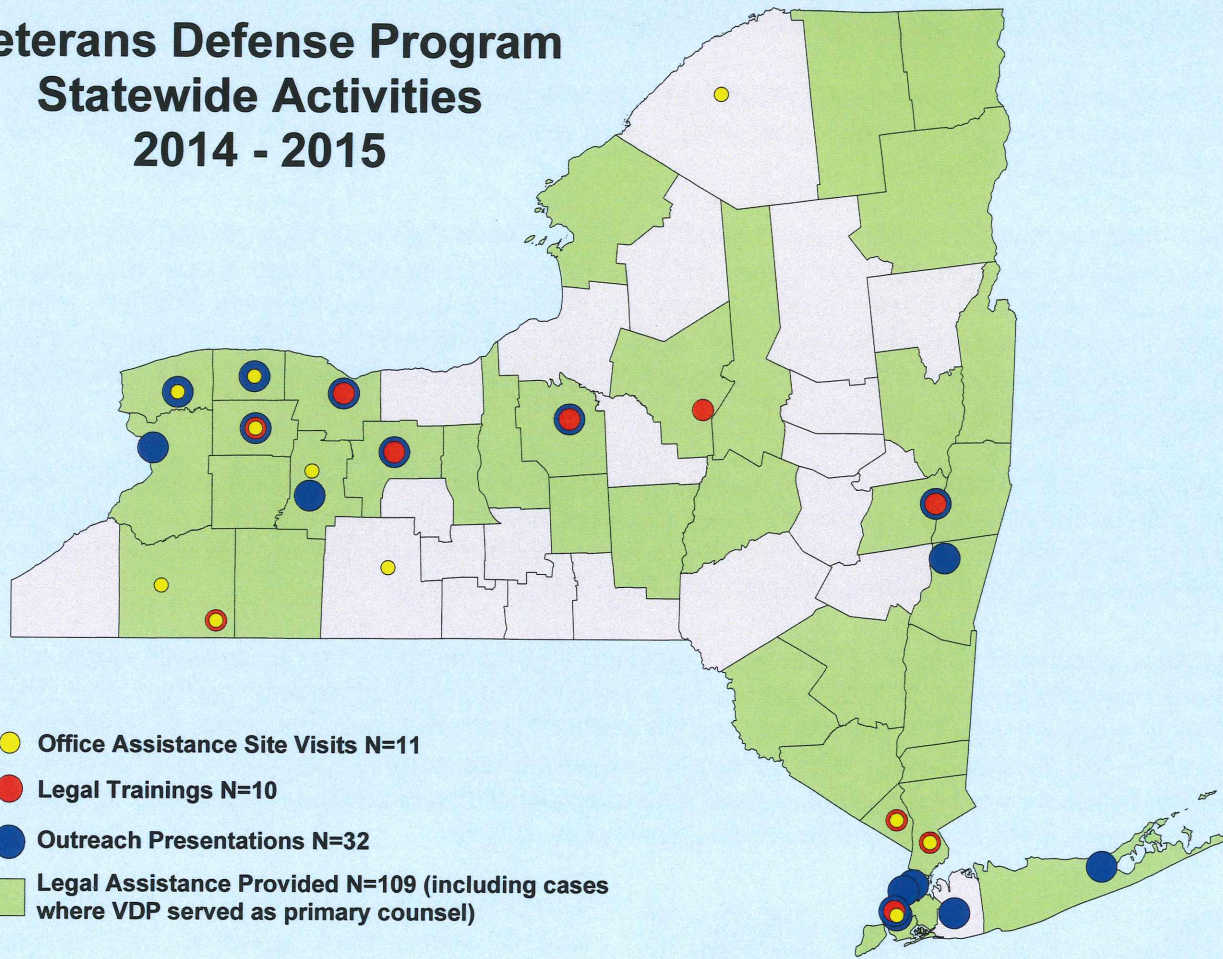
Comprehensive Training for 600 Lawyers Defending Veterans

- **Intensive Point Person Training:** The VDP held intensive two-day "Point Person" trainings for over 50 public defenders to establish one or two attorneys in each office as internal point persons, trained to serve as knowledgeable first resources for their office and as liaisons to the VDP.

- **Legal Trainings**

The VDP provided extensive legal training to over 600 public defenders, legal aid society attorneys and assigned counsel

Veterans Defense Program Statewide Activities 2014 - 2015



Veterans Defense Program Testimonials

What Veterans Are Saying About the VDP

"I think the VDP attorneys are literally saving lives with their knowledge and expertise. They have greatly impacted my life on a positive note. I am forever grateful and in your debt for what you have done for me." *Ross Keim, Disabled & Medically Retired U.S. Army Military Policeman*

"I truly believe if I did not have you in my corner backing me, I would more than likely be in jail and worse off. The service that the VDP provides is invaluable. The legal system does not know what difficulties veterans face when they come home from war, and what demons they carry within themselves. The VDP advises the court system of exactly what myself and my fellow veterans have been through, and what we are currently going through, in an effort to lessen the blow that the legal system will levy against a veteran who has committed a crime. There needs to be a VDP in every court system." *Terry Travis, U.S. Marine Sergeant, Two Iraq Tours*

"After three years and two heart attacks, and trying to get the justice system to understand my dilemma, I was desperate and disabled. VDP acted immediately and restored my dignity and faith in the system. It is the best thing to come along for a veteran who needs help in criminal matters; an organization that has a heart and soul. They have truly saved me and my family from years of anguish." *Lawrence Fuchs, U.S. Army Vietnam Veteran*

"As a retired Army Lieutenant Colonel, Purple Heart recipient and Founding Partner of a law firm with offices across New York State, I personally know of the unique needs of veterans, especially those suffering from the invisible wounds of war. The risk of those untreated veterans becoming involved in the criminal justice system is at an all-time high. I, and the members of the Military Order of the Purple Heart in New York State, strongly support the VDP and appreciate their important work to help justice-involved veterans regain their status as productive members of society." *Matthew Tully, NYS Department Commander, Military Order of the Purple Heart of the U.S.A.*



"I can't explain how thankful I am that you guys took on my case. It's been a roller coaster ride right from the gate. It's been an honor to have met all of you." *Ljube Terzioski, U.S. Army Afghanistan Veteran.* "Out of the sky drops a bunch of angels called the VDP. Like a whirlwind, you amazing people knew what to do to help my son." *The Gaston & Terzioski Family*



"I felt like [the VDP] was speaking from MY heart in the mitigation report and I could not have found a better voice... The difference the mitigation brief brought to the case was like night and day." *Petre Ivan, U.S. Army Afghanistan Veteran*

"Our statewide veteran council, representing 37 veteran groups, such as the Marines, VFW and Disabled American Veterans, strongly support the critically important work of the VDP. A number of our members have been helped by the VDP and their advocacy for mitigation and treatment to heal a veteran's battle-borne illness. Justice-involved veterans need the VDP. The VDP is truly defending those who defended America." *Tom DeMeo, President, NYS Council of Veterans Organizations*

What Government Officials Are Saying About the VDP

"I am writing to express my unwavering support for the VDP as it effectively broadens the scope of services provided to our nation's bravest patriots. Defending veterans who encounter NYS's criminal or family court system is a noble feat, yet the VDP seeks to serve beyond the walls of the courtroom. The implementation of pilot projects like the Veterans Restorative Justice offer much needed opportunities for veterans. With the VDP's past achievements and anticipated future successes, the program could become a model for others across the nation." *U.S. Senator Kirsten Gillibrand*

"I commend NYSDA for launching the Veterans Defense Program. I created the nation's first Veterans Treatment Court in Buffalo, NY to address the unique needs of veterans, especially those suffering from PTSD, TBI, military sexual trauma and major depression. By identifying a veteran upon his or her arrest, their needs can be assessed and a treatment program can be developed. A collaborative approach to treatment that focuses on supervision of the veteran throughout the process can reduce recidivism and help our veterans lead sober, healthy, and productive lives." *Judge Robert T. Russell, Jr., City Court Judge, City Court of Buffalo*

"The VDP's work is critical to veterans and service members who find themselves in the family court or criminal court system, especially those who are suffering from mental health illnesses. They help the most vulnerable of our returning warriors by guiding attorneys in how to ensure that the courts consider treatment programs for veterans with military-related PTSD, TBI, and depression." *Congressman Paul Tonko (20th District)*

"The Veterans Defense Program showed compassion and care when it seemed no one else could or would [for an Afghanistan veteran]. The VDP is a small group of legal professionals whose services are desperately needed here in New York. They should flourish and expand so that more of our veterans, damaged in the service of their country, can be helped through their own individual nightmare." *Assemblyman Marc Butler (R-Herkimer)*

What Public Defense Attorneys & Organizations Are Saying About the VDP

"I am impressed with the outstanding work of the VDP attorneys. Their presentation at the Chief Defender Convening was inspiring and informative, and their written advocacy on behalf of Veteran CJ in the post-judgment motion was superb. I am quite hopeful that with the VDP's continued advocacy at the hearing, the court will reduce CJ's harsh and excessive sentence." *Richard Greenberg, Attorney-in-Charge, NYC Office of the Appellate Defender*

"In my travels, I have never come across anything like the VDP. I had the honor of presenting at their 2014 statewide training, and was blown away by the quality and depth of their program. This program is literally breaking new ground—the first of its kind in the country—using sophisticated veterans defense knowledge to assist criminally-charged veterans across NYS, and train attorneys in the art and science of defending veterans." *Attorney Brockton Hunter, U.S. Army veteran and author of the seminal legal treatise, The Attorney's Guide to Defending Veterans in Criminal Court*

"I enthusiastically support the VDP. I and my staff appreciate their skilled assistance as they strategically support our representation of veterans and service members. Most recently, they assisted us on a case involving a former infantry soldier charged with weapons and drug related offenses. The VDP's expertise is invaluable to such representations." *Lisa Schreibersdorf, Executive Director, Brooklyn Defender Services*

"The VDP's assistance, resources, techniques, and tips were invaluable in formulating an effective defense strategy. VDP helped me steer the case towards a treatment program to address my client's pathology and prevent a reoccurrence, rather than incarceration, allowing this individual to remain a productive member of society instead of a mere statistic." *Aaron Dean, Chenango County Assistant Public Defender*

"I am truly grateful for your incredibly speedy responses and helpfulness. What a tremendous resource you provide." *Attorney Stephanie Pope, The Legal Aid Society*

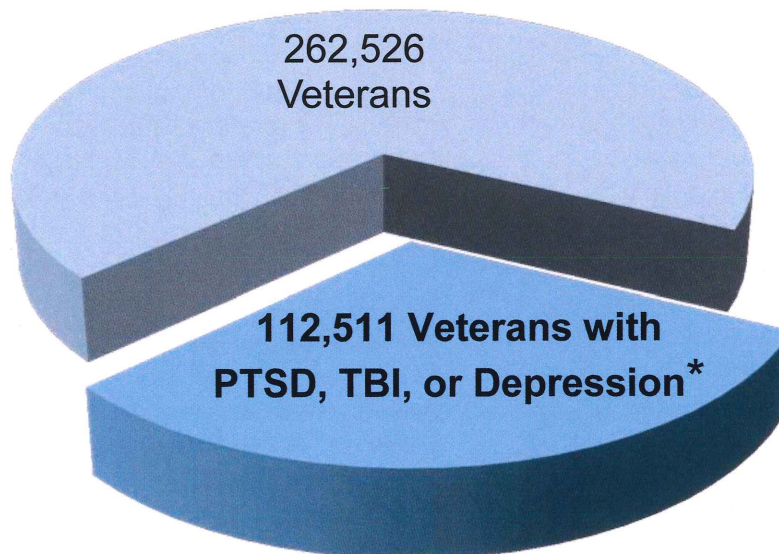
"The VDP has been a tremendous real time resource to my office. The provision of vigorous defense for veterans of our armed forces is invaluable." *Robert Linville, Columbia County Public Defender*

"The VDP provides much-needed legal training and support for lawyers defending veterans struggling with mental health issues. At BPI, we estimate that nearly 30 students of the approximately 800 who have enrolled in our college are veterans; more broadly, it is estimated that 1 in 10 prisoners in the NYS prison system are veterans. Providing veterans in the criminal justice system with meaningful legal representation is critical and timely." *Laura Liebman, Bard Prison Initiative*

"Hofstra Law School fully supports the VDP and the tremendous efforts it makes on behalf of justice-involved veterans throughout the state." *Jennifer Gundlach, Clinical Professor of Law, Hofstra Law School.*



An estimated 30% or 112,511 Vietnam & Post-9/11 Veterans have PTSD, TBI, or Depression in New York State



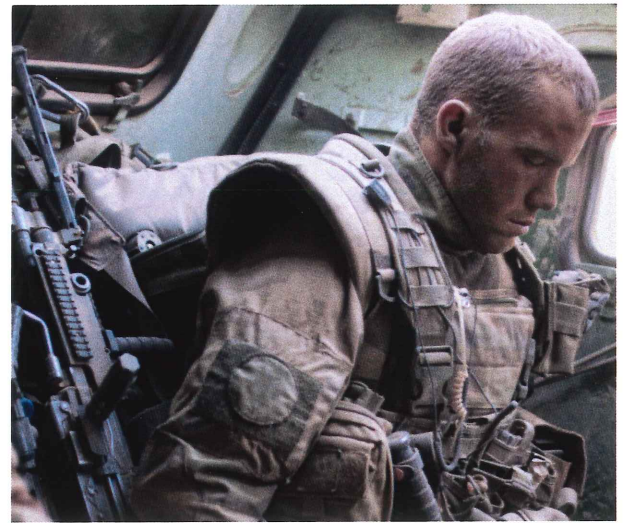
Significant treatment gaps exist. Only about 50% of Post-9/11 veterans with mental health ailments are receiving treatment, and the estimates are much lower for Vietnam veterans.

The Institute of Medicine and the U.S. Dept. of Veterans Affairs report such veterans are at significant risk of arrest as their trauma symptoms can lead them to criminal conduct.

Source: *Invisible Wounds of War: Psychological & Cognitive Injuries, Their Consequences & Services to Assist Recovery*, RAND Corporation, 2008.

VDP Veteran Case Studies*

VDP Challenges Harsh Sentence for Veteran's First-time Burglary Offense, Seeking PTSD Treatment & Mitigation



U.S. Army Specialist CJ Smith: For almost two years, a young Afghanistan-deployed veteran was held in an upstate New York jail without trial for his first offense: burglary with two friends while under the influence of alcohol, a few months after returning from a combat zone with untreated PTSD, depression, and substance abuse.

CJ joined the elite 173rd Airborne Brigade Combat Team and later deployed to Forward Operating Base Shank in Afghanistan, in a region frequently described as “the most dangerous place in the world.” Private First Class CJ often endured rocket and mortar barrages five days a week for months on end. He had colleagues killed and close friends injured. One such incident haunted him. He was standing in a long line at the PX with his battle buddy when he realized he had forgotten his wallet and left to recover it. A few minutes later, a rocket hit the spot where he had been standing, and his buddy was hit by shrapnel, losing both legs. CJ’s colleague eventually recovered from his life threatening wounds but CJ obsessed over this incident and thought continually, *“It could have been me. Why not me? Was it luck? Fate? I don’t know how not to think about it.”* He came home *“a very broken man,”* said his mother. He suffered from depression and undiagnosed PTSD which led to self-medicating with alcohol.

