



Vigilant, by Henrietta M. Snowden, watercolor/colored pencil on paper, Kosovo, 2000.
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Chapter 18

MENTAL HEALTH AND DISCIPLINARY PROBLEMS

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INTRODUCTION

The relationship between disciplinary problems and the mental health of service members and veterans is complex, and it varies significantly from one individual to the next. The presence of preexisting mental health problems is associated with an increased risk of disciplinary/legal problems. Conversely, facing disciplinary/legal problems is inherently stressful and can lead to significant mental health problems, even in those without prior mental illness. Further complicat-

ing an understanding of the mental health impact of disciplinary problems is that research in this area is somewhat limited, especially in the active duty and reserve military population. The existing information clearly shows that disciplinary/legal problems can have a profound impact on mental health. Several programs have been developed to mitigate this impact; however, information about their effectiveness is limited.

JURISDICTIONS ASSOCIATED WITH SERVICE MEMBERS AND VETERANS WITH DISCIPLINARY/LEGAL MATTERS

Veterans who face legal problems generally do so in the civilian criminal justice system, much like any other civilian, although their cases may be heard in a special “veterans’ court” within the civilian criminal justice system. Although the definition of veteran can vary across studies and legal jurisdictions, in this chapter it is defined as a person who has been discharged from a US military service branch, regardless of length of service or type of discharge received. Military service members, defined here as a person on active duty in any branch of service (including reservists on active duty), however, can face disciplinary and legal problems in several additional venues:

1. They may be arrested and charged by civilian authorities and face proceedings in the civilian criminal justice system. This situation is usually the most similar to that encountered by veterans. Depending on the nature of the charges, a service member facing a civilian trial may be administratively separated before the trial outcome. The character of this discharge varies depending on the service member’s past record and other information;
2. Military authorities may charge military service members under the Uniform Code of Military Justice. In this case, they may be released pending court-martial, be released but restricted from leaving base, or held in pretrial detention. Pretrial detention may be in a military facility, or if one is not available, it will be in a civilian jail under contract with the Department of Defense (DoD).¹⁻⁴ If the individual is found guilty, a court-martial can in most cases award both an adverse discharge and confinement (incarceration). There were 1,651 service members incarcerated in military facilities in 2008⁵; or
3. They may face nonjudicial punishment, also sometimes referred to as an Article 15. In this case they do not face a judicial proceeding, but their commander/commanding officer may hear the case, determine guilt or innocence, and also award punishment. Depending on the offense, nonjudicial punishments can lead to an other-than-honorable discharge, often for drug use or a pattern of misconduct.

MENTAL ILLNESS AND CRIMINAL JUSTICE INVOLVEMENT

Mental illness has been repeatedly associated with civilian involvement in the criminal justice system. A recent study estimates that 55% to 80% of offenders in civilian correctional facilities have—or have had—a mental disorder.⁶ Fifteen percent to 25% of incarcerated offenders have a severe and chronic disorder,⁶ and the problem is particularly significant in veterans. Several studies in veterans have shown that combat exposure and posttraumatic stress disorder (PTSD) are associated with an increased risk of criminal justice system involvement.⁷⁻¹³ Another recent study has found an association between Operation Iraqi Freedom and

Operation Enduring Freedom veterans with PTSD and domestic violence.¹⁴

Few studies have been conducted involving service members facing disciplinary or legal proceedings, and most of them date from the 1940s and 1950s. The applicability of these older studies is unclear because the definitions of mental illness used then are different. The early studies also focused on service members who were incarcerated (generally in military detention facilities), whereas the vast majority of service members facing disciplinary problems today are not incarcerated. This latter difference is mitigated, however,

as the rate of incarceration for service members was higher in the past,¹² and the types of crimes described in these early studies often would not lead to incarceration today. Thus, although incarcerated at a higher rate, the service members in these earlier studies may have committed infractions similar to those seen in service members today. All of these studies focused on service members who had already been adjudicated; however, the authors of these studies found that the mental health problems usually preceded the onset of disciplinary problems. Information on service members who have been accused, and thus are earlier in the disciplinary process, is more limited. Even with these limitations, the findings clearly indicate an elevated rate of mental health problems in service members with disciplinary problems.^{15–18} Despite the lack of recent research, given the association of mental illness and criminal justice involvement in both civilian and veteran populations, as well as the earlier work in service members, it can be concluded that mental illness is also associated with an increased risk of disciplinary problems for service members.

