

New York State Defenders Association (NYSDA)

# Veterans Defense Program 2017 Annual Report

*Defending Those Who Defended Us*





# **NYSDA Veterans Defense Program**

## **2017 Annual Report**

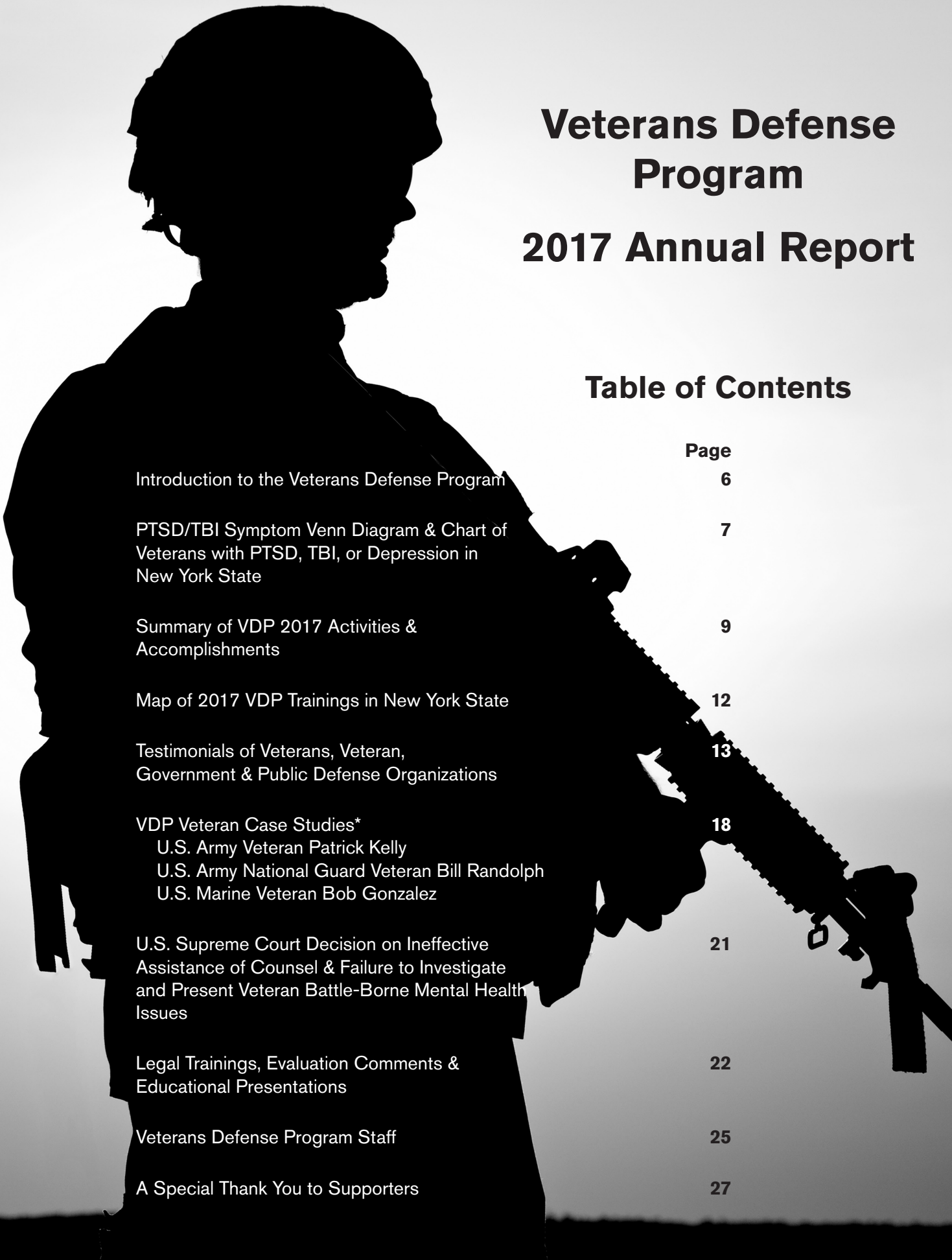
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# Veterans Defense Program

## 2017 Annual Report

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# Introduction to the Veterans Defense Program

## *Defending Those Who Defended Us*

The Veterans Defense Program (VDP) provides training, support, and legal assistance to promote trauma-informed effective representation of veterans and service members in New York State's criminal and family court systems. The first of its kind in the nation, the VDP was launched in response to a crisis situation as growing numbers of veterans with service-related mental health illnesses were lost in the criminal justice system.

### **Promoting Justice & Fairness**

The Veterans Defense Program (VDP) is a project of the New York State Defenders Association (NYSDA), a statewide non-profit organization working to improve the quality and scope of publicly supported legal representation for people who cannot afford a lawyer.

### **Intersection of Military Service, Mental Health & Criminal Justice**

Studies report that depressive disorders, substance abuse, Post-Traumatic Stress Disorder (PTSD), and Traumatic Brain Injury (TBI) among veterans are at epidemic proportions. Of the 582,000 Vietnam, Gulf, and Post-9/11 veterans in the state, approximately 174,600 are estimated to have PTSD, TBI, or depression. Studies show 50% of those veterans are untreated. (Sources: *Invisible Wounds of War: Psychological & Cognitive Injuries, Their Consequences & Services to Assist Recovery*, RAND Corporation, 2008; *Veterans & Health in NYS*, NYS Health Foundation, 2017.)

The U.S. Department of Veterans Affairs (VA) and the National Academy of Medicine report that veterans with mental health conditions are at significant risk of arrest as their trauma symptoms may lead them to criminal conduct. PTSD and TBI are linked to incarceration, antisocial behavior, and violence among veterans. The VA found the association between PTSD and violence is especially strong among post-9/11 veterans. Moreover, the numbers are expected to increase. According to the VA, the veteran population will increase 46% between 2014 and 2019.

Attorney Brock Hunter, a recognized national expert on

veteran defense, summarized the situation. "We are fighting wars on the backs of volunteers and a smaller military and we recycle the same troops back over and over, with many tours of duty. PTSD rates climb with each additional tour. The military culture is one of service and sacrifice: you deal with your problems privately and don't complain or ask for help. Vets are badly treated and ignored in the criminal justice system. We need to give veterans support when they fall, particularly when they fall into the criminal justice system."

"Left untreated, the emotional wounds of war can have a dramatic and destructive impact on veterans," said Melissa Fitzgerald, Senior Director of the Justice for Vets, a division of the National Association of Drug Court Professionals. "If we don't intervene at the critical point of arrest, we risk losing veterans to the system forever. We can hold accountable veterans who commit crimes while connecting them to the benefits and treatments they have earned. Men and women who, instead of languishing behind bars, are going back to school, working, raising children, and living as civic assets. Veterans have fought for our freedom—shouldn't we fight for theirs?"