Both his appointed lawyer and the Judge ignored the links between his battle-borne mental impairments and his offense. The VDP took on his case and sought a treatment-

oriented approach and mitigation. VDP’s mental health expert evaluated CJ and diagnosed him with service-related PTSD. At the VDP’s request, the Judge promised a sentencing hearing to hear from witnesses regarding his military service and mitigating circumstances. In preparation, the VDP wrote a sentencing memorandum which outlined some of the witnesses’ proposed testimony. Surprisingly, the Judge stated he had enough information from the memorandum and denied the promised hearing, sentencing CJ to 8 years in prison.

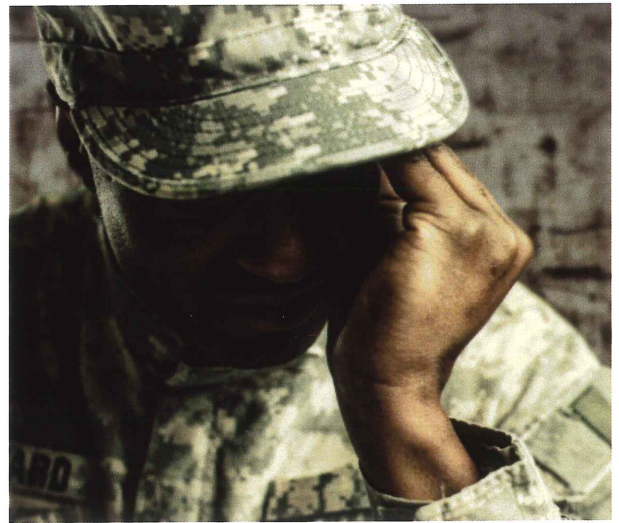
He came home “a very broken man,” said his mother.

Challenging this harsh sentence in a post-conviction application, the VDP argued that the Judge’s reasoning “smacks of a Catch 22. In short, in order to get a sentencing hearing, CJ was required to provide a sentencing memorandum. Yet precisely because CJ’s attorneys submitted the desired memorandum, complying with the Court’s order, he was denied the very sentencing hearing he sought.”

The VDP filed a Notice of Motion to Vacate Conviction & Set Aside Sentence noting the length of time already served, and the contributing factor of his service-related mental health ailment. The VDP was successful in having another Judge grant a motion to hold a sentencing hearing wherein mental health experts and his military superiors will testify on his behalf. A sentencing hearing is scheduled for late Fall. **Finally, after two years, this young veteran will have his day in court and an opportunity for treatment and justice.**

*The Case Study veteran names have been changed for privacy protection and all photos are from istockphoto.

VDP Successfully Secured Treatment for Iraq Veteran Suffering From Severe PTSD, Back Injuries, & Substance Abuse



U.S. Army Private First Class Tom Donner: Tom was slated for Military Intelligence, but requested the Infantry as he wanted to *“be in the action”* in Iraq. In 2003, he took part in the invasion of Iraq and his platoon experienced heavy battle conditions, undergoing machine gun fire, rockets, and rocket-propelled grenades. One of the first platoons to enter Bagdad, his company was described as the *“tip of the spear”* in the assault. Tom received four medals for his service, including the Bronze Service Star. According to the VA medical records, Tom was exposed to extremely harsh military trauma and suffered considerable combat guilt. He had recurring nightmares and the smell of burnt flesh in his dreams, saying *“we were constantly approached by Iraqi civilians who were horribly burned seeking medical care, and the burned kids were the worst.”* He began to self-medicate with alcohol and marijuana and was discharged from the Army.

On returning home, he went from job to job, suffering from undiagnosed PTSD, insomnia, and substance abuse. His childhood friend said, *“Tom changed a lot after his army service. He started drinking a lot, especially at night, as it was the only way he could sleep. But with the nightmares, he would only sleep 3 to 4 hours a night if he was lucky.”* Ten years later, he went to the VA seeking help for severe back pain and a continuing sleep disorder. He reported that in 2003, he had hit his head and back when he had fallen off an infantry fighting vehicle. The VA diagnosed him with back injuries, PTSD, and Substance Abuse Disorder. He entered VA and Warriors Salute programs and his discharge summary stated that he was *“fully engaged in treatment and has*

He had recurring nightmares and the smell of burnt flesh in his dreams, saying “we were constantly approached by Iraqi civilians who were horribly burned seeking medical care, and the burned kids were the worst.”

made good progress... He believes...the treatment has greatly helped him to modify his behavior and improve his coping. He hopes to be able to maintain stable functioning, to be able to better provide for his daughter.”

Tom was abstinent for over five months, when he relapsed after a very close veteran friend in his VA treatment program overdosed and died. He was arrested for a Misdemeanor Aggravated DWI the day after his friend’s death. He went back to the VA program. A VA social worker stated that, *“In spite of significant PTSD symptoms ...positive factors include supportive parents, an extremely strong bond with his daughter, his desire to work, and motivation for treatment and occupational advancement.”*

The VDP provided the North Country public defender representing Tom with ongoing support and co-authored his Mitigation Memorandum in Support of a Bail Application, which stated that *“while incarcerated, Tom cannot receive adequate care for his back condition and PTSD. He is removed from familial supports...and continued incarceration threatens the progress he has made. The VA is prepared to refer Tom to further residential treatment.”* It concluded that, *“We as a society owe him appropriate care so that he can regain his place in his community.”* **The Judge agreed to a “bed-to-bed” release, thus enabling Tom to enter an inpatient PTSD program and continue treatment to finally heal from his battle-borne ailments and be restored to his family.**

VDP Seeks Bail & Treatment for Army Veteran Acting in Self-Defense in Life-Threatening Situation



U. S. Army Specialist Rick Jones: Rick is deeply patriotic and after 9/11 he sought military service, eventually serving for fifteen months as part of Operation Iraqi Freedom. He deployed to Forward Operating Base (FOB) Pasab in Khandahar province, one of the deadliest areas in Afghanistan. He was under fire on a daily basis almost immediately upon arriving at the FOB. His Sergeant stated that Rick's job as a cook in no way exempted him from fighting, and upon hearing incoming fire, Rick would immediately run to join his 10th Mountain infantrymen colleagues. Jones engaged in 2 to 5 firefights a week and his Sergeant stated that he was *"one of the most level headed soldiers I have ever seen in a combat situation... acting as if he was a much older and seasoned veteran than he was."*

Rick was known for helping his friends in need, and on the death of a soldier, he counseled one young man who was hit very hard by the death, causing his supervisor to say, *"Such compassion and care for a fellow soldier in my opinion is a rare sight."* In 2011, six months after his deployment, Rick suffered a seizure as his epilepsy medications did not arrive in time. He fell and had a head injury during the seizure and was medically evacuated back to America. Rick repeatedly requested to stay with his unit and felt guilty at leaving his colleagues behind. His requests were denied and he was ordered to his unit's homebase, Fort Drum. His supervisor found that he was extremely dependable, noting that "things would get done in an efficient and professional manner" and he continued to mentor soldiers and take on additional responsibilities. A few years later, due to reoccurring seizures, the Army medically retired Rick with an Honorable Discharge. Married with a young son, Rick's wife serves as a Sergeant at Fort Drum and provided for their financial needs after his discharge.

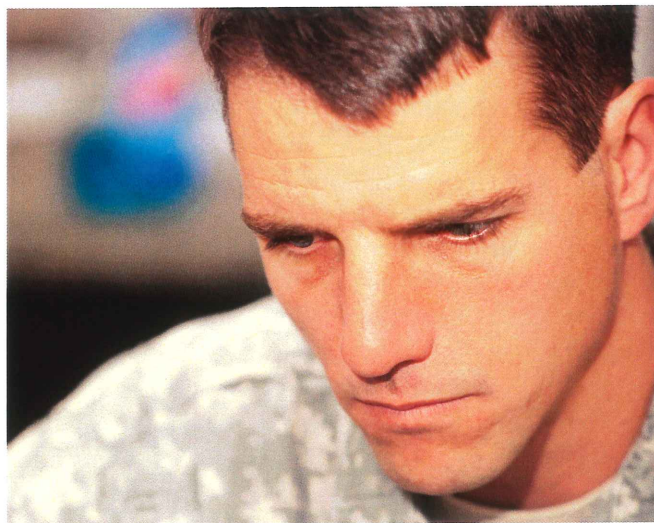
Rick's serious epilepsy health conditions and his lack

At core, he responded in self-defense to a life-threatening situation as he had been militarily trained.

of employment led him to depression and intermittent substance abuse. On an overnight visit to a medical specialist for his child in a nearby city, he relapsed and found himself caught up in a life-threatening situation when he attempted to purchase drugs. He was abducted, trapped in a crack house, and held against his will. He was threatened by drug dealers with guns and believed that if he left, he would be shot. He asked the dealers to return his car and they angrily refused. In fear for his life, Rick sought to disarm an armed perpetrator and a struggle ensued. Rick disarmed the man, but he continued to come at him, and Rick was forced to shoot him in self-defense. Rick was charged with Manslaughter in the 1st degree and, if convicted, will face 5 to 25 years. The VDP and Rick's public defense attorney urged the court to appreciate his military background, noting that Rick "as a well-trained soldier, assessed that his actions were necessary to defend himself from a gun wielding crack dealer. *In essence, Rick's training took over: he reasonably perceived the crack dealer to be an immediate threat to him, made efforts to disarm him, and then was forced to shoot him to curtail his continued advances."*

Many friends, fellow soldiers, and family members submitted statements in support of Rick after his arrest, attesting to his exemplary character in terms of dedication to his country, family, and community. They all noted that his reputation is that of a caring person actively concerned about the welfare of others. **The VDP and Rick's attorney are seeking substance abuse treatment, emphasizing that Rick is a highly decorated veteran with no criminal record, and is a model family man. At core, he responded in self-defense to a life-threatening situation as he had been militarily trained.**

VDP Obtains Extensive Treatment for Severely Traumatized & Suicidal Army Veteran Facing Weapons Charge



U.S. Army Specialist Patrick Kelly: Patrick enthusiastically joined the New York Army National Guard and was deployed to Afghanistan as a Combat Medic in 2012. His supervisors said he was a “model soldier,” and he was “competent, hardworking and dedicated.” He served as a clinical caretaker in a combat theater at the Troop Medical Clinic at Kandahar Air Field (KAF), where amidst continual rocket fire he unloaded helicopters of dead and wounded soldiers for four months. He described feeling shock and helplessness, saying, *“I can’t believe how fragile life is.”*

He was transferred to work as a medic at the Detention Facility in Parwan (DFIP), which held insurgent prisoners who had killed Americans or had contributed to the planning of major attacks on Americans. Work conditions were extremely harsh with physical violence, verbal threats, and frighteningly weak security, creating an environment of severe fatigue and trauma with which Patrick struggled to cope. He worked in a dark, dungeon-like facility amidst constant threats, with spit and other bodily fluids thrown on him, while he medically treated 2,000 patients in 12 hour shifts over 6 weeks. He treated severe battlefield injuries, broken bones, and administered medications to the mentally unstable Taliban prisoners. Often his mornings at the DFIP would include treating sexual injuries as the prisoners would violently injure each other in sexual games, and this caused him much emotional stress. Patrick and his teammates lived in near constant dread of death. According to his immediate supervisor, the “Afghan staff would mishandle locking mechanisms and keys for cells containing dozens of detainees that made no secret of wanting to kill us.” In addition, Patrick and his colleagues were forced to live in soft tents next to a loud and active construction site and a mine field leaving him only a few hours of sleep a day for two months.

He described feeling shock and helplessness, saying, “I can’t believe how fragile life is.”

He was then transferred to the Navy Trauma Center at KAF, *“known as the trauma capital for the Afghanistan campaign, with soldiers handling the worst of what combat has to offer,”* said his supervising officer. Part of his duties included assisting in the loading of fallen soldiers onto transport planes going back home. He was profoundly impacted when one of the loadings involved a soldier, killed in action, whose neck injury Patrick had treated earlier that year. Shortly after, his Sergeant recalled he found him *“crying and distressed after learning of his wife’s infidelity with one of his closest Army colleagues.”* Patrick was honorably discharged and returned home, receiving an Army Commendation Medal for providing medical care for over 2,000 enemy combatant detainees composed mostly of insurgent leaders, and for helping over 5,000 patients in a high risk detention facility. Patrick suffered from monumental trauma as a medic in Afghanistan which was exacerbated by his distress over his wife’s infidelity.

Less than a month after returning home, Patrick went to the VA Emergency Room in extreme anguish, unable to sleep, suicidal, and drinking heavily. The VA gave Patrick the maximum rating for PTSD and also diagnosed him with depression and anxiety. He has made significant strides in his PTSD treatment and has stopped drinking. Unfortunately, early in his therapy program, he was pulled over by the police and they found a gun in his car trunk. Upon questioning, he said its only purpose was in case he decided he wanted to *“shoot himself.”* He was arrested on a charge of Criminal Possession in the 2nd degree, facing up to 5 years in prison.

The VDP assisted a lawyer representing Patrick and wrote a Mitigation Memorandum which urged the Court to provide

leniency and treatment for his battle-borne PTSD. The VDP pointed out that the VA staff treating Patrick reported he had not fully reintegrated at the time of the incident, and was suicidal. The VDP stated that incarceration would have a negative effect on his mental health and retard recovery as there is no VA PTSD treatment program for incarcerated veterans, and urged that in the interests of justice, Patrick receive a treatment requirement.

The Judge and the Prosecution were impressed by the Mitigation Memorandum detailing Patrick's traumatic military experience. After learning of Patrick's trauma and health problems, the Assistant District Attorney said, "what we really need for the defendant is the opportunity for him to get 100% better...I want him to get better." The Prosecution agreed to a disposition wherein Patrick

would not be incarcerated but rather upon his successful completion of two additional years of therapy, the felony charge against him would be dismissed and he would be on probation for the misdemeanor for three additional years. **The Judge said, "Mr. Kelly, heal, integrate, become whole again, as you provided a great service to this country. We are thankful for that and want this wonderful disposition." The Judge then noted, "I thank you as well Mr. Cody [VDP Legal Director] for your presence and insight. It was very, very helpful in closing the window on this case." The VDP succeeded in obtaining justice for Patrick, helping him to get extensive treatment and family restoration so he can again be a productive member of society.**

VDP Obtains Multi-Faceted Treatment for Marine with PTSD & TBI

U. S. Marine Sgt. Timothy Polaski: Tim has extensive military experience with the U.S. Marine Corps, including an Iraq deployment in 2009, where he achieved the rank of Sergeant. Beforehand, he suffered from trauma as his father and two siblings were physically abusive during his childhood in an upstate city, resulting in a skull fracture and other injuries. Sadly, his mother tried to commit suicide three times and then had early onset dementia. Throughout all of this tragedy, Tim never received any counseling. He was inspired to join the Marines at eighteen by the example of his brother-in-law who he looked to as a father figure. He trained as an Assault Infantryman and was assigned to an Anti-terrorism Battalion and deployed to Iraq. Tim was seriously injured during a nighttime convoy operation while serving as a gunner. His vehicle hit a bomb crater and during the impact, he was hit in the face with a 300 lb. tow bar and thrown from the vehicle. It was three days, after the convoy mission was complete, before Sgt. Polaski could obtain medical care for his serious back injury.

