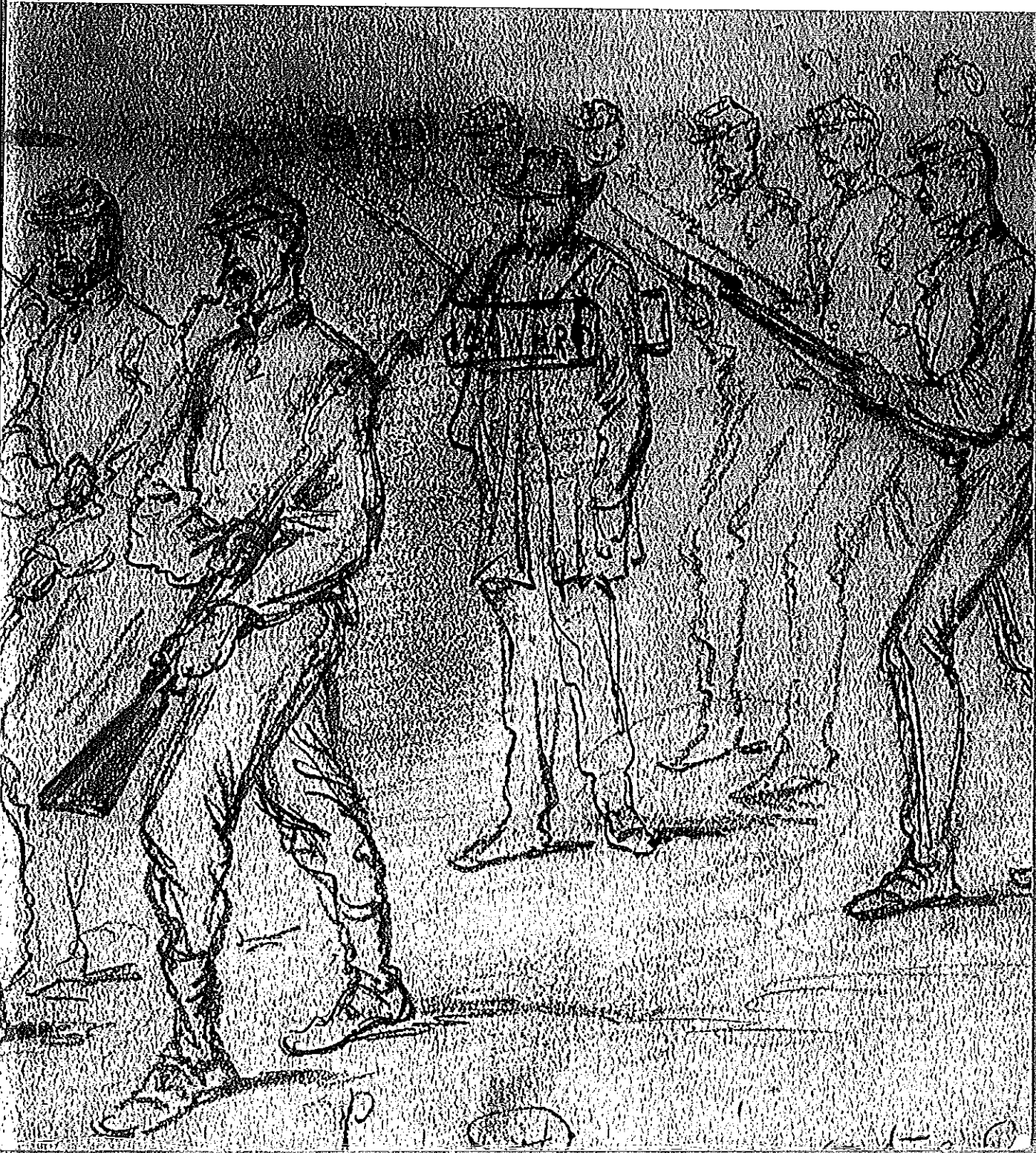


SPECIAL ISSUE: THE TRAUMA OF WAR

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Civil War History



Reflections on "The Trauma of War" and *Shook over Hell*

ERIC T. DEAN JR.

I began work on my study of the psychological problems of Civil War soldiers and veterans in the 1980s. I was influenced largely by two factors: First, the Vietnam Veterans' movement of the 1970s and 1980s had drawn a great deal of attention to the phenomenon of Post-Traumatic Stress Disorder (PTSD). Commentators stated repeatedly, without challenge, that this phenomenon was unique to Vietnam veterans, and that soldiers and veterans of earlier American wars, including the Civil War, had readjusted well, due to adulation from adoring publics. Second, John Keegan had only recently written *The Face of Battle: A Study of Agincourt, Waterloo, and the Somme*, and this work invited historians to examine military history with a close eye on the experience of the common soldier—something that had been grievously overlooked for all intents and purposes in practically all military and social history.¹ In prior military history, the emphasis had been on generals, leaders, battles, and regimental histories, and there had probably been more discussion of uniforms and flags than of the opinions and reactions of the common men who fought and died.