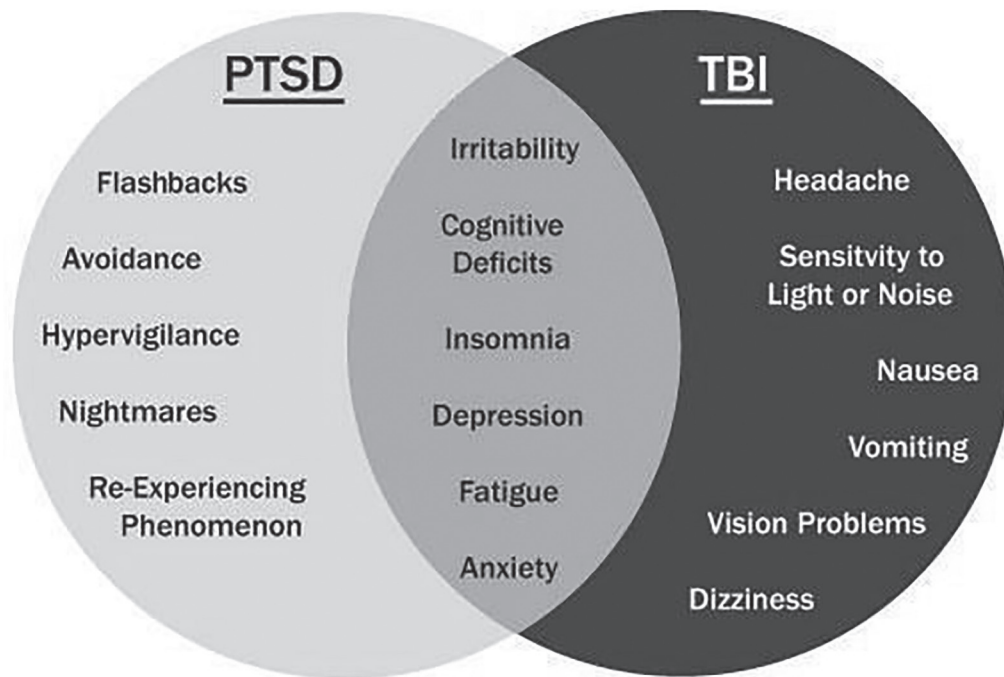
Justice-involved veterans often do not have the funds to hire an attorney and are represented by public defenders. Public defense attorneys are rarely trained to adequately represent veterans who suffer from the invisible wounds of war, or to translate the combat experience of their clients to explain resulting criminal behavior. Approximately 7%

of Americans are veterans. Thus, it is likely that very few judges, attorneys, and jurors are veterans.

Defense attorneys need to be educated as to the critical impact of military culture on justice-involved veterans. The military trains individuals to become warriors. To survive in battle, a soldier must remain

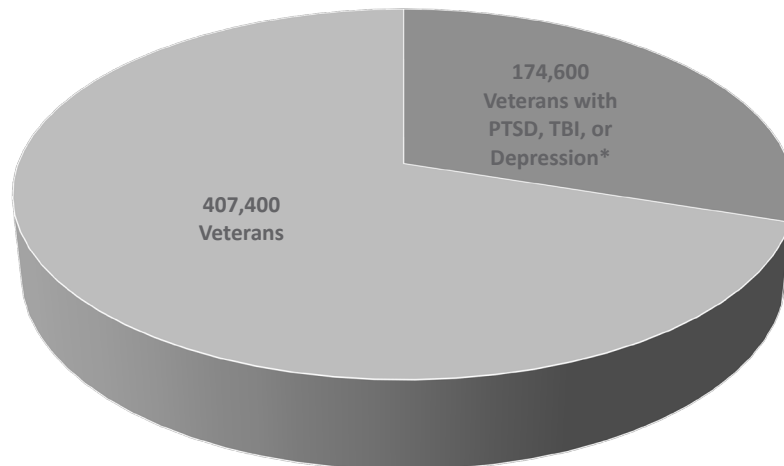
hyper-vigilant and learn hand-to-hand combat and how to use weapons. The skills that serve soldiers so well in the military often make reintegration into civilian life without help extremely difficult, especially when exacerbated by trauma. Defenders need to understand how a client's military experience and health issues impact their cases

Men and women who, instead of languishing behind bars, are going back to school, working, raising children, and living as civic assets. Veterans have fought for our freedom—shouldn't we fight for theirs?



***PTSD/TBI Symptom Venn Diagram  
(Post-Traumatic Stress Disorder & Traumatic Brain Injury)***

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



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

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

Sources: *Invisible Wounds of War: Psychological & Cognitive Injuries, Their Consequences & Services to Assist Recovery*, RAND Corporation, 2008; and NYS Health Foundation's *Veterans & Health in NYS*, 2017.



at every stage of representation and gain insight into how their mental health conditions affect them.

Significant progress has been made with the advent of Veterans Treatment Courts to provide a therapeutic health-based approach to respond to the mental health crisis among justice-involved veterans. However, New York has Veterans Treatment Courts in only 29 City, County, or Supreme Courts and most accept only a small percentage of cases, usually limited to misdemeanors and in some courts, non-violent felonies. Veterans with mental illnesses in the criminal justice system—the most vulnerable of our returning warriors—deserve an alternative resolution process with treatment and rehabilitation. Incarcerating veterans for medium level crimes, such as assault and burglary, when mental health treatment is needed and available, closes the door to substantial opportunities for healing, family restoration, and becoming a productive member of society. An alternative treatment track for veterans whose crimes stem from service-related injuries is strongly supported by many veteran organizations, including the Iraq & Afghanistan Veterans of America and the New York State Council of Veterans Organizations.

Defense attorneys need to be zealous advocates for therapeutic justice on behalf of their veteran clients and trained strategists in dealing with their client's mental health conditions with sensitivity. They need to understand that they are functioning as therapeutic agents in their interactions with their clients, particularly in the plea and sentencing process. However, to accomplish this, understaffed and overburdened public defenders need the support services of a resource center. As a statewide analysis found, the vast majority of public defenders were only able to spend an average of four hours on a case: from arraignment, to motion filing, to court appearances, to visiting clients in jail, to pre-trial hearings, to disposition and sentencing.

### **Legal Support Services for Justice-Involved Veterans**

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 attorneys provide innovative and case-specific legal assistance, resources, mentoring, and consultation in criminal and family court veteran cases.

VDP Deputy Director, Art Cody, a retired Navy Captain and Afghanistan veteran, describes the need for VDP:

*"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 advises public defense attorneys representing veterans on military culture and its impact on clients, service-related mental health issues, and client-centered legal approaches focused on treatment and sentencing mitigation. The VDP assists attorneys during every step of a case, from pre-trial motions to sentencing and re-entry. For instance, VDP attorneys will conduct in-depth research and interviews, make court presentations, help defenders obtain military or medical experts, and write Mitigation Memoranda and other legal documents.

### **Training Programs & Mentoring**

The VDP attorneys conduct Continuing Legal Education (CLE) trainings across the state for hundreds of public defense attorneys and presentations to bar associations, government agencies, and veteran organizations. The VDP trainings receive excellent reviews. The VDP is a program of NYSDA, an Accredited Provider of CLE.

The VDP staff provide mentoring, support, and expert referrals to help hundreds of veteran clients annually access treatment and address legal, health, benefit, social service, housing, employment, and other issues. The VDP also partners with NYSDA's Prisoner Pre-Entry Mentoring Program to provide mentoring to newly incarcerated veterans to help them transform their lives.

