With more than 180,000 US troops currently serving in Iraq and Afghanistan, veterans’ affairs and benefits have been hot topics in the media. However, for many veterans this is not just a headline; it’s a difficult reality of their daily lives, as they struggle to access the disability and medical benefits they have earned.

Executive Compensation and Employee Benefits associate Kenneth Hemler explains that veterans’ claims are often denied by the US Department of Veterans Affairs (VA), due to a complicated application process. In many cases, Hemler says “problems arise because the VA is overburdened right now.”

Shearman & Sterling works with several organizations that help connect veterans with trained pro bono attorneys. A few recent examples include work with the New York City Bar, Project SALUTE, the Veterans Consortium Pro Bono Program, and the National Veterans Legal Services Program.

NEW YORK CITY BAR

In 2007, Shearman & Sterling, along with a handful of other firms, partnered with the New York City Bar to create a program that provides free legal advice to veterans regarding their disability benefits. The program trains attorneys to volunteer at monthly clinics for low-income veterans.

Litigation associate Terence Gilroy brings a unique perspective to his participation in this program, having served in the US Army as a member of the 82nd Airborne Division in Iraq before entering law school in 2003.

“I’ve dealt with this bureaucracy myself,” explains Gilroy, “and at the same time, I understand the VA has its own challenges.” Gilroy says the combination of his legal knowledge and first-hand experience in the military has given him an appreciation of what his clients go through when appealing claims denials.

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In January I had my first meeting with Mrs. M, an unemployed mother of two seeking a contested divorce on grounds of cruel and inhuman treatment. Shearman & Sterling does not typically accept contested divorce proceedings, but I felt this was a compelling case and asked the pro bono team to make an exception. The facts that I had been provided regarding Mr. M’s alleged conduct were disturbing and I recall looking forward to my meeting with Mrs. M, eager to help her begin a new life.

I arrived at my first meeting with Mrs. M with an armful of paperwork, but the meeting did not proceed as I had expected. Mrs. M spent much of the time in tears as she related her story of Mr. M’s marital conduct. One of my most meaningful initial acts as Mrs. M’s attorney was to find her a box of tissues, an essential tool of family law that no one had mentioned during my training. Due to the emotional nature of the preliminary fact-finding, it took two meetings to finish the paperwork.

Mrs. M was referred to Shearman & Sterling by inMotion, a New York nonprofit dedicated to providing free immigration and family law services to low-income women. Shearman & Sterling has supported inMotion since its inception and has been recognized with a Commitment to Justice Award for its work. InMotion notes on its Web site that low-income women seeking divorce in New York face a “daunting array of social issues that often make it almost impossible for them to focus on their legal cases.” So it proved for Mrs. M.

From a legal perspective, Mrs. M’s case is straightforward. Mr. M’s alleged abusive conduct clearly imperiled Mrs. M’s safety. I advised Mrs. M to seek a contested divorce as soon as possible, including a full order of protection excluding Mr. M from the family home and a request for expedited proceedings in view of the gravity of the allegations. Several barriers prevented Mrs. M from accepting this advice. She has no independent income and cannot afford to rent the family apartment. Moving to a new apartment is difficult because her daughter is in a special needs program and no comparable programs are available in more affordable areas. Mrs. M is also unwilling to make certain allegations of abuse public because she believes that this would irreparably damage her relationship with her son.

Mrs. M has decided to pursue an uncontested divorce that would not include key allegations of abuse or immediately remove Mr. M from the family apartment. She is looking for a job, but her role as primary caregiver for her children and the special needs of her daughter limit Mrs. M’s opportunities. Despite her struggles, Mrs. M has expressed gratitude for the time and effort spent on her case; because Mrs. M has nowhere else to turn, an attentive ear and a source of advice represent at least some hope.

