



**Testimony of Loree Sutton, MD (BG, USA, Ret.)**  
**Commissioner for the New York City Department of Veterans' Services (DVS)**  
New York City Council Committee on Veterans  
14th Floor Committee Room, 250 Broadway  
November 26, 2018

Good afternoon Chair Deutsch and members of the New York City Committee on Veterans. My name is Loree Sutton and I am honored to serve as the founding Commissioner of the New York City Department of Veterans' Services (DVS). I am joined today by Eric Henry, General Counsel and Director of External Affairs.

As you know, DVS was created to facilitate access to and coordination with organizations and entities throughout New York City which serve our veterans' community. From outreach and employment assistance, to facilitating peer-mentoring and whole health services, to veteran homelessness reduction, DVS staff members work with veterans one-on-one to help them figure out what benefits they might be eligible for and how to get access to services.

Over the past year, the City ramped up its efforts to serve New York City's most underserved veteran populations to deliver real results for our over half million veterans and their families, in the following ways:

- When the federal government fell behind on delivering the GI Bill benefits that our over 12,000 student veterans rely on as their sole means to pay rent, DVS and the Department of Social Services stepped in to provide emergency rent arrears assistance.
- This year, through public - private partnerships, we were able to dedicate the first monument to the over 13,000 women service members and veterans in the New York City area – “Women Serve”—at Calverton National Cemetery to honor the service and sacrifice of women in the military.
- DVS and NYCHA proudly volunteered to be the first city in the country to test out a pilot program to help over 100 formerly disconnected veterans and families, who were not eligible for federal subsidy, move from transitional housing into safe, permanent homes.
- Recognizing that nobody serves alone, and that families serve, too, DVS teamed up with two national organizations – the Elizabeth Dole Foundation's Hidden Heroes Initiative and the Reimagine Project – to organize programs dedicated to shining a light on the tireless efforts of our veteran caregivers, who provide much-needed support to some of our most vulnerable veterans.
- On Veterans' Day, the Mayor proudly announced that DVS has launched “VetConnectNYC,” a coordinated care network. This is a partnership with Northwell

Health, Syracuse University's Institute for Veterans & Military Families, the veteran-owned business Unite:Us, and over 80 community service providers. VetConnectNYC's goal is to ensure every veteran gets access to the services they need to lead fulfilling and purpose-driven lives.

These are just a few of the ways DVS has leveraged the work of governmental, non-profit, and private stakeholders to deliver coordinated response and services to our City's underserved veteran populations, and we look forward to future opportunities to do so.

Today I welcome the opportunity to share our views about Councilmember Dromm's proposed Int. 479, as well as Chair Deutsch's proposed Int. No. 1218. Given the history of discrimination against generations of LGBTQ servicemembers in this country, DVS applauds the City Council for exploring ways to remedy continued injustices against this population. DVS also appreciates the Council's intention to assist veterans who may have been unfairly given an improper discharge status for other reasons, including mental health conditions. However, while the spirit of the two bills is indeed laudable, DVS recommends collaborating with the Council to identify alternative means to achieve the goal of providing discharge upgrades other than those proposed in Int. 479 and Int. 1218.

First, let me share some background about discharge upgrades. Apart from retirement, service members generally separate from the United States military by means of a "discharge." There are two types of discharges – administrative and punitive. The most common types of administrative discharge are Honorable, Under Honorable Conditions/General, Other Than Honorable and Entry-Level Separation (for those in service less than 180 days). The most common types of punitive discharge are Bad Conduct (for enlisted service members), Dismissal (equivalent to Bad Conduct, but only for Officers) and Dishonorable.

Administrative discharges are issued by a high-ranking officer through a non-judicial process, and are generally less severe than punitive discharges. Punitive discharges are generally given for more serious violations and can result from a conviction after a court-martial, which is a military court where prosecutions are tried under the Uniform Code of Military Justice.

In order to change a veteran's discharge status -- for example, from a Bad Conduct discharge to an Other than Honorable -- an applicant must apply to their appropriate branch of the armed services' Discharge Review Board for a discharge upgrade. The applying veteran must convince the board that the discharge in contention was "inequitable" or "improper," which is most effectively facilitated by a veterans' service organization or attorney well versed in the procedural complications associated with discharge upgrades.

With respect to the legislation before us, I will first discuss Intro 479, which would extend City veteran benefits to service members who were discharged because of their LGBTQ status by requiring DVS to issue "Certificates of Eligibility." These certificates would be used as proof that a discharged LGBTQ veteran is eligible for certain City benefits or services.

One of the tenets of good government is fair allocation and application of resources, with an eye towards establishing equity for all residents. Discrimination of any kind, especially when based

on sexual orientation or gender identification, is a societal stain which should not be facilitated through consideration for City benefits or services. Reflective of this belief, discharge status and LGBTQ status are not identifiers used to screen out applicants for City resources. Neither DVS - - nor other City agencies that have interactions with veterans, with whom we have discussed this issue -- are aware of instances where discharged LGBTQ veterans have been denied City benefits because of their LGBTQ status or their discharge status. For that reason, we believe it is difficult to justify creating such special certificates that would declare or prove their eligibility. That said, we welcome any information you may have that indicates there is a problem, and we will explore further any such incidents.

With regard to any selective eligibility criteria encountered by veterans, we are aware that the federal and State governments determine eligibility for housing subsidies and civil service credits, respectively, by considering factors such as discharge status and period of service. However, no veteran who applies for City benefits is ever foreclosed from consideration due to discharge, sexual orientation, length of service, or any other identifier.

Int. 1218 would require, in addition to the creation of a discharge upgrade assistance unit within DVS, that the Department issue non-binding opinions to veterans on their discharge upgrade appeal that they may then submit as evidence with their claim. Where the unit does not deem a claim meritorious, DVS would inform the veteran, in writing, the reason for its opinion.

While the Department prides itself on its ability to evaluate veteran concerns and needs, and assist coordination of services for delivery, DVS is not a subject matter expert on evaluating the legitimacy of discharge upgrade claims. This bill would require that DVS provide what is actually legal advice and counselling, which is beyond its capacity and is inappropriate because City agencies do not provide direct legal counsel to members of the public.

Instead, the City contracts with a range of nonprofit legal services provider organizations that provide free high-quality legal assistance to New Yorkers through the Office of Civil Justice (OCJ), located at the Human Resources Administration (HRA). Since the Council and Mayor de Blasio amended the City Charter in 2015 to establish the Office of Civil Justice at HRA, OCJ has been tasked with procuring, managing and monitoring the City's civil legal services programs for New Yorkers in need - including veterans - facing legal challenges in the areas of housing, immigration, employment law, benefits advocacy and other areas of civil legal need.

HRA's OCJ works in partnership with a number of agencies and mayoral offices, including DVS. As part of this work, OCJ administers the Legal Services for Veterans program, which in Fiscal Year 2019 provided funding through discretionary grants by the Council for four experienced nonprofit legal services providers – the New York Legal Assistance Group (NYLAG); Legal Information for Families Today (LIFT); Legal Services NYC; and the Urban Justice Center. In total, this year \$450,000 supports legal services for veterans in New York City on a broad range of matters, including family law, housing, public benefits, healthcare and home care, financial planning and consumer protection.

DVS will continue to refer veterans who seek discharge upgrades to the experts at organizations that conduct this important work, for they possess the experience and expertise necessary to see these applications from intake to ultimate disposition. We believe that this is the best means of connecting veterans with the legal assistance they need for this sensitive, fact-specific application process. Indeed, the Council approved almost two weeks ago Intro 394, which specifically provides that discharge upgrade resource information should be part of the services offered at Veterans' Resource Centers in the five boroughs. The Council recognized in that bill -- and in Intro 396 which it approved that same day -- that referrals to organizations having subject matter expertise is the most effective way to help our veterans.

Ultimately the Administration and City Council must determine what are the best policies and practices to support the organizations that provide these invaluable legal resources to our veteran population. We welcome further discussion with the City Council, veterans' legal service providers and advocates to establish the best mechanisms to help veterans connect with legal service providers, to receive the valued assistance they need.

Thank you again for this opportunity to meet with you today. At this time, I am happy to address any questions you may have.