***The Veterans Defense Program provides training, support, and legal assistance to promote trauma-informed, client-centered representation of veterans and service members who are suffering from the invisible wounds of war and involved in New York State's criminal and family court systems.***



# Summary of Veteran Defense Program

## 2017 Activities & Accomplishments

- In 2017, the VDP assisted 370 veterans and trained 577 public defenders representing veterans in New York State's criminal and family court systems.
- In 2017 and 2016, the VDP helped justice-involved veterans to be diverted into treatment and probation, avoiding a maximum total of 518 years of incarceration with a costs savings to the State of up to \$31 million.
- **Mentoring & Assistance in 203 Cases with Many Veterans Receiving Support & Treatment:** The VDP provided legal assistance to defense counsel representing veterans in 203 cases, providing advice on how to obtain military and VA records, and assistance with expert referrals, including military culture and medical experts. The VDP also holistically assisted veterans and their families by providing mentoring, facilitating treatment and benefits, and addressing homelessness among other issues.

### *Assistance Provided in 370 Veteran Cases*

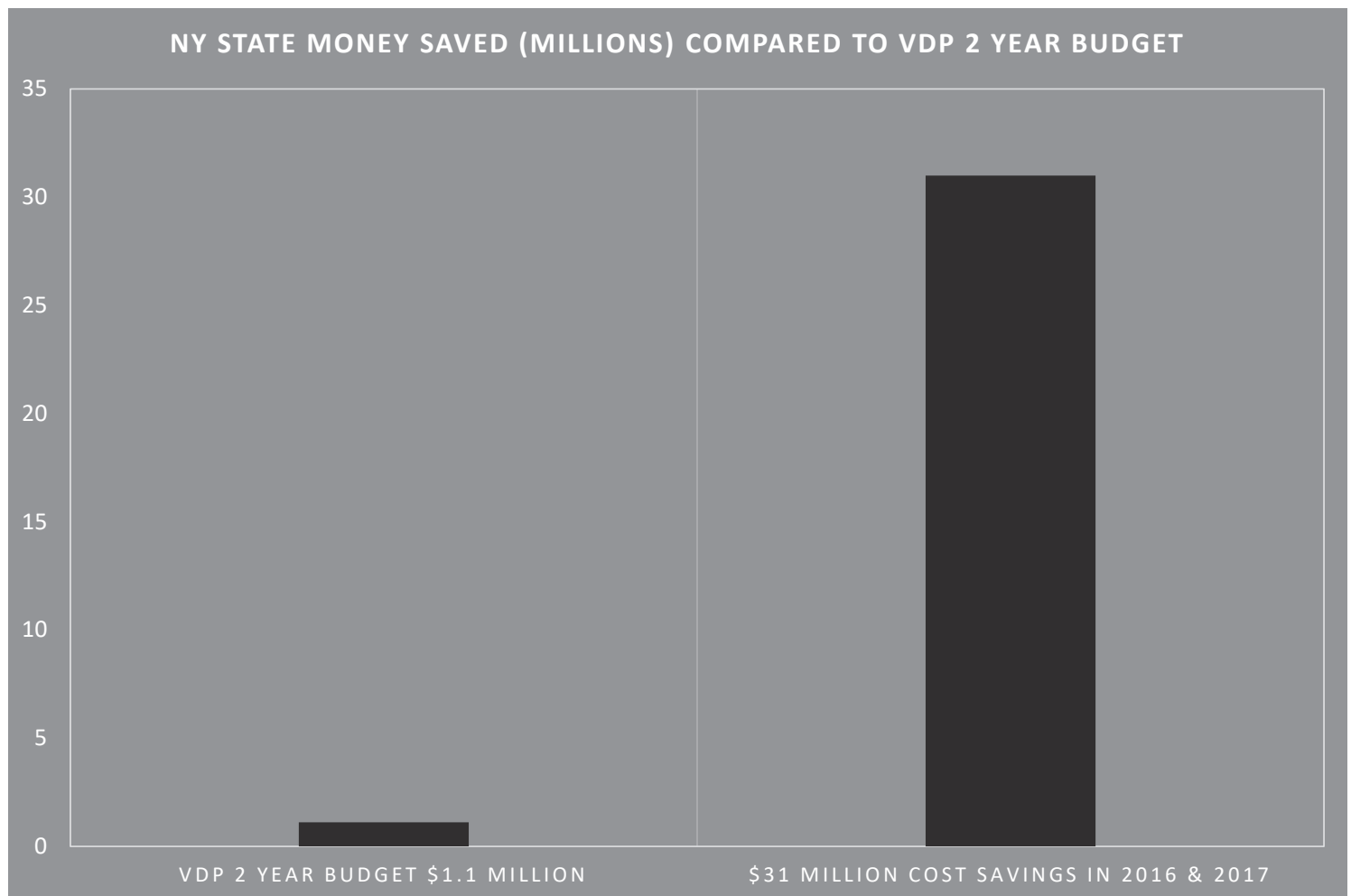
The VDP served as a backup resource and support program for attorneys in more than 120 county-based public defender offices, legal aid societies, and assigned counsel programs, and for individual veterans and their families. The VDP's assistance provided a second chance for veterans who have lost their way and facilitated a treatment-oriented mitigation approach focusing on restoration and rehabilitation. The following is a summary of the assistance that VDP attorneys and program staff provided to justice-involved veterans and their defense attorneys.

- **Substantial Legal Assistance in 156 Cases with Many Veterans Receiving Needed Treatment & Probation:** The VDP attorneys provided substantial assistance to defense counsel representing veterans in 156 cases. The VDP's zealous representation resulted in case victories where veterans were saved from incarceration, provided leniency by the court, and sentenced to probation and treatment to address their mental health conditions and/or substance abuse. The VDP conducted veteran client interviews, appeared in court as co-counsel, and drafted legal documents, such as Mitigation Memoranda, Criminal Procedure Law article 440 Motions, Bail Release Memoranda, and Motions to Dismiss in the Interest of Justice.

- **Mentoring 11 Veterans to Prepare for Prison:** The VDP partnered with NYSDA's Prisoner Pre-Entry Mentoring Program to provide mentoring and support to 11 veteran clients to help them transform their lives. The mentoring focused on education, job training, and wellness activities in prison leading to successful re-entry and reduced recidivism. The VDP also facilitated placement for these veterans in Level III Incarcerated Veteran Programs in the NYS Department of Corrections and Community Supervision (DOCCS). Located in three DOCCS facilities, these programs offer Veteran Dorms with mental health counseling and peer-to-peer veteran mentoring.

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

# A Treatment-Oriented Mitigation Approach Places Veterans on the Road to Recovery, While Saving the State Up to \$31 Million in Incarceration Expenses\*



\* The cost saving is calculated by taking the maximum number of incarceration years for the original charge and subtracting the number of years imposed in sentencing. The cost of incarcerating a prisoner for a year in New York State is estimated at \$60,000.