Although pro bono representation of clients in such difficult situations can be frustrating, these are the very clients most desperately in need of legal assistance. My representation of Mrs. M will continue as we file divorce papers and attempt to secure exclusive occupancy of the family apartment for her and her children.
Serving Those Who Serve Their Country | continued from cover

Gilroy is currently assisting a Vietnam veteran believed to suffer from post-traumatic stress disorder (PTSD), but whose initial benefits claim did not include a diagnosis for the condition. Without the formal diagnosis, the client’s claim that his PTSD was related to his military service was rejected by the VA. Gilroy is working with the veteran to reopen his case and refile the claim so it more accurately reflects his PTSD diagnosis.

Other Shearman & Sterling attorneys working with the New York City Bar on veterans’ issues include partners Brian Polovoy, Michael Schiavone, James Scott, Sr., Maura O’Sullivan, and Jaculin Aaron, and associates Christopher Rosado, Curtis Scribner, Curt Goldman, Seth Burch, Fabiana Sakai, Jordan Costa, Horace Wu, Fraser Hartley, and Damien Grierson.

PROJECT SALUTE

Like Gilroy, Hemler also feels a personal connection to veterans’ cases. “Serving those who have served our country is the greatest way I can think of to use my law license,” says Hemler, whose uncle served in Vietnam.

Hemler, along with partner W. Jeffrey Lawrence, helped bring Project SALUTE to Shearman & Sterling. Project SALUTE (Students and Lawyers Assisting US Troops Everywhere) is a pro bono effort coordinated by the University of Detroit Mercy School of Law (UDM Law), designed to provide legal assistance to low-income veterans. Earlier this year, about 15 Shearman & Sterling attorneys and summer associates attended a training session conducted by the university.

Along with associate Eva Rasmussen, Hemler is currently working to help the mother of a Vietnam veteran appeal the denial of a claim submitted for benefits related to the veteran’s skin cancer, which may be related to exposure to the chemical Agent Orange.

Appeals like these are particularly challenging, Hemler explains, because “once a case goes past the Board of Veterans Appeals, you’re not allowed to submit new evidence to support a claim,” such as new reports on the effects of chemical exposure. Trained legal experts are needed to review denied claims and find new ways to approach earlier submissions.

Supervised by Lawrence, other Shearman & Sterling associates who have worked on Project SALUTE cases include Molly Stark, Rodrick Shepard, and Gaurav Sud, and summer associates Danielle Asaad, Colin Keefe, and John Anzelc.

Peggy Costello, a visiting clinical professor at UDM Law who helps administer the program, says Project SALUTE has helped hundreds of veterans around the country. She notes that demand remains strong for qualified attorneys to assist this population.

VETERANS CONSORTIUM PRO BONO PROGRAM

Shearman & Sterling also represented the family of a deceased Vietnam veteran in a case referred to the firm by the Veterans Consortium Pro Bono Program. The Consortium was established in 1992, when the US Congress recognized that over two-thirds of appellants before the US Court of Appeals for Veterans Claims were unrepresented by counsel and created this federally funded program to train and provide assistance to pro bono counsel for these appellants.

The veteran in this case had been diagnosed with schizophrenia while on active duty in the Army and was immediately discharged on that basis. Between 1973 and his death in 2002, the veteran was denied compensation by the VA on the grounds that the condition had pre-existed, and was not aggravated by, his service, although schizophrenia was not noted in his medical examination at the time of his induction.

In 2006, Shearman & Sterling began assisting the veteran’s mother with an appeal for accrued benefits. The team successfully argued that the VA failed to provide an adequate statement of reasons to support its denial. In August 2008, the Court vacated the Board of Veterans Appeals decision and remanded the case for reconsideration.

Capital Markets associates Jordan Costa and Damien Grierson and partner Michael Schiavone represented the veteran’s mother. “I was attracted to the Consortium by the possibility of assisting Iraq and Afghanistan war veterans who were underserved and needed help,” says Costa. “It was surprising to learn how many veterans from earlier conflicts continue to deal with legal issues.”

NATIONAL VETERANS LEGAL SERVICES PROGRAM

Another benefits appeal concerning a Vietnam veteran came to Shearman & Sterling through the independent nonprofit National Veterans Legal Services Program (NVLSP), which helps veterans obtain benefits.