I put aside my law practice and accepted Keegan's invitation to examine the past with a new, more discerning eye. Common sense suggested that in a war like the American Civil War, which took the lives of an estimated 750,000

1. John Keegan, *The Face of Battle: A Study of Agincourt, Waterloo, and the Somme* (New York: Viking, 1976).

men, there must have been adverse, if not dire psychological consequences for the combatants.² But no one had yet written this story. I thus embarked on my ten-year study of the Civil War soldier and veteran.

My journey took me to Purdue University for an MA and Yale University for a PhD. I put together an ambitious "plan of attack," which would take me from my native Midwest to the East and South. To conserve resources, I favored Motel 6's, and I spent long days in a wide variety of state and private libraries and state archives as well as the National Archives in Washington, D.C. Perhaps only another historian can appreciate the deep satisfaction of spending days and days in the quiet and still of the archives poring over manuscripts, letters, and diaries, and finally discovering what one has been seeking. I had many such moments, which were full of wonder.

A stunning portrait of Civil War soldiers and veterans in acute distress emerged. I saw classic elements of PTSD, including depression, anxiety, social numbing, flashbacks, fear, dread of calamity, and memory loss. These men continued to suffer from the aftereffects of the war. Their testimony was immediate, compelling, and alarming: "Sobbed & cried & imagined that some one was going to kill him"; "in constant dread of being killed"; "Preparing his knife and bringing his ax in near his bed at night time"; "calls for his gun & declares his enemies are seeking his life & at times talks as if the Rebels were threatening an attack"; "his whole mind was on the service, and he constantly ranted about the army, saying that the rebels were after him and that he could hear them digging holes to put him in." He would "look wild and excited and being evidently in great mental commotion," would say "there is some one after me," "do you see them coming over the hill, we will all be lost and destroyed."³

Doctors would heavily sedate these men, but their torment continued, and to end the unbearable memories of death and violence, many tried to take their own lives. The families of these men also suffered. In my research, the stories of devoted wives, sisters, and mothers emerged—people who maintained their vigils night after night to care for their menfolk who could not sleep. One can only imagine the distress of the sister of Allen Wile, who was close

2. J. David Hacker, "A Census-Based Count of the Civil War Dead," *Civil War History* 57, no. 4 (Dec. 2011): 307–48.

3. Quoted in Eric T. Dean Jr., *Shook over Hell: Post-Traumatic Stress, Vietnam, and the Civil War* (Cambridge: Harvard Univ. Press, 1997), 105.

In "A Burden Too Heavy to Bear," Diane Miller Sommerville makes the important point, in the context of Confederate soldiers and veterans, that war does not end on the battlefield. It takes a terrible toll on civilian society in the years after the war ends—as she reveals in her accounts of Confederate men driven by despair and the terror of war to take their own lives. She shows that civilians who thought that they understood war came to realize that they did not. They were shocked by the brutality and awful reality of this phenomenon—as seen through the self-destructive behavior of loved ones—and this led them to moderate their harsh attitudes concerning suicide. They took a more tolerant, sympathetic position toward those who resorted to suicide because of the stress and trauma of war.

Sommerville's greater contribution is that as a starting point we need to understand that war has horrific consequences, and then we can take a step further and carefully analyze the effects of this on civilian attitudes, conventions, and culture. She contends that many questions remain unanswered and that much work remains for historians. I would reiterate the importance for these continuing studies, again, that state mental health records be made available to historians and researchers.

Finally, Chris Walsh, in "Cowardice Weakness or Infirmity, Whichever It May Be Termed" delineates the difficult and nuanced relationships among cowardice, bravery, and diagnostic frameworks, such as the "medicalization" of mental illness and stress disorders. As Walsh points out, there was a difficult interplay between sympathy for soldiers and revulsion for "cowardice" that particularly played out in courts-martial of soldiers accused of desertion or dereliction of duty. Indeed, the fear of cowardice and sanctions against cowardly behavior are critical in producing and maintaining discipline and unit cohesion in military units in the midst of some of the worst stress and trauma imaginable—witnessing and fearing immediate death.

I would take this one step further, though, to maintain that in some instances, there is a break and disruption, and not an interplay or continuum. Sometimes the trauma of war is so catastrophic that it ends dialogue. One sees this most starkly in the consequences of the artillery barrages of World War I where men stumbled to the rear suffering from hysterical blindness or mutism, or temporary paralysis of limbs due to the unspeakable trauma to which they had been subjected. They were sometimes reduced to a catatonic state in which they cut off all connection to the sentient world.