## ***Comprehensive Training Provided for 577 Lawyers Defending Veterans***

- **VDP Legal Trainings:** The VDP provided extensive legal training to 577 public defenders, legal aid society attorneys, and assigned counsel from 46 counties through 24 training workshops. The trainings provided Continuing Legal Education (CLE) credits for attorneys and received very positive reviews.
- **VDP Intensive Point Person Training:** The VDP held two Intensive Point Person Trainings for the 7th & 8th Judicial Districts in Batavia NY, and the 5th & 6th Judicial Districts in Syracuse, NY. As a result of these trainings, at least one attorney from each office that participated is now able to serve as a resource on veteran criminal justice representation and as a liaison to the VDP.
- **Educational Workshops, TV Shows & Conference Presentations:** The VDP participated in educational presentations to judges, attorneys, veterans, and legal organizations working on public defense, criminal justice, and veteran issues, such as the American Bar Association, NYS Association of Criminal Defense Lawyers, and NYS Council of Veterans Organizations. Deputy Director Art Cody appeared on *In Honor Of*, a Staten Island community television program about veterans. View the show at [https://www.youtube.com/watch?v=qBn4\\_bgdyy0](https://www.youtube.com/watch?v=qBn4_bgdyy0)





# Veterans Defense Program Supporters

## *An Invaluable Service for Veterans*

The VDP is supported by over 70 veteran, legal, and mental health organizations, including the American Legion, AMVETS, Chief Defenders Association of New York, Disabled American Veterans, Marine Corps League, Military Order of the Purple Heart, National Alliance for Mental Illness-NYS, NYS Association of Criminal Defense Lawyers, NYS Council of Veterans Organizations, United War Veterans Council, Veterans of Foreign Wars, and a majority of county public defense programs, such as Brooklyn Defender Services, Bronx Defenders, Legal Aid Society of Suffolk County, Legal Aid Society of Nassau County, Legal Aid Bureau of Buffalo, The Legal Aid Society, and the Chemung, Monroe, Oneida, Ontario, St. Lawrence, Ulster, and Wyoming County Public Defender offices.

## *What Veterans & Veteran Organizations Are Saying About the VDP*

"With the VDP's support and advocacy, our son was able to avoid a considerable prison sentence. I am certain that without Art Cody's help, the outcome would have been terrible for our family. Kyle\* has the opportunity now to continue being a Dad, a son, a brother and a contributing member of our community. Art was generous with his time, and he provided support for our family when we needed it the most. We will be forever grateful."

*Zane & Colleen Shepard\*, Parents of U.S. Army Veteran, Goshen, NY*

"Thanks to all of you and all the hard work everyone has done for my son!! We can't express how much you all have done to help him, and us. With much gratitude."

*Carole Knight\*, Mother of NYS National Guard Veteran, Watertown, NY*

"Thank you so much for your help over the last 15 months. Your service is a blessing! I really would not like to imagine what things would be like through this process without the VDP."

*John Jones\*, U.S. Army Veteran, NYS DOCCS Correctional Facility*

"Your service is a blessing!"  
– U.S. Army Veteran



"Thank you and everyone that helps you for all the help you've given me throughout this process. If it wasn't for you, I'd probably be looking at a lot more time. Thank you, Semper Fidelis."

*Ron Dallas\*, U.S. Marine Veteran*

"Gary Horton has been very helpful to our son. He has given us hope for justice for our son. Everyone whom I have been in contact with has been professional and helpful in all our dealings; even though we know that they are so busy handling their heavy caseloads."

*Beth Lorenzo\*, Mother of Army Veteran, Rome, NY*

"The angel warriors at VDP moved our family from complete helplessness to unwavering hopefulness. Although the case is still ongoing at this time, we are positively expecting a gratifying outcome that will enable our son to transition from soul-shattered wounded warrior to a free veteran grounded in wholeness."

*Amy Wayland\*, Mother of U.S. Army Veteran*



"I just wanted to say thank you so much for the time and effort you put in to make my situation better. I am currently at the ... Correctional Facility in the Veterans Dorm. They lost my property during transit and everyone helped me out with lending me clothes and stuff.... These veteran dorms are great.... It is really good to see that in such a flawed system that there are guys like you who devote so much time and energy to make other people's situations better for them and their families. Thank you."

*Matt Tarisino\*, U.S. Marine Veteran, NYS DOCCS Correctional Facility*

"I am a U.S. Marine and Iraq War veteran who has PTSD and TBI. The VDP's assistance proved to be invaluable to me and my public defense attorney. When I was arrested, I was humiliated and degraded by police officers ...

until Gary stepped in to help .... I know personally how important it is to have the help of the VDP attorneys; if it was not for them stepping in I would likely be sitting in a jail cell now .... The VDP was there to help me when no one else was. Veterans who find themselves caught in the legal system need the VDP—without them we are lost in the criminal justice system. The VDP's assistance gave me a second chance."

*Terry Thomas\*, U. S. Marine Veteran, Binghamton, NY*

"I could have never made it this far without your help. The work that you provide to veterans is more than just help, it is heavenly sent."

*Theo Lancaster\*, NYS National Guard, NYS DOCCS Correctional Facility*

"The VDP was there to help me when no one else was. The VDP's assistance gave me a second chance."

"Our statewide veteran council, representing 24 veteran groups, such as the Marines, Disabled American Veterans, VFW and Fleet Reserves Association, 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*

"The VDP has gone above and beyond in supporting our members engaged with the criminal justice system .... The VDP remains one of the most trusted veteran-specific pro bono legal advisers. It would be impossible to overestimate the impact of the VDP on the lives of New York's military community."

*Dre Popow, Executive Director, Veterans Rebuilding Lives, Astoria, NY*

"The Veterans Outreach Center serves over 1,000 veterans yearly and many are in need of legal services. Our members appreciate the important work of the VDP to help veterans and service members who find themselves with a family court or criminal court legal matter. VOC is supportive of the great work the VDP does. We see firsthand the lives it impacts."

*Todd Baxter, former Executive Director, Veterans Outreach Center, Rochester, NY*





## What The Legal Community Is Saying About the VDP

"Young men and women who return from combat have experienced events that only those who fought before them can truly understand. The VDP plays a vital role in educating those who represent veterans and those who sit in judgment of said veterans. I have worked on several cases with the VDP. In each case, the VDP's work made a significant difference in the outcome. For a recent case, Mr. Cody prepared a comprehensive and powerful memo with numerous exhibits. With the VDP's assistance, we were able to secure a disposition that included no further incarceration, but rather treatment by the VA followed by probation. I'm certain that were it not for the efforts of the VDP, my client would be in prison now commencing a multiyear sentence. As it is, he is at the Montrose Veterans Hospital beginning his treatment and recovery. They are a critical resource for any lawyer who is representing a veteran in criminal court. Thanks for this wonderful program which is making a true difference in people's lives."

*Andrew Kossover, Esq., Kossover Law Offices, LLP, New Paltz, NY*

"One of the best mitigation briefs I have ever read. Our client is certainly very lucky that you became involved in this case. Thank you very much."