Three months after the incident, he was redeployed home. He has relatively

With his ongoing physical pain and his untreated mental health ailments, Tim self-medicated with alcohol.



constant back pain with degenerative disc disease, PTSD, and suffers from two Traumatic Brain Injuries (TBI) that cause vertigo. Despite his injuries, Tim was active in the Reserves for three years and his Captain reported he was a highly qualified Marine. His discharge was Involuntary Honorable (Medical). During his service, he received numerous citations and medals, including the National Defense Service Medal and Iraq Campaign Medal.

The father of four children, Tim has a 90% VA Disability rating. With his ongoing physical pain and his untreated mental health ailments, Tim self-medicated with alcohol. One day, he stopped taking his medications and drank beer which triggered a violent reaction. He was arrested for resisting arrest and domestic violence. His wife recounted that, "Our 10 year old daughter came upstairs and said Daddy was talking funny. I came down and

saw he was drinking. I told him that was enough and it was time to go to bed. He started rambling about his life. I told him that he just needed to come upstairs and go to bed. He flipped a switch and came after me. He had me bear-hugged in the kitchen corner when I screamed for our oldest daughter, who is 12. By the time she came down, I had gotten enough space to get around him and go upstairs where I called the police.” When the police entered the house, they found him asleep on the couch and when awoken, he reacted aggressively and instinctively with a trained military response.

The VDP assisted Sgt. Polaski’s public defender in submitting a Mitigation Memorandum to the court,

advocating for leniency and a treatment approach to enable him to heal and recover from his PTSD and TBI. The Judge placed him on a one-year Interim Supervision Probation, which if successfully completed, will result in a conditional discharge with no further probation. Concurrently, Tim is in an inpatient PTSD VA treatment program, a VA substance abuse program, and a domestic violence therapy program, and is fully compliant with his probation terms. **He is being held accountable while still receiving the multi-faceted treatment and therapy that he needs to heal both his and his family’s wounds. The VDP mitigation legal advocacy succeeded in giving Tim a second chance, putting him on the road to recovery and his family on the road to restoration.**

VDP Attains Court-Ordered Therapeutic Approach with Treatment for Marine with PTSD

U.S. Marine Sgt. Joseph Gallo: Sergeant Gallo served in both the Marines and the Army for a total of ten years. In 2004, as a soldier, he deployed to Iraq. For a year he was tasked with leading a twelve man Quick Reaction Force to provide security to Iraq convoy operations. In one of his first “outside the wire” missions, he led a security operation to recover a U.S. Army vehicle that had been blown up by a suicide bomber outside of Baghdad. Walking through strewn body parts was an indelible image for Joe. Two months later, he had to open fire on a car full of people to thwart their aggressive and potentially dangerous approach towards a military convoy. He suffered guilt over this incident, since due to tactical and security operations, he could not offer aid to the people in the car and never learned of their fate. In another incident, two dead Iraqi “body bombs” were thrown from a car. Joe found that the gutted bodies had explosives placed internally, requiring a bomb disposal robot to disarm them.

On the deployment, Sgt. Gallo spent over 250 days “outside the wire” beyond the security and safety of an American



base, exposed to life-threatening danger daily. When he returned home in 2005, the military at that time lacked a full understanding of the mental effects of combat. Thus, Joe’s PTSD was not diagnosed and he turned to illegal drugs to self-medicate. Within a few months, he tested positive for cocaine and was reduced in rank and discharged from the Army under “Other than Honorable Conditions.” He was devastated, as his identity and sense of worth was wrapped up in his status as a soldier and his military dedication. His marriage rapidly disintegrated, resulting in a divorce, and he faced financial hardships. For eight years, he struggled with his drug addiction in a desperate attempt to forget his war experiences, saying, “Iraq is always there.”

... he struggled with his drug addiction in a desperate attempt to forget his war experiences, saying, “Iraq is always there.”

With support from his fiancé, he turned over a new leaf and stopped taking drugs, marrying and then regaining full custody of his son from his previous

marriage. On the day of his arrest for drug possession, he had just lost his job and was in relapse and using drugs. After his arrest, he immediately enrolled in the VA program for substance abuse treatment. He was clean for over a year until he came upon a car accident where the driver's head was decapitated, triggering memories of his Iraq war horrors. Within hours, he again relapsed and then sought help from the VA. Throughout the last ten plus years, his PTSD had been undiagnosed.

The VDP assisted Joe's public defender and submitted a Mitigation letter to the Court stating, "it is in the best interest

of justice that he be spared further incarceration and be afforded the opportunity to heal his battle-borne wounds." The VDP said, "While he struggles with some extremely powerful memories of past events that are at the distal end of human experience, he is dedicated to his wife and son and realizes how much he has to gain from continuing treatment." **The court undertook a therapeutic approach and sentenced Joe to VA PTSD and substance abuse treatment for 18 months, allowing him to heal and return to his family to once again be a productive member of society.**



*The Case Study veteran names have been changed for privacy protection and all photos are from istockphoto.

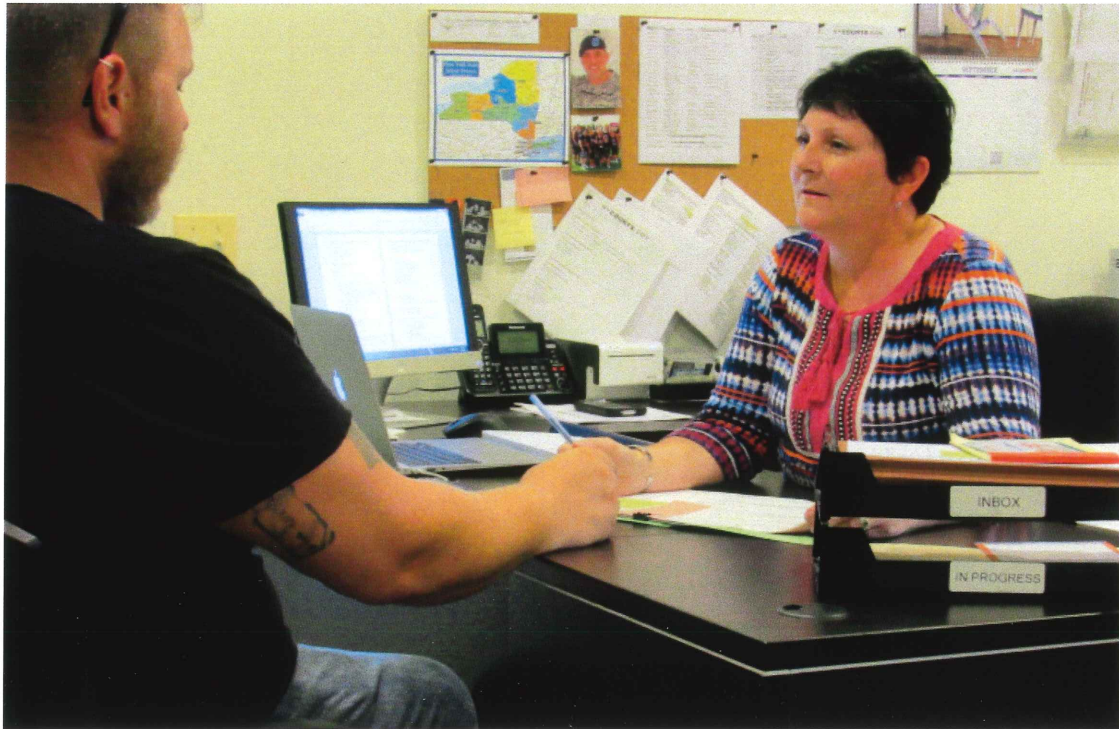


The VDP Assists Public Defenders in Fulfilling the U.S. Supreme Court Unanimous Ruling That Defense Counsel Must Investigate a Veteran Defendant's Military Service & Battle-Borne Mental Health Ailments

The VDP is helping public defenders to fulfill their constitutional obligation to investigate their client's military service, and any related mental health ailments that may have contributed to their offense, and seek mitigation. In *Porter v. McCollum*, 558 U.S. 30 (2009), **the United States Supreme Court ruled unanimously that public defenders must adequately investigate their client's military background to include battle-borne mental health illness, such as PTSD, and reasonably present such evidence in mitigation.** Although the defendant was a decorated Korean War veteran, his court-appointed counsel neither investigated nor presented evidence of his military service to the jury, and the Court reasoned that this type of evidence might have swayed the jury. Porter's defense counsel was found ineffective in this *per curiam* decision.

The Supreme Court emphasized:

"Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did. Moreover, the relevance of Porter's extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter." (Porter v. McCollum, 558 U.S. 30, 130 S.Ct. 447 (2009)).



Helping Those Who Defended Us:

Deanne Quinn Miller, VDP Program Coordinator, assists a veteran with expert referrals and guidance on VA treatment and therapy programs in August 2015 at the Batavia office.

VDP Public Defender Office Assistance Site Visits

Office site visits were conducted with Chief Defenders and their staff at eleven county public defense programs to train, educate and advise on the issues surrounding the representation of veterans in family and criminal court, and to assist them in connecting veteran clients with service programs.

- Columbia County Public Defender Office**, Hudson, NY, 05/08/14.
- Cattaraugus County Public Defender Office**, Olean, NY, 06/30/14.
- Livingston County Public Defender Office**, Geneseo, NY, 10/31/14.
- Steuben County Public Defender Office**, Bath, NY, 10/31/14.
- Orleans County Public Defender Office**, Albion, NY, 11/7/14.
- Genesee County Public Defender Office**, Batavia, NY, 12/10/14.
- Rockland County Public Defender Office**, New City, NY, 7/16/15.
- St. Lawrence County Public Defender Office**, Canton, NY, 7/14/15.
- Kings County, Brooklyn Defender Services Office**, NY, 7/30/15.
- Niagara County Public Defender Office**, Lockport, NY, 8/17/15.
- Westchester County Legal Aid Society Office**, White Plains, NY, 9/17/15.

VDP Legal Trainings

The VDP provided extensive training to over 600 public defenders, legal aid society attorneys and assigned counsel in New York State through twelve national, statewide and regional training workshops and conferences. The trainings often provided Continuing Legal Education (CLE) credits for attorneys. The trainings received rave reviews with one seasoned public defense attorney stating, "This was the best training I have ever attended."

Cattaraugus County CLE, Olean, NY, 8/15/14, Best Practices for Representation of Veterans

Monroe County CLE, Rochester, NY, 8/29/14, Best Practices for Representation of Veterans

Albany County CLE, Albany, NY, Statewide Training, 10/17/14, Representing Veterans in NY Courts

National Association for Public Defense Webinar CLE, 2/26/15, Defending Veterans in Criminal Court

29th Annual Metropolitan Trainer CLE, New York City, NY, 3/14/15, Representing the Veteran From Arrest Through Disposition

Ontario County CLE, Canandaigua, NY, 3/20/15, Representation of the Veteran Client: Understanding the Issues & Tips for Effective Advocacy

Oneida County CLE, Utica, NY, 4/25/15, Using your Veteran Client's Military Experience, Training and Culture in their Defense

Syracuse University College of Law CLE, Syracuse, NY, 5/4/15, Defending the Veteran Client

NAACP Legal Defense Fund 36th Annual Capital Punishment Training Conference, Warrenton, VA, 7/9/15, Defending Veterans in Capital Cases

7th and 8th Judicial Districts, Batavia, NY, 8/13/15 & 8/14/15, Veterans Defense Program Point Person Training

Rockland County CLE, New City, 9/17/15, Defending the Veteran Client

Westchester County CLE, White Plains, NY, 9/18/15, Best Practices for Representation of Veterans

5th & 6th Judicial Districts, Syracuse, NY, 10/15/15 & 10/16/15, VDP Point Person Training

2nd, 10th & 11th Judicial Districts, Hempstead, NY, 11/12/15 & 11/13/15 VDP Point Person Training



Best Practices for Representation of Veterans:
(L-R) VDP Legal Director Art Cody and VDP Director Gary Horton speaking at September 2015 training in Westchester County.

Evaluation Comments on VDP Trainings

"Outstanding! Thank you!"

"Excellent panel of very moving, informative and wonderful speakers. Keep up the good work."

"The best Continuing Legal Education (CLE) I have attended. Congrats!"

"Excellent direct-experience presentations."

"Very informative and heartfelt presentations. An excellent CLE. Thank you."

"Great presentations and introduction to representing veterans."

"The U.S. Army veteran was excellent and his presentation was personal which made it incredibly interesting and helpful."

"Great training – thank you!! It definitely opened my eyes to many issues to consider."

"Great to hear more about veteran's experiences, military culture and how it relates to cases."

"Such an important topic for such a marginalized and misunderstood population."

"Talented and excellent speakers."

"Very informative and on point presentations with great resources."

"Great presenters with insightful and helpful points."



Statewide Training Features National Experts

The Veterans Defense Program's Best-Practice Litigation Training for Lawyers Representing Veterans on October 17, 2014 featured national experts on defending veterans in criminal court and the treatment of veterans with PTSD and TBI. (L-R): Jonathan E. Gradess, NYSDA Executive Director; Attorney Brock D. Hunter, a nationally-recognized expert and author of the seminal [The Attorney's Guide to Defending Veterans in Criminal Court](#); Ed Tick, Ph.D, Executive Director of the international organization Soldier's Heart, and author of the nationally acclaimed book, [War & The Soul: Healing Our Nation's Veterans from PTSD](#); Art Cody, VDP Legal Director, and Gary Horton, VDP Director.

VDP Outreach Presentations

The VDP legal staff traveled throughout the state to meet with 26 organizations working on public defense, criminal justice and family court veteran issues. The VDP provided information on its programs, trainings and resources, and surveyed groups about any needs they have to best serve justice-involved veterans and service members.

- Bronx Defenders**, New York City, 5/9/14.
- Seventh Judicial District Chief Defenders Meeting**, Canandaigua, 5/9/14.
- Ontario County Veterans Court Planning Committee**, Canandaigua, 5/15/14.
- Veterans Outreach Center**, Rochester, 5/17/14.
- Clearpath for Veterans**, Syracuse, 6/13/14.
- Marine Corps League**, Albany, 6/28/14.
- American Legion**, Department of NYS, Statewide Convention, Albany, 7/17/14.
- Center for Court Innovation**, Syracuse, 8/1/14.
- Genesee County Bar Association**, Batavia, 10/1/14.
- Partners In Restorative Initiatives**, Rochester, 11/10/14.
- Chief Defender Association**, Albany, 12/15/14.
- Judge Robert Russell**, Buffalo City Veterans Treatment Court, Buffalo, 1/27/15.
- National Alliance on Mental Illness**, Albany, 1/12/15.
- Syracuse Law School Veterans Clinic**, Syracuse, 1/29/15.
- Dr. Cory Crane, Strength at Home Program**, Rochester, 2/20/15.
- VA Committee on Women's Programs**, VA Western NY Medical Center, Buffalo, 3/11/15.
- Hofstra Law School**, Hempstead, 4/23/15.
- East End Vets Long Island**, East End, NY, 4/25/15.
- Groveland Correctional Facility, Veterans Program**, Groveland, 4/29/15
- Veterans of Foreign Wars**, Albany, 5/2/15.
- New York State Council of Veterans Organizations**, Albany, 5/13/15.
- One-Stop Veterans Center of WNY**, Buffalo, 6/26/15.
- Brooklyn Defender Services**, 8/12/15
- Orleans County Magistrates Association**, Albion, 9/9/15.
- Harlem Vet Center**, Harlem, 9/11/15.
- NY City Council Veterans' Affairs Committee Chairman Eric Ulrich**, NYC, 9/25/15.