Some mental illnesses (antisocial personality disorder, schizophrenia, paranoid type, substance dependence) are associated with increased rates of violence and criminal behavior, thus leading to legal problems and potential incarceration. With the move toward deinstitutionalization of people with chronic and severe mental illness in civilian populations, jails and prisons have at times—unfortunately—become a shelter when these individuals do not receive outpatient treatment. These individuals may have great difficulty holding steady employment and become homeless, and they are viewed as a public nuisance, leading to repeated arrests and incarceration often for nonviolent offenses.

The nature of military service can amplify a mental illness, which contributes to the risk of disciplinary problems. Military duty often requires living and working in close quarters, and often under stressful conditions. In addition, military life is a 24-hour-per-day endeavor, and military personnel on average are

more closely observed because they often live close to their supervisors and colleagues, especially in an operational setting. Thus, for example, a service member with PTSD may have difficulty with irritability and being in groups of people. In the civilian world, such a person could seek a job with relatively little contact with others and then go home and remain isolated. By remaining isolated, the individual—though still having PTSD symptoms—is less likely to have conflict with others, while the frequent contact with others in a military setting can lead to a greater risk of conflict and resulting disciplinary problems.

In addition, in the military such a person may have to be exposed to repeated reminders of trauma, such as gunfire from a practice range or exposure to the types of vehicles or situations in which he or she was traumatized. In addition, that person may be assigned to live in a barracks constantly surrounded by the people with whom he or she works. Adding to the stress, if a civilian finds that a job or living situation intolerably worsens his or her symptoms, he or she can move or quit and try to find a new job. A civilian will usually not face legal repercussions for moving or having occupational problems. Moving one's home or quitting a job that exacerbates one's symptoms are options often not available to the service member. Failure to report for duty is a disciplinary offense in the military. As a result, a service member with a mental health problem may have an increased risk of disciplinary/legal involvement compared to a similarly situated civilian, especially if unit or medical personnel have not identified the problem.

A history of mental health problems increases the risk for legal/disciplinary problems. Because of the regimented nature of military duty, the limited ability of service members to “get away” from the stress, the higher standard of conduct required by military law, and the potential exposure (for those with PTSD) to reminders of the traumatic event, service members with untreated mental illness may be at a particularly high risk for disciplinary/legal problems.

IMPACT OF DISCIPLINARY/LEGAL PROBLEMS ON MENTAL HEALTH

In addition to the potential for mental health problems to contribute to disciplinary/legal problems, justice system involvement is often very stressful and may create or worsen existing mental health problems. Research in civilian populations has primarily focused on the stress of being incarcerated.^{6,19–23} These studies have shown both increased psychological distress, including poor sleep and depressed mood, and an increased rate of physical symptoms in the immediate aftermath of incarceration.¹⁹ One study notes, “The

incarceration experience is a significant, stressful life event, even for those who do not have a mental illness.”²³ One individual in the justice system described incarceration as “a complete and utter shock to the system.”²⁰ Most of these studies also have found that the psychological distress is most severe during the first few days and weeks of incarceration.

Two recent studies^{6,24} have found that involvement with the criminal justice system at any level—including being arrested without incarceration—is associated

with significant distress⁶ and an increased risk of suicide.²⁴ The latter study also reports that the risk of suicide is increased even when other social risk factors and a history of mental health treatment were controlled for in it. The authors conclude that an “improved mental health service provision is indicated for all people who pass through the criminal justice system.”²⁴ Thus, significant evidence shows involve-

ment in the criminal justice system is associated with significant psychological distress, including an increased risk of suicide.