*Mariann Connolly, Esq., Ulster County Assistant Public Defender, New Paltz, NY*

"Without the VDP's help, I doubt that I would have been able to obtain the client's full record or make heads or tails of it, certainly not in the limited timeframe. With Mr. Cody's help, I was able to provide the court with the requisite documents and the judge dismissed our client's case!"

*Alana Roth, The Legal Aid Society, New York, NY*

"I created the nation's first Veterans Treatment Court in Buffalo, NY, to address the unique needs of veterans especially those suffering from the invisible wounds of war, such as PTSD, TBI, military sexual trauma and major depression. I am

writing in support of the VDP as the program is filling a critical gap in New York's criminal justice system by training and educating public defense attorneys to effectively represent wounded warriors charged with a criminal offense, and to facilitate mitigation, treatment and restoration. I commend the VDP for its important work in helping justice-involved veterans regain their status as productive members of society.  
*Honorable Judge Robert T. Russell, Jr., City Court Judge, Buffalo Veteran Treatment Court*

"The work of VDP Director Gary Horton helped me assure [that] my client, carrying the scars and trauma of war, got the best representation possible."

*Michael Lopez, Esq. Monroe County Assistant Public Defender, Rochester, NY*

"I commend your program. It is a great service to our veterans who are impacted by the criminal justice system. I never had the benefit of such insider knowledge as Mr. Cody was able to impart."

*Jodie English, Attorney & Mitigation Specialist, Indianapolis, IN*





"I believe that Mr. Cody's support and evaluations of my client's military history helped us better understand his history and communicate that to the prosecution. Thanks in large part to the VDP's work, the prosecutor offered my client a plea to a violation and not a crime. Our gratitude for the VDP's assistance in this case."

*Aida Ferrer Leisenring, Barket Marion Epstein & Kearon, LLP, New York, New York*

"The support and assistance that Gary Horton provided to me and our office was outstanding. I am grateful for his assistance and, more importantly, his leadership of the VDP."

*Mark D. Hosken, Esq., Supervisory Assistant Federal Public Defender, Rochester, NY*

"I do not have a military background and do not possess the military expertise that was needed to clarify or to fully understand my client's assertions and to decipher the DD 214 and OMPF. The VDP's

assistance was invaluable. The VDP was a tireless advocate for my client."

*Jennifer Siletti, The Legal Aid Society, New York, NY*

"I have reviewed Gary's great mitigation memo. Hopefully it'll convince the District Attorney to [offer] an interim probation sentence. Thanks to Gary for all his expertise and help in this matter. Appreciatively,"

*Mike Arcesi, Chemung County Assistant Public Defender, Elmira, NY*

"The VDP is needed to serve the Veteran who is at extreme risk when entering the judicial system. Their unique ability to provide training, support, and legal assistance for Veterans who may have untreated service-related illnesses can keep service members from being overwhelmed by the legal system. The VDP's assistance provides a second chance for Veterans by facilitating a treatment-oriented mitigation approach. The VDP's assistance has led to impressive results."

*Eric J. Hesse, former Executive Director, New York State Division of Veterans' Affairs*

"I commend the VDP for its important work in helping justice-involved veterans regain their status as productive members of society."

"Gary and Dee spent a significant amount of time teaching me how to interview veteran clients and connect with the veterans in a way that was meaningful to them as military personnel and defendants. They also helped me navigate the requests for DD 214 and military medical records. Gary has written several mitigation letters that have helped our attorneys work out fair and appropriate sentences. The VDP is an asset to our office and to veterans living in Ontario County who need help with legal mitigation."

*Leah Morrow, Paralegal Specialist, Ontario County Public Defender Office, Canandaigua, NY*

"The unique challenges of effectively representing veterans and service members, especially those suffering from untreated mental health disorders, highlights the importance of the work of the VDP. As a leader of a public defense organization that represents many veteran clients, I can attest that the exceptional training provided by VDP attorneys Gary Horton and Art Cody is an invaluable resource."

*Lisa Schreibersdorf, Executive Director, Brooklyn Defender Services, Brooklyn, NY*



"The VDP is an amazing tool that every defense attorney should be able to avail themselves to in the course of their practice. I will forever be grateful for the assistance I received from the VDP. My client's charges were dismissed in the interests of justice. Mr. Cody was integral in helping me accomplish this feat and I thank him for his time, dedication and service."

*Stephanie Giancristofaro-Partyka, Esq., Legal Aid Society of Suffolk County, Central Islip, NY*

"I had the pleasure to work closely with the VDP on behalf of one of my clients and I declare without hesitation that this program is an invaluable resource for criminal attorneys with veteran clients. VDP's mitigation brief was a significant portion of the information supplied to the Judge on behalf of the client and unquestionably played a vital role in the Court considering and ultimately granting a favorable disposition in the case. The importance of the VDP's work to train and assist attorneys to effectively defend veterans and to seek mitigation and alternative dispositions with treatment and rehabilitation cannot be overstated."

*Brian J. Griffin, Esq., Foley Griffin, LLP, Garden City, NY*

"The VDP was a tireless advocate for my client."

\*Veteran names were changed to protect their privacy.



# VDP Veteran Case Studies\*

## ***VDP Obtains Treatment for Severely Traumatized Veteran Now Happily Married, In College to Become History Teacher***

### **U.S. Army Combat Medic Patrick Kelly**

"Thanks to the legal assistance of Captain Cody of the Veterans Defense Program, I am not in jail on a 5 year weapons charge," said Kelly recently. "Captain Cody's Mitigation Memorandum to the court explained my severe PTSD, suicidal depression and my traumatic incidences in Afghanistan and advocated a treatment-oriented approach. After hearing my story, the judge and District Attorney both supported three years of probation with PTSD treatment, saving me from incarceration and getting me into treatment. I successfully completed my VA PTSD treatment and am now going to college to be a teacher."

In 2012, Kelly enthusiastically joined the New York Army National Guard and was deployed from New York City to Afghanistan as a Combat Medic. 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 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 Kelly 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. Kelly and his teammates lived in near constant dread of immediate 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." Additionally, Kelly and his colleagues were forced to live in tents next to a loud and active construction site and mine fields leaving him only a few hours of sleep a day for two months.

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

"I successfully completed my VA PTSD treatment and am now going to college to be a teacher."



transport planes going back home. He was profoundly impacted when one of the loadings involved a soldier, killed in action, whose neck injury Kelly had treated earlier that year. He 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.

“What we really need for the defendant is the opportunity for him to get 100% better.”

Kelly suffered from monumental trauma as a medic in Afghanistan. Less than a month after returning home, he went to the VA Emergency Room in extreme anguish, unable to sleep, suicidal, and drinking heavily. The VA gave him the maximum rating for PTSD and also diagnosed him with depression and anxiety. He started treatment and 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 second-degree criminal possession of a weapon, facing up to 15 years in prison.

The VDP assisted the Queens lawyer representing Kelly and wrote a Mitigation Memorandum that urged the Court to provide leniency and treatment for his battle-borne PTSD. The VDP pointed out that the VA staff treating Kelly 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, Kelly receive treatment. The Judge and the Prosecution were impressed by the memorandum detailing Kelly’s traumatic military experience.