# AMERICAN VETERANS FOR EQUAL RIGHTS NEW YORK

November 26, 2018

Testimony to the New York City Council Committee on Veterans  
Regarding Int. No. 479; Benefits and assistance for LGBTQ veterans

By Denny Meyer, President AVER-NY

National Veterans Affairs and Public Affairs officer of American Veterans for Equal Rights  
National Veterans Affairs and Public Affairs officer of Transgender American Veterans Association

From WWII through 1994 over 100,000 LGBT American patriots were less than honorably discharged due to being homosexual. And from 1994 through 2011 over 14,000 more patriots were involuntarily discharged, under 'Don't Ask Don't Tell,' due to being homosexual. The majority of the latter group received honorable discharge paperwork that nevertheless listed the reason for discharge being due to being homosexual. In the latter group minority women were most likely to receive doubly discriminatory less than honorable discharges.

In 2005 Massachusetts Representative Marty Mehan introduced a bill to Repeal Don't Ask Don't Tell which contained pages of provisions to rectify prior discriminatory policy including discharge upgrades. Congress failed to pass that bill; but in 2010 a compromise Don't Ask Don't Tell repeal bill, created in the Senate Armed Services Committee, passed. All provisions to rectify past discrimination were stripped from the compromise bill that passed, which resulted in ongoing discriminatory denial of rights and benefits to veterans previously discharged due to being homosexual.

In 2005, at the request of AVER-NY, the NYC Council, led by then Speaker Giff Miller, passed the nation's first Don't Ask Don't Tell Repeal Resolution, which was copied by cities and counties across the nation and by the California State Legislature. This enhanced the Congressional will to eventually repeal DADT in 2010.

In 2013 the Restore Honor to Service Members Act was introduced, to automate and streamline discharge upgrades for LGBT veterans, by Congressmen Charles Rangel of NYC and openly gay Jared Polis who was just elected as Governor of Colorado, and Senators Gillibrand of NY and Schatz of Hawaii. Introduced two more times, the bill never got out of Committee.

In 2015 NY State Senator Brad Hoylman introduced a NY State Restoration of Honor bill to guarantee NY State benefits to LGBT veterans regardless of discharge status. That too was blocked and never got out of Committee.

Meanwhile, Canada provides both restitution and a medal to rectify past discrimination suffered by its LGBT veterans.

Hence, the NYC legislation under consideration today, to enable NYC patriotic LGBT veterans to be eligible for all the benefits they have earned by serving our nation. It has been and remains AVER's and TAVA's highest priority to advocate for full and equal benefits for our LGBTQ veterans. We strongly urge and advocate passage of this legislation.



**Statement of Vadim Panasyuk**  
**Sr. Veteran Transition Manager, VA Benefits Lead**  
*of*  
**Iraq and Afghanistan Veterans Of America**  
*before the*  
**New York City Council Committee on Veterans**

**November 26, 2018**

Chairman Deutsch and distinguished members of the Committee, on behalf of Iraq and Afghanistan Veterans of America (IAVA) and our more than 425,000 members, I would like to thank you for the opportunity to testify here today on the pending legislation. I am a New Yorker, a Ukrainian expatriate and naturalized citizen, and a US Army veteran having served two tours of duty with the 3rd Infantry Division in Iraq. At IAVA, I am a masters-level social worker serving as a Senior Veteran Transition Manager (VTM), VA Benefits Lead, with our Rapid Response Referral Program - or “RRRP” for short.

RRRP is a high-tech, high-touch referral service for veterans and their families with a comprehensive case management component. We assist veterans of all eras, regardless of discharge status, worldwide in confronting significant challenges like unemployment, financial or legal struggles, homelessness, and mental health related issues. To date, RRRP has served over 9,000 veterans and family members nationwide, and over 1,000 in New York City alone, providing critical support and resources to ensure that this city's veteran's needs are effectively met.

After fourteen years, IAVA has become the preferred empowerment organization for post-9/11 veterans. While our members are spread throughout the nation, we are proud to say that our national headquarters is located here in New York City. Since its beginning, IAVA has fought for and has been successful in advocating for policies that are able to meet the needs of our newest generation of veterans, which includes our advocacy towards the creation, proper funding, and oversight of the Department of Veterans Services (DVS).

IAVA has a proud history of being at the forefront of equal rights for all servicemembers and veterans. Based on feedback and guidance from our membership during our annual member survey, we became the first mainstream veterans organization to come out in support of repealing “Don’t Ask, Don’t Tell” (DADT). As then-Joint Chiefs Chairman Admiral Mike Mullen said lifting the ban on known gay and lesbian service members was “a matter of integrity - theirs as individuals and ours as a nation.” We stand by the fact that diversity is a force multiplier for our



armed forces and IAVA is proud of its record of being on the right side equality issues within the Department of Defense (DoD) and the Department of Veterans' Affairs (VA).

Promoting Equality for all Troops and Veterans remains a key part of IAVA's policy agenda. In addition to supporting the repeal of DADT, IAVA endorsed the repeal of the Defense of Marriage Act (DOMA). In an *amicus curiae* brief filed with the Supreme Court before their ruling, IAVA argued not only that DOMA was morally wrong and unconstitutional, it also impeded force readiness and negatively impacted unit cohesion and morale. IAVA also supported the 2016 decision to allow transgender troops to serve openly without the threat of discharge, and have recently come out against any potential changes to that policy.

It is with this long history of promoting equality for all of our veterans and servicemembers that IAVA supports the intention behind both of the bills before the Council today, Int. 479 and Int. 1218. We recognize that the changes of status and benefits available to LGBT troops and veterans in the past could leave many of them confused or unaware of what is available to them. This problem is compounded by veterans who are disconnected from the VA and DoD because of their discharge status. Many veterans may not be aware that they can change their discharge status. Others may feel shunned or fearful of the VA because of their discharge status. In my experience, these veterans are often the most vulnerable in the population. As a VTM, I have worked with almost 400 veterans and their families. One hundred sixty-two had a less than honorable discharge while making up a fraction of the total veteran population. Due to loss of access to programs and benefits, as well as the stigma associated with their discharge status, these veterans often have a much more difficult road ahead when they transition back.

While IAVA supports the intention of the bills, we do have concerns over implementation. Upgrading a discharge status can be an extremely lengthy legal process. Additionally, there are already processes in the nonprofit sector that will help veterans upgrade their discharge status free of charge. IAVA is concerned that the passage of these bills could create confusion among the nonprofit and veterans community. DVS may be better served to complement these existing services rather than competing or duplicating them.

Veterans discharged solely because of their sexual orientation or identity deserve the full benefits of the VA and New York's DVS. IAVA is encouraged by Int. 1218's focus on communication for its services in assisting veterans with their discharge status. However, it may be better served to use the existing government outreach services to complement existing nonprofit's discharge assistance. We also encourage the Council and DVS to go beyond just posting about these services on their website, but also to have an outreach plan through email, social media, and other means in order to maximize awareness of these existing programs. As noted earlier, many



veterans may no longer be connected to the VA or DoD community because of their discharge status.

Members of the Committee, thank you again for the opportunity to share IAVA's views on these issues today. I look forward to answering any questions you may have and working with the Committee in the future.



**VETERAN  
ADVOCACY  
PROJECT**

**THE COUNCIL OF THE CITY OF NEW YORK**

COMMITTEE ON VETERANS  
Chaim Deutsch, Chair

**RE: Oversight - Discharge Characterization Upgrade Assistance  
Int. No. 479 and No. 1218**

Testimony by Coco Culhane  
Director, Veteran Advocacy Project  
November 26, 2018

# VETERAN ADVOCACY PROJECT

## CITY COUNCIL INT. NO. 1218 AND INT. NO. 479

Good afternoon Chairman Deutsch and the Veterans Committee. My name is Coco Culhane and I am the founder and director of the Veteran Advocacy Project. We provide legal services to low-income veterans and their families, with a focus on those who have Post Traumatic Stress Disorder, Traumatic Brain Injury, and other mental health issues. We are one of the few legal services organizations in the country that specializes in veterans law.

### Why Discharge Upgrades Are Needed

Few civilians understand the high standards that servicemembers are held to in the military. Often we think of only *Honorable* and *Dishonorable* and form assumptions based on those labels. In fact, there are six discharge statuses and they determine a veteran's access to health care and benefits. Further, a bad discharge can brand a veteran, closing doors to employment programs and opportunities, creating lasting psychological wounds, and isolating veterans from their friends and communities.