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CORPORATE SECTOR REACHES OUT TO VETERANS

For veterans making the transition from military to civilian life, finding steady, fulfilling work in the corporate sector can be a challenge. American Corporate Partners (ACP), a new nonprofit that Shearman & Sterling is advising pro bono, aims to ease this transition.

The brainchild of Sidney E. Goodfriend, an investment banker who has worked with Shearman & Sterling, ACP pairs mentors from Fortune 500 companies with returning service members. Mentors offer veterans career and educational advice, serve as role models, and act as sounding boards on readjustment to civilian life.

“One of the reasons I was able to do reasonably well on Wall Street is because I had strong mentors,” Goodfriend says. “We are just doing our part to try to help make sure these veterans, who have sacrificed so much, receive the support they deserve when they return home.”

ACP is working with the US Army and Army Reserves, the US Marine Corps, and the US National Guard to identify individuals who might best benefit from the program. Corporate partners include Campbell’s, General Electric, Home Depot, Morgan Stanley, PepsiCo, and Verizon.

Shearman & Sterling has been helping to launch ACP since 2007, assisting with the nonprofit incorporation process, drafting organizational documents, and filing for tax-exempt status. The firm will continue to provide advice to ACP as it grows. Attorneys from multiple practice groups who have worked on the ACP project include partners Robert Evans III, Mitchell Menaker, James Scott, Sr., and Doreen Lilienfeld, counsel Daniel Glazer, associates Craig Culbert, Amy Lewis, Mark Gelman, Robert Laorno, and Shirley Wang, and legal assistant James Lik.

SETTING PRECEDENT IN THE SECOND CIRCUIT

In United States v. Crawford, a team led by Litigation partner Jeremy Epstein represented Eugene Crawford in a case before the US Court of Appeals for the Second Circuit.

The appeals court ruled that Crawford, who was convicted of gun possession in the United States District Court, Eastern District of New York, is entitled to a new trial, as the US District Court judge in the original trial allowed additional testimony to be presented to the jury after deliberations began. The decision marks the first time that the Court has addressed the propriety of reopening a trial during jury deliberations.

Agor explained that the case “dealt with an issue that had never been addressed in the Second Circuit, and indeed, by few other courts outside this Circuit, primarily because, as we argued, reopening a case after the jury has begun deliberations is highly irregular. Fortunately, the Court agreed with us, and adopted a fairly strict standard we had advocated that trial courts must follow in the future.”

“What was interesting about this case,” says Agor, “is that it was not only an issue of first impression for this Court, but also for many attorneys, and it was Jeremy’s background as a trial attorney that made all the difference. From the very beginning, Jeremy was focused on this issue, whereas an attorney with less trial experience may not have fully appreciated its significance.”
A NEW TRIAL FOR A DEFENDANT

In *United States v. Evans*, Epstein led a team working on the appeal of Robert Evans. In the US District Court for the District of Connecticut, Evans was found guilty of drug possession with intent to distribute, but acquitted of possession of a firearm during and in relation to a drug trafficking crime.

Evans raised the defense of entrapment, arguing that a government informant originated the idea of exchanging drugs for firearms and induced Evans to make the exchange with an undercover FBI agent. To rebut this defense, the government relied on the unnoticed and unqualified expert testimony of two FBI agents and a “guilt-by-association” argument in summation to demonstrate that Evans was predisposed to commit the crimes charged.

In its appellate brief, the Shearman & Sterling team argued that the trial court’s erroneous admission of the FBI agents’ improper expert testimony over defense counsel’s objections and the government’s impermissible “guilt-by-association” argument denied Evans a fair trial.

Associate John Scalzo, who worked on the brief and has participated in several pro bono criminal cases, says drafting a Second Circuit appellate brief in a criminal context is stylistically different than the briefs he works on more regularly. With Epstein’s leadership, he adds, the process was very smooth.

“Jeremy has significant experience in this area,” notes Scalzo, “which makes it a tremendous learning experience. He identified the potential appealable issues; had us research those issues; and once he was satisfied with our research, we prepared a draft of the brief. Jeremy incorporated his revisions, and it was filed.”