**ABC News Journalist
Bob Woodruff
Meets with VDP Staff**

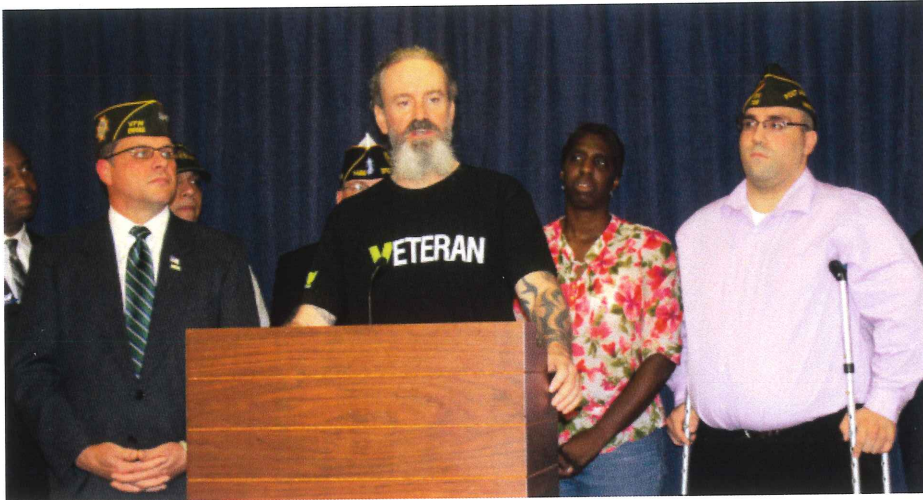
Bob Woodruff, former co-anchor of "ABC World News Tonight," was severely injured with Traumatic Brain Injury from a roadside bomb while reporting in Baghdad, Iraq. After his recovery, he and his wife wrote a book, [In an Instant: A Family's Journey of Love and Healing](#), and created the Bob Woodruff Family Foundation in support of veteran service programs. (L-R) VDP Legal Director Art Cody; Bob Woodruff; and VDP Director Gary Horton meet at the Mental Health Foundation August 2014 event in Saratoga Springs, NY.



**Former First Lady
Matilda Cuomo
Meets with VDP Staff**

(L- R) VDP Legal Director Art Cody; Former First Lady Matilda Cuomo, wife of former NYS Governor Mario Cuomo; VDP Director Gary Horton; and VDP Program Coordinator Deanne Quinn Miller meet at the Mental Health Foundation 2014 event supporting treatment for mentally-impaired veterans.

Veterans Defense Program Supporters



Supporting Treatment for Veterans

Robert Porter speaks in support of the VDP's treatment-oriented approach for PTSD veterans at an Albany 2015 news event. (L-R: John Lewis, VFW; Robert Porter, Marine Corps League; Linda McKinnis, Disabled American Veterans; and Steven Cippitelli, VFW.)

The Veterans Defense Program is strongly supported by over 30 veteran organizations, including the American Legion, American Merchant Marine Veterans, AMVETS, Black Veterans for Social Justice, Clear Path for Veterans, Disabled American Veterans, Jewish War Veterans, Harlem Vet Center, Marine Corps League, Military Order of the Purple Heart, New York State Council of Veterans Organizations, PEF Veterans, Veterans of Foreign Wars, Veterans Outreach Center and WNY One-Stop Veterans Center.



Supporting Justice-Involved Veterans

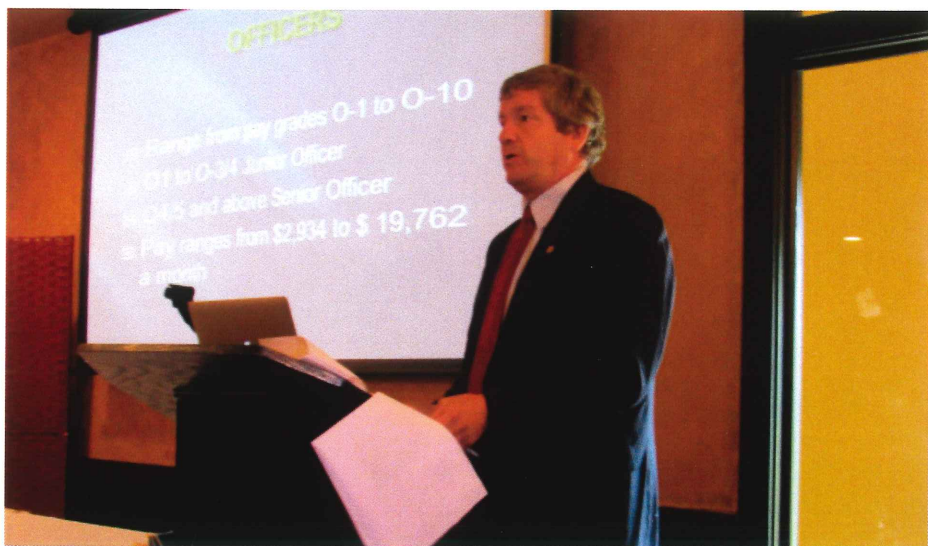
VDP Legal Director Art Cody speaks at a 2014 Albany, NY news event in support of assisting justice-involved veterans with mental health ailments.

Veterans Defense Program Full-Time Staff



Gary A. Horton is Director of the Veterans Defense Program.

A graduate of Hofstra University School of Law, Horton's practice has centered on public defense for more than thirty years, and he was Genesee County Public Defender for twenty years, before becoming the VDP Director. Horton is the recipient of the NYSBA Criminal Justice Section David S. Michaels Award (2006), the New York State Defenders Association Wilfred R. O'Connor Award (2011), United States District Court for the Western District of New York Special Service Award (2005), and a Friend of the Mental Health Association of NY (2015). Horton is a founding member and past President of the Genesee Veterans Support Network.



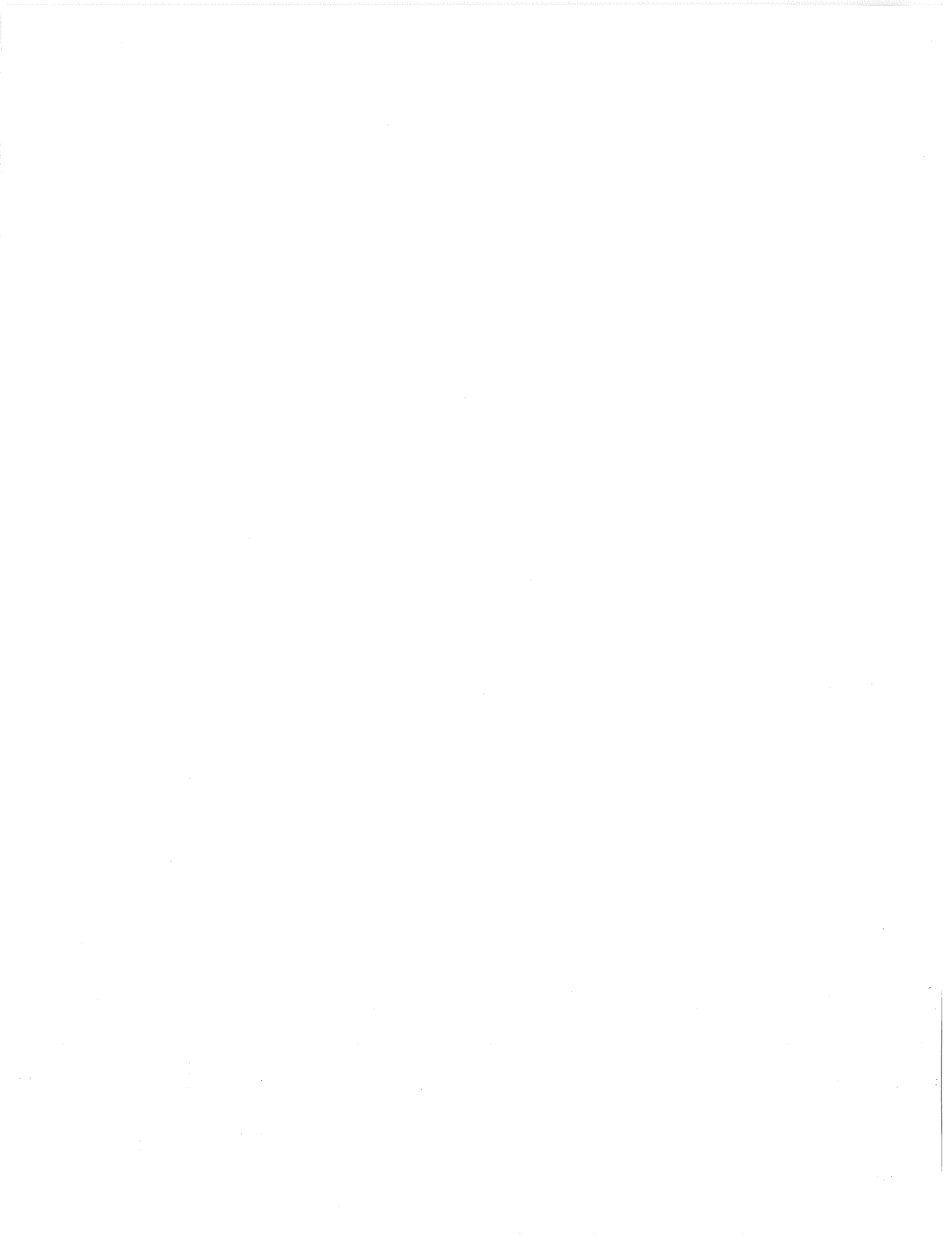
Captain Art C. Cody, USN (Retired) is Legal Director of the Veterans Defense Program.

A graduate of West Point, Cody has a Master's Degree from the University of Southern California and graduated magna cum laude from Notre Dame Law School. Cody first served as a U.S. Army helicopter pilot, followed by similar service in the Navy Reserve. Most recently, he was mobilized for Operation Enduring Freedom in 2011, serving for one year at the United States Embassy in Kabul, Afghanistan as Staff Director of the Interagency Rule of Law Section. For his Afghan service, he received the Bronze Star Medal and the State Department Meritorious Service Award. He retired from the Navy in 2012 after 30 years of service. As a civilian lawyer, he has represented criminal defendants for over 15 years. He is a recipient of the Thurgood Marshall Award for Capital Representation from the New York City Bar Association.

New York State Defenders Association
**Veterans Defense Program
Activities Report**

Defending Those Who Defended Us







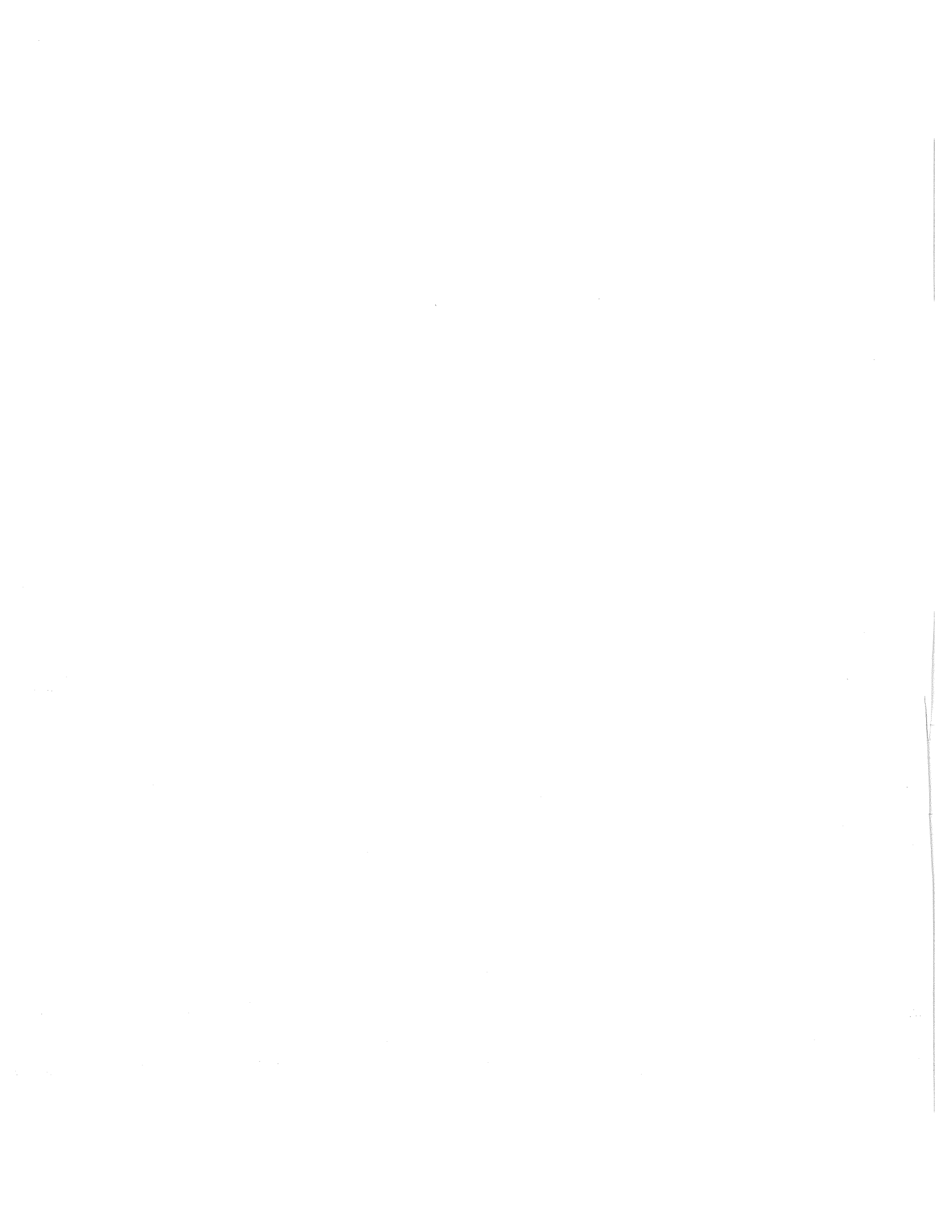
NYSDA Veterans Defense Program

Activities Report

October 2015

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Veterans Defense Program

Activities Report

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*The Case Study veteran names have been changed for privacy protection and all photos are from istockphoto.