Things like going AWOL once can haunt a veteran for decades. Imagine if not showing up to work one day got you the perceived equivalent of a criminal record for life. And while there are strict rules and regulations, the truth is that command discretion plays an enormous role in what discharge a veteran receives—disparate treatment of all kinds is rampant. Marines were found to be 11 times more likely to have been discharged with an Other Than Honorable than servicemembers in other branches.<sup>1</sup> In another study, black servicemembers were twice as likely to face disciplinary action and courts-martial than white servicemembers—back in Vietnam? No, this data is from as recent as two years ago (the study covered 2005-2016).<sup>2</sup>

These are just a few of the stats; other injustices also endure: Survivors of military sexual trauma are 50 percent more likely to get misconduct discharges.<sup>3</sup> Over 100,000 servicemembers were discharged because of their sexual orientation. Over 600,000 veterans received less than honorable discharges in Vietnam, and the number for the Post-9/11 generations is approaching that.

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<sup>1</sup> Legal Services Center, Harvard University, National Veterans Legal Services Program, & Swords to Ploughshares. (2016, March). *Underserved: How the VA Wrongfully Excludes Veterans with Bad Paper*. Cambridge, MA: Harvard.

<sup>2</sup> Vanden Brook, Tom. "Black troops as much as twice as likely to be punished by commanders, courts" *USA Today* (June 7, 2017). Available at: <https://www.usatoday.com/story/news/politics/2017/06/07/black-troops-much-twice-likely-punished-commanders-courts/102555630/>.

<sup>3</sup> *Getting It Right: "Bad Paper" Legislation That Works*. Prepared for House Veteran Affairs Committee, Subcommittee on Health Legislative Hearing on H.R 918 and others March 29, 2017. Submitted by Swords to Plowshares, with the Assistance of Veterans Legal Clinic at Harvard Law School.

This is in part because, until recently, mental health and invisible injuries were not regularly considered as mitigating factors in disciplinary action. A government report showed that from 2011 to 2015, of the veterans discharged for misconduct, 62 percent had already been diagnosed with a mental health condition, such as PTSD or depression.<sup>4</sup> In the same years, of those servicemembers who had a mental health diagnosis, only 4 percent received Honorable discharges.<sup>5</sup>

It comes as no surprise, then, that there is a correlation between discharge status and successful transition: an involuntary discharge is the second highest predictor of homelessness.<sup>6</sup> And while we all work to lower the suicide rate among veterans, already high with an average of 20 a day, the rate for veterans with less than honorable discharges is nearly three times as high as other vets.<sup>7</sup> We cannot leave these men and women behind.

### Veterans Law

The practice of veterans law has been mostly relegated to Veterans Service Organizations and the few attorneys they may employ. During the Civil War, Congress protected veterans from would-be predatory lawyers by enacting legislation that capped attorneys' fees for a veteran benefits claim at \$10.<sup>8</sup> In 1985, the Supreme Court upheld this limitation on veterans, declaring that it was not a violation of their due process rights.<sup>9</sup> In 1988, Congress passed the Veterans Judicial Review Act, which included the creation of the Court of Veterans Appeals; it also lifted the \$10 limit for cases going before that new court (these were a small percent of overall claims, those that were to be appealed from a ruling at the Board of Veterans Appeals).<sup>10</sup> Lawyers were still financially locked out of the majority of the benefits adjudication process. It was not until June 2007 that attorneys were allowed to charge at the regional level; once a veteran has received an initial decision and filed a Notice of Disagreement, then an accredited representative or attorney can charge a fee.<sup>11</sup> And the practice area of veterans law began to blossom.

For years, public knowledge of veterans law has been focused on disability compensation. Yet, as the veterans law space grows, so too do the types of cases that get attention—everything from character of discharge appeals to “fleeing felon” overpayments; this past year the Federal Circuit held that the Court of Appeals for Veterans Claims, the judicial body that oversees VA adjudication, has the power to certify classes.<sup>12</sup> Impact litigation is about to boom. The majority

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<sup>4</sup> Actions Needed to Ensure Post-Traumatic Stress Disorder and Traumatic Brain Injury Are Considered in Misconduct Separations, GAO-17-260: Published: May 16, 2017. Publicly Released: May 16, 2017.

<sup>5</sup> *Id.*

<sup>6</sup> See, Gundlapalli AV, Fargo JD, Metraux S, et al. Military Misconduct and Homelessness Among US Veterans Separated From Active Duty, 2001-2012. *JAMA*. 2015;314(8):832–834. doi:10.1001/jama.2015.8207.

<sup>7</sup> Bryan, CJ. On Deployment and Military Suicide Risk. *JAMA Psychiatry*. 2015; 72(9):949–950. doi:10.1001/jamapsychiatry.2015.0671.

<sup>8</sup> 38 U.S.C. § 3402(c).

<sup>9</sup> *National Association of Radiation Survivors v. Walters*, 473 U.S. 305 (1985).

<sup>10</sup> Veterans' Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988).

<sup>11</sup> See 38 U.S.C. § 5904; 38 C.F.R. § 14.636.

<sup>12</sup> *Monk v. Shulkin*, 855 F.3d 1312 (Fed. Cir. 2017).

of legal attacks on the VA over the decades have been based in violations of veterans' due process rights and were litigated by membership organizations. As veterans still wait an average of over four years for an appeal to be processed, this new ruling, allowing classes to move forward, provides hope for true reform.

All of these changes in the law, the new challenges to protect veterans' rights, are long overdue. They are fantastic. They have nothing to do with discharge upgrades.

There is already a debate over whether DVS should take on VA claims; now we add Department of Defense matters. While the facts that are involved in both VA character of discharge and some disability cases and the facts for DoD review boards applications are much the same, there are different sets of statutes, regulations, and agency directives. Because someone is accredited by the VA does not make her qualified to create a DoD application.

The landscape for discharge upgrade standards keeps shifting with new reforms coming every year, sometimes multiple times a year. While many cases may be okay in the hands of a VSO rep who may make a general argument that a discharge is unfair, if they are not successful that veteran has lost his or her chance for a personal appearance where relief is statistically highest. Moreover, there is likely no record for an appeal to the federal judiciary. These cases are reviewed under the Administrative Procedures Act, so the record stands as it was presented to the Board; no further fact development may occur. No forensic expert can be called in. If a lifetime of benefits and psychological healing, a sense of my identity, were on the line, I would not go to a VSO where staff may be experts on VA disability but not DoD regulations. Similarly, I would not ask our attorney who focuses on VA character of discharge appeals to whip up a discharge upgrade application; and City Council should not ask the Department of Veterans Services to do the same.

### **How VAP's work developed**

The seeds of discharge upgrade work as we know it began in an office in Saigon, where a few JAGs were just trying to protect their fellow servicemembers from unjust discharge proceedings or courts-martial prosecutions. When the heart of this operation, an air force attorney named David Addlestone, returned from Vietnam, he took up the cause of advocating for the 600,000+ veterans with less than honorable discharges. His work with Bart Stichman became the National Veterans Legal Services Program (NVLSP).

Fast forward to 2008 in New York City: there were no legal services programs for veterans in the five boroughs. The City Bar Justice Center was just beginning its *pro bono* project, getting volunteer attorneys to file appeals for veterans' disability compensation claims. When the Veteran Advocacy Project launched in 2010, VAP found mentors at Swords to Plowshares in San Francisco and the Connecticut Veterans Legal Center, seemingly light years ahead of us with one year open. As VAP struggled to meet the needs of veterans in New York City, other legal services organizations began to open up veterans projects, as well. Yet none, other than the *pro bono* project at the City Bar, were working on veterans law. They were serving veterans and their families in the areas of law that all New Yorkers need assistance with. The City Bar and

VAP made efforts to work together and avoid duplication of services, but both of us had unending demand. Adding to our sense of urgency, the problem of bad paper had been completely left in the shadows in New York.

In 2012, when a Marine with severe Post Traumatic Stress Disorder and Traumatic Brain Injury came into VAP's office for a child support issue, our director saw a glimpse of his discharge review paperwork; the Department of Defense form had been filled out by a Veterans Service Organization and the legal argument was that the vet needed benefits—this is the one thing the boards actually proactively tell veterans they cannot and will not base an upgrade on. We could not let him leave our office with that form. And so our Discharge Upgrade Clinic (“DUC”) was born.

In 2013, when DUC officially launched, there were no resources for vets with less than honorable discharges in New York. Our director picked the brain of John Rowan, president of Vietnam Veterans of America; he recalled the golden days of the 1980s when there were numerous places a veteran could go, and his own experience with fellow vets in Brooklyn. We were unable to locate any of his old buddies to teach us. We reached out to NVLSP to see if they could offer training but they had long since let that practice area lapse. So, we went to the source. VAP got David Addlestone to come out of retirement and train our staff and 120 volunteer lawyers, including attorneys from NVLSP, Connecticut Veterans Legal Center, and our partner in DUC, the New York County Lawyers' Association.

