

# SERVING THE VETERAN COMMUNITY

by MAJOR DWIGHT STIRLING

The Rand Corporation's groundbreaking monograph, *The Invisible Wounds of War*, outlined the distressing, often internal damage sustained by combat veterans of Afghanistan and Iraq as they reintegrated into civilian society after their deployments. The 2008 report shocked many in the mental health, policy, and legal sectors, documenting the extent to which post-traumatic stress disorder, traumatic brain injury, and other often unseen war wounds haunted veterans upon their return. Central to the researchers' findings was the paucity of services available to treat veterans' unique types of injuries, including legal services. Legal services targeting veteran-specific needs are pertinent to removing barriers to healthcare, education, housing, and employment.

While progress has been made, many of the problems set forth in the report are just as pressing now as they were then, if not more so, as the armed forces' mission in Afghanistan ends after thirteen long years. One of the largest concentrations of military veterans in the nation is located in Southern California, with 750,000 veterans residing in the counties of Orange, Los Angeles, San Diego, as well as Riverside. Providing professional services and advocacy to the veteran population in the local community will

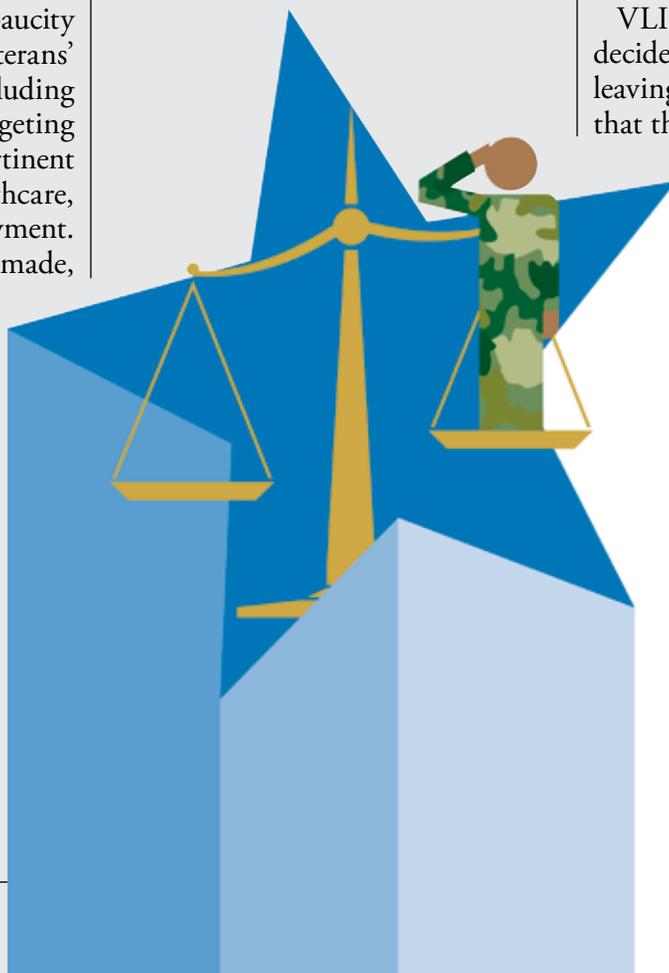
require a sustained effort for years to come.

In order to increase capacity within the legal field, Antoinette Balta and I recently founded the Veterans Legal Institute (VLI), a combined public law firm and think tank headquartered in Orange County. VLI's objective is two-fold—assist low-income veterans with legal issues and advocate for better protections for veterans and service members at the policy level. Ms. Balta brings to VLI many years of experience as a former staff attorney at the Public Law Center and

was one of the developing attorneys of its Operation Veterans Re-Entry Project. She is also a JAG officer in the California State Military Reserve, holding the rank of Captain. As a former active duty JAG officer with the California National Guard and a former clinical professor in military law at Chapman University's Dale E. Fowler School of Law, I am likewise familiar with the legal needs of the military and veteran communities, gained through years of service as an attorney and military officer.