After learning of Kelly’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 prosecutor agreed to a disposition wherein Kelly 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 for your presence and insight. It was very, very helpful in closing the window on this case.” The VDP succeeded in obtaining therapy and justice for Patrick Kelly. Upon completing extensive VA treatment in 2017, he and his wife moved to Poughkeepsie, bought a house and he started college with the goal to become a history teacher.**

## ***VDP Obtains Treatment for Sergeant With Severe PTSD & Depression, Now Making a Fresh Start with a Sound Basis for Success***



### **National Guard & U.S. Air Force Reserve Staff Sergeant Bill Randolph\***

SSgt. Randolph served a total of nine years with the Army National Guard and Air Force Reserve. He first deployed in 2003 to Cuba's Guantanamo Bay with the 181st Infantry Regiment where the battalion's mission was to provide security in and around Camp Delta, a maximum security prison housing detainees from the Global War on Terror. His second deployment was to Kuwait in 2005, where he was served as a Blackhawk Helicopter Crew Chief manning a .50 caliber door gun. Randolph was diagnosed by the VA as suffering from major depressive disorder, PTSD, and alcohol dependence. The VA reported he had multiple military trauma incidents; the worst was at Guantanamo when he saw his unit Sergeant commit suicide by shooting himself in the head. He immediately began experiencing PTSD symptoms including sleep disturbance, nightmares, anger, detachment, and re-experiencing the event. He began to self-medicate with alcohol.

Upon leaving the service with an honorable discharge, the VA awarded him a 100% service-connected disability rating.

In 2016, Randolph was charged in Erie County with Driving While Intoxicated. His attorney requested assistance from the VDP when the Assistant District Attorney assigned to the case was reluctant to transfer the case to Judge Robert Russell's Buffalo Veterans Treatment Court (VTC). **After interviewing Randolph, and reviewing his military and VA records, the VDP wrote a Mitigation Memorandum. The memorandum convinced the prosecutor to allow him to participate in the VTC. In 2017, after a year of intense participation in VA treatment and regular appearances in VTC, he completed his treatment. Randolph has healed and is now making a fresh start with a sound basis for success.**

***"I sincerely hope that your office continues offering its services pro bono as many veterans simply cannot afford the high quality of representation your office provides."***

*Mark Dunford, Esq., Counsel for SSgt. Randolph\**

## ***Veteran Receives PTSD & Drug Abuse Treatment After Experiencing a Perfect Storm of Traumatic Violence in Iraq***

### **U.S. Marine Veteran Bob Gonzalez\***

Gonzalez embodies the effects of the rawest form of war as his Iraq combat service in 2006 was a perfect storm of traumatic violence. As a Marine infantryman, he was in the most hazardous job, in Fallujah, the most dangerous city, during one of the worst casualty years of the Iraq conflict. As a result, he saw many of his fellow Marines killed in action, with some burned alive, and he was diagnosed by the VA with PTSD. He self-medicated with alcohol and was arrested in Dutchess County on weapons charges, facing up to 15 years in prison.

The VDP reviewed his military records, and conducted numerous interviews with him and his Iraq chain of command personnel. The VDP wrote a Mitigation Memorandum that explained Gonzalez's traumatic military service and advocated a treatment-oriented approach. **Through close coordination with the VA's regional Veterans Justice Outreach Coordinator, he was accepted into two consecutive in-patient VA programs for substance abuse and PTSD.**

**As a result of the VDP's memorandum, the District Attorney's office agreed to a non-incarceration disposition with treatment and probation. Gonzalez's primary attorney, Andy Kossover, said, "I'm certain that were it not for the efforts of the VDP, he would be in prison commencing a multiyear sentence." Thanks to the VDP's assistance, Gonzalez has completed in-patient treatment at a VA medical facility and is now in a VA outpatient program.**



*"He saw many of his fellow Marines killed in action, with some burned alive."*

*\*Case Study veteran names have been changed for privacy protection.*





## Fulfilling the United States Supreme Court Ruling That Defense Counsel Must Investigate a Veteran Defendant's Military Service & Battle-Borne Mental Health Issues

The VDP is helping public defenders to fulfill their constitutional obligation to investigate their client's military service and any related mental health issues that may have contributed to their offense, and to seek mitigation. In *Porter v. McCollum*, 558 U.S. 30 (2009), **the United States Supreme Court ruled that defense attorneys must adequately investigate their client's military background to include battle-borne mental health issues, such as PTSD, and reasonably present such evidence in mitigation.** Although the defendant was a decorated Korean War veteran, his court-appointed counsel did not present evidence of his military service to the jury, and the Court reasoned this evidence might have swayed the jury. The 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, (2009).

# VDP 2017 Legal Trainings & Educational Presentations

The VDP provided extensive training to 577 public defenders, legal aid society attorneys, and assigned counsel attorneys in New York State. They also delivered educational presentations through national, statewide, and regional presentations and workshops. The trainings often provided Continuing Legal Education (CLE) credits for attorneys.

## VDP Legal Trainings

- Understanding Military Culture and Obtaining & Understanding Military & Veteran Records**, 1/24/17, co-sponsored by The Legal Aid Society, Staten Island, NY.
- Veteran Specific Theory of the Case, Motions, Defenses & Mitigation**, 1/27/17, co-sponsored by the Genesee County Bar Association, Batavia, NY.
- Military Cultural Competence, Investigation & Corroboration**, 2/10/17, co-sponsored by the Erie County Assigned Counsel Panel, Buffalo, NY.
- Interview Techniques in Veterans' Criminal Cases, Presenting Military Mitigation in Criminal Cases**, 2/21/17, co-sponsored by The Legal Aid Society, Staten Island, NY.
- Presenting Military Mitigation in Criminal Cases**, 2/23/17, co-sponsored by The Legal Aid Society, New York, NY.
- Veteran Specific Theory of the Case, Motions, Defenses, & Mitigation**, 2/24/17, co-sponsored by the Erie County Assigned Counsel Panel, Buffalo, NY.
- Understanding Military Culture, Obtaining & Understanding Military & Veterans Records**, 3/2/17, co-sponsored by New York County Defender Services, New York, NY.
- Defending the Veteran Client in the Criminal Courts**, 3/10/17, co-sponsored by the Allegany, Cattaraugus, and Chautauqua County Public Defender offices, Olean, NY.
- Western New York Point Person Training for the 7th & 8th Judicial Districts**, 3/23/17 and 3/24/17, Batavia, NY.
- Interview Techniques in Veterans' Criminal Cases & Presenting Military Mitigation in Criminal Cases**, 4/6/17, co-sponsored by New York County Defender Services, New York, NY.
- Mitigation in Representing Veterans**, 4/21/17, co-sponsored by the Oneida County Bar Association Assigned Counsel Program, NYS Office of Indigent Legal Services, and Oneida County Public Defender Office, Utica, NY.
- Representing Veterans in Criminal Courts**, 4/26/17, co-sponsored by Finkelstein & Partners Veteran Services Group and Orange County Bar Association, New Windsor, NY.
- Representing Veterans in Criminal Cases**, 4/27/17, co-sponsored by the Columbia County Public Defender Office, Hudson, NY.
- Veteran Specific Theory of the Case, Motions, Defenses, & Mitigation**, 4/28/17, co-sponsored by the Broome County Public Defender Office, Binghamton, NY.
- Defending the Veteran Client in the Criminal Courts**, 5/12/17, co-sponsored by the Saratoga County Public Defender Office, Ballston Spa, NY.
- Defending Veterans in Criminal Court**, 6/8/17, co-sponsored by the Suffolk County Bar Association, Hauppauge, NY.
- Defending the Veteran Client in the Criminal Courts**, 6/9/17, co-sponsored by the St. Lawrence County Public Defender Office, Canton, NY.
- Defending the Veteran Client in the Criminal Courts**, 6/22/17, co-sponsored by the Monroe County Public Defender Office, Rochester, NY.