VAP conducted outreach in August 2013 via emails to a few partners letting them know of our discharge upgrade intake day. That is the only direct outreach we have ever done. We have veterans calling us from Hawaii, Montana, and Florida, all pleading with us to take their case. One veteran *moved to New York from Texas* so that he could get us to take his case. In 2017, our list of veterans waiting for an investigation into their discharge was over 650 New Yorkers' names. Even with the flourishing law school clinics around the country, there are still so few attorneys that know how to do an upgrade application. In May 2017, we cut our list. We triaged and kept veterans whose trauma had affected their ability to serve and those whom we could get the most benefits for based on length and era of service.

Today our DUC wait list hovers near 125 names and our cases move more quickly. What we mean by quickly is 18 months from investigation to decision. Most are three years. The boards are backed up with 18 months or more from submission of an application to their decision.

Last week, I learned of a win for one of our first clients. A Vietnam veteran, who watched his best friend skewered with bamboo spikes, who picked up body parts in early dawn hours, who was an only child and likely a part of Project 100,000 (Robert MacNamara's social experiment that grossly preyed on Americans with low test scores from low socio-economic backgrounds). After returning from Vietnam he struggled as an MP. Eventually he went AWOL because his mother was dying and he had been denied leave. He received an Other Than Honorable Discharge. The veteran's wife passed away and he remarried during the pendency of his discharge case. He told me when he won that his first job was to go lay roses on his wife's grave for all that she had done to support him over the decades of his writing to the boards in vain, the

years of being asked not to share in trauma therapy groups outside the VA because his memories were too upsetting, and the achingly long months when their SNAP seemed to run out too early as they struggled to get by on SSI benefits. His case, what we would now consider a “slam dunk”, took five years.

Thanks to the reforms that have occurred over the last four years, cases like this veteran’s have higher rates of approval and broader categories of evidence can be used to support an application. Where some boards used to have about a 9 percent approval rate, applications alleging PTSD are being granted relief at higher rates because of three DoD memoranda that afford certain applications liberal consideration that mitigating circumstances led to their misconduct; one report put the approval rate for PTSD-based applications at the Army boards at 65 percent. The attention on trauma and the resulting reforms at the Department of Defense have made more people aware of the possibility of obtaining justice. This means our list keeps growing. It also means that there is even more to learn when doing one of these cases.

### **The Path of a Case: Years of Work**

When a veteran calls VAP intake for a discharge, there is a special screening that takes place. We start by gathering the bare bones that we need in order to make a decision about whether they will make our wait list—not whether we will accept the case or even investigate it, but whether we will wait list the person for those services. Our intake advocate inquires about the information on the veteran’s DD 214 and then carefully asks questions about trauma and mental health problems that the individual may have experienced pre-, during, and post-service. Sometimes veterans are not ready to tell us about their darkest moments and will come back months later to reveal what really happened to them; other times veterans become frustrated upon learning about our criteria and then will try to convince intake that they have a heroin addiction they forgot to mention. They wonder why they are being punished for not being damaged enough. We sympathize and explain that we must use our small and finite resources where they will have the most impact. We try to point to the disqualifying elements of their life as positives. At the end of every intake all veterans are offered access to no cost services with our medical partners.

Next, records are ordered: the Official Military Personnel File (OMPF) and Service Treatment Records (STRs). Months later when the records arrive, a staff attorney, or trained law student depending on the time of year, will comb through the OMPF page by page to document misconduct, injuries, or anything out of the ordinary. They will try to match dates of incidents to the service treatment records to see if there is evidence of injury. Their report goes to a staff meeting for discussion; usually we need more information—life’s problems are not usually recorded in an OMPF. We do a second interview with the veteran, or we wait on the psych records from particular base facilities, courts-marital transcripts, and civilian medical records—requests that are all still in process. At this stage there is a split between veterans who have a diagnosis and those who do not. For individuals in treatment and with evidence that supports a meritorious argument, we place the name on the wait list.

For veterans who have no civilian medical records or diagnosis, we offer to connect them to one of our medical partners. Once a veteran has a relationship with a therapist, whether from a

partner or from the VA, we consult the medical professional's opinion and if appropriate we send the veteran to a forensic psychiatrist for evaluation. Most important in all of this, we do not start a case for an argument based in equity without the veteran being in treatment. We have clients that simply cannot face their trauma, who are not ready and we wait. One Marine our staff attorney is currently working with experienced numerous instances of violence in Iraq. On one occasion, he responded to a missile attack against a location that had been firing upon U.S. Marines. When he arrived at the site, he saw that two small children had been killed in the missile strike. The memory of their charred bodies still haunts him. He has been meaning to make an appointment with a partner medical provider for six months now. Our attorney Chris checks in with him regularly to see how he is doing and if he has made the appointment.

The discharge upgrade application process will retraumatize that veteran. He will likely relive the moment he saw the small bodies, smelled the burned flesh, and had to carry on. As advocates we are not qualified to assist him with those memories. His case and others like his are on hold in our database, because not having professional mental health support in place may be risking someone's life. If this sounds dramatic, it is. We have lost a client to suicide, one to overdose, and others to poor health and age.

Once a client is in treatment and we have a forensic report back, we begin constructing the argument for relief. There are about ten different basic arguments to consider.<sup>13</sup> First, we do a propriety/error scrub to make sure that no mistakes were made in the process of the discharge; and then we use the report and psychological records as the mainstay of our equity arguments; most of these contentions focus on mitigation, under what the Department of Defense Discharge Review Boards categorize as Family and Personal Problems under a Capability to Serve argument. We get to work tracking down any other records and witnesses: buddies who can attest to behavioral changes, authority figures the veteran may have sought help from or confided in, and servicemembers who experienced the same incident.

Other equity (or "injustice" for the BCMRs/BCNR) arguments are made on the ground that there has been a change in policy that enhances a servicemember's rights and raises substantial doubt that the discharge would have been the same. For veterans who were discharged for sexual orientation before the repeal of "Don't Ask, Don't Tell" the upgrade is not as easy as it may seem. If the veteran has an Honorable discharge with a narrative of "homosexual admission" and wants a change in narrative, it is a two-page application. For those who have a lesser characterization and a narrative reason that says something like "homosexual activity" the task is more complicated. There may be misconduct aside from the charges for their sexual orientation, and this could be a reason to uphold the less than honorable characterization. We must then prove that the misconduct itself was command discretion being used to persecute the individual—this requires extensive witness accounts, research, and professional forensic opinions. Other times the person may have engaged in misconduct for entirely unrelated reasons and a separate argument needs to be made in addition to the equity argument about a change in policy. Still other cases involve older veterans with an Undesirable characterization and only a cite to an out-of-date regulation that we know relates to their sexuality. These cases also require

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<sup>13</sup> See 10 U.S.C. § 1552, 1553; 32 C.F.R. § 70.9; DoDI 1332.28 E4.2, E4.3.

an investigation to ensure that there was no other conduct the board could presume the discharge was also based on—we do not want the Department of Defense to have a second chance to wound these veterans.

Next we draft the application argument and complies the affidavits from experts and witnesses. We create the evidence binders—our postage budget is extraordinary. After finalizing the application we read through it with the veteran and have them sign their affidavit and the DD form. We submit to the relevant board and we wait; likely over a year. If the veteran is less than 15 years from separation, the submission goes to a Discharge Review Board and preparation for the personal appearance must begin. Moot hearings are staged so that veterans will be prepared for the extremely difficult questions they will be asked. For our volunteers, our stand-in board members snap at them as we coach the attorneys to keep it short. We also have to prep our expert witnesses, forensic psychiatrists, who will testify telephonically in most cases. The to-do list for one case is pages long.

There are always the easy cases. The veteran who had a clean record, a documented isolated traumatic incident, and resulting symptoms that led to discharge; further, those who have access to the VA, with record of a VA provider's assessment of trauma related to service, have improved chances and receive special consideration. With no prior mental health issues, the medical advisory opinion done by the board's expert is going to view that veteran's case, with the straightforward VA diagnosis, favorably; so a forensic evaluation and a rebuttal to the advisory opinion may not be necessary. But those cases are few and far between. And servicemembers whose mental health conditions fall outside of PTSD from combat or sexual assault do not have the same statutory protections—they do have the benefit of the same liberal consideration under the Kurta Memorandum if they can prove their mental health condition began in or was aggravated by service. That is not an easy thing to prove. Most veterans do not have a record that outlines what happened or even provides an official diagnosis. For example a case we had: it is common sense that witnessing your mother be shot in front of you as a child left you with PTSD and that was aggravated by your service. But it is not as simple as writing that. The board rejected that veteran.