## Legal Services Division

VLI's Legal Services Division is decidedly veteran-centric. A veteran leaving military service quickly learns that the Department of Defense does not have a corner on the market of complex bureaucracies. The Department of Veterans Affairs is a similarly large and complicated bureaucracy that can be challenging to navigate. Filing claims for service-related injuries and resolving lingering legal issues related to military service can be particularly difficult for veterans. Accordingly, two of the VLI's focal points in its Legal Services Division are disability/pension claims and discharge upgrades—VA-specific practice areas representing the largest need among veterans. These legal needs are often the



most overlooked at various legal aids throughout the country.

The process of filing a disability claim with the VA to establish a service-connected injury is often a winding road. Prosecuting the claim can involve an initial claims officer, a Decision Review Officer, the Board of Veterans Appeals, and lastly the Court of Appeals for Veterans Claims. It can be practically impossible for a veteran to navigate the disability claims process by himself, especially if his injury is indirect, unusual, or involves mental illness. Mental diagnosis from third-party doctors may be required to provide an alternative opinion to the VA's conclusion. Attorney assistance is vital both substantively and procedurally. While challenging, successful prosecution of a service-connected claim can result in monthly payments of over \$3,000, depending on the percentage rating of disability and family status, a life-changing outcome for a former service member struggling to deal with the often-invisible wounds of war.

VLI's second main practice area is discharge upgrades. At the conclusion of military service, a service member is assigned a "characterization of service," essentially a grade reflecting the command's evaluation of how well a service member performed. While most characterizations of service are positive, being either honorable or general (under honorable conditions), some service members are given negative characterizations, such as other than honorable, bad-conduct, or dishonorable. Negative characterizations can have long-term ramifications for a veteran as she transitions to civilian life, limiting or preventing the receipt of medical care or educational benefits available from the VA. Further, the stigma connected to a less than honorable discharge, especially for a veteran who deployed for multiple combat tours, can be mentally debilitating.

Many times, a veteran is assigned a negative characterization of service

that does not accurately reflect his/her performance. Consider the heart-breaking case of Amber, a female veteran who was the victim of military sexual trauma during her tenure on active duty. In Amber's case, she was sexually assaulted by her company commander during Advanced Individual Training in the Army. A twenty-year-old private first class at the time of the incident, her assailant was a thirty-five-year-old captain. Scared to report the incident for fear of retaliation and exclusion from her tight-knit unit due to the captain's senior status, Amber

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attempted to deal with the psychological fallout from the assault on her own. Over time, she withdrew from her friends, lost interest in her job, and turned to prescription drugs to cope with the pain. This in turn caused her to come up hot on a unit urinalysis test and be separated from the Army with a discharge characterization of other than honorable.

If Amber's other than honorable characterization is not upgraded after leaving military service, she may be excluded from critical VA benefits, including health care and the Post-9/11 G.I. Bill, an educational assis-

tance program that pays for four years of college. Cases involving unreported military sexual trauma are unfortunately common, with a 2012 study by the Pentagon finding that approximately 26,000 military members were assaulted in that year alone. Most of the instances of sexual trauma identified in the study were unreported.

Attorney assistance is critical in the discharge upgrade process as evidence of sexual assault will need to be developed and presented for the first time in the upgrade paperwork because veterans' military records are usually devoid of any mention of such assault. Working on sexual trauma cases requires sensitivity, compassion, and finesse, as the client is forced to relive painful experiences and discuss events that the veteran would rather forget. But the benefit to a veteran such as Amber receiving benefits such as the Post-9/11 G.I. Bill can be truly transformative and bring closure to a painful open wound. This is just one illustration of how VLI assists those who need a discharge upgrade. There are many cases where veterans who deployed on multiple combat tours return home with an "other than honorable" characterization due to trauma-induced behavior. VLI advocates for those veterans with their right to an appeal, aware of the fact that veterans who attend a hearing with an attorney are five times more likely to prevail.

### **Public Policy Division**

In addition to its Legal Services Division, the VLI also contains a Public Policy Division consisting of a think tank dedicated to education, research, and policy advocacy. There is a pressing need for a California-based research and policy institute focused on military and veterans issues. The California Military Department has seen its last three commanding generals removed from their positions for misconduct or ineffective leadership, with the 21,000-member agency still

reeling from a \$100 million recruiter/theft-related scandal that devastated its senior leadership and resulted in criminal prosecutions of many service members. Moreover, the federal Department of Veterans Affairs' failure to care for veterans' health-care has been widely reported in the media, leading to the recent resignation of former Secretary Shinseki. Further, glaring examples of inequitable treatment exist, including that California National Guardsmen are falling through the Post-9/11 G.I. Bill "doughnut" at an alarming rate, denied eligibility for the top-shelf educational program that is available to their federal reservist brethren.

Senior-level mismanagement in the military and veterans sectors is a symptom of the fact that the vast majority of elected officials and civilian attorneys have little or no understanding of military and/or veteran-related issues. Those charged with promulgating rules, providing oversight, and giving legal guidance simply lack the knowledge and background to be effective regulators, a by-product of an all-volunteer military that tends to draw heaviest from the lower end of the economic ladder. Without military service experience, the result is that civilian leaders having the constitutional responsibility of making rules for the military and overseeing veterans' care are forced to take the word of the military establishment—unable to independently query, confirm, and verify—which often results in uneducated or misinformed decision and policy making.

The VLI will help close the "knowledge gap" by producing scholarship that sheds light on veteran-related issues. It will also conduct community workshops to explain the key issues facing veterans and military members. MCLE programs for

attorneys will be a vital part of the VLI's educational component, with courses covering legal issues within the California Military Department, veterans' law, and the constitutional underpinnings of the United States Armed Forces establishment.

### Increased Emphasis on *Pro Bono* Service

It is an historic time to enter the *pro bono* space in Orange County. The California State Bar Association is developing a rule requiring law students and new lawyers to perform fifty hours of voluntary legal service. Further, four local law schools—UCI, Western State, Whittier, and Chapman—have redoubled their commitment to skills training, an emphasis perforce resulting in higher instances of public law activity. The creation of a combined public law firm and think tank focused on the legal needs of the veteran community provides an important platform for current and future lawyers to protect the rights and interests of the warriors who protected us all at home and abroad. It also provides a forum for students, practitioners, and academics to produce scholarship on military and veteran issues.

Ms. Balta and I share a passion for the veteran community. The bread and butter of Ms. Balta's work at the Public Law Center as a former staff attorney related to battling chronic homelessness amongst the veteran community, much of which came through administering free legal clinics around the county. As an original member of the Orange County Veterans and Military Families Collaborative, she has developed deep relationships with the various stakeholders in the local veteran services community.

My military service flowed directly from the events of September 11, 2001,

joining the Army National Guard in December of that year and taking a leave of absence from my civilian practice to attend basic combat training in Fort Jackson, South Carolina. I eventually closed my civilian practice to accept an active duty position with the California National Guard, a rare opportunity to serve as General Counsel of the Joint Forces Training Base in Los Alamitos. Leaving active duty to co-found VLI is a natural next step.

Serving the brave one percent of our population who have served us is a mission that the entire Orange County legal community can rally behind. VLI hopes that many of our colleagues will join our efforts and donate time to perform *pro bono* legal work for former service members in need. As we commemorate Veterans Day, let us keep squarely in mind that, for some, the cost of defending freedom is especially high, exacting a price that is often invisible and frequently lasts a lifetime.



**ON POINT**  
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**Major Dwight Stirling, Esq., M.Ed.,** is co-founder of the Veterans Legal Institute. He is also a reserve JAG Officer in the California National Guard, holding the rank of Major. To volunteer legal services or make a donation to the Veterans Legal Institute, please contact Dwight Stirling at [dstirling@vetslegal.com](mailto:dstirling@vetslegal.com).

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