**Representing Veterans in Criminal Courts**, 9/19/17, co-sponsored by Finkelstein & Partners Veteran Services Group and the Orange County Bar Association, New Windsor, NY.

**Representing Veterans in Criminal Cases**, 9/20/17, co-sponsored by the Dutchess County Bar Association, Poughkeepsie, NY.

**Defending the Veteran Client in the Criminal Court, Part I**, 9/22/17, co-sponsored by the Monroe County Public Defender Office, Rochester, NY.

**Central New York Point Person Training for the 5th & 6th Judicial Districts**, 9/28/17 and 9/29/17, Syracuse, NY.

**Defending the Veteran Client in Criminal Court**, 10/3/17 and 10/4/17, co-sponsored by the Legal Aid Society of Nassau County, Mineola, NY.

**Defending the Veteran Client in the Criminal Court**, 10/6/17, Watkins Glen, NY.

**Understanding Military Culture and Obtaining & Understanding Military & Veteran Records**, 10/20/17, New Paltz, NY.

**Defending the Veteran Client in the Criminal Court**, 10/27/17, Oneonta, NY.

**Defending the Veteran Client in the Criminal Court, Part II**, 12/8/17, co-sponsored by the Monroe County Public Defender Office, Rochester, NY.

## ***Evaluation Comments on VDP 2017 Trainings***

"This was fantastic!"

"It made me want to go back in time to better represent my veteran clients."

"Great speaker and a great and relevant subject."

"Awesome class."

"This two day CLE was the most informative CLE I have attended in some time. Thank you."

"Amazing presentation. I loved it."

"Amazing lecture and so informative."

"Excellent speaker; passionate and informative."

"I would attend again, even without the CLE credit. Well-done."

"Excellent on motions and defense."

"Mr. Horton was a delight."

"This was excellent and a very informative program."

"Art Cody is a wealth of knowledge that all attorneys should have the opportunity to learn from."

"Speaker gave a very practical presentation that will allow me to immediately improve my representation of veteran clients."

"Excellent program."

"Thank you for the sample motions as they are extremely helpful."

"Great and helpful presentation. Very comprehensive handouts and tips for veteran defense."

"Excellent presentation."

"Clear, concise, and interesting speaker. He really knows the subject well and is inspiring to lawyers representing veterans."

# VDP 2017 Educational Presentations

The VDP provided information on its services, treatment-oriented legal approach, and resources, and facilitated discussions among groups about how to best meet the needs of justice-involved veterans.

## **Educating Judges with the Center for Court Innovation & NYS Unified Court System**

VDP Director Gary Horton served on the Veterans Advisory Group of the NYS Unified Court System (NYSUCS) Office of Policy & Planning and the Center for Court Innovation (CCI) to develop trainings for judges and other court personnel. In the fall of 2017, CCI and NYSUCS held three educational events for judges and other court personnel, entitled *Enhancing Court Services for Veterans Initiative*. The events were held in Syracuse, Buffalo, and New York City. Horton facilitated a panel discussion on *Integrating Military & Veteran Cultural Competency into Practice* and led a breakout session for *Non-Veteran Treatment Court Practitioners*.

## **Educating Lawyers with the American Bar Association**

VDP Director Gary Horton gave a presentation at the American Bar Association (ABA) Annual Meeting in New York City on August 12, 2017. Horton spoke at a panel workshop entitled *Serving Veterans in Veterans Treatment Courts: Implementation and Effective Advocacy*. The workshop provided a summary of the critical steps needed to implement a successful Veterans Treatment Court, and legal strategies to effectively advocate for justice-involved veterans.

## **Educating Family Court & Criminal Justice Lawyers with Legal Services NYC**

VDP Deputy Director Art Cody and NYSDA Family Court Staff Attorney Lucy McCarthy gave presentations at Legal Services NYC's Veterans Justice Project in New York City on July 19, 2017. Cody and McCarthy discussed the effective representation of veterans in criminal and family courts.

## ***In Honor Of* TV Show**

VDP Deputy Director Art Cody gave a lengthy interview on *In Honor Of*, a Staten Island community television program for and about veterans. Cody discussed issues that veterans commonly face in criminal court and how the VDP assists such veterans.

[https://www.youtube.com/watch?v=qBn4\\_bgdyy0](https://www.youtube.com/watch?v=qBn4_bgdyy0)



# Veterans Defense Program Staff



**Gary A. Horton, VDP Director**, directs and manages the VDP, providing training, support, and legal assistance to justice-involved veterans and service members, and the public defense attorneys representing them. Previously, his legal practice centered on public defense for over 30 years, serving as Chief Public Defender of Genesee County for the last 20 years. He is a founding member and past President of the Genesee Veterans Support Network, and served on NYSDA's Board of Directors for 12 years, including as Board Vice President. He received the first-ever *National Alliance for Mental Health-NYS Criminal Justice Award* in 2016, *U.S. District Court for the Western District of New York Special Service Award* in 2005, the *NYS Bar Association Criminal Justice Section David S. Michaels Award* in 2006, and the *NYSDA Wilfred R. O'Connor Award* in 2011. He has a J.D. from Hofstra University School of Law and a B.A. in Political Science from Hobart College.



**Captain Art C. Cody, USN (Retired), VDP Deputy Director**, combines his military career experience with a legal focus on criminal mitigation. He served as a U.S. Army helicopter pilot in Germany, transitioned to the Navy Reserve, and flew with a Special Operations/Strike Rescue Squadron. His deployments include on the U.S.S. Enterprise in response to 9/11, and as Director of the U.S. Embassy Interagency Rule of Law Section, Kabul, Afghanistan in 2011-2012. As a civilian lawyer, he has represented defendants for over 20 years, specializing in mitigation in death penalty appeals. He was the Chair of the Capital Punishment Committee of the NYC Bar Association and a recipient of their *Thurgood Marshall Award for Capital Representation* and a national *Four Chaplains Humanitarian Award*. Art graduated *magna cum laude* from Notre Dame Law School, holds a Master's Degree from the University of Southern California, as well as a B.S. in Aerospace Engineering from West Point.



**Deanne Quinn Miller, VDP Program Coordinator**, assists with trainings and expert referrals, provides mentoring, and navigates the VA and Department of Defense systems to obtain military records for veteran cases. She has extensive knowledge of veteran issues and benefits. Previously, she was Executive Director of the Genesee Veterans Support Network. She received the *VA of Western New York's Women Veterans Justice System Award* in 2016, and a *Women of Distinction Award* in 2017 for her work with veterans. She is Director of the Forgotten Victims of Attica. She graduated *cum laude* from the University of NY at Buffalo with a B.S. in Consumer & Family Studies.