After reading the brief, the United States Attorney for the District of Connecticut agreed that the testimony was admitted in error and moved to vacate Evans’s conviction and remand the case to the district court for a new trial. Although reversals of federal criminal convictions are rare, it is even rarer for a United States attorney to agree to vacate a conviction. The Second Circuit granted the government’s motion.

Former associate Dan Fisher also worked on the case.

APPOINTMENTS UNDER THE CJA

The Criminal Justice Act was created to ensure that all defendants receive the effective assistance of counsel guaranteed by the Sixth Amendment. CJA panel members agree to represent low-income individuals accused of crimes. Epstein serves on the Second Circuit CJA panel, partner Patrick Robbins serves on the federal court’s panel in the Northern District of California, and partner Tai Park serves on the panel for the Southern District of New York.

Both Scalzo and Agor say they enjoy the opportunity to work on pro bono criminal cases like these. “You tend to get a level of substantive experience and responsibility that you might not otherwise get on a client matter,” says Scalzo.

In addition, both reflect on the larger implications. “On their own, defendants like these would not have access to representation like Shearman & Sterling can provide,” notes Agor. “It’s great that they can receive it through the CJA.”
Skyrocketing college tuition is keeping many parents across the United States awake at night. Today the average cost per year is $34,000 at a private university and $16,000 at an in-state public university. Colleges and the federal government are simply not keeping pace: The financial aid they offer students is being outstripped by tuition increases. As a consequence, cost is rapidly becoming the biggest obstacle to higher education.

The Institute for College Access & Success (TICAS) is one organization trying to address the mounting crisis of escalating college tuition. An independent nonprofit, TICAS conducts and supports research and advocacy with the aim of improving public policies affecting higher education’s access and affordability.

Applying Antitrust Law to Colleges
Shearman & Sterling recently advised TICAS pro bono on a little-known area of antitrust law and its applicability to colleges that wish to share financial aid information as a way to curb “bidding wars” for the most talented students. TICAS attached the firm’s 21-page legal memo on the subject to a white paper it released in June.

“Because this is a very complex, highly specialized corner of antitrust law—with a substantial education policy overlay—we did a lot of research for TICAS so that they could better advocate for their position, which is the adoption of new initiatives to improve the accessibility and affordability of higher education,” says Vittorio Cottafavi, a second-year Antitrust associate who worked on the matter. “We drafted a legal memo that included a description of the Department of Justice’s investigation into the exchange of financial aid information among colleges, a survey of the resulting litigation and congressional responses, and an analysis of the antitrust risk schools would face if they were to venture beyond the current statutory exemptions.”

According to TICAS, many public and private colleges hand out financial aid in excess of students’ actual needs in order to attract the best candidates. Colleges believe this “merit aid” is an investment in institutional quality and diversity. Because top students are in high demand, colleges often end up bidding against each other, raising the amounts of money offered to these students well beyond their actual financial need. This leaves colleges less money for “need-based aid,” and, as a result, less financial assistance available for low- and moderate-income students.

More cooperation among colleges potentially means more funding diverted from merit-based to need-based scholarships. In the past, several colleges agreed to share financial aid information in order to collectively determine aid packages for students who were admitted to two or more of the participating schools. After investigating this activity from 1989–91, the Department of Justice challenged this practice as price-fixing in violation of the antitrust laws. As part of the settlement of this litigation, colleges agreed to cease sharing detailed financial aid information about prospective students.

Congress then passed the Higher Education Amendments of 1992, which exempted from antitrust laws some exchanges of financial information among colleges. TICAS, however, does not believe the exemptions went far enough. The organization is now lobbying for an expansion of the current statute.

“We are proud to have been part of this project,” says Cottafavi. “The TICAS white paper is both impressive and important in what it is trying to achieve: affordable higher education for all students.”