VAP supports the bills in spirit and applauds the council members for shedding light on this dire need. We appreciate the support towards our work. However, we do not believe that a unit within DVS would be an efficient use of city funds or city employees' time. Further, for DVS to represent veterans on upgrades, the agency would need to be able to send staff down to the boards in D.C. for hearings. Not all boards are conducting telephonic/remote hearings. If a veteran needs an evaluation, or expenses to get to a hearing, or someone to track down witnesses for affidavits, how will the city access those resources and how will they decide who gets those resources?

Should the council move forward with these bills, we believe that much of the language is problematic: as written the bills exclude nearly all veterans who need discharge upgrade services. This solves the resources problem but the unit would then serve as another way for a governmental agency to injure a vulnerable veteran—one more time they are told they are not worthy.



As VAP testified to this committee just weeks ago, we believe that DVS must accomplish its mission to educate, to be the connector for veterans, to counsel families on the benefits and services they can access, and DVS must provide these services to all—regardless of discharge. We have included further comment on the specifics of the bills in our written testimony submitted today.

Thank you for the opportunity to speak.

## **Language Analysis**

### **I. Int. No. 1218**

#### **a. Definitions**

The bill seeks to define “veteran” as “a person who has served in the active military or naval service of the United States and who has been released from such service otherwise than by dishonorable discharge, or who has been furloughed to the reserve.”

##### **i. “Naval” and Specifying Coast Guard Veterans**

If the bill moves forward VAP believes that the language defining who may be served by the unit should be altered and that “military” should be defined. The “uniformed services” of the United States, under Section 101(a)(5) of Title 10 of the United States Code, include the “armed forces” as well as the Public Health Service Commissioned Corps and the National Oceanographic and Atmospheric Administration Commission Officer Corps. The inclusion of the words “or naval” is unnecessary, as the United States Navy is a part of the Department of Defense, along with the Army, Marines, and Air Force. As the United States Coast Guard falls under the Department of Homeland Security, rather than the Department of Defense, some individuals erroneously believe that the Coast Guard is not a part of the “military”; however it is considered a part of the “armed forces.” Accordingly, to avoid confusion, VAP recommends that “military” be defined as the “armed forces.”

##### **ii. Exclusion of Vets with Dishonorable Characterizations**

We recommend not excluding veterans who received a discharge characterization of “dishonorable.” The circumstances that could lead to a veteran’s receiving of a dishonorable characterization are myriad, and, in some instances, mirror the misconduct of veterans who receive other less-than-fully honorable discharges unjustly.

For example, we represent a veteran who served with distinction in Korea in the 1950s. Our client was the target of systemic racism from his chain of command. His records reflect that, after months of repeated acts of racist harassment, he used drugs one time. He quickly was subjected to a general court-martial and discharged with a dishonorable characterization. Such severe punishment for what would today be considered significant but isolated misconduct is unwarranted, and likely related to the hostile environment in which our client served.

In short, there is no objective reason to categorically bar veterans who are discharged with a dishonorable characterization from applying for government assistance to remedy what they believe is an injustice. Denying them access to this unit only serves to perpetuate the idea that not every individual deserves *access* to justice—after all, plenty of individuals received Other than Honorable or even General discharges for conduct that another individual received a Dishonorable for; why does one person deserve a review and assistance but not the other? Given the documented disparity in the treatment of misconduct among the branches<sup>14</sup> and among racial divides,<sup>15</sup> and given the ever changing values of our society,<sup>16</sup> why would we exclude anyone from this review?

### iii. “Furloughed to the Reserve”

Third, the term “furloughed to the reserve” does not add to the definition. The only individuals who receive DD 214s—the discharge certificates that indicate the characterization, narrative, and separation code—are veterans who served on active duty. And all veterans on active duty receive DD 214s, regardless of whether they transition to the reserves. Accordingly, any qualifying language about the reserves is unnecessary.

### iv. Recommended Language

In order to not exclude veterans with Dishonorable discharges who suffered severe injustice, often related to race, we recommend replacing the definition of “veteran” for this section with the below language:

The term “veteran” for this section means a person who has served active duty in the armed forces of the United States.

## **b. Discharge Assistance Unit**

The bill proposes that “[t]he department shall create a unit to assist veterans with discharge characterization upgrades, changes of narrative reasons for discharge, and changes of separation program designator codes and changes of reentry/reenlistment, where there are no aggravating

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<sup>14</sup> Legal Services Center, Harvard University, National Veterans Legal Services Program, & Swords to Ploughshares. (2016, March). *Underserved: How the VA Wrongfully Excludes Veterans with Bad Paper*. Cambridge, MA: Harvard.

<sup>15</sup> Vanden Brook, Tom. “Black troops as much as twice as likely to be punished by commanders, courts” *USA Today* (June 7, 2017). Available at: <https://www.usatoday.com/story/news/politics/2017/06/07/black-troops-much-twice-likely-punished-commanders-courts/102555630/>.

<sup>16</sup> “The relative severity of some misconduct can change over time, thereby changing the relative weight of the misconduct to the mitigating evidence in a case.” Performing the Duties of the Under Secretary of Defense for Personnel and Readiness A. M. Kurta, *Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment*, p. 26.i.

factors related to discharge. Such assistance shall be provided by legal counsel or an accredited representative of an organization recognized under section 5902 of title 38 of the United States code or successor provisions."

We have several comments regarding the description of potential services provided.

i. Separation Codes

First, note that a separation codes and separation program codes are different terms for the same thing. The entry on the DD 214 is one code.

ii. Reenlistment Codes

Second, the term "changes of reentry/reenlistment" could more accurately be written as "changes of reentry code."

iii. Aggravating Factors

Third, the meaning and purpose of the language "where there are no aggravating factors relating to the discharge" is unclear, and could potentially undermine the purpose of the entire bill.

If the purpose of the language is to categorically bar veterans who engaged in misconduct—whether minor or serious—from receiving assistance, then we are concerned there will be no veterans to assist. The vast majority of our clients allegedly engaged in some form of misconduct, such as drug use, driving while intoxicated, or disrespecting a senior officer.

If "aggravating factors" means something other than misconduct,<sup>17</sup> it would help to have an explanation of what that meaning is, and why veterans whose discharges included those factors should be barred from receiving assistance.

iv. VA Accredited Representatives

An "accredited representative of an organization recognized under section 5902 of title 38" of the U.S.C. would not necessarily have the knowledge or experience required to assist in discharge upgrade advocacy.

Individuals with accreditation under this section are qualified to advocate for veterans regarding certain benefits from the Department of Veterans Affairs. But all discharge upgrade advocacy takes place within a Department of Defense administrative system. The legal grounds, standards, and method of advocacy are entirely different. Accordingly, we do not believe that the department should assume that these individuals are qualified to advocate on behalf of veterans seeking discharge upgrades.

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<sup>17</sup> For instance, in regulations that govern a Department of Veterans Affairs character of discharge determination, "aggravating factors" are cited in reference to sexual crimes and are defined. See 38 C.F.R. §3.12(d)(5).

### **c. Issuance of Non-Binding Opinions**

The bill provides that “[u]pon request and where the unit deems it meritorious, the unit may provide non-binding opinions to veterans on their discharge characterization upgrade appeal that veterans may then submit as evidence with their claim. Where the unit does not deem a claim meritorious, it must inform the veteran, in writing, the reason for the opinion.”

#### **i. Non-Binding**

As an initial matter, it is not clear how the opinion would be non-binding, and whether that indicates that the commissioner of the Department of Veteran Services—or someone else within the department—would have veto authority over the opinion. Another interpretation could be that the unit could issue an opinion but does not stand behind it if other details come to light. Or the language could mean the opinion is not binding the Department of Defense, which seems obvious but also misleading—as if the unit could write a binding opinion. If that is the intent, it may be better to write out that the opinion simply serves as a recommendation as any letter of support would.