In a different form, one sees a gulf between soldier and civilian. There is an anger and a conviction that only another soldier can understand what war

is about. I saw this in the account of an Alabama infantryman who excoriated his civilian brother: "You speak of hard times and troublesome times. Just permit me to say that you do not know anything about trouble. Suppose you had to lie night after night and day after day in dread of your life every moment. . . . Do not talk about troubles and hard times while God and your country permits you to stay at home with your family and friends."⁵

I found one of the most poignant expressions of the longing for home, something impossibly out of reach for many soldiers, from James Stephens of the 20th Indiana Infantry:

[Indiana] has for the last three years nearly seemed as distant from and isolated to me as England. More than the Ocean with all its dangers has surged and rolled between me and my Earthly home since I left it in '61." Since then I have thought of home in the future as if I were in a dream. With a heart throbbing with a fearful hope I looked forward to the time when I might again be at home. But when I thought of that which lay before me. The hours of hellish conflict yet to come. Comrades falling all around me. The deadly minnie. The fearful shell. The screaming solid shot. The dreadful charge into the very jaws of death. Disease in a hundred forms. When I thought of all this, the faces of my friends seemed to fade to my view, and home seemed hidden by the smoke of battle.⁶

The important work of understanding the psychological consequences of the Civil War continues, and I commend the authors in this volume of *Civil War History* for their efforts.

5. Quoted in *ibid.*, 93.

6. Quoted in *ibid.*, 93.

Difficult Hunting

Accessing Connecticut Patient Records to Learn about Post-Traumatic Stress Disorder during the Civil War

MATTHEW WARSHAUER AND MICHAEL STURGES

In the fall of 2008, graduate students at Central Connecticut State University enrolled in *The Professional Historian*, the history department's required historical methodology course. I had previously taught the course for many years and had allowed students to study any subject related to Connecticut history, with the understanding that archival resources were readily available. For the fall 2008 semester, I decided for the first time to have students work on a common theme—Connecticut and the American Civil War—keeping in mind that the sesquicentennial was only three years away. What began as a bit of curiosity on my part as to what students might come up with turned into genuine amazement at the variety of topics they chose and the tenacity with which they researched.¹ One of the students, Michael Sturges, a high school teacher, became fascinated with post-traumatic stress disorder and whether Civil War soldiers might have suffered the same psychological

Matthew Warshauer is the principal author of this article. Michael Sturges is the lead researcher and uncovered all of the documents related to Connecticut Civil War soldiers and PTSD and placed them within the context of mental health in the United States. Attorney James E. Brown also contributed.

1. I have continued the Civil War focus of the course since fall 2009, and students have continued to excel at researching and writing original scholarship that has provided a much greater understanding of Connecticut's experiences during the war. Each class has had at least three students who have produced, with revisions, publishable work. See Matthew Warshauer, ed., *Inside Connecticut and the Civil War: One State's Struggles* (Middletown, Conn.: Wesleyan Univ. Press, forthcoming).

trauma psychiatrists and historians have come to understand from World War I, World War II, the Korean War, and the Vietnam conflict. Logic and simple assumption would suggest that many of the soldiers fighting in America's bloodiest conflict, with horrific battles like Antietam and Gettysburg resulting in death tolls not previously imagined, would be forever affected by what they had witnessed. Assumption, however, is the bane of historical inquiry, and Sturges set out to find evidence.

Neither of us knew that the hunt for records would lead to the Connecticut Hospital for the Insane, located in Middletown and founded in 1868 (today known as Connecticut Valley Hospital and run by the Connecticut Department of Mental Health and Addiction Services [DMHAS])—nor that it would lead to a two-year battle for access to the records, bringing us before the Connecticut Freedom of Information Commission. To avoid the suspense, I will tell you now that we were successful in getting access to the records, which were ultimately turned over to the Connecticut State Library and Archives. Our victory, however, was bittersweet. Not long after the records were transferred, the Connecticut General Assembly passed a new bill with a short amendment tucked away inside that sealed the files.

This article is the story of our hunt and fight for patient records to determine whether Connecticut Civil War soldiers suffered war trauma that today we recognize as post-traumatic stress disorder. Yet it is far more than the story of our travails: it is also a window into the continuing stigma of mental health and the rather remarkable fact that the agency within the state most devoted to aiding people with psychological disorders and of destigmatizing mental health—the Department of Mental Health and Addiction Services—became the worst roadblock in our attempt to better understand the psychological toll of the Civil War. This is also the story of how our research has continued. Perhaps the most important item learned from the process and our findings is the stark relevance this history has for today's soldiers returning home from Iraq and Afghanistan. As Col. Richard Young, the Connecticut state army surgeon, noted following a presentation on PTSD and Connecticut Civil War soldiers, "this sort of research is so incredibly important so that we can let the young men and women in our armed forces know that this sort of trauma has been around for many years, that they are not the first to be affected by it, and to place it all in a larger historical context."²

2. AMEDD (U.S. Army Medical Department) Annual Conference—Colonel Robert Nett Hall, Camp Niantic, Niantic, Conn., Jan. 29, 2012. Warshauer gave the keynote lecture on