Antitrust associate Timothy Haney also contributed to the project, and Antitrust partner Wayne Dale Collins oversaw the assignment.
"No one fully knows our Edith who hasn’t seen her in the act of creating a habitation for herself,” noted writer Henry James, a close friend of the novelist Edith Wharton. The Mount, Wharton’s magnificent estate in Lenox, Massachusetts, is a “habitation” like few others in the United States, and Shearman & Sterling has been contributing pro bono hours to helping the organization that runs the estate maintain financial stability.

THE PERFECT HOME: SIMPLICITY, HARMONY, PROPORTION, AND SUITABILITY

Although best known for more than 40 books, including Ethan Frome and The Age of Innocence, the Pulitzer-Prize-winning writer was also an accomplished interior designer and gardener. Her first book, co-authored with Ogden Codman, Jr., a Boston architect, was The Decoration of Houses, an 1897 guide to interior design. The Mount, an exquisite 29-room, three-and-a-half-story white stucco villa, with an expansive terrace, three acres of formal gardens, stable, greenhouse, and gatehouse, was built in 1901-02 and represented Wharton’s belief that a home should embody the principles of simplicity, harmony, proportion, and suitability. It was the place where Wharton put her design theories into practice and where she wrote The House of Mirth and other works.

Sadly, Wharton’s happiness with her confection didn’t last long. Ten years after The Mount’s construction, Wharton separated from her husband, went into voluntary exile in France, and surrendered The Mount. It passed through a succession of owners, among them a girls’ boarding school and a theater company. In 1980, the nonprofit Edith Wharton Restoration was founded in an effort to preserve the house, which had suffered badly from neglect.

Over several years, millions were spent to restore the estate to its original grandeur—more than $3 million on replanting the gardens alone. In 2002, the residence was opened to the public as a museum. Five years later, the restoration group earned a National Preservation Honor Award for its efforts. Despite years of hard work and much fundraising, however, The Mount ran into serious financial difficulties. In early 2008, with the estate in danger of foreclosure, the organization turned to Shearman & Sterling for help.

The firm has since been advising The Mount on the restructuring of its debt obligations, with Bankruptcy & Reorganization associates Susan Fennessey and Kelly McDonald and Property associate Seth Burch actively involved. “The estate survives as a symbol of Edith Wharton, a great writer and cultural icon, and has taken on a new life since its restoration as a National Historical Landmark,” said Bankruptcy partner Doug Bartner. “We are proud to assist in The Mount’s restructuring efforts.”
WHAT’S IN A NAME

For Shakespeare’s Juliet, a name was but a convention. For individuals who are transgender, however, a name can be the start of a long-awaited-for life.

The Transgender Legal Defense & Education Fund (TLDEF), a civil rights organization dedicated to ending discrimination based on gender identity and expression, has recently launched The Name Change Project to help transgender individuals navigate the legal process involved in a name change. Shearman & Sterling is among a handful of law firms advising name-change petitioners on a pro bono basis.

New York Antitrust partner Beau Buffier, Finance associate Alexandro Padrés, summer associates Geoff Rawle and Dave Kokell, and pro bono specialist Jorge Escobedo have been working on the firm’s three name-change cases.

A FIRST STEP

“A legal name change is the first step for these clients as they move toward fully adopting their identities, but it is only the beginning of a complicated course,” says fifth-year associate Alexandro Padrés. “Once the court issues the order granting leave to change their name, clients must then go about conforming all of their other documents, including Social Security, passport, driver’s license, educational documents, and other identity papers. This can be a lengthy and time-consuming process.”

Moreover, Padrés adds, a name change does not result in a gender marker—that is, male or female identification—change. “That’s a separate, much more complicated legal procedure that varies from state to state,” he says.

Despite the legal and administrative challenges, the outcome is well worth the effort. A name change can have a profound impact on many aspects of a transgender individual’s life, from personal safety to self-confidence. Simply passing a building’s security desk is no longer the minefield it once was, as one is able to show identification with a name matching one’s gender presentation.

MAKING A DIFFERENCE

“Many transgender individuals are vulnerable to discrimination, and even violence, just for being who they are,” notes Padrés. “Helping our clients conform their legal identities to the way they live their lives has been a great opportunity to witness how a basic legal procedure like a name change can make a huge difference in someone’s life.”