Veterans Defense Program

Defending Those Who Defended Us

The Veterans Defense Program (VDP) provides in-depth training, support, and legal assistance to engender informed and zealous representation of veterans and service members in the New York State criminal and family court systems. The VDP assists public defense attorneys to take a treatment-oriented approach when representing veterans suffering from the invisible wounds of war, such as Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and/or depression.

The VDP—the first in the nation—was launched in response to a crisis situation where growing numbers of veterans with untreated, service-related mental health illnesses are lost in the criminal justice system. Studies have reported epidemic numbers of Iraq and Afghanistan War veterans with mental health illnesses. Previous research found significant numbers of Vietnam War veterans had undiagnosed PTSD. Sadly, approximately 112,000 veterans in New York State have mental health ailments, and studies show 50% are not receiving treatment. The U.S. Veterans Administration (VA) and Institute of Medicine report such veterans are at significant risk of arrest as their trauma symptoms can lead them to criminal conduct.

VDP Legal Director, Art Cody, a retired Navy Captain and Afghanistan veteran, describes why the VDP was created. “The most vulnerable of our returning warriors, those who have been injured either physically or mentally and are now in the criminal justice system because of those injuries, are often somehow removed from those ‘troops’ that we

support. We support the troops and thank them for their service until they get arrested. Very often their military experiences, which a civilian judge or jury would have a very difficult time understanding, are at the core of their involvement in the criminal justice system. It is difficult for a civilian judicial system to understand what it means to undergo rocket attacks 5 days a week for months on end or know what it is like to spend days crouched in a bunker in fear for your life. That has an effect on you that is difficult to recover from when you get back home. The VDP’s goal is to ensure that each veteran has an effective advocate; each veteran’s story is properly presented to a judge, jury, and prosecutor; and veterans get the treatment they need and deserve.”

The VDP's goal is to ensure that each veteran has an effective advocate; each veteran's story is properly presented to a judge, jury, and prosecutor

Staffed by award-winning attorneys with deep experience working with veterans, the VDP is committed to giving veterans access to the best possible legal representation. Veterans with battle-borne illnesses need treatment and an alternative resolution process in the criminal justice system. The VDP’s zealous legal advocacy takes a comprehensive client-centered approach, which can include mental health evaluation and treatment, counseling, and liaison with support

groups. The VDP trains and assists public defenders and other defense counsel representing veterans to encourage mitigation and treatment, and to avoid the significant collateral consequences that flow from criminal convictions. Effective representation of veteran clients involves defense counsel’s understanding of military culture and experience, effects of military trauma, and resources available to veterans.

The VDP is supported by many organizations, including the NYS Council of Veterans Organizations, American Legion, VFW, Marine Corps League, Military Order of the Purple Heart, Rochester Veterans Outreach Center, Clear Path for Veterans, One-Stop Veterans Center of Western New York, Chief Defenders Association of NYS, Brooklyn Defender Services, NYC Office of the Appellate Defender, The Legal Aid Society, and many county public defense offices, as well as state and federal officials, including US Senator Kirsten Gillibrand.

The VDP received a critically important appropriation

in the 2015/2016 state budget. Many thanks for the key support of NYS Senator Thomas Croci and NYS Assemblyman Michael DenDekker, Chairmen of the Senate and Assembly Veterans Affairs Committees, and Senate Majority Leader John Flanagan and Assembly Speaker Carl Heastie. Thanks also to the support of a host of other state legislators, especially Senators George Amedore, Hugh Farley, Joseph Griffo, William Larkin, Betty Little, Kathleen Marchione, Terrance Murphy, Robert Ortt, Michael Ranzenhofer and Jim Seward; and Assembly members Jeffrion Aubry, Anthony Brindisi, Herman Farrell and Joseph Lentol.

The Veterans Defense Program—the first in the nation—provides training and legal assistance to attorneys defending veterans and encourages restorative justice programs for veterans suffering from the invisible wounds of war.

Summary of Veterans Defense Program Activities & Accomplishments

Since its launch in the Spring of 2014, the VDP has assisted or trained nearly 1,000 veterans and public defenders representing veterans in New York State's criminal court and family court systems.

The VDP's assistance provides a second chance for veterans who have lost their way and facilitates a treatment-oriented mitigation approach focusing on restoration and rehabilitation.

Legal Assistance for Over 100 Veteran Criminal Justice Cases

■ **Veteran Case-Specific Litigation:**

The VDP represented five veterans whose cases addressed a systemic problem, established a precedent, and presented a great need requiring an extensive expenditure of time and assistance. The VDP's zealous representation resulted in 3 case victories and veterans were saved from incarceration, provided leniency by the court, and sentenced to treatment to address their mental health ailments and/or substance abuse. For instance, the VDP produced three sets of motions, a sentencing memorandum, and a 440 resentencing motion, in addition to numerous court appearances, for the CJ Smith case alone. (See CJ Smith and Roger Ford Case Studies. Names have been changed for privacy protection.)

... the VDP has assisted or trained nearly 1,000 veterans and public defenders representing veterans in New York State's criminal court and family court systems.

- For CJ Smith, the VDP's direct representation resulted in the young Afghanistan-deployed Army soldier with PTSD finally having his day in court. CJ will have a hearing this Fall and an opportunity for treatment and justice after being held in jail for almost two years pre-trial for a first-time offense of residential burglary.
- Roger Ford, an Army Military Police veteran, suffered from survivor's guilt, severe anxiety and depression resulting from four of his unit members all being killed in action in Iraq. The VDP's direct representation led to a dismissal of a felony charge and an adjournment in contemplation of dismissal for a misdemeanor, relating to an incident where police alleged he misidentified himself as an active service member. After the court appearance, the VDP staff escorted Roger to a Veterans Center, where he is now receiving assistance with his mental health issues.

■ **Chief Public Defender Assistance Visits:** Office visits were conducted with Chief Defenders at eleven county Public Defense Programs to train, educate and advise staff on the issues surrounding the representation of veterans in family and criminal court, and to assist them in connecting with service programs for veteran clients.

- **Public Defender Backup Support:** The VDP served as a day-to-day backup resource for attorneys in 120 county-based public defender offices, legal aid agencies, and assigned counsel offices, and for individual veterans and their families.



Training Public Defenders

VDP Director Gary Horton speaks at a Westchester County training in September 2015.

This was the best training I have ever attended.

– Public Defender

in New York State through twelve national, statewide and regional training workshops and conferences. The trainings often provided Continuing Legal Education (CLE) credits for attorneys. The trainings received rave reviews with one seasoned public defense attorney stating, “This was the best training I have ever attended.” The VDP is also planning to institute training presentations in the near future on a secure YouTube website which will be accessible and free for public defense attorneys.

Education & Research for Justice-Involved Veterans

■ **VDP Outreach Meetings:** The VDP legal staff traveled throughout the state to meet with 26 organizations working on public defense, criminal justice and family court veteran issues, such as Bronx Defenders, Brooklyn Defender Services, Harlem Vet Center, American Legion, Chief Defender Association, Syracuse Law School Veterans Clinic, Veterans

of Foreign Wars, Bar Associations, and Veterans Outreach Center. The VDP provided information on its programs, trainings and resources, and surveyed groups about any needs they have to best serve justice-involved veterans and service members.

■ **Veteran Treatment Court Visits:** The VDP visited four major Veteran Treatment Courts (VTCs) to meet the Judges and staff and gauge the vitality, effectiveness and procedures of these courts. The VDP visited the City of Buffalo VTC, Monroe County VTC, Niagara County VTC, and Albany County VTC. The VTCs take a therapeutic jurisprudence or treatment-oriented approach, and utilize the important support of veteran mentors. Operating in less than a third of New York State counties, the VTCs largely focus on misdemeanor crimes. The VDP seeks the same treatment-oriented approach in more serious cases in the criminal courts for veterans and service members suffering from battle-borne mental health ailments.

- **Assisted Defense Counsel by providing substantial help on 104 veteran cases**, including both criminal and family court cases. Seventy-four cases have been closed.

- For Patrick Kelly, an Afghanistan-deployed Army medic facing burglary and weapons charges, the VDP provided a mitigation memorandum outlining the sources and effects of his severe PTSD. Patrick was facing a five year state prison sentence. As a result of the VDP's mitigation efforts, the prosecution offered probation. At the hearing, the court concluded, "Mr. Kelly, heal, integrate, become whole again, as you provided a great service to this country. We are thankful for that and want this wonderful disposition for you." The VDP succeeded in obtaining justice for Patrick, helping him to once again be a productive member of society.

- For Joe Gallo, the court agreed with the VDP's mitigation request and undertook a therapeutic approach, sentencing this Army Sergeant to PTSD and drug abuse treatment. Joe suffered for years from undiagnosed PTSD and now is able to heal from his Iraq experience, and return to his family.

- **Assisted Defense Counsel by conducting 117 veteran client interviews** across the state. A majority of the interviews were done by the VDP attorneys, either in the case of direct representation or

... the court concluded,
 "Mr. Kelly, heal, integrate,
 become whole again,
 as you provided a great
 service to this country.
 We are thankful for that
 and want this wonderful
 disposition for you.

for purposes of preparing a Mitigation Memorandum. In some cases, the veteran client's public defense attorney joined the interview. Some clients were seen on multiple occasions.

- **Assisted Defense Counsel by writing important case-specific legal documents**, including nine in-depth Mitigation Memoranda, three Bail Release Memoranda and a Motion to Dismiss in the Interest of Justice.

- **Responded to over 150 veterans by providing expert referrals and/or information** on legal rights, benefits, VA procedures, health and other services.

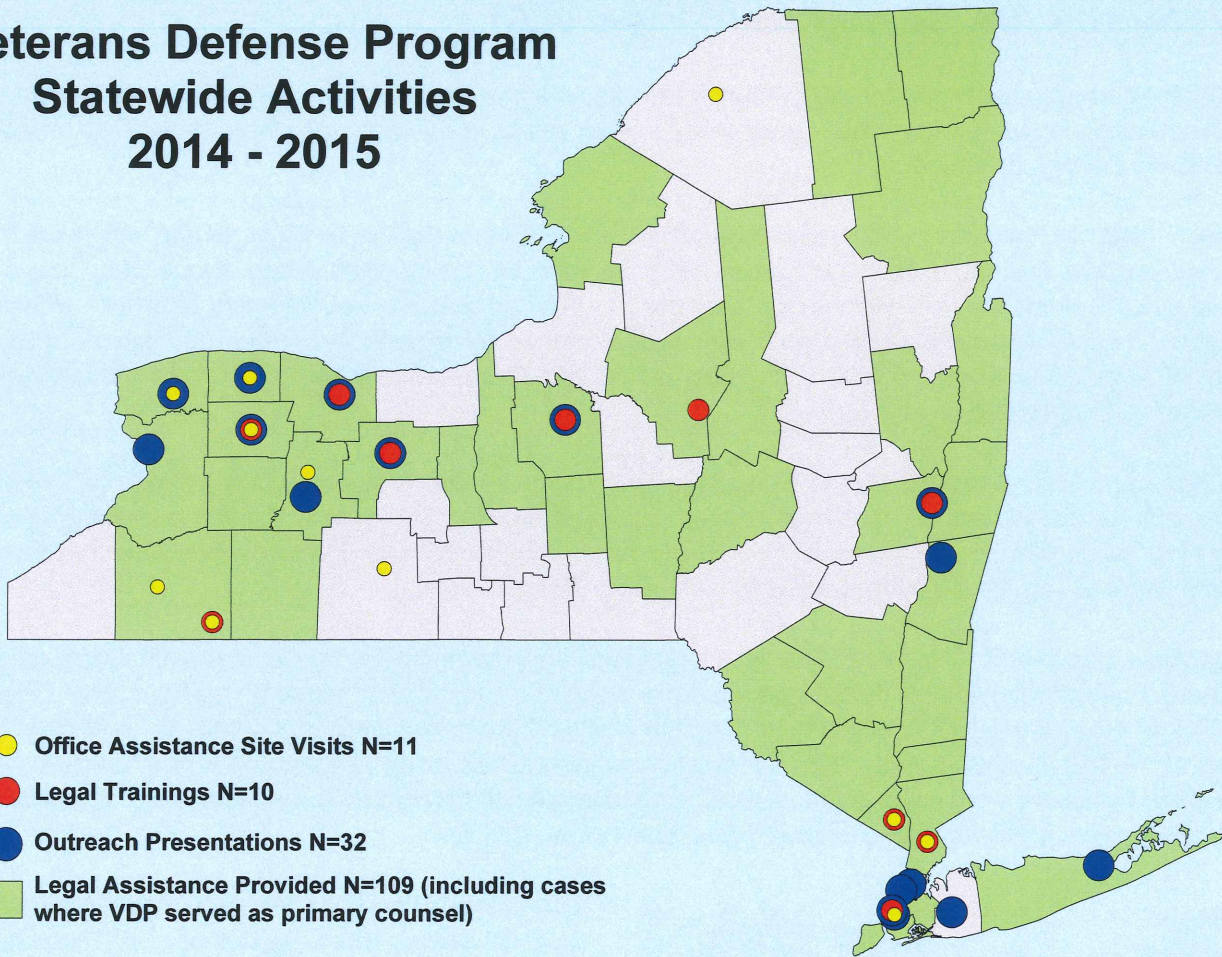
Comprehensive Training for 600 Lawyers Defending Veterans

- **Intensive Point Person Training:** The VDP held intensive two-day "Point Person" trainings for over 50 public defenders to establish one or two attorneys in each office as internal point persons, trained to serve as knowledgeable first resources for their office and as liaisons to the VDP.