Sturges's historical research began with the secondary literature. Eric T. Dean Jr.'s *Shook over Hell: Post-Traumatic Stress, Vietnam, and the Civil War* was the first study of its kind. A practicing attorney in Indiana, Dean began his work on PTSD as a seminar paper at Purdue University in 1987. His fascination and passion for the subject steered him from the law and into full-time study of history at Yale University, where he expanded his research into a dissertation that became the basis for his book. Dean concluded that significant numbers of Civil War veterans from Indiana suffered from psychological trauma. His study included the records of 291 Civil War veterans housed at the Indiana Hospital for the Insane (unlike Connecticut, Indiana has a seventy-five-year limit on the amount of time records may be closed after the creation of a record) and made observations based on the definitional outlines of PTSD as applied to Vietnam veterans and first officially recognized in the 1980 *Diagnostic and Statistical Manual of Mental Disorders III*.³ Noted Civil War historian James McPherson praised Dean's work, stating, "of this book it can truly be said, as it is all too often falsely said of other historical studies, that it breaks new ground" and "it has yielded more information about the mental health of Union veterans than historians had previously realized was available."⁴

"Available" was the key word. Thus began Sturges's search in the Connecticut State Library and Archives for information on Civil War veterans, most especially those with manifest psychological disabilities. Connecticut is unique for having established the nation's first soldiers' home, which became

post-traumatic stress disorder on Civil War soldiers and afterward spoke with Col. Richard Young, the Connecticut state army surgeon.

3. Eric T. Dean Jr., *Shook over Hell: Post-Traumatic Stress, Vietnam, and the Civil War* (Cambridge: Harvard Univ. Press, 1997), 17–21. Prior to the publication of his book, Dean had published a number of articles related to his research: "'We Will All Be Lost and Destroyed': Post-Traumatic Stress Disorder and the Civil War," *Civil War History* 37, no. 2 (June 1991): 138–53; "The Myth of the Troubled and Scorned Vietnam Veteran," *Journal of American Studies* 26, no. 1 (Apr. 1992): 59–74; "War and Psychiatry: Examining the Diffusion Theory in Light of the Insanity Defense in Post-World War One Britain," *History of Psychiatry* 4, no. 1 (1993): 61–82; "Rethinking the Civil War: Beyond 'Revolutions,' 'Reconstructions,' and the 'New Social History,'" *Southern Historian* 15 (Spring 1994): 28–50; "A Scene of Surpassing Terror and Awful Grandeur': The Paradoxes of Military Service in the American Civil War," *Michigan Historical Review* 21, no. 2 (Fall 1995): 37–61. For the DSM-III-R, see American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 3d ed. (Washington, D.C.: American Psychiatric Association 1987), 247–51.

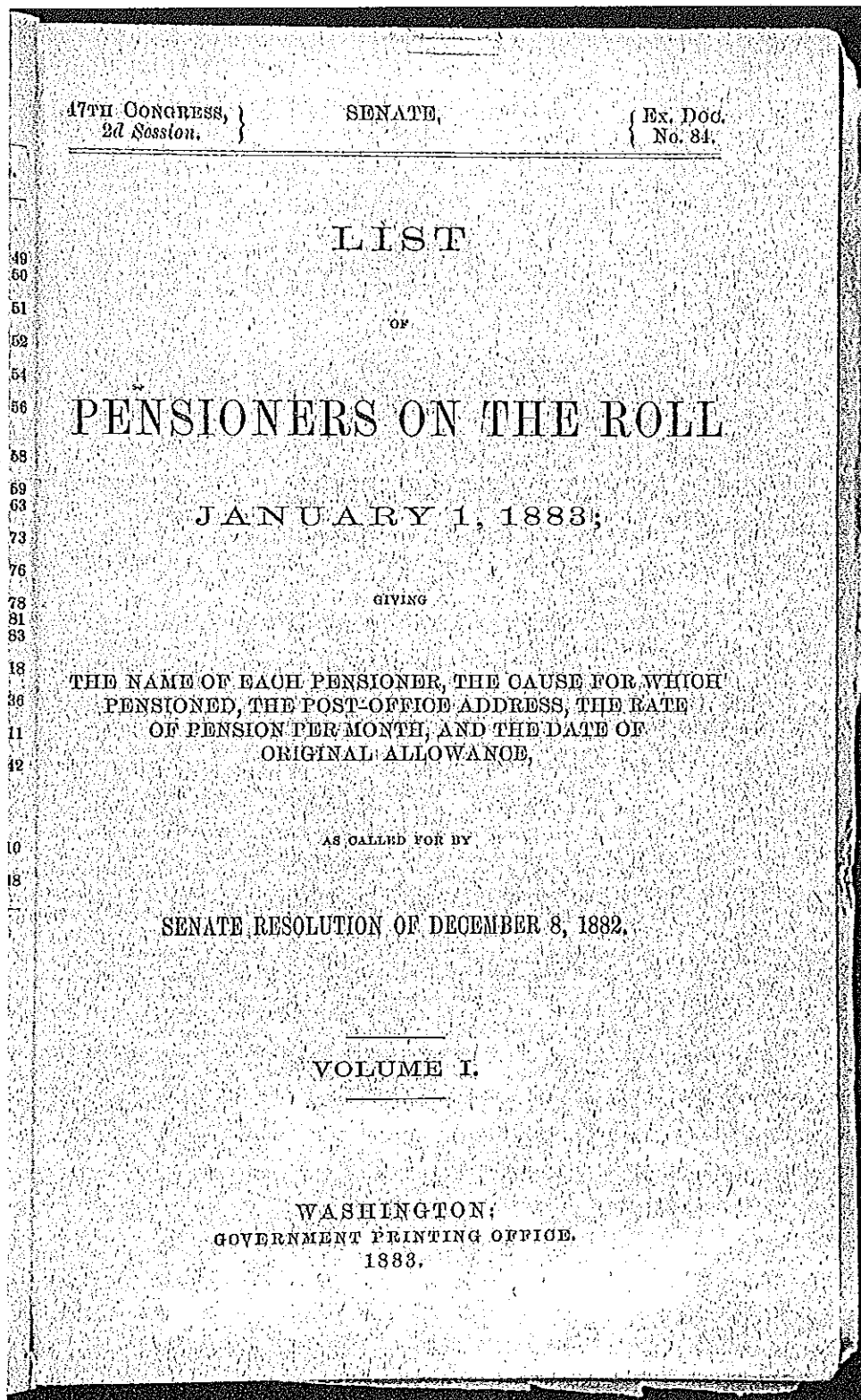
4. James M. McPherson, "War in the Mind: A Book That Breaks New Ground in Its Analysis of the Psychiatric Casualties of Battle," review of Eric T. Dean Jr., *Shook over Hell*, *Atlantic Monthly*, Mar. 1998, <http://www.theatlantic.com/past/docs/issues/98mar/mindwar.htm>.