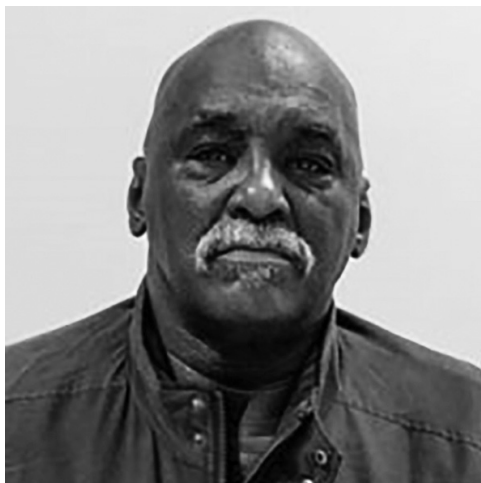




**Michael White, USMC (Retired), VDP Case Manager**, mentors veteran clients by providing guidance, support and expert referrals, and provides direct support to the VDP staff. White retired from the Marine Corps in 2014 with 22 years of military experience, including deployments to Haiti, Philippines, Korea, and Afghanistan. He has extensive firsthand knowledge of the many issues that veterans face and extensive knowledge of military culture and VA health and education benefits. He is working on his Associate's Degree in Human Services at Genesee Community College.



**Lynette Celedonia, VDP Clerical Assistant**, provides administrative support to the VDP attorneys and staff. She is a U.S. Navy veteran who served as an Illustrator/Draftsman in Seattle, WA and San Diego, CA. She has an A.S. in Liberal Arts from Monroe Community College, and previously was a welfare caseworker. She is completing her A.A.S. in Criminal Justice at Genesee Community College, and working towards a B.S. in Community and Human Services.



**Jay Coleman, Client Coordinator** for NYSDA's Prisoner Pre-Entry Mentoring Project, mentors people to prepare and survive prison life and develop a goal-oriented plan to be productive and healthy. Coleman is a formerly incarcerated person who previously worked at the Center for Employment Opportunities. He has given presentations on prison mentoring around the country, including at the Rutgers School of Criminal Justice, National Legal Aid & Defender Association (NLADA), and Osborne Association. He received the *Citizens Against Recidivism Eddie Ellis Lifetime Achievement Award* in 2010 and a *NLADA Client Contribution Award* in 2015.



# A Special *THANK YOU* to Supporters



## *New York State Legislature*

The VDP thanks the New York State Legislature for its legislative budget appropriation for the VDP in the 2017/2018 State Budget. Special thanks to NYS Senator Thomas Croci and NYS Assemblyman Michael DenDekker, Chairmen of the Senate Veterans, Homeland Security & Military Affairs Committee and Assembly Veterans Affairs Committee respectively and Senate Majority Leader John Flanagan and Assembly Speaker Carl Heastie. Thanks also, to the strong support of many other state legislators, especially many members of the Senate and Assembly Veterans Affairs, Codes, Crimes, Finance, Health, Judiciary, and Ways & Means Committees.

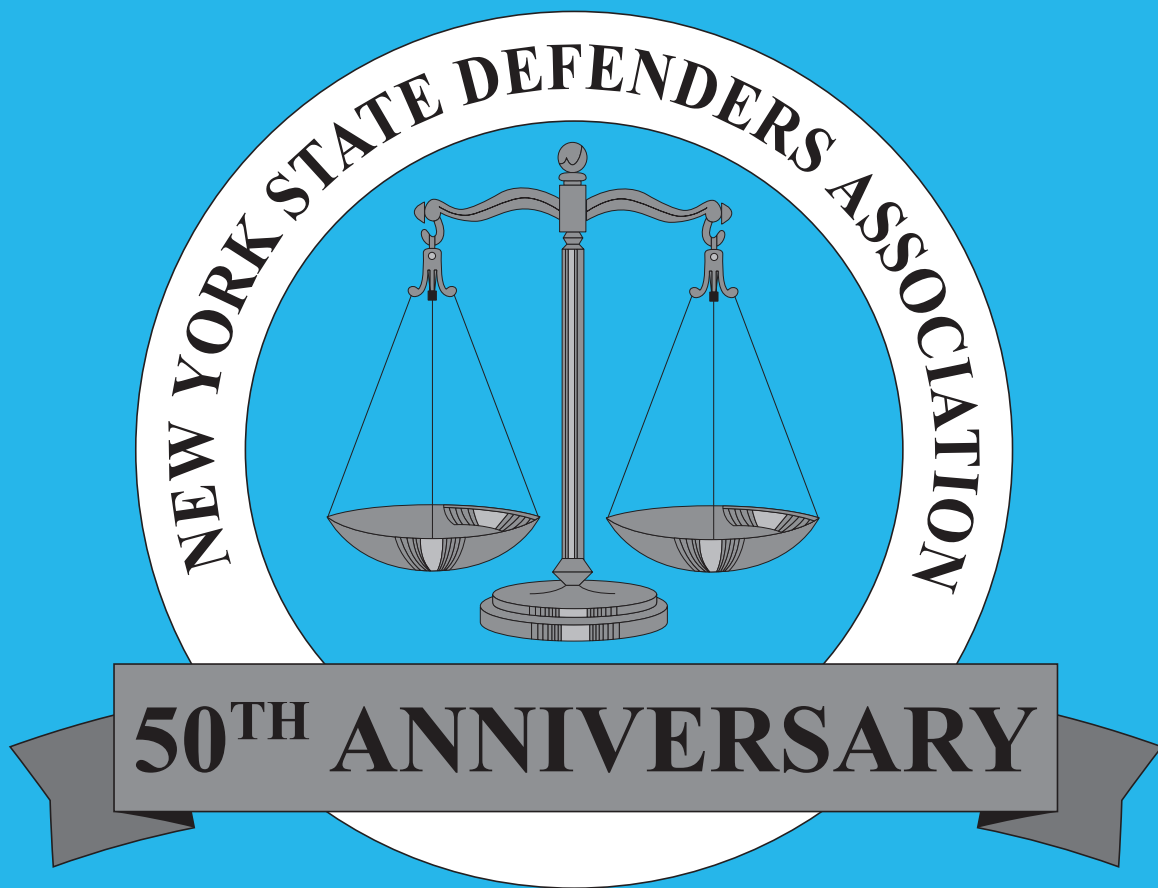


**BOB WOODRUFF FOUNDATION**  
Investing in the Next Chapter for Our Veterans

Thanks to the Bob Woodruff Foundation for a grant to conduct trainings.  
[bobwoodrufffoundation.org/stand4heroes](http://bobwoodrufffoundation.org/stand4heroes)



Thanks to the NYS Bar Foundation for a grant to conduct trainings.



**For information and assistance, contact the Veterans Defense Program.**

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*Find the VDP in the Special Projects section or*  
**<https://nysda.site-ym.com/?page=VetsDef>**