- **Legal Trainings**

The VDP provided extensive legal training to over 600 public defenders, legal aid society attorneys and assigned counsel

Veterans Defense Program Statewide Activities 2014 - 2015



Veterans Defense Program Testimonials

What Veterans Are Saying About the VDP

"I think the VDP attorneys are literally saving lives with their knowledge and expertise. They have greatly impacted my life on a positive note. I am forever grateful and in your debt for what you have done for me." *Ross Keim, Disabled & Medically Retired U.S. Army Military Policeman*

"I truly believe if I did not have you in my corner backing me, I would more than likely be in jail and worse off. The service that the VDP provides is invaluable. The legal system does not know what difficulties veterans face when they come home from war, and what demons they carry within themselves. The VDP advises the court system of exactly what myself and my fellow veterans have been through, and what we are currently going through, in an effort to lessen the blow that the legal system will levy against a veteran who has committed a crime. There needs to be a VDP in every court system." *Terry Travis, U.S. Marine Sergeant, Two Iraq Tours*

"After three years and two heart attacks, and trying to get the justice system to understand my dilemma, I was desperate and disabled. VDP acted immediately and restored my dignity and faith in the system. It is the best thing to come along for a veteran who needs help in criminal matters; an organization that has a heart and soul. They have truly saved me and my family from years of anguish." *Lawrence Fuchs, U.S. Army Vietnam Veteran*

"As a retired Army Lieutenant Colonel, Purple Heart recipient and Founding Partner of a law firm with offices across New York State, I personally know of the unique needs of veterans, especially those suffering from the invisible wounds of war. The risk of those untreated veterans becoming involved in the criminal justice system is at an all-time high. I, and the members of the Military Order of the Purple Heart in New York State, strongly support the VDP and appreciate their important work to help justice-involved veterans regain their status as productive members of society." *Matthew Tully, NYS Department Commander, Military Order of the Purple Heart of the U.S.A.*



"I can't explain how thankful I am that you guys took on my case. It's been a roller coaster ride right from the gate. It's been an honor to have met all of you." *Ljube Terzioski, U.S. Army Afghanistan Veteran.* "Out of the sky drops a bunch of angels called the VDP. Like a whirlwind, you amazing people knew what to do to help my son." *The Gaston & Terzioski Family*



"I felt like [the VDP] was speaking from MY heart in the mitigation report and I could not have found a better voice... The difference the mitigation brief brought to the case was like night and day." *Petre Ivan, U.S. Army Afghanistan Veteran*

"Our statewide veteran council, representing 37 veteran groups, such as the Marines, VFW and Disabled American Veterans, strongly support the critically important work of the VDP. A number of our members have been helped by the VDP and their advocacy for mitigation and treatment to heal a veteran's battle-borne illness. Justice-involved veterans need the VDP. The VDP is truly defending those who defended America." *Tom DeMeo, President, NYS Council of Veterans Organizations*

What Government Officials Are Saying About the VDP

"I am writing to express my unwavering support for the VDP as it effectively broadens the scope of services provided to our nation's bravest patriots. Defending veterans who encounter NYS's criminal or family court system is a noble feat, yet the VDP seeks to serve beyond the walls of the courtroom. The implementation of pilot projects like the Veterans Restorative Justice offer much needed opportunities for veterans. With the VDP's past achievements and anticipated future successes, the program could become a model for others across the nation." *U.S. Senator Kirsten Gillibrand*

"I commend NYSDA for launching the Veterans Defense Program. I created the nation's first Veterans Treatment Court in Buffalo, NY to address the unique needs of veterans, especially those suffering from PTSD, TBI, military sexual trauma and major depression. By identifying a veteran upon his or her arrest, their needs can be assessed and a treatment program can be developed. A collaborative approach to treatment that focuses on supervision of the veteran throughout the process can reduce recidivism and help our veterans lead sober, healthy, and productive lives." *Judge Robert T. Russell, Jr., City Court Judge, City Court of Buffalo*

"The VDP's work is critical to veterans and service members who find themselves in the family court or criminal court system, especially those who are suffering from mental health illnesses. They help the most vulnerable of our returning warriors by guiding attorneys in how to ensure that the courts consider treatment programs for veterans with military-related PTSD, TBI, and depression." *Congressman Paul Tonko (20th District)*

"The Veterans Defense Program showed compassion and care when it seemed no one else could or would [for an Afghanistan veteran]. The VDP is a small group of legal professionals whose services are desperately needed here in New York. They should flourish and expand so that more of our veterans, damaged in the service of their country, can be helped through their own individual nightmare." *Assemblyman Marc Butler (R-Herkimer)*

What Public Defense Attorneys & Organizations Are Saying About the VDP

"I am impressed with the outstanding work of the VDP attorneys. Their presentation at the Chief Defender Convening was inspiring and informative, and their written advocacy on behalf of Veteran CJ in the post-judgment motion was superb. I am quite hopeful that with the VDP's continued advocacy at the hearing, the court will reduce CJ's harsh and excessive sentence." *Richard Greenberg, Attorney-in-Charge, NYC Office of the Appellate Defender*

"In my travels, I have never come across anything like the VDP. I had the honor of presenting at their 2014 statewide training, and was blown away by the quality and depth of their program. This program is literally breaking new ground—the first of its kind in the country—using sophisticated veterans defense knowledge to assist criminally-charged veterans across NYS, and train attorneys in the art and science of defending veterans." *Attorney Brockton Hunter, U.S. Army veteran and author of the seminal legal treatise, The Attorney's Guide to Defending Veterans in Criminal Court*

"I enthusiastically support the VDP. I and my staff appreciate their skilled assistance as they strategically support our representation of veterans and service members. Most recently, they assisted us on a case involving a former infantry soldier charged with weapons and drug related offenses. The VDP's expertise is invaluable to such representations." *Lisa Schreibersdorf, Executive Director, Brooklyn Defender Services*

"The VDP's assistance, resources, techniques, and tips were invaluable in formulating an effective defense strategy. VDP helped me steer the case towards a treatment program to address my client's pathology and prevent a reoccurrence, rather than incarceration, allowing this individual to remain a productive member of society instead of a mere statistic." *Aaron Dean, Chenango County Assistant Public Defender*

"I am truly grateful for your incredibly speedy responses and helpfulness. What a tremendous resource you provide." *Attorney Stephanie Pope, The Legal Aid Society*

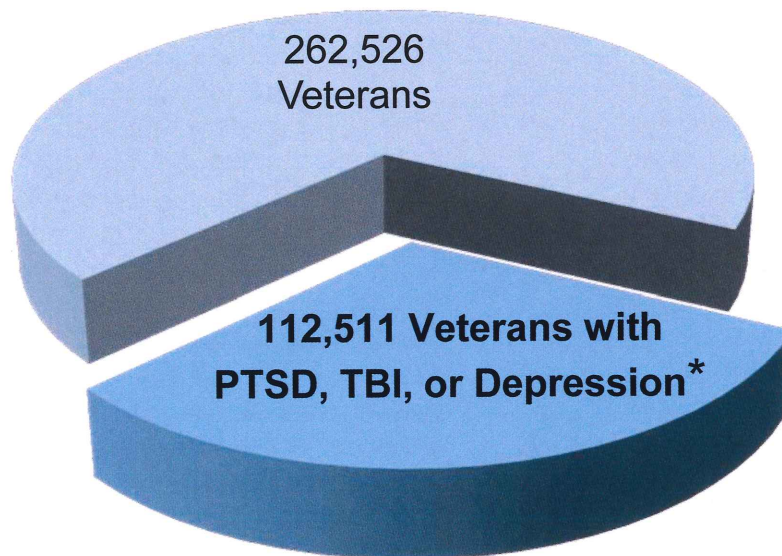
"The VDP has been a tremendous real time resource to my office. The provision of vigorous defense for veterans of our armed forces is invaluable." *Robert Linville, Columbia County Public Defender*

"The VDP provides much-needed legal training and support for lawyers defending veterans struggling with mental health issues. At BPI, we estimate that nearly 30 students of the approximately 800 who have enrolled in our college are veterans; more broadly, it is estimated that 1 in 10 prisoners in the NYS prison system are veterans. Providing veterans in the criminal justice system with meaningful legal representation is critical and timely." *Laura Liebman, Bard Prison Initiative*

"Hofstra Law School fully supports the VDP and the tremendous efforts it makes on behalf of justice-involved veterans throughout the state." *Jennifer Gundlach, Clinical Professor of Law, Hofstra Law School.*



An estimated 30% or 112,511 Vietnam & Post-9/11 Veterans have PTSD, TBI, or Depression in New York State



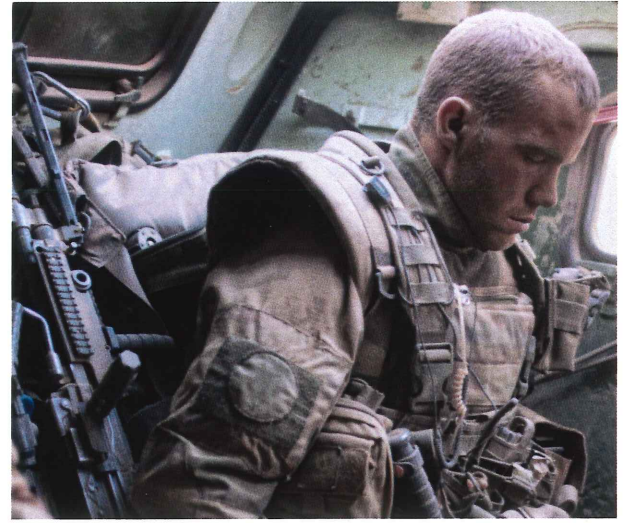
Significant treatment gaps exist. Only about 50% of Post-9/11 veterans with mental health ailments are receiving treatment, and the estimates are much lower for Vietnam veterans.

The Institute of Medicine and the U.S. Dept. of Veterans Affairs report such veterans are at significant risk of arrest as their trauma symptoms can lead them to criminal conduct.

Source: *Invisible Wounds of War: Psychological & Cognitive Injuries, Their Consequences & Services to Assist Recovery*, RAND Corporation, 2008.

VDP Veteran Case Studies*

VDP Challenges Harsh Sentence for Veteran's First-time Burglary Offense, Seeking PTSD Treatment & Mitigation



U.S. Army Specialist CJ Smith: For almost two years, a young Afghanistan-deployed veteran was held in an upstate New York jail without trial for his first offense: burglary with two friends while under the influence of alcohol, a few months after returning from a combat zone with untreated PTSD, depression, and substance abuse.

CJ joined the elite 173rd Airborne Brigade Combat Team and later deployed to Forward Operating Base Shank in Afghanistan, in a region frequently described as “the most dangerous place in the world.” Private First Class CJ often endured rocket and mortar barrages five days a week for months on end. He had colleagues killed and close friends injured. One such incident haunted him. He was standing in a long line at the PX with his battle buddy when he realized he had forgotten his wallet and left to recover it. A few minutes later, a rocket hit the spot where he had been standing, and his buddy was hit by shrapnel, losing both legs. CJ’s colleague eventually recovered from his life threatening wounds but CJ obsessed over this incident and thought continually, *“It could have been me. Why not me? Was it luck? Fate? I don’t know how not to think about it.”* He came home *“a very broken man,”* said his mother. He suffered from depression and undiagnosed PTSD which led to self-medicating with alcohol.

Both his appointed lawyer and the Judge ignored the links between his battle-borne mental impairments and his offense. The VDP took on his case and sought a treatment-

oriented approach and mitigation. VDP’s mental health expert evaluated CJ and diagnosed him with service-related PTSD. At the VDP’s request, the Judge promised a sentencing hearing to hear from witnesses regarding his military service and mitigating circumstances. In preparation, the VDP wrote a sentencing memorandum which outlined some of the witnesses’ proposed testimony. Surprisingly, the Judge stated he had enough information from the memorandum and denied the promised hearing, sentencing CJ to 8 years in prison.

He came home “a very broken man,” said his mother.

Challenging this harsh sentence in a post-conviction application, the VDP argued that the Judge’s reasoning “smacks of a Catch 22. In short, in order to get a sentencing hearing, CJ was required to provide a sentencing memorandum. Yet precisely because CJ’s attorneys submitted the desired memorandum, complying with the Court’s order, he was denied the very sentencing hearing he sought.”

The VDP filed a Notice of Motion to Vacate Conviction & Set Aside Sentence noting the length of time already served, and the contributing factor of his service-related mental health ailment. The VDP was successful in having another Judge grant a motion to hold a sentencing hearing wherein mental health experts and his military superiors will testify on his behalf. A sentencing hearing is scheduled for late Fall. **Finally, after two years, this young veteran will have his day in court and an opportunity for treatment and justice.**

*The Case Study veteran names have been changed for privacy protection and all photos are from istockphoto.

VDP Successfully Secured Treatment for Iraq Veteran Suffering From Severe PTSD, Back Injuries, & Substance Abuse



U.S. Army Private First Class Tom Donner: Tom was slated for Military Intelligence, but requested the Infantry as he wanted to *“be in the action”* in Iraq. In 2003, he took part in the invasion of Iraq and his platoon experienced heavy battle conditions, undergoing machine gun fire, rockets, and rocket-propelled grenades. One of the first platoons to enter Bagdad, his company was described as the *“tip of the spear”* in the assault. Tom received four medals for his service, including the Bronze Service Star. According to the VA medical records, Tom was exposed to extremely harsh military trauma and suffered considerable combat guilt. He had recurring nightmares and the smell of burnt flesh in his dreams, saying *“we were constantly approached by Iraqi civilians who were horribly burned seeking medical care, and the burned kids were the worst.”* He began to self-medicate with alcohol and marijuana and was discharged from the Army.

On returning home, he went from job to job, suffering from undiagnosed PTSD, insomnia, and substance abuse. His childhood friend said, *“Tom changed a lot after his army service. He started drinking a lot, especially at night, as it was the only way he could sleep. But with the nightmares, he would only sleep 3 to 4 hours a night if he was lucky.”* Ten years later, he went to the VA seeking help for severe back pain and a continuing sleep disorder. He reported that in 2003, he had hit his head and back when he had fallen off an infantry fighting vehicle. The VA diagnosed him with back injuries, PTSD, and Substance Abuse Disorder. He entered VA and Warriors Salute programs and his discharge summary stated that he was *“fully engaged in treatment and has*

He had recurring nightmares and the smell of burnt flesh in his dreams, saying “we were constantly approached by Iraqi civilians who were horribly burned seeking medical care, and the burned kids were the worst.”

made good progress... He believes...the treatment has greatly helped him to modify his behavior and improve his coping. He hopes to be able to maintain stable functioning, to be able to better provide for his daughter.”

Tom was abstinent for over five months, when he relapsed after a very close veteran friend in his VA treatment program overdosed and died. He was arrested for a Misdemeanor Aggravated DWI the day after his friend’s death. He went back to the VA program. A VA social worker stated that, *“In spite of significant PTSD symptoms ...positive factors include supportive parents, an extremely strong bond with his daughter, his desire to work, and motivation for treatment and occupational advancement.”*

The VDP provided the North Country public defender representing Tom with ongoing support and co-authored his Mitigation Memorandum in Support of a Bail Application, which stated that *“while incarcerated, Tom cannot receive adequate care for his back condition and PTSD. He is removed from familial supports...and continued incarceration threatens the progress he has made. The VA is prepared to refer Tom to further residential treatment.”* It concluded that, *“We as a society owe him appropriate care so that he can regain his place in his community.”* **The Judge agreed to a “bed-to-bed” release, thus enabling Tom to enter an inpatient PTSD program and continue treatment to finally heal from his battle-borne ailments and be restored to his family.**

VDP Seeks Bail & Treatment for Army Veteran Acting in Self-Defense in Life-Threatening Situation



U. S. Army Specialist Rick Jones: Rick is deeply patriotic and after 9/11 he sought military service, eventually serving for fifteen months as part of Operation Iraqi Freedom. He deployed to Forward Operating Base (FOB) Pasab in Khandahar province, one of the deadliest areas in Afghanistan. He was under fire on a daily basis almost immediately upon arriving at the FOB. His Sergeant stated that Rick's job as a cook in no way exempted him from fighting, and upon hearing incoming fire, Rick would immediately run to join his 10th Mountain infantrymen colleagues. Jones engaged in 2 to 5 firefights a week and his Sergeant stated that he was *"one of the most level headed soldiers I have ever seen in a combat situation... acting as if he was a much older and seasoned veteran than he was."*

Rick was known for helping his friends in need, and on the death of a soldier, he counseled one young man who was hit very hard by the death, causing his supervisor to say, *"Such compassion and care for a fellow soldier in my opinion is a rare sight."* In 2011, six months after his deployment, Rick suffered a seizure as his epilepsy medications did not arrive in time. He fell and had a head injury during the seizure and was medically evacuated back to America. Rick repeatedly requested to stay with his unit and felt guilty at leaving his colleagues behind. His requests were denied and he was ordered to his unit's homebase, Fort Drum. His supervisor found that he was extremely dependable, noting that "things would get done in an efficient and professional manner" and he continued to mentor soldiers and take on additional responsibilities. A few years later, due to reoccurring seizures, the Army medically retired Rick with an Honorable Discharge. Married with a young son, Rick's wife serves as a Sergeant at Fort Drum and provided for their financial needs after his discharge.