#### **ii. Difficulty in Getting Information**

We believe that the department may confront significant difficulty in acquiring the information necessary to make an informed opinion regarding the merit of a veteran’s discharge upgrade claim. We have found that the vast majority of veterans, understandably, do not know what the discharge review boards and correction boards look for when determining whether to grant relief. For example, a veteran suffering from mental illness may be convinced that her best argument will be to claim that there were incorrect factual determinations made during a court-martial. She may submit to the department information to support this argument—unaware that it is almost certainly a losing argument<sup>18</sup>—at the expense of diagnostic documents that could lead her to receive relief from a discharge review board.

In short, a veteran lacking adequate legal counsel in her attempt to upgrade a discharge may submit to the department information that is either irrelevant or of marginal importance. A negative opinion from the department could dissuade the veteran from continuing to pursue the discharge upgrade or could cause further psychological damage.

This point underscores the need for competent, experienced, dedicated legal advocate when it comes to discharge upgrades; it is imperative that an advocate know how to mine a veteran’s records for the best arguments.

#### **iii. Marginal Benefit**

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<sup>18</sup> The boards must take all courts-martial findings and decisions as fact. There is no litigating of the criminal case.

While we recognize that the spirit of this bill is a leap forward for New York City, we do not believe that the proposed benefit to the veteran would substantially impact many applications.

Our organization has spent significant resources to identify the types of evidence that make an application stronger. In addition to our experience in researching board opinions and submitting applications, we have contact with various board members, and have hosted two trainings with board leadership—including an event earlier this month—where board directors discussed what makes an application successful. As a general matter, the most important evidence is from licensed, objective medical professionals (*e.g.*, psychologists and psychiatrists) who have personally worked with or evaluated the veteran.

The board directors have also indicated that they consider statements of support from respected community leaders who have a personal connection to the veteran. Examples of these exhibits include statements from employers, clergy members, and leaders of volunteer organizations. What is crucial regarding these statements is the individual's personal knowledge of the veteran's character and rehabilitation.

Because the proposed unit would not have a medical professional on staff who would produce evaluations for the boards, and because the unit would not have a personal connection to the veteran, we do not feel that the non-binding opinion that the bill proposes would weigh significantly into the boards' deliberations.

Ultimately, while the intentions of this bill are commendable, the department would expend significant time and resources on an endeavor that would provide inconsistent and few returns. In certain situations, the proposed non-binding opinion may even dissuade a veteran from continuing to seek a discharge upgrade. We are concerned that, should the bill pass, the department would not have sufficient resources to continue its critical mission of linking veterans with direct services. Any sacrifice of the department's ability to accomplish this mission should not be made. They are the starting point of resources for all individuals and families connected to the military.

## **II. Int. No. 479**

### **a. Definitions**

#### **i. Discharged LGBTQ Veterans**

The bill defines "discharged LGBTQ veteran" as "a veteran who was discharged from the United States military or naval services solely due to sexual orientation, gender identity or expression; statements, consensual sexual conduct, or consensual acts relating to sexual orientation, gender identity or expression; or the disclosure of such statements, conducts or acts, that were prohibited by the armed forces at the time of discharge."

See above, part I.a.i, for a discussion of the definitions for "military" and "naval services."

Additionally, we believe it may be difficult to identify who was discharged “solely” due to policies that did not permit LGBTQ individuals to serve, openly or otherwise. In many instances, misconduct that likely would not have led to a discharge was used as pretext to discharge individuals once they were identified as LGBTQ. For example, servicemember may engage in minor misconduct that does not lead to a discharge and then years later, and after being “outed” for allegedly being LGBTQ, commanders may cite to the misconduct as one of the grounds for discharge. The narrative may even identify the reason for discharge as “homosexual misconduct.” However, an advocate would have to present arguments mitigating the alleged misconduct alongside arguments relating to changes in the law regarding LGBTQ servicemembers.

Ultimately, the only way to ensure the unit is representing individuals who were discharged *solely* as a result of being an LGBTQ servicemember would be to limit representation to LGBTQ veterans with an honorable characterization who are seeking to have their narrative changed. To be sure, this is important work. However, we have not identified a large need for this limited service.

#### ii. Discharge Upgrade Assistance

This provision provides that “[t]he department shall offer assistance to any discharged LGBTQ veteran seeking discharge characterization upgrade, changes of narrative reasons for discharge, changes of separation and separation program designator codes and changes of reentry/reenlistment, where there are no aggravating factors related to the discharge. Such assistance shall be provided by legal counsel or an accredited representative of an organization recognized under section 5902 of title 38 of the United States code or successor provisions.”

We believe that this provision has some of the same issues as the provisions discussed above in sections I.b.i-iv.



**TESTIMONY BEFORE THE CITY COUNCIL VETERANS COMMITTEE**

**NOVEMBER 26, 2018 2 P.M.**

Good afternoon Chairman Deutsch and good afternoon to the honorable members of this committee. My name is Kent Eiler and I'm the Project Director of the City Bar Justice Center's Veterans Assistance Project. The City Bar Justice Center is the largest department of the City Bar Fund, the 501(c)(3) affiliate of the New York City Bar. The City Bar Justice Center's mission is to increase access to justice for low-income and disadvantaged New Yorkers across a broad range of civil legal services by leveraging the volunteered time and expertise of New York City's legal community. The Veterans Assistance Project, which I oversee, is one of a dozen projects providing vital legal services to low-income New Yorkers. I've been in my role at the City Bar Justice Center for three and a half years and continue to serve as a Major in the United States Air Force Reserve Judge Advocate General's Corps. I first began my legal career as a JAG over a decade ago on active duty.

The Veterans Assistance Project utilizes a pro model of providing legal services. We represent veterans who have a claim or appeal before the U.S. Department of Veterans Affairs. If a veteran requires general legal services because they have a legal issue that isn't germane to their status as a veteran (such as a family law or housing law issue) we refer the veteran's case either to another project at the City Bar Justice Center or to another legal services provider because of resource constraints. I'm the only attorney that oversees the work of my volunteers all of whom are lawyers. Last year, the lawyers of the Veterans Assistance Project helped veterans to obtain \$770,532.65 in retroactive benefits from the VA and \$40,322.86 in new, monthly recurring benefits. According to an analysis done by outside experts, the VA benefits

awarded to these veterans who were represented by volunteers from the City Bar Justice Center will result in a total lifetime value of over six million dollars - that is life-changing legal services. More information about the City Bar's Veterans Assistance Project is attached as a one-page addendum to this statement.

To participate in our program, volunteer attorneys must complete a three-hour CLE (CLE stands for "Continuing Legal Education") course, which I teach because the course must meet the requirements for accreditation from the U.S. Department of Veterans Affairs (Title 38 of the United States Code section 5902 as implemented by Title 38 of the Code of Federal Regulations Chapter 14 section 629). Once volunteer attorneys have completed accreditation CLE they have not mastered the law they will need to be successful for their veteran client, they have not finished the process, they have merely just begun. Accreditation from the VA is the floor, the bare minimum, not the ceiling, of what is required of an able veteran's advocate. My role as the project director of the City Bar's program is to mentor those attorneys who are new to veterans law and to make sure they have the tools they need to be successful for their clients to whom we owe so much.

To be sure, the subject of today's hearing rightly identifies a real problem: the need for assistance by veterans who seek a discharge upgrade. The denial of an honorable service characterization of our LGTBQ servicemembers was a grave injustice and must be corrected. We commend the City taking what steps it can to issue a city certificate of eligibility, as called for by the proposed legislation, to mitigate such effects. In addition, both bills call for the involvement of legal counsel or accredited representatives which raise a concern. To be clear, we certainly believe the City should support experienced, not-for-profit, lawyers and advocates doing this work, but those of us already working in this field have identified another problem, a secondary



problem, that arises in connection with the need for assistance in connection with discharge upgrades as well as VA benefits. The secondary problem is the demand for able, experienced accredited representatives is vastly outstripped by the demand of veterans who need assistance. To qualify for the City Bar Justice Center's program a veteran has to be a resident of the five boroughs and meet our income requirements. When a veteran meets these requirements and contacts the City Bar Justice Center seeking assistance they are told the City Bar's program currently has a 8-10 month wait for placements. Veterans who do not wish to wait are given referral information to the one or two other legal services providers who do this work. Despite this reality we still have a significant waitlist.

It is not lost on the veteran population that there is a shortage of well trained lawyers to help when advocates are not able to solve hard cases. Most of our clients went to non-lawyer advocates before they came to the City Bar Justice Center. The reason the veterans who call our intake line are willing to wait is because of the problem of the lack of experienced and qualified representatives. It is a problem the VA itself has suffered from for decades and some would argue, since its inception. As a rule the VA's own employees are inadequately trained and inadequately supervised to be able to assist veterans with legally complex claims or appeals. The number one referral source to the City Bar's program comes from the VA's own employees. All the good intention in the world will not make someone who is inadequately trained and inadequately supervised, effective. We need to be careful not to recreate this problem in the proposed Discharge Upgrade Unit.