the basis for the nation's modern Veterans' Administration. In 1863, Benjamin Fitch, a resident of Darien, Connecticut, promised soldiers enlisting in the Union army that he would care for their children and for the soldiers themselves upon their return. Fitch's Home for Soldiers and Orphans, also known as the Noroton Home, was incorporated by legislation in early 1864 and officially dedicated on July 4 that same year. From 1864 to 1883, Fitch's received limited aid from the State, and in 1887 the State assumed control and renamed the institution Fitch's Home for Soldiers. In 1940, because of limited space, it was later relocated to Rocky Hill, where it continues today as the primary Connecticut Veterans' Administration facility.⁵

The records from Fitch's Home were the first piece of critical evidence placing Civil War veterans at the Connecticut Hospital for the Insane. A single document, "Fitch's Home for the Soldier Beneficiaries transferred to the Connecticut Hospital for the Insane, 1891," listed forty-one veterans who were moved to the hospital.⁶ Records related to these men's deaths were subsequently returned to Fitch's Home and included information about their stays in the hospital. All of the Fitch records were readily available at the Connecticut State Library. It is evident that many of the men suffered from PTSD-related conditions in varying degrees: eleven from alcoholism, five from "inebriety" (a term used for intoxication apart from alcohol, most likely opium), five from mental paralysis, six from imbecility, four from dementia, eight from mania, seven from neurasthenia, and one from intemperance (likely extreme irritability, given the presence of alcoholism and inebriety as separate categories). Most were single, though some were married. Roughly 60 percent were foreign born, mostly Irish. Only two of the forty-one were