Limited research has been done regarding the impact of criminal justice system involvement on service members. Some of the studies date from the post-World War II period¹⁸ and may not be applicable. Most recent work has focused on the risk of suicide.^{25–27}

SUICIDE RISK

Research has shown that suicide risk is significantly increased in service members facing disciplinary/legal problems. In one study from 1998,²⁵ of those Marines who had been suicidal, 36% had a history of disciplinary/legal problems; however, in a comparison group of Marines who had not been suicidal, only 9% had a history of disciplinary/legal problems—a highly significant difference. According to the Final Report of the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces,²⁶ “A significant number of suicides among service members occurs in the context of an investigation or allegation of a criminal or other serious offense.” The report cites data showing that 15% of service members who committed suicide had received nonjudicial punishment, 13% had civilian legal problems, and 6% were facing administrative separation. Although only 1% of those who committed suicide were facing court-martial, the number is significant because of the relatively small number of service members who face a court-martial. In many of these cases, suicide followed the disciplinary issue within 30 days. The task force recommended that the DoD “develop and implement a DoD-wide policy requiring immediate command notification and chain of care (or chain of custody) for individuals who become aware they are being investigated for a criminal or other serious offense, immediately after they confess to a crime, and/or soon after they are arrested and taken into custody.”²⁶

The May 2011 US Marine Corps Suicide Activity Report featured an article titled “Legal issues associated with 40% of Marine suicides.”²⁸ The article noted

that during the 2008–2009 period legal issues were the second most prevalent issue associated with suicide in the Marine Corps. The article concluded, “Legal problems may be civil or criminal in nature. Both can have a devastating effect on a Marine’s state of mind and readiness if not addressed by leaders.” The article recommended that leaders talk with Marines being investigated for a potential legal issue and consider referral for mental health evaluation.²⁸

The DoD Suicide Event Report for 2011 noted that 18.72% of service members who attempted suicide in 2011 had a history of nonjudicial punishment/Article 15 hearings with a similar percentage (17.38%) in 2010.²⁷ An additional 3.42% had a history of court-martial.²⁷

Despite the limited research evidence, disciplinary/legal problems are very stressful for many service members because of the potential losses they can cause. A service member facing significant disciplinary action that could lead to separation from the military may lose pay, medical and dental benefits, retirement benefits, social support from his or her unit, and the respect of his or her peers. An adverse discharge may also interfere with the service member’s ability to secure a civilian job after discharge. The impact of incarceration is noted in Secretary of the Navy Instruction 1640.9C, which states that confinement “means loss of status and disapproval of the individual by the military society.”¹ Thus, it is clear that facing disciplinary/legal action can have a significant impact on mental health in service members, including being associated with many suicide attempts.

THE MILITARY LEGAL SYSTEM

Mental health problems can be considered in determining potential disciplinary action in two ways for service members whose disciplinary/legal issues may result from them. The first is a relatively informal process if the problem is brought to the awareness of the service member’s chain of command. The commanding officer can request a mental health evaluation and may communicate with the mental health provider regarding the potential impact of any mental

health issues on the service member’s behavior.^{29,30} The commanding officer can—if he or she feels it appropriate—consider this information when determining how to manage the service member’s case.

A more formal method, generally applicable to courts-martial, is to request a formal forensic mental health examination.³¹ In this case, the judge (or commanding officer before a judge is assigned) directs a mental health examination to opine on whether the service member

has a mental illness that removed responsibility for his or her behavior. The standard used is whether the accused had a “severe mental disease or defect” and if so, “was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease

or defect, unable to appreciate the nature and quality or wrongfulness of his or her conduct?”³¹ Anecdotally, this standard is rarely met, although information about mental health problems also can be introduced during sentencing and can mitigate the punishment.

THE CIVILIAN LEGAL SYSTEM

Although laws vary widely based on jurisdiction, as in the military justice system, the defense counsel or the judge in a civilian criminal case can raise the issue of mental health issues affecting criminal responsibility. These issues can also be raised as mitigation during the sentencing phase. Specialized veterans’ courts are increasingly being used to address the specific issues of veterans in the civilian criminal justice system. These courts, which are designed for veterans, often focus on rehabilitation and reintegration instead of incarceration. Although much less common, some veterans’ courts have also worked with service members facing civilian criminal charges. These courts exist in some state and local jurisdictions, and the structure and nature of these courts vary. Most—but not all—are limited to nonviolent crimes; violent crimes are handled in the regular court system. Many courts require the defendant to plead guilty before being admitted into the veterans’ court, although some use a deferred model, where the charge may be dismissed if the veteran successfully completes the treatment program required by the court. In most cases, the veteran is not incarcerated, but is required to participate in a comprehensive mental health treatment program. The defendant may be assigned a court-employed caseworker who

follows the case, ensures participation in a treatment plan, and complies with any other conditions of the court. In addition to mental health treatment, veterans’ courts often involve community service, job training, requirements related to living arrangements, alcohol and drug abstinence, and maintenance of employment.