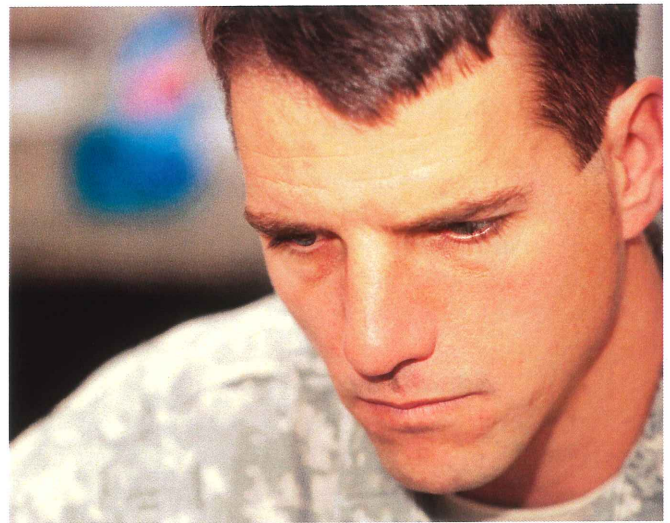
Rick's serious epilepsy health conditions and his lack

At core, he responded in self-defense to a life-threatening situation as he had been militarily trained.

of employment led him to depression and intermittent substance abuse. On an overnight visit to a medical specialist for his child in a nearby city, he relapsed and found himself caught up in a life-threatening situation when he attempted to purchase drugs. He was abducted, trapped in a crack house, and held against his will. He was threatened by drug dealers with guns and believed that if he left, he would be shot. He asked the dealers to return his car and they angrily refused. In fear for his life, Rick sought to disarm an armed perpetrator and a struggle ensued. Rick disarmed the man, but he continued to come at him, and Rick was forced to shoot him in self-defense. Rick was charged with Manslaughter in the 1st degree and, if convicted, will face 5 to 25 years. The VDP and Rick's public defense attorney urged the court to appreciate his military background, noting that Rick "as a well-trained soldier, assessed that his actions were necessary to defend himself from a gun wielding crack dealer. *In essence, Rick's training took over: he reasonably perceived the crack dealer to be an immediate threat to him, made efforts to disarm him, and then was forced to shoot him to curtail his continued advances."*

Many friends, fellow soldiers, and family members submitted statements in support of Rick after his arrest, attesting to his exemplary character in terms of dedication to his country, family, and community. They all noted that his reputation is that of a caring person actively concerned about the welfare of others. **The VDP and Rick's attorney are seeking substance abuse treatment, emphasizing that Rick is a highly decorated veteran with no criminal record, and is a model family man. At core, he responded in self-defense to a life-threatening situation as he had been militarily trained.**

VDP Obtains Extensive Treatment for Severely Traumatized & Suicidal Army Veteran Facing Weapons Charge



U.S. Army Specialist Patrick Kelly: Patrick enthusiastically joined the New York Army National Guard and was deployed to Afghanistan as a Combat Medic in 2012. His supervisors said he was a “model soldier,” and he was “competent, hardworking and dedicated.” He served as a clinical caretaker in a combat theater at the Troop Medical Clinic at Kandahar Air Field (KAF), where amidst continual rocket fire he unloaded helicopters of dead and wounded soldiers for four months. He described feeling shock and helplessness, saying, *“I can’t believe how fragile life is.”*

He was transferred to work as a medic at the Detention Facility in Parwan (DFIP), which held insurgent prisoners who had killed Americans or had contributed to the planning of major attacks on Americans. Work conditions were extremely harsh with physical violence, verbal threats, and frighteningly weak security, creating an environment of severe fatigue and trauma with which Patrick struggled to cope. He worked in a dark, dungeon-like facility amidst constant threats, with spit and other bodily fluids thrown on him, while he medically treated 2,000 patients in 12 hour shifts over 6 weeks. He treated severe battlefield injuries, broken bones, and administered medications to the mentally unstable Taliban prisoners. Often his mornings at the DFIP would include treating sexual injuries as the prisoners would violently injure each other in sexual games, and this caused him much emotional stress. Patrick and his teammates lived in near constant dread of death. According to his immediate supervisor, the “Afghan staff would mishandle locking mechanisms and keys for cells containing dozens of detainees that made no secret of wanting to kill us.” In addition, Patrick and his colleagues were forced to live in soft tents next to a loud and active construction site and a mine field leaving him only a few hours of sleep a day for two months.

He described feeling shock and helplessness, saying, “I can’t believe how fragile life is.”

He was then transferred to the Navy Trauma Center at KAF, *“known as the trauma capital for the Afghanistan campaign, with soldiers handling the worst of what combat has to offer,”* said his supervising officer. Part of his duties included assisting in the loading of fallen soldiers onto transport planes going back home. He was profoundly impacted when one of the loadings involved a soldier, killed in action, whose neck injury Patrick had treated earlier that year. Shortly after, his Sergeant recalled he found him *“crying and distressed after learning of his wife’s infidelity with one of his closest Army colleagues.”* Patrick was honorably discharged and returned home, receiving an Army Commendation Medal for providing medical care for over 2,000 enemy combatant detainees composed mostly of insurgent leaders, and for helping over 5,000 patients in a high risk detention facility. Patrick suffered from monumental trauma as a medic in Afghanistan which was exacerbated by his distress over his wife’s infidelity.

Less than a month after returning home, Patrick went to the VA Emergency Room in extreme anguish, unable to sleep, suicidal, and drinking heavily. The VA gave Patrick the maximum rating for PTSD and also diagnosed him with depression and anxiety. He has made significant strides in his PTSD treatment and has stopped drinking. Unfortunately, early in his therapy program, he was pulled over by the police and they found a gun in his car trunk. Upon questioning, he said its only purpose was in case he decided he wanted to *“shoot himself.”* He was arrested on a charge of Criminal Possession in the 2nd degree, facing up to 5 years in prison.

The VDP assisted a lawyer representing Patrick and wrote a Mitigation Memorandum which urged the Court to provide

leniency and treatment for his battle-borne PTSD. The VDP pointed out that the VA staff treating Patrick reported he had not fully reintegrated at the time of the incident, and was suicidal. The VDP stated that incarceration would have a negative effect on his mental health and retard recovery as there is no VA PTSD treatment program for incarcerated veterans, and urged that in the interests of justice, Patrick receive a treatment requirement.

The Judge and the Prosecution were impressed by the Mitigation Memorandum detailing Patrick's traumatic military experience. After learning of Patrick's trauma and health problems, the Assistant District Attorney said, "what we really need for the defendant is the opportunity for him to get 100% better...I want him to get better." The Prosecution agreed to a disposition wherein Patrick

would not be incarcerated but rather upon his successful completion of two additional years of therapy, the felony charge against him would be dismissed and he would be on probation for the misdemeanor for three additional years. **The Judge said, "Mr. Kelly, heal, integrate, become whole again, as you provided a great service to this country. We are thankful for that and want this wonderful disposition." The Judge then noted, "I thank you as well Mr. Cody [VDP Legal Director] for your presence and insight. It was very, very helpful in closing the window on this case." The VDP succeeded in obtaining justice for Patrick, helping him to get extensive treatment and family restoration so he can again be a productive member of society.**

VDP Obtains Multi-Faceted Treatment for Marine with PTSD & TBI

U. S. Marine Sgt. Timothy Polaski: Tim has extensive military experience with the U.S. Marine Corps, including an Iraq deployment in 2009, where he achieved the rank of Sergeant. Beforehand, he suffered from trauma as his father and two siblings were physically abusive during his childhood in an upstate city, resulting in a skull fracture and other injuries. Sadly, his mother tried to commit suicide three times and then had early onset dementia. Throughout all of this tragedy, Tim never received any counseling. He was inspired to join the Marines at eighteen by the example of his brother-in-law who he looked to as a father figure. He trained as an Assault Infantryman and was assigned to an Anti-terrorism Battalion and deployed to Iraq. Tim was seriously injured during a nighttime convoy operation while serving as a gunner. His vehicle hit a bomb crater and during the impact, he was hit in the face with a 300 lb. tow bar and thrown from the vehicle. It was three days, after the convoy mission was complete, before Sgt. Polaski could obtain medical care for his serious back injury.

Three months after the incident, he was redeployed home. He has relatively

With his ongoing physical pain and his untreated mental health ailments, Tim self-medicated with alcohol.



constant back pain with degenerative disc disease, PTSD, and suffers from two Traumatic Brain Injuries (TBI) that cause vertigo. Despite his injuries, Tim was active in the Reserves for three years and his Captain reported he was a highly qualified Marine. His discharge was Involuntary Honorable (Medical). During his service, he received numerous citations and medals, including the National Defense Service Medal and Iraq Campaign Medal.

The father of four children, Tim has a 90% VA Disability rating. With his ongoing physical pain and his untreated mental health ailments, Tim self-medicated with alcohol. One day, he stopped taking his medications and drank beer which triggered a violent reaction. He was arrested for resisting arrest and domestic violence. His wife recounted that, "Our 10 year old daughter came upstairs and said Daddy was talking funny. I came down and

saw he was drinking. I told him that was enough and it was time to go to bed. He started rambling about his life. I told him that he just needed to come upstairs and go to bed. He flipped a switch and came after me. He had me bear-hugged in the kitchen corner when I screamed for our oldest daughter, who is 12. By the time she came down, I had gotten enough space to get around him and go upstairs where I called the police.” When the police entered the house, they found him asleep on the couch and when awoken, he reacted aggressively and instinctively with a trained military response.

The VDP assisted Sgt. Polaski’s public defender in submitting a Mitigation Memorandum to the court,

advocating for leniency and a treatment approach to enable him to heal and recover from his PTSD and TBI. The Judge placed him on a one-year Interim Supervision Probation, which if successfully completed, will result in a conditional discharge with no further probation. Concurrently, Tim is in an inpatient PTSD VA treatment program, a VA substance abuse program, and a domestic violence therapy program, and is fully compliant with his probation terms. **He is being held accountable while still receiving the multi-faceted treatment and therapy that he needs to heal both his and his family’s wounds. The VDP mitigation legal advocacy succeeded in giving Tim a second chance, putting him on the road to recovery and his family on the road to restoration.**

VDP Attains Court-Ordered Therapeutic Approach with Treatment for Marine with PTSD

U.S. Marine Sgt. Joseph Gallo: Sergeant Gallo served in both the Marines and the Army for a total of ten years. In 2004, as a soldier, he deployed to Iraq. For a year he was tasked with leading a twelve man Quick Reaction Force to provide security to Iraq convoy operations. In one of his first “outside the wire” missions, he led a security operation to recover a U.S. Army vehicle that had been blown up by a suicide bomber outside of Baghdad. Walking through strewn body parts was an indelible image for Joe. Two months later, he had to open fire on a car full of people to thwart their aggressive and potentially dangerous approach towards a military convoy. He suffered guilt over this incident, since due to tactical and security operations, he could not offer aid to the people in the car and never learned of their fate. In another incident, two dead Iraqi “body bombs” were thrown from a car. Joe found that the gutted bodies had explosives placed internally, requiring a bomb disposal robot to disarm them.

On the deployment, Sgt. Gallo spent over 250 days “outside the wire” beyond the security and safety of an American



base, exposed to life-threatening danger daily. When he returned home in 2005, the military at that time lacked a full understanding of the mental effects of combat. Thus, Joe’s PTSD was not diagnosed and he turned to illegal drugs to self-medicate. Within a few months, he tested positive for cocaine and was reduced in rank and discharged from the Army under “Other than Honorable Conditions.” He was devastated, as his identity and sense of worth was wrapped up in his status as a soldier and his military dedication. His marriage rapidly disintegrated, resulting in a divorce, and he faced financial hardships. For eight years, he struggled with his drug addiction in a desperate attempt to forget his war experiences, saying, “Iraq is always there.”

... he struggled with his drug addiction in a desperate attempt to forget his war experiences, saying, “Iraq is always there.”

With support from his fiancé, he turned over a new leaf and stopped taking drugs, marrying and then regaining full custody of his son from his previous

marriage. On the day of his arrest for drug possession, he had just lost his job and was in relapse and using drugs. After his arrest, he immediately enrolled in the VA program for substance abuse treatment. He was clean for over a year until he came upon a car accident where the driver's head was decapitated, triggering memories of his Iraq war horrors. Within hours, he again relapsed and then sought help from the VA. Throughout the last ten plus years, his PTSD had been undiagnosed.

The VDP assisted Joe's public defender and submitted a Mitigation letter to the Court stating, "it is in the best interest

of justice that he be spared further incarceration and be afforded the opportunity to heal his battle-borne wounds." The VDP said, "While he struggles with some extremely powerful memories of past events that are at the distal end of human experience, he is dedicated to his wife and son and realizes how much he has to gain from continuing treatment." **The court undertook a therapeutic approach and sentenced Joe to VA PTSD and substance abuse treatment for 18 months, allowing him to heal and return to his family to once again be a productive member of society.**



*The Case Study veteran names have been changed for privacy protection and all photos are from istockphoto.



The VDP Assists Public Defenders in Fulfilling the U.S. Supreme Court Unanimous Ruling That Defense Counsel Must Investigate a Veteran Defendant's Military Service & Battle-Borne Mental Health Ailments

The VDP is helping public defenders to fulfill their constitutional obligation to investigate their client's military service, and any related mental health ailments that may have contributed to their offense, and seek mitigation. In *Porter v. McCollum*, 558 U.S. 30 (2009), **the United States Supreme Court ruled unanimously that public defenders must adequately investigate their client's military background to include battle-borne mental health illness, such as PTSD, and reasonably present such evidence in mitigation.** Although the defendant was a decorated Korean War veteran, his court-appointed counsel neither investigated nor presented evidence of his military service to the jury, and the Court reasoned that this type of evidence might have swayed the jury. Porter's defense counsel was found ineffective in this *per curiam* decision.

The Supreme Court emphasized:

"Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did. Moreover, the relevance of Porter's extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter." (Porter v. McCollum, 558 U.S. 30, 130 S.Ct. 447 (2009).



Helping Those Who Defended Us:

Deanne Quinn Miller, VDP Program Coordinator, assists a veteran with expert referrals and guidance on VA treatment and therapy programs in August 2015 at the Batavia office.

VDP Public Defender Office Assistance Site Visits

Office site visits were conducted with Chief Defenders and their staff at eleven county public defense programs to train, educate and advise on the issues surrounding the representation of veterans in family and criminal court, and to assist them in connecting veteran clients with service programs.