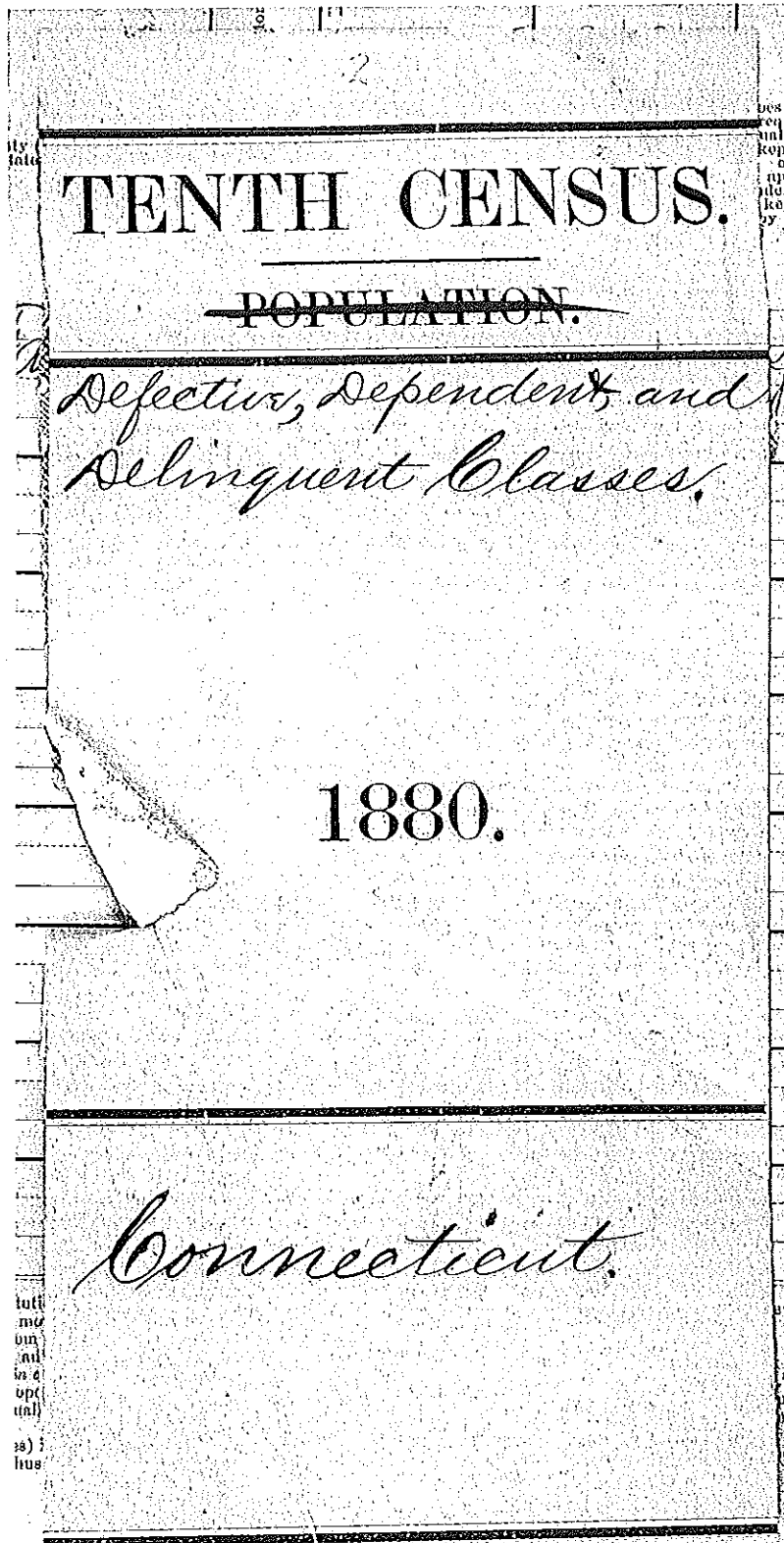
5. The Fitch Files include "The Deceased Veterans Discharge Files, 1882-1936," which consist of approximately twenty-three hundred veterans' files, located at the Connecticut State Library and Archives, Hartford. A finding aid, "Fitch's Home for Soldiers," is available at the Connecticut State Library Web site, <http://www.cslib.org/fitch.asp>. Little has been written about the history of Fitch's Soldiers' Home. There is a brief account, "History of Connecticut Veterans' Home," available at *Connecticut Department of Veterans' Affairs*, <http://www.ct.gov/ctva/cwp/view.asp?a=2005&q=290842>. In its archives, the Department of Veterans Affairs also possesses an unpublished, brief history: Edmund F. Schmidt, "Fitch's Home for Soldiers and Their Orphans" (1984), Rocky Hill Veterans' Administration, Rocky Hill, Conn. See also Patrick J. Kelly, *Creating a National Home: Building the Veterans' Welfare State, 1860-1900* (Cambridge, Mass.: Harvard Univ. Press, 1997).

6. "Fitch's Home for the Soldier Beneficiaries transferred to the Connecticut Hospital for the Insane, 1891," RG 73, box 174, Connecticut State Library and Archives, Hartford, Conn. (hereafter cited as CSL).



List of Pensioners on the Roll, January 1, 1883, part of the 1883 special census. This federal publication is reprinted from United States Pensions in Connecticut, January 1, 1883 (Hartford: State of Connecticut, 1883). Image courtesy of the Connecticut State Library, Hartford, Conn.

"Tenth Census: Defective, Dependent, and Delinquent Classes," 1880. Image courtesy of the Connecticut State Library, Hartford, Conn.



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listed as being illiterate, and only six were listed as laborers, the others being tradesman of various types. Of the forty-one men who made up this group of transferees, thirty-seven died in the asylum.⁷