The US Department of Veterans Affairs (VA), through the Veterans Justice Outreach (VJO) Program, is often an active participant in veterans’ courts and its role includes providing treatment. At times the VJO worker serves as a member of the team advising the court regarding the veteran’s progress.

More than 75 veterans’ courts exist, and more are planned. These courts have received attention in the news media.^{32–34} Although specific criteria vary from jurisdiction to jurisdiction, these courts divert justice-involved veterans from the traditional justice system into a system focused on closely monitored treatment and rehabilitation. These courts have been successful, with perhaps the best model being in Buffalo, New York, which did not have a single case of recidivism in its first 2 years of operation.³² Overall, 70% of defendants finish the prescribed course in veterans’ courts, and of those, 75% have not been rearrested 2 years after completion.³³

PROGRAMS ADDRESSING MENTAL HEALTH IMPLICATIONS

Given the significant potential for mental health problems for service members and veterans facing disciplinary/legal problems, several programs have been developed to mitigate the effect of these problems. Most of these programs are oriented to the Sequential Intercept Model, which is used as part of the jail diversion initiatives sponsored by the Substance Abuse and Mental Health Services Administration and its Center for Mental Health Services National GAINS (Gathering information, Assessing what works, Interpreting and integrating the facts, Networking, and Stimulating change) Center. The model identifies five points in the criminal justice

system contact where people can be intercepted and moved into appropriate treatment. These intercept points include the following:

- Law enforcement and emergency services;
- Initial detention in jail and initial court hearings;
- Jail, courts, forensic evaluations, and forensic commitments;
- Community reentry from jails, prisons, and forensic hospitalizations; and
- Community corrections and community support.^{13,35}

DEPARTMENT OF DEFENSE PROGRAMS: ACCESS TO MENTAL HEALTH SERVICES

Access to mental health services varies depending on the setting. Service members in civilian jails pending civilian charges often have limited access to

military services. In most cases, any services provided come from the civilian facility holding the service member, not the military. Service members being

held in a civilian facility because of military charges may have somewhat greater access, but given their distance and limited ability to leave the civilian facility, access will usually be limited in comparison with those who are on base. Services available in a military detention facility also vary by the type of facility.

Military regulations¹⁻³ divide military correctional facilities into categories based on the length of time a service member may be confined in the facility. Level I facilities can hold a service member for relatively brief sentences (maximum of 1 year). The service member generally relies on the installation where the detention facility is located to provide services. Services are often fairly limited in nature, including mental health support.³⁶ Level II and III facilities can hold service members for several years, or in the case of level III up to and including life without parole and death sentences. Although some variation exists by facility, these facilities generally have fairly robust mental health services and support. They also are required to have specially trained counselors to assist prisoners and often have their own mental health staff. Some also have specialized programs, such as for sexual offenders. Group and

individual therapy are usually available if indicated, and pre-release counseling, including referral to appropriate community services, is also provided.¹⁻³ Virtually all service members in level II or III facilities will receive an adverse discharge, and thus will not be eligible for VA services after their release.

Service members on “restriction” (required to remain on base) or facing disciplinary action without restriction (no limits on their movement) usually can access mental health and other support services on the installation. In the Army, most service members facing disciplinary action are offered a mental health evaluation. In the Navy, service members who have served in an imminent danger pay zone in the past 2 years and face involuntary administrative separation must have completed all required postdeployment evaluations before separation. In addition, if they have been diagnosed with PTSD or traumatic brain injury, they must have a mental health evaluation before discharge.³⁷ In many cases where the disciplinary action leads to discharge from the military, service members will not be eligible for VA services after their discharge.