- Columbia County Public Defender Office**, Hudson, NY, 05/08/14.
- Cattaraugus County Public Defender Office**, Olean, NY, 06/30/14.
- Livingston County Public Defender Office**, Geneseo, NY, 10/31/14.
- Steuben County Public Defender Office**, Bath, NY, 10/31/14.
- Orleans County Public Defender Office**, Albion, NY, 11/7/14.
- Genesee County Public Defender Office**, Batavia, NY, 12/10/14.
- Rockland County Public Defender Office**, New City, NY, 7/16/15.
- St. Lawrence County Public Defender Office**, Canton, NY, 7/14/15.
- Kings County, Brooklyn Defender Services Office**, NY, 7/30/15.
- Niagara County Public Defender Office, Lockport**, NY, 8/17/15.
- Westchester County Legal Aid Society Office**, White Plains, NY, 9/17/15.

VDP Legal Trainings

The VDP provided extensive training to over 600 public defenders, legal aid society attorneys and assigned counsel in New York State through twelve national, statewide and regional training workshops and conferences. The trainings often provided Continuing Legal Education (CLE) credits for attorneys. The trainings received rave reviews with one seasoned public defense attorney stating, "This was the best training I have ever attended."

Cattaraugus County CLE, Olean, NY, 8/15/14, Best Practices for Representation of Veterans

Monroe County CLE, Rochester, NY, 8/29/14, Best Practices for Representation of Veterans

Albany County CLE, Albany, NY, Statewide Training, 10/17/14, Representing Veterans in NY Courts

National Association for Public Defense Webinar CLE, 2/26/15, Defending Veterans in Criminal Court

29th Annual Metropolitan Trainer CLE, New York City, NY, 3/14/15, Representing the Veteran From Arrest Through Disposition

Ontario County CLE, Canandaigua, NY, 3/20/15, Representation of the Veteran Client: Understanding the Issues & Tips for Effective Advocacy

Oneida County CLE, Utica, NY, 4/25/15, Using your Veteran Client's Military Experience, Training and Culture in their Defense

Syracuse University College of Law CLE, Syracuse, NY, 5/4/15, Defending the Veteran Client

NAACP Legal Defense Fund 36th Annual Capital Punishment Training Conference, Warrenton, VA, 7/9/15, Defending Veterans in Capital Cases

7th and 8th Judicial Districts, Batavia, NY, 8/13/15 & 8/14/15, Veterans Defense Program Point Person Training

Rockland County CLE, New City, 9/17/15, Defending the Veteran Client

Westchester County CLE, White Plains, NY, 9/18/15, Best Practices for Representation of Veterans

5th & 6th Judicial Districts, Syracuse, NY, 10/15/15 & 10/16/15, VDP Point Person Training

2nd, 10th & 11th Judicial Districts, Hempstead, NY, 11/12/15 & 11/13/15 VDP Point Person Training



Best Practices for Representation of Veterans:
(L-R) VDP Legal Director Art Cody and VDP Director Gary Horton speaking at September 2015 training in Westchester County.

Evaluation Comments on VDP Trainings

"Outstanding! Thank you!"

"Excellent panel of very moving, informative and wonderful speakers. Keep up the good work."

"The best Continuing Legal Education (CLE) I have attended. Congrats!"

"Excellent direct-experience presentations."

"Very informative and heartfelt presentations. An excellent CLE. Thank you."

"Great presentations and introduction to representing veterans."

"The U.S. Army veteran was excellent and his presentation was personal which made it incredibly interesting and helpful."

"Great training – thank you!! It definitely opened my eyes to many issues to consider."

"Great to hear more about veteran's experiences, military culture and how it relates to cases."

"Such an important topic for such a marginalized and misunderstood population."

"Talented and excellent speakers."

"Very informative and on point presentations with great resources."

"Great presenters with insightful and helpful points."



Statewide Training Features National Experts

The Veterans Defense Program's Best-Practice Litigation Training for Lawyers Representing Veterans on October 17, 2014 featured national experts on defending veterans in criminal court and the treatment of veterans with PTSD and TBI. (L-R): Jonathan E. Gradess, NYSDA Executive Director; Attorney Brock D. Hunter, a nationally-recognized expert and author of the seminal [The Attorney's Guide to Defending Veterans in Criminal Court](#); Ed Tick, Ph.D, Executive Director of the international organization Soldier's Heart, and author of the nationally acclaimed book, [War & The Soul: Healing Our Nation's Veterans from PTSD](#); Art Cody, VDP Legal Director, and Gary Horton, VDP Director.

VDP Outreach Presentations

The VDP legal staff traveled throughout the state to meet with 26 organizations working on public defense, criminal justice and family court veteran issues. The VDP provided information on its programs, trainings and resources, and surveyed groups about any needs they have to best serve justice-involved veterans and service members.

- Bronx Defenders**, New York City, 5/9/14.
- Seventh Judicial District Chief Defenders Meeting**, Canandaigua, 5/9/14.
- Ontario County Veterans Court Planning Committee**, Canandaigua, 5/15/14.
- Veterans Outreach Center**, Rochester, 5/17/14.
- Clearpath for Veterans**, Syracuse, 6/13/14.
- Marine Corps League**, Albany, 6/28/14.
- American Legion**, Department of NYS, Statewide Convention, Albany, 7/17/14.
- Center for Court Innovation**, Syracuse, 8/1/14.
- Genesee County Bar Association**, Batavia, 10/1/14.
- Partners In Restorative Initiatives**, Rochester, 11/10/14.
- Chief Defender Association**, Albany, 12/15/14.
- Judge Robert Russell**, Buffalo City Veterans Treatment Court, Buffalo, 1/27/15.
- National Alliance on Mental Illness**, Albany, 1/12/15.
- Syracuse Law School Veterans Clinic**, Syracuse, 1/29/15.
- Dr. Cory Crane, Strength at Home Program**, Rochester, 2/20/15.
- VA Committee on Women's Programs**, VA Western NY Medical Center, Buffalo, 3/11/15.
- Hofstra Law School**, Hempstead, 4/23/15.
- East End Vets Long Island**, East End, NY, 4/25/15.
- Groveland Correctional Facility, Veterans Program**, Groveland, 4/29/15
- Veterans of Foreign Wars**, Albany, 5/2/15.
- New York State Council of Veterans Organizations**, Albany, 5/13/15.
- One-Stop Veterans Center of WNY**, Buffalo, 6/26/15.
- Brooklyn Defender Services**, 8/12/15
- Orleans County Magistrates Association**, Albion, 9/9/15.
- Harlem Vet Center**, Harlem, 9/11/15.
- NY City Council Veterans' Affairs Committee Chairman Eric Ulrich**, NYC, 9/25/15.



**ABC News Journalist
Bob Woodruff
Meets with VDP Staff**

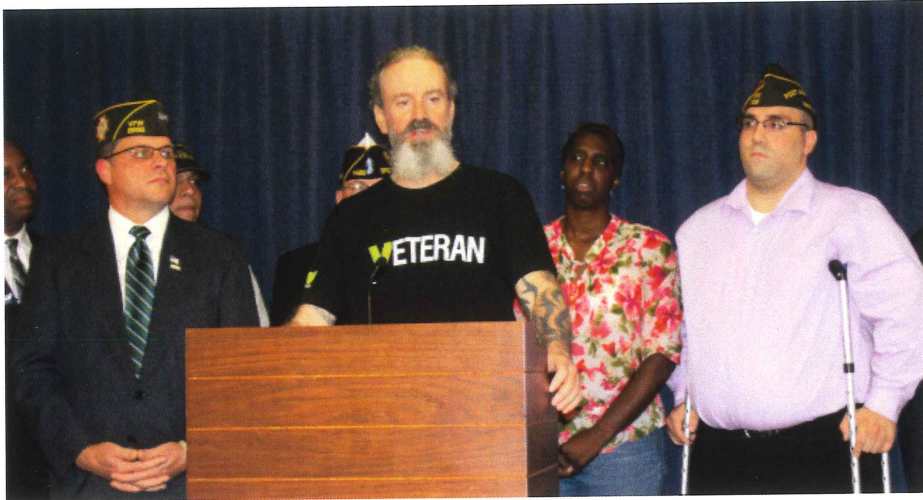
Bob Woodruff, former co-anchor of "ABC World News Tonight," was severely injured with Traumatic Brain Injury from a roadside bomb while reporting in Baghdad, Iraq. After his recovery, he and his wife wrote a book, [In an Instant: A Family's Journey of Love and Healing](#), and created the Bob Woodruff Family Foundation in support of veteran service programs. (L-R) VDP Legal Director Art Cody; Bob Woodruff; and VDP Director Gary Horton meet at the Mental Health Foundation August 2014 event in Saratoga Springs, NY.



**Former First Lady
Matilda Cuomo
Meets with VDP Staff**

(L- R) VDP Legal Director Art Cody; Former First Lady Matilda Cuomo, wife of former NYS Governor Mario Cuomo; VDP Director Gary Horton; and VDP Program Coordinator Deanne Quinn Miller meet at the Mental Health Foundation 2014 event supporting treatment for mentally-impaired veterans.

Veterans Defense Program Supporters



Supporting Treatment for Veterans

Robert Porter speaks in support of the VDP's treatment-oriented approach for PTSD veterans at an Albany 2015 news event. (L-R: John Lewis, VFW; Robert Porter, Marine Corps League; Linda McKinnis, Disabled American Veterans; and Steven Cippitelli, VFW.)

The Veterans Defense Program is strongly supported by over 30 veteran organizations, including the American Legion, American Merchant Marine Veterans, AMVETS, Black Veterans for Social Justice, Clear Path for Veterans, Disabled American Veterans, Jewish War Veterans, Harlem Vet Center, Marine Corps League, Military Order of the Purple Heart, New York State Council of Veterans Organizations, PEF Veterans, Veterans of Foreign Wars, Veterans Outreach Center and WNY One-Stop Veterans Center.



Supporting Justice-Involved Veterans

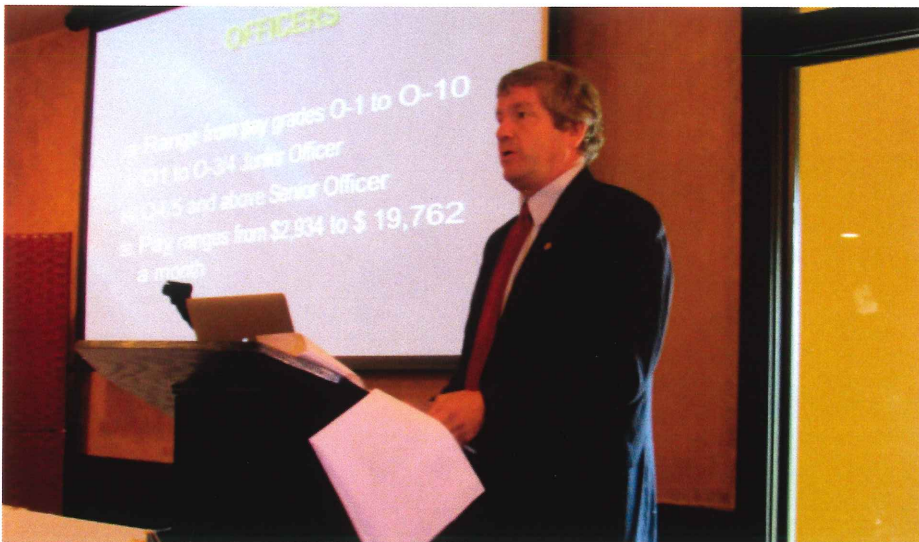
VDP Legal Director Art Cody speaks at a 2014 Albany, NY news event in support of assisting justice-involved veterans with mental health ailments.

Veterans Defense Program Full-Time Staff



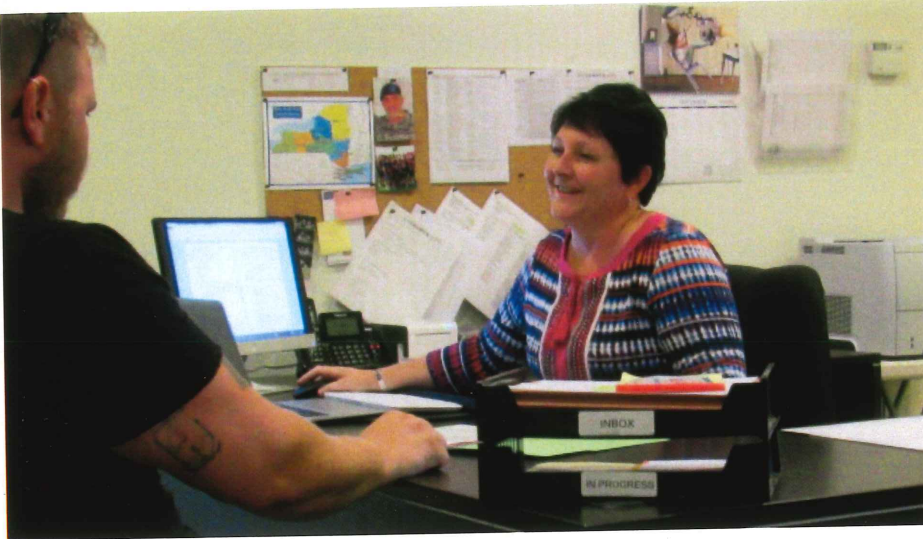
Gary A. Horton is Director of the Veterans Defense Program.

A graduate of Hofstra University School of Law, Horton's practice has centered on public defense for more than thirty years, and he was Genesee County Public Defender for twenty years, before becoming the VDP Director. Horton is the recipient of the NYSBA Criminal Justice Section David S. Michaels Award (2006), the New York State Defenders Association Wilfred R. O'Connor Award (2011), United States District Court for the Western District of New York Special Service Award (2005), and a Friend of the Mental Health Association of NY (2015). Horton is a founding member and past President of the Genesee Veterans Support Network.



Captain Art C. Cody, USN (Retired) is Legal Director of the Veterans Defense Program.

A graduate of West Point, Cody has a Master's Degree from the University of Southern California and graduated magna cum laude from Notre Dame Law School. Cody first served as a U.S. Army helicopter pilot, followed by similar service in the Navy Reserve. Most recently, he was mobilized for Operation Enduring Freedom in 2011, serving for one year at the United States Embassy in Kabul, Afghanistan as Staff Director of the Interagency Rule of Law Section. For his Afghan service, he received the Bronze Star Medal and the State Department Meritorious Service Award. He retired from the Navy in 2012 after 30 years of service. As a civilian lawyer, he has represented criminal defendants for over 15 years. He is a recipient of the Thurgood Marshall Award for Capital Representation from the New York City Bar Association.



Deanne Quinn Miller is the Program Coordinator of the Veterans Defense Program.

Miller was previously the Executive Director of Genesee Veterans Support Network in Genesee County. She has extensive knowledge of veteran issues, VA health and education benefits, as well as the systems of the VA and Department of Defense, to assist in collecting pertinent client military history information. She is also a spokesperson and Director of the Forgotten Victims of Attica and a cum laude graduate of the University of New York at Buffalo.

For information and assistance, contact the Veterans Defense Program.

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