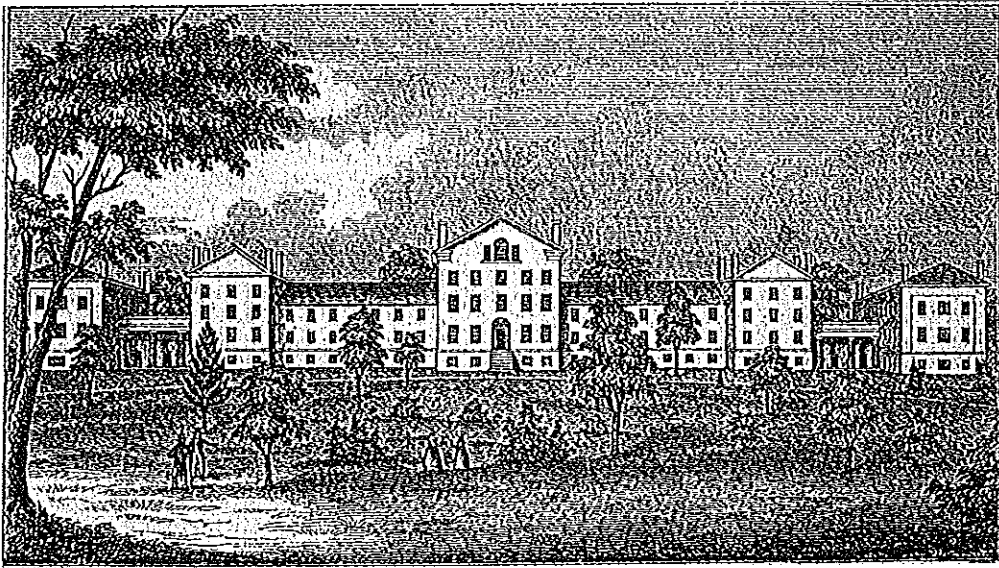
This information was supplemented by additional Connecticut State Library records, such as the 1880 Census of Defective, Dependent, and Delinquent Persons in the State of Connecticut, which counted the insane, mentally challenged, and incarcerated, as well as orphans throughout the state, organizing them by town of origin in most cases or by location of institutionalization. This census was carried out by many different agents and varied widely in terms of detail. The next important finding was an 1883 Census of veteran pensioners commissioned by the State of Connecticut, which listed the pensioners not only by name, but also by injury and pension level. Of particular importance was a group of men identified as being driven insane by their war experiences.⁸ Cross-listing the two census records revealed that out of ten men listed as "insane" in the 1880 census, eight also appeared in the 1883 census. Five of these were patients at the Connecticut Hospital for the Insane, one was a patient at the Hartford Retreat for the Insane, and two were listed as residing in their towns of origin. Only the five men at the Connecticut Hospital for the Insane had the nature of their disability recorded: three suffered from mania and two from dementia.⁹

The 1883 census also recorded important information about a much broader array of men. The records included each veteran's name, the date of his injuries, the disability that caused the pension to be awarded, and the monthly payment he received. There were between ten and sixty-five Connecticut veterans receiving pensions for conditions today associated with PTSD. A broader interpretation (one that includes the wide range of PTSD symptoms) finds that all sixty-five veterans suffered varying degrees of psychological combat-related trauma. These were listed as a host of "nervous diseases," such as nervous agitation, nervous exhaustion, neurasthenia, or simply nervous disorder. These

7. Collected final papers of residents from Fitch's Home, RG 73 box 81, CSL.

8. *U.S. Pensions in Connecticut, Jan. 1, 1883* (Hartford: State of Connecticut, 1883), CSL, list of pensioners identified as being driven insane by their war experiences. The names and certificate numbers of these men are Edward Quigley (#91,876), George P. Langdon (#93,645), William Blodgett (#162,636), Cornelius Dayton (#111,949), Edward L. Wilcox (#165,135), Charles Atkins (#119,284), Charles Pendleton (#21,316), William Bronson (#186,557), Blas Arwells (#93,784), and David Mallory (#157,615).

9. *State of Connecticut, Census of Defective, Dependent, and Delinquent Persons*, (Hartford: n.p., 1880).



The Hartford Retreat for the Insane, founded in 1823; today it is the Institute of Living at Hartford Hospital. Image courtesy of the Connecticut Historical Society, Hartford, Conn.

general nervous disorder diagnoses affected fifty-five of the soldiers. The other ten veterans suffered from severe psychological disorders caused by their war experiences. Six of the veterans had “insanity” specifically listed as their sole disability, which is noteworthy, considering the contemporary medical establishment’s avoidance of such a diagnosis.¹⁰

With all of this information firmly in hand, Sturges contacted Linda Gagnon, the records administrator at the Connecticut Valley Hospital (CVH, formerly the Connecticut Hospital for the Insane) in the fall of 2008. It is important to note the decision to seek records at CVH, a public institution, rather than the Hartford Retreat (today Hartford Hospital’s Institute of Living), a private one. Sturges was quickly rebuffed, told that any such records were private medical files and as such were not open to research without permission from living descendants. I subsequently wrote Gagnon on February 13, 2009, stating my position as a professor of history and cochair of the Connecticut Civil War Commemoration Commission, explaining the nature of our interest in the records, and engaging the question of their legal access:

I have recently spoken with the Principal Attorney at the State of Connecticut Freedom of Information Commission, Tracie Brown, and discussed

10. *U.S. Pensions in Connecticut, Jan. 1, 1883*, CSL.

the issue of privacy as it relates to the files, specifically CGS [Connecticut General Statutes] section 1-210 (b) (2) and (18), which set forth arguably pertinent exemptions from the broad disclosure requirements under the Freedom of Information Act (FOI).

Sub-section (2) states:

“Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy;”

Sub-section (18) states:

“Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Division facilities of the Connecticut Valley Hospital, the Commissioner of Mental Health and Addiction Services, has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction or Whiting Forensic Division facilities.”