SERVICE MEMBER JUSTICE OUTREACH PROGRAM

The Service Member Justice Outreach Program (SMJOP) developed from a joint VA /DoD meeting in October 2009 focused on increasing the integration of mental health efforts between the departments. It was determined that an opportunity exists for collaboration focused on the mental health needs of service members and veterans facing legal and disciplinary action. The SMJOP, which is being piloted at sites focusing on each of the services, provides support, information, and access to appropriate mental health services for service members facing administrative discharge from the military for legal or disciplinary problems. A Service Member Justice Outreach Worker (SMJOW), a licensed clinical social worker who is privileged at the military treatment facility serving the area, implements the program.

Service members who are eligible for the program are identified from a number of sources, including commands, legal officials, and themselves. The

SMJOW contacts and informs the service member about the program. If the service member agrees to participate, the SMJOW conducts a screening for mental health issues. Those found to have mental health problems are offered mental health services before their discharge, and they are also referred to appropriate civilian and (if the service member retained VA eligibility) VA services after discharge. In addition to mental health screening and referral or provision of needed services to service members facing a disciplinary discharge, the SMJOW also provides informational briefs to command and military justice officials about the program, proactively identifies and works with existing military and civilian resources that may benefit service members eligible for the program, and can serve as a liaison with the justice system with the service member’s permission. Participation in the program is voluntary for the service member.³⁸

VETERANS JUSTICE OUTREACH PROGRAM

In response to the needs of veterans involved with the civilian justice system, the VA created and operates the VJO and Health Care for Re-entry Veterans (HCRV) programs. The VJO program focuses on the first three intercept points that usually occur relatively early in an

individual’s involvement with the justice system. The stated purpose of the program is to “avoid unnecessary criminalization of mental illness and extended incarceration among veterans by ensuring that eligible veterans in contact with the criminal justice system have access to:

- a. VHA [Veterans Health Administration] mental health and substance abuse services where clinically indicated and
- b. Other VA services and benefits as appropriate.”³⁵

The program works with “justice-involved veterans” who are defined as follows:

- a. “A veteran in contact with local law enforce-

ment who can be appropriately diverted from arrest to mental health treatment;

- b. A veteran in a local jail, either pretrial or serving a sentence; and
- c. A veteran involved in adjudication or monitoring by a court.”²⁴

This definition intentionally excludes veterans in state or federal prisons who are served by the HCRV program described later.

VETERANS JUSTICE OUTREACH SPECIALISTS

Each VA medical center has a VJO specialist. Depending on the workload, this position can be full- or part-time. Although the VJO specialist’s role varies somewhat based on location and need, the focus is on veterans at “the front end of the justice system.”³⁹ In general, the duties include the following:

- Identifying, meeting with, and evaluating the needs of justice-involved veterans who are either in jail or are pending criminal action that could lead to jail, with the goal of determining their eligibility and need for VA services;
- Referring justice-involved veterans to appropriate VA and community services;
- Serving as liaison to local courts and correctional institutions, including special veterans, mental health, and drug courts where these exist;
- Providing training to local judicial officials, including lawyers and law enforcement staff on veteran-specific issues;
- Meeting with incarcerated veterans to determine their eligibility and need for VA services; and

- Communicating nonclinical treatment and program progress to officers of the court.”³⁵

Ideally, the VJO specialist spends about 70% of his or her time working directly with justice-involved veterans, which often involves significant—but usually brief—case management. The VJO specialist seeks to engage the veteran with appropriate services primarily within the VA system, but also with community resources if these will best fit his or her needs. Each VJO specialist is assigned to the catchment area of a VA medical center. These catchment areas are usually large and include numerous jurisdictions, many of which have their own court and jail. Because the VJO specialist must meet with veterans and officials in each jurisdiction, the position requires significant travel. VJO specialists generally try to visit each jurisdiction at least once per quarter and more often if the need requires.

For service members working with the SMJOP who retain VA eligibility, the SMJOW can do a direct “hand-off” to the VJO to ensure continuity of care after discharge from the military.

CHALLENGES IN VETERANS JUSTICE OUTREACH

One major challenge in VJO has been identifying justice-involved veterans. Several methods are used to identify these veterans, including group meetings with those incarcerated in local jails, where the program is explained. Veterans in those group meetings are encouraged to come forward privately. Also used to identify these veterans are posters in jails, VA facilities, and court buildings; referrals from court and law enforcement officials, including jail medical staff and defense attorneys; referrals from family members; and referrals from justice-involved veterans. Based on anecdotal discussions with VJO program staff, although most courts and law enforcement officials have been open to the program, some exceptions exist.