The veterans community has an expression for veterans who are stuck in endless claims and appeals with the VA. These veterans are stuck in "The Hamster Wheel." The perfect encapsulation of "The Hamster Wheel" came from a caller several years ago to the City Bar's

Veterans Project. My coordinator was trying to understand the assistance that the veteran was seeking. At one point she asked the veteran "Are you seeking assistance with filing a claim with the VA?" The veteran responded "Oh no, I've been filing the same claim with the VA each year, every year only to watch it be denied year after year. I've got that process down." The veteran's comment perfectly articulates what "The Hamster Wheel" is and encapsulates the problem of the lack of experienced and qualified representatives in this area. That veteran had multiple offers of support, many, if not all, I'm sure, were well-intentioned but the veteran was still stuck on The Hamster Wheel.

It will be vital, given limited resources, that DVS, and the non-profit organizations that receive its support, not merely have accredited individuals but have the knowledge that comes from experience so the blind are not leading the blind, that the services offered are being effective, and we are getting veterans off of The Hamster Wheel rather than merely extending the time they spend on it. To that end, I would urge the members of this committee to listen to recommendations and speak with experienced practitioners in this area. We look forward to partnering with the City Council on smart, efficient solutions to helping New York veterans to receive the federal benefits to which they are entitled. Thank you for your time and commitment to NYC veterans.

Attachment

City Bar Justice Center Veterans Assistance Project Information Flyer

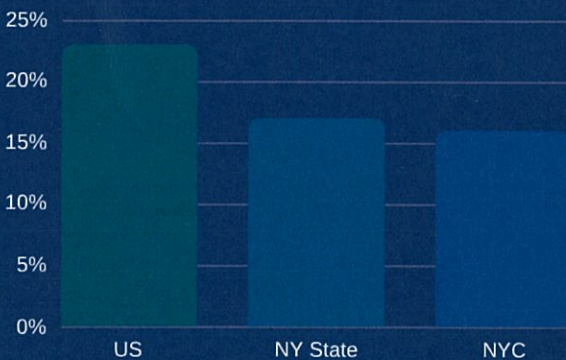
# Veterans Assistance Project

## Who We Are

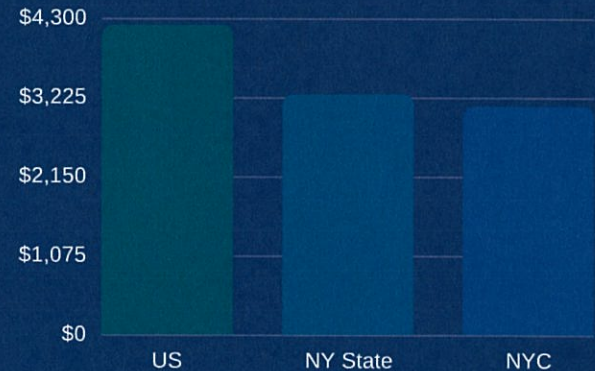
- Since 2007, VAP has been leveraging the efforts of over 400 pro bono attorneys to help low-income, disabled veterans in NYC receive the VA benefits they deserve.
- Last year, VAP helped veterans obtain \$770,532.65 in retroactive benefits and \$40,322.86 in monthly recurring benefits.
- According an analysis done by outside experts, the VA benefits awarded to VAP clients over the last year will result in a total lifetime value of over six million dollars.

## NYC's Vets are Receiving Less\*

Percent of Veterans Receiving SCD Compensation



Expenditures on Compensation and Pension per Vet



Veterans in the city are less likely\* to receive service connected disability (SCD) compensation. Further, the veterans that do manage to receive compensation or pension are getting less than their peers across the US.

## Help Us Help the City

City & State



Federal

VAP's work takes veterans off city and state public benefits and transfers them to more favorable federal benefits.

8-10

VAP currently has a waitlist of 8-10 months. With additional resources we would be able to assist more veterans faster.

\*Sources: Veterans Populations 2016 County-Level Veteran Population by State, Age Group, Gender, 2015-2045; FY2017 VA Disability Compensation and Pension Recipients by County of Residence; FY2017 Summary of Expenditures by State. All produced by the U.S. Department of Veterans Affairs' National Center for Veterans Analysis and Statistics and retrievable at [www.va.gov/vetdata/](http://www.va.gov/vetdata/).





**We refuse to be invisible**

**Testimony to the Veterans Committee of the New York City Council**

**Delivered in person on November 26, 2018  
by Ashton Stewart, SAGEVets Program Coordinator**

Thank you Chairman Deutsch and Council members for holding this Veterans' Committee hearing to discuss the proposed Discharge Characterization Upgrade legislation, and thank you for inviting SAGE to testify. My name is Ashton Stewart and I am the Coordinator of the SAGEVets program at SAGE.

SAGE is the country's first and largest organization dedicated to improving the lives of lesbian, gay, bisexual and transgender (LGBT) older adults. Founded in 1978, SAGE has provided and continues to provide comprehensive social services and programs to LGBT older people for nearly four decades in New York City. Thanks to the New York City Council, the Department for the Aging and other funders, SAGE produces a range of services such as daily hot meals, socialization, arts, technology, and health and wellness programs through our SAGE senior centers located in 5 sites throughout the city. SAGE likewise provides case management, support groups, caregiver support, bereavement support, mental health counseling, friendly visiting for the homebound, and programs for people living with or at risk for HIV in our Care Management Department. All of these services are available to LGBT older veterans, of course, as well as the service-enriched LGBT-friendly affordable senior housing SAGE is currently building in Brooklyn and the Bronx. The SAGEVets program, currently funded exclusively by the New York State legislature, is one of the offerings of the Care Management Department and is the only program in all of New York City as well as New York State designed to address the needs of older LGBT veterans. The primary purpose of SAGEVets is to locate LGBT veterans age 50 and over and educate them about various veteran programs and services they might be eligible for, starting with the VA's, and then connect them to those services. SAGEVets also produces programs that offer support to LGBT older veterans, as well as acknowledging and honoring their military service. This has included participating in the annual New York City Veterans' Day Parade over the last four years, as the only openly LGBT contingent.

SAGEVets was created with the idea that if an individual had discharge issues that had to do with their sexual orientation, SAGE would work with other community partners to try and get those discharges overturned or reclassified, particularly if they were a bar to receiving VA or other veteran services. For this reason, SAGE wholeheartedly supports the Discharge Characterization Upgrade Assistance legislation being proposed to help veterans gain access to

benefits they have earned for their service. We believe taking this step will bring profile to the important issue of LGBT service members wrongfully discharged from the military because of their sexual orientation. Designating the NYC Department of Veteran Services (DVS) to assist with upgrading discharge characterizations or changing the narrative reasons for those discharges would be a meaningful step toward addressing the injustice that has hurt so many of our city's LGBT veterans. Similar legislation was introduced at both the State and Federal level but it hasn't gone anywhere to date. S51, the "New York State Restoration of Honor Act" was sponsored by New York State Senator Brad Hoylman in 2015 and S.1366, the "Restore Honor to Service Members Act" was sponsored by U.S. Senator Brian Schatz from Hawaii for the third time last year. While this proposed local legislation before the Council will not affect state and federal veteran benefits, it sets an important precedent and can do much to raise the profile of this issue, plus lend support to the mental and emotional healing process for New York City's LGBT veterans.

There might be unique psychological damage to take into consideration when addressing the experience of LGBT veterans who served under the Don't Ask Don't Tell Policy (DADT). These service members were forced to lie and live in the closet to avoid harassment, discrimination, and a less than honorable discharge from service. Serving their country is the pinnacle of patriotism for many people, and knowing that our military has given a less than honorable discharge to thousands of talented, committed individuals for nothing more than their personal sexual orientation is in itself, dishonorable. The monetary and psychological implications and repercussions of this hypocritical policy need to be addressed openly and honestly in order to rectify the past. It is estimated that 114 thousand veterans were discharged across the country based on their sexual orientation between WWII and 2011 when Don't Ask Don't Tell ended.

Councilmembers, thank you for your continued support of SAGE, and for your support of the rights and fair treatment of all New Yorkers, including those who are older adults and members of the LGBT community. We, at SAGE, look forward to partnering with the New York City Council and DVS to ensure that LGBT veterans can receive the support that they so richly deserve after serving our country with distinction, pride and honor.