Attorney Brown is of the opinion that neither of these exemptions apply to Civil War soldiers' files at Connecticut Valley Hospital. These soldiers have been long dead, and medical file privacy right exemptions, specifically sub-section (2), applies only to living individuals.

I am therefore formally requesting in accordance with the provisions of Connecticut's Freedom of Information Act, including C.G.S. Sections 1-210 and 1-212, that you provide Mr. Sturges, myself, and other members of my research team access to the files in question. Please be assured that we understand and respect your desire to protect the privacy rights of patients who have been served at Connecticut Valley Hospital.

I closed the letter by stating that I would be happy to discuss the matter in more detail on the phone, and that “should you request it, we will not publish any of the names of soldiers who were treated at Connecticut Valley Hospital.” Brown also invited Gagnon to make contact on the matter.¹¹

In reply, I received a letter from Doreen Del Bianco, the State of Connecticut DMHAS's freedom of information officer, dated March 5, 2009. It

11. Matthew Warshauer to Linda Gagnon, Feb. 13, 2009.

outlined the perceived reasons CVH records would be of no use to us and demonstrated a clear unfamiliarity with historical methodology. She wrote,

I do not believe our records will be helpful to his search because our Director of Health Information Management informs me that patient records from the late 1800's and early 1900's would not indicate whether someone had even served in the armed forces, much less in a particular war.

Also, our historical files consist of original documents, in bound volumes for the period 1869 through the 1930's, containing the medical records of *all* patients treated during those years—we are talking many volumes here, up to 100 patients per volume, involving probably tens of thousands of patients over a 40- or 50-year time span.

Del Bianco concluded that Sturges's best bet was to pursue his research at the state library. "Hopefully, they will have information that is more pertinent to his research. At least all of the records they have would be ones of people who actually served in the military, which is definitely not the case—and apparently could never even be determined—in terms of the historical records located at Connecticut Valley Hospital."¹²

In a March 23, 2009, reply, I addressed the specifics of Del Bianco's letter and not only attempted to explain some of the basic methodology historians employ but also provided specific evidence confirming that Connecticut Civil War soldiers were treated at CVH. "I would like to take this opportunity to address some of the stated reasons why you appear to believe that CVH patient files will be of no use to our research project," I began.

Your letter states: "I do not believe our records will be helpful to his [graduate student Michael Sturges's] search because our Director of Health Information informs me that patient records from the late 1800's and early 1900's would not indicate whether someone had even served in the armed forces, much less in a particular war."

Historians rarely expect that records will be perfectly mapped out. Nor do we expect that CVH records will state somewhere at the top of a file that "patient x served in the Civil War, in unit 1, etc." It would certainly be nice

12. Doreen Del Bianco to Matthew Warshauer, Mar. 5, 2009.

if this were the case. We do, however, believe that patient files will reveal service and war-related experiences based on a doctor's diagnosis and treatment. I hope that you will agree it is highly likely that a hospital, CVH in this case, founded in 1868, only three years after the conclusion of the war, would house and treat soldiers affected by their war-time experiences.

Moreover, we are certain that Civil War veterans were in fact treated at CVH, and base this determination on our review of the following sources:

- 1) "Census of Defective, Dependant, and Delinquent Persons," State of Connecticut 1883, State Documents Collection, Connecticut State Library. (This list provides the names of individuals residing at CVH.)
- 2) United States Pensions in Connecticut, January 1, 1883, State Documents, Connecticut State Library.
- 3) "Fitch's Home for the Soldier Beneficiaries transferred to the Hospital for the Insane," 1891, Box 174 RG 73, Connecticut State Library.
- 4) "Death Records," Fitch's Home for Soldiers, Case Numbers 499-800, Box 81 RG 73, Connecticut State Library.

Based on these sources, which provide conclusive evidence that Civil War veterans were treated at CVH, we reasonably believe that additional veterans, perhaps many, were treated at the facility.

Your letter also states: "our historical records consist of original documents, in bound volumes for the period 1869 through the 1930's, containing the medical records of *all* patients treated during those years—we are talking many volumes here, up to 100 patients per volume, involving tens of thousands of patients over a 40- or 50-year time span."

Again, historians often deal with large quantities of materials and we are not daunted by the task that is presented with the volume of records. Once we have the opportunity to peruse the files, we may very well determine a larger rationale regarding how they were kept and this may help to expedite our search. This, however, will only become evident once we have been granted access to the files.

You indicate that the bound volumes contain "*all*" patient records. I appreciate that your concern is protecting the privacy of patients. As I indicated in my original letter to Ms. Gagnon, however, "These soldiers have been long dead, and medical file privacy right exemptions, specifically sub-section (2) [of CGS section 1-210 (b)] applies only to living

individuals." The Principal Attorney at the State of Connecticut Freedom of Information Commission, Tracie Brown, agrees with this conclusion, which is consistent with decisions of the Connecticut Supreme Court.

I hope that these clarifications answer some of your assumptions regarding how useful patient