Most courts and law enforcement officials welcome the additional resources the program provides to help justice-involved veterans. The vast majority of eligible veterans also welcome the program.⁴⁰

This approach has led, however, at times, to unreasonable expectations. Thus, VJO specialists also must educate defense counsel and prosecutors. For example, VJO specialists cannot perform forensic mental health examinations or testify in court about forensic issues, although they can provide updates (with the veteran’s written consent) about the veteran’s participation and progress in treatment. In addition, justice-involved veterans generally do not receive priority placement in programs, despite the expectations of some veterans

and court officials.

Another challenge is eligibility. Most veterans with adverse military discharges (other-than-honorable or worse) are ineligible for VA medical services, including this program or HCRV. In these cases, the VJO or HCRV specialist may assist the veteran on one occasion with identifying community resources, but he or she

cannot provide other support.

VJO specialists also participate actively in special courts that have been set up for veterans, those with mental health issues, and those whose offenses involve drug use. The VJO program is ideal for settings where the focus is on treatment and case management in addition to—or in place of—punishment.

HEALTH CARE FOR RE-ENTRY VETERANS PROGRAM

Unlike the VJO program, the HCRV program seeks to intercept veterans in state or federal prisons at the fourth intercept point—community re-entry from the justice system. Veterans are eligible for the program 6 months before their scheduled release from prison until 4 months after. The program provides outreach, assessment, education, referral, postrelease case management, and advocacy regarding access to clinical programs.

Like VJO, referrals can be made both to VA and community services as appropriate. Unlike VJO, which has a program at every VA medical center, the HCRV program is Veterans Integrated Service Network region based, with 44 HCRV specialists. The HCRV specialist meets with veterans in prison, helps establish their eligibility for services, and evaluates them to determine their needs. The program then works with the veteran (and his or her family, if available and desired by the

veteran), appropriate community agencies, and VA services. A plan is developed to ensure the veteran receives needed treatment and support upon release from prison. The goal is to allow the veteran to return to a productive life and avoid recidivism.⁴¹

HCRV specialists also must travel because of their larger areas of responsibility. The relatively smaller number of state and federal prisons, however, makes this travel easier. They too work both directly with veterans and court and prison officials to identify veterans who are eligible for the program. One challenge has been that many community agencies are reluctant to provide services to convicted felons, which complicates placement and referrals. In addition, the HCRV specialist must know and develop relationships with a large number of community resources for assisting the veteran in receiving the treatment and services required.

EVIDENCE OF EFFECTIVENESS

A significant number of service members face disciplinary problems and the associated stress. Research in civilian and veteran populations, military suicide data, and the known significant losses suffered by service members facing disciplinary/legal problems indicate that these service members are at significantly increased risk for mental health problems, including suicide. In addition, appropriate intervention has been shown to be beneficial.

To this point, most of these programs have not been studied to determine their effectiveness. The

SMJOP, VJO, and HCRV programs measure outcomes, but no data regarding their effectiveness are available. In addition, evidence indicates that mental health services can help veterans face legal problems. One study has shown that provision of VA mental health services to justice-involved veterans (not through VJO, however) significantly reduced recidivism.⁴² Other studies also have shown that mental health treatment of justice-involved individuals (not necessarily veterans) has a beneficial effect.^{43–44}

CONCLUSION

Service members facing disciplinary/legal problems are at a significant risk for psychological health problems, including suicide. Preexisting mental health problems can contribute to criminal behavior and legal/disciplinary problems are inherently stressful, which can cause mental health symptoms or exacerbate preexisting ones. Several promising programs address this problem and attempt to mitigate the potential im-

pact of legal/disciplinary problems on mental health. With the exception of veterans courts, no data exist on the programs' effectiveness. However, given these programs' emphasis on improving access to treatment and other needed services, combined with the evidence that mental health treatment of those facing legal problems can be effective, it appears that these programs are a good first step and need further evaluation.

Providers working with service members and veterans who face legal or disciplinary action should be observant for potential mental health issues in these

patients. If found, prompt, effective treatment, including a broad-based approach to meet the individual's needs, should be used.

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