Testimony of Cecilia Gentili, Managing Director of Policy and Public Affairs at Gay Men's Health Crisis (GMHC)

New York City Council hearing on the discharge characterization and extension of benefits and services to LGBTQ veterans

My name is Cecilia Gentili, and I am the Managing Director of Policy at Gay Men's Health Crisis (GMHC). Thank you for allowing me to speak today on behalf of the military veterans who are clients of GMHC and members of our staff.

GMHC has tremendous respect for our military. Every year during our November all-staff meeting, our CEO, Kelsey Louie, asks GMHC staff who are also veterans to stand up and be counted. Those team members get some of the loudest cheers of the entire year since many of us have heard about what they have seen and been through.

But those staff members are applauded not only for their past service to the United States, but also for their current lifesaving work at GMHC. Many of them work with LGBT clients who are also veterans, and who in many cases need specialized support and care coordination.

We know that military veterans tend to experience higher rates of mental health and substance use issues than the general population. And through GMHC's work, we know that the same is true for LGBT people -- especially if they are living with or at high risk of HIV infection. When a client is both LGBT and a veteran, you have a bit of a perfect storm when it comes to emotional issues that need professional, compassionate interventions. We see this all the time, and we're grateful for the veterans on our staff who can help guide our programs and services properly.

We will continue to work with our LGBT brothers and sisters who are veterans, and we urge New York City to understand, and address, their unique needs and challenges. Thank you.



## NYC Veterans Alliance

[www.nycveteransalliance.org](http://www.nycveteransalliance.org)

[www.ourveterans.nyc](http://www.ourveterans.nyc)

Testimony by

Samuel Molik  
Director of Policy and Legislative Advocacy  
NYC Veterans Alliance

**Committee on Veterans**

Intro. 1218

&

Intro. 0479

November 26, 2018

Good afternoon and thank you to the Chair and the Committee for the opportunity to testify today. My name is Samuel Molik and I am the Director of Policy and Legislative Advocacy for the NYC Veterans Alliance, a member-driven, grassroots policy advocacy and community-building organization that advances veterans and their families as civic leaders.

On behalf of our members and supporters, we state our firm support for veterans with “bad paper” discharges to receive critical services, particularly those veterans unjustly discharged because of their sexual orientation or sexual identity, or because of untreated traumas from the battlefield or from sexual assault within the ranks. For this reason, we applaud the intent of this Committee in addressing bad paper discharges and seeking to right the wrongs of federal bureaucracy. We do not, however, support the expansion of the NYC Department of Veterans’ Services to duplicate the expert legal services already at work in in the nonprofit sector.

The NYC Veterans Alliance testified before this Committee in December 2015 in favor of two resolutions in support of state and federal legislation to restore honor and benefits for veterans unjustly discharged from the military under Don’t Ask, Don’t Tell and prior policies based in bigotry against LGBT individuals.<sup>1</sup> The NYC Veterans Alliance also brought to hearing Resolution 1196 in October 2016, which we proposed to this Committee, in support of federal legislation bringing fair policies to the federal discharge review board process.<sup>2</sup> Though none of these resolutions passed this Committee, nor did the corresponding state and federal legislation pass—we bring to this Committee’s attention that some measure of progress has been made toward permitting veterans discharged with bad paper to receive potentially lifesaving services from the VA.<sup>3</sup>

Although we remain fully committed to justice for veterans who were wrongly discharged and fairness in the discharge review board process, we urge members of this Committee to review transcripts of these prior hearings. What prior testimonies by the Veterans Advocacy Project, American Veterans for Equal Rights, High Ground Veterans Advocacy, Vietnam Veterans of America, and others have made clear before this Committee is the complexity and longevity of the discharge upgrade process, and the expert legal services involved in advancing these cases over the course of months and years. If DVS is required to create a standing unit dedicated to discharge upgrades, it will most certainly deplete the agency

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<sup>1</sup> <https://www.nycveteransalliance.org/151214>

<sup>2</sup> <https://www.nycveteransalliance.org/161028>, <https://www.nycveteransalliance.org/161029>

<sup>3</sup> <https://www.militarytimes.com/pay-benefits/military-benefits/2016/12/30/dod-issues-new-guidance-for-veterans-seeking-discharge-upgrades-military-record-corrections/>



of considerable resources not provided in its current staffing and budget.<sup>4</sup> We believe the effects of this legislation would be detrimental to DVS in carrying out its mission and mandate. For these reasons, we urge this Committee to table Intro 1218.

Yet support for veterans with bad paper remains urgently needed; as we have testified previously, these veterans are the most likely to experience homelessness, substance abuse, incarceration, and are the highest risk for suicide. We support the intent of Intro. 479 to ensure all city services for veterans are available to those unjustly discharged. We urge this Committee to revise Intro. 479 to be more broadly inclusive, ensuring that veterans discharged as a result of untreated traumas, including sexual assault, incurred during military service, also receive the benefits accorded in this bill. Exclusion of any category of wrongly discharged veterans would merely repeat the historic wrongs of federal policy. We further recommend Intro. 479 be amended to permit DVS to accomplish a cursory review of service records during the course of its current processes for aiding veterans and linking them with legal services available through the VetConnectNYC network.

To offer impactful support to wrongly discharged veterans, we urge this Committee to seek to strengthen and support the robust network of service providers who offer services and support to veterans with bad paper discharges. Instead of saddling a small agency with additional mandates, we urge the Council to offer a larger share of support in discretionary funding for service providers who already have the expertise and institutional knowledge needed to navigate the complexities of the discharge upgrade process. We also urge the Council to offer further support for mental health services, housing services, employments services, and other essential support for veterans with bad paper discharges.

On behalf of the NYC Veterans Alliance, I thank you for the opportunity to testify today. Pending your questions, this concludes my testimony.

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<sup>4</sup> <https://council.nyc.gov/budget/fy2019/>

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: JOE BELLO

Address: \_\_\_\_\_

I represent: ME

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1218:479 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 11/26/18

(PLEASE PRINT)

Name: Coco Culhane

Address: 40 rector st.

I represent: Veteran Advocacy Project

Address: 40 rector st.

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Appearance Card

I intend to appear and speak on Int. No. 479 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Yonatan Teichy

Address: 105 West End Ave

I represent: Jews for morality

Address: \_\_\_\_\_

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 479 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/26/2018

(PLEASE PRINT)

Name: Cecilia Gentili

Address: \_\_\_\_\_

I represent: GMHC - Gay Men's Health Crisis

Address: \_\_\_\_\_

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Appearance Card

I intend to appear and speak on Int. No. 479/1218 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/26/18

(PLEASE PRINT)

Name: LOREE SUTTON, MD

Address: 1 CENTRE ST, NY NY 10007

I represent: Department of Veterans Services (DVS)

Address: 1 CENTRE ST, NY NY 10007

**THE COUNCIL  
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Appearance Card

I intend to appear and speak on Int. No. 479/1218? Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/26/18

(PLEASE PRINT)

Name: ERIC HENRY

Address: 1 CENTRE ST, NY NY 10007

I represent: NYC DVS

Address: 1 CENTRE ST, NY NY 10007

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THE COUNCIL  
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Appearance Card

I intend to appear and speak on Int. No. 0179/1278 Res. No. \_\_\_\_\_

in favor  in opposition

*in part* *in part*  
Date: 27 November 2018

(PLEASE PRINT)

Name: Kent Eiler

Address: 42 West 44th Street NYC 10036

I represent: City Bar Justice Center Veterans Assistance Project

Address: 42 West 44th Street NYC 10036

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Appearance Card

I intend to appear and speak on Int. No. 1218 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/26/18

(PLEASE PRINT)

Name: Samuel Malik

Address: 118 W 22nd St 12th fl

I represent: NYC Veterans Alliance

Address: 118 W 22nd St 12th fl

THE COUNCIL  
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Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/26/18

(PLEASE PRINT)

Name: Vadim Panasjuk

Address: \_\_\_\_\_

I represent: Iraq & Afghanistan Veterans of America

Address: \_\_\_\_\_



THE COUNCIL  
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Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Ashton Stewart

Address: 305 Seventh Ave.

I represent: SAGEVets

Address: \_\_\_\_\_

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I intend to appear and speak on Int. No. 479 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: VENNY MEYER

Address: POB 150160, Kew Gardens, NY 11415

I represent: AUGER-NY

Address: \_\_\_\_\_

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