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March 15, 2010

Defendants Fresh From War Find Service Counts in Court

By **JOHN SCHWARTZ**

CHARLESTON, W.Va. — When Judge Robert C. Chambers handed down Timothy Oldani's federal sentence for selling stolen military equipment on eBay, he gave the former Marine a break.

In Iraq, Mr. Oldani had performed the jangling work of detonating [improvised explosive devices](#) and had seen six of his fellow [Marines](#) burned alive in an armored vehicle. He left the service with [traumatic brain injury](#) and post-traumatic stress syndrome that, the judge concluded, had clouded his judgment. Under federal sentencing guidelines, the prison term could have been nearly five years; Judge Chambers decided on just five months, with three years of supervised release and treatment.

Many veterans like Mr. Oldani have returned from Afghanistan and Iraq burdened by post-traumatic stress, drug dependency and other problems. As veterans find themselves skirmishing with the law, judges are increasingly finding ways to provide them with a measure of leniency.

"More and more courts are noticing and asserting, in a variety of ways, that there seems to be some relevance to military service, or history of wartime service, to our country," said Douglas A. Berman, a law professor at [Ohio State University](#) and an expert on sentencing.

At the federal level, judges are bucking guidelines that focus more on the nature of the crime than on the qualities of the person who committed it. States, too, are forming special courts to ensure that veterans in court receive the treatment their service entitles them to.

While veterans are not considered to be more likely to be arrested than the rest of the population, [estimates released](#) by the [Bureau of Justice Statistics](#) in 2008 found 229,000 veterans in local jails and state and federal prisons, with 400,000 on probation and 75,000 on parole.

There are about 1 million veterans of the two current wars in the Veterans Affairs system so far, said Jim McGuire, a health care administrator at the [agency](#). He cited statistics suggesting that 27 percent of active-duty veterans returning to civilian life “were at risk for mental health problems” including post-traumatic stress syndrome.

Judges have recognized that many of those returning from war are carrying a heavy burden of damage that might not be physically visible. As one federal district judge in Denver, John L. Kane, [wrote in an order](#) giving a defendant probation instead of a prison sentence, the soldier “returned from the war, but never really came home.”

The judges’ decisions are part of a broader fight over sentencing, and over once-rigid federal guidelines that tend to punish the crime while giving little weight to the specific circumstances of the defendant. The [guidelines explicitly state](#) that “good works” like military service “are not ordinarily relevant” in determining whether to give sentences below the recommended range.

The [Supreme Court](#), however, in a series of cases, has declared that the federal sentencing [guidelines are advisory](#), not mandatory. The [United States Sentencing Commission](#) is considering [proposals](#) that would allow military service or other evidence of “prior good works” to be considered as mitigating factors in sentencing decisions.

The Supreme Court seemed to signal greater consideration for military service in a [decision in November](#) throwing out the death penalty for a Korean War veteran who was convicted in 1987 of murdering his former girlfriend and her boyfriend. Calling for a new sentencing hearing, the justices wrote that lawyers for the defendant, George Porter Jr., should have presented evidence of “the intense stress and emotional toll that combat took” on Mr. Porter, who suffered from “dreadful nightmares and would attempt to climb his bedroom walls with knives at night.”

In Mr. Oldani’s case, his lawyer, Christian M. Capece, an assistant federal public defender in Charleston, said something about Mr. Oldani struck him at their first meeting. When Mr. Capece mentioned that he, too, had served in the Marines, he expected the usual warm response: Where did you serve? Did you see combat? Instead, Mr. Capece said, “there was nothing from him.”

Mr. Oldani spoke with what clinicians call flat affect — an absence of emotion or change in tone — and to Mr. Capece, it seemed clear that “this kid was really messed up by his experiences out there.”

Mr. Oldani, 25, pleaded guilty last year to selling night vision equipment stolen from a base in Georgia by his brother, and prosecutors wrote in their sentencing memorandum that he “committed a serious crime and he merits serious punishment.” Judge Chambers, however,

citing the evidence of the effects of the war on Mr. Oldani, concluded that “the personal characteristics of the defendant warrant a sentence lower than the guideline range.”

Judge Kane faced a similar choice when he opted for the sentence of probation for John Brownfield Jr., a former Air Force firefighter from Cañon City, Colo., who admitted accepting a bribe for smuggling tobacco into a prison while working as a corrections officer. In a 30-page sentencing memorandum, the judge cited Mr. Brownfield’s experiences in Iraq and Afghanistan, which included dealing with gravely wounded soldiers and civilians, and wrote that with so many members of the military returning with serious mental health issues, “we are now, in a manner of speaking, charting unknown waters.”

At the state level, special courts to deal with the problems of veterans are being formed across the nation, modeled on the special courts to deal with drug and mental health issues. Twenty-one veterans courts are in operation, said West Huddleston, the chief executive officer of the [National Association of Drug Court Professionals](#).

The [first such court](#), in Buffalo, has handled about 130 cases, said Judge Robert T. Russell Jr., who created it in 2008.

New York kicked off a statewide program last year; Judge Judy Harris Kluger, chief of policy and planning for the state court system, said veterans “may have a unique set of issues that we try to help them with.”

Mr. Huddleston praised court programs that connect veterans with treatment, but added, “We should not be mitigating an offender’s case or disposition just because they are a veteran,” which he suggested “doesn’t make sense from a constitutional perspective.”

Professor Berman agreed that automatic deference to veterans could raise issues of equal protection, but “nobody is yet really talking about military service as a get-out-of-jail-free card.”

In fact, some of the new court programs have been carefully devised to avoid the appearance of blanket leniency. “People were concerned veterans were going to get an unfair advantage,” said Jack B. Zimmermann, a military law specialist who helped Texas shape a new pilot program. Defendants enter the Texas program, Mr. Zimmermann noted, only if the judge and prosecutor agree.

“These men and women have served their country and have been injured,” he said. “We as a society have an obligation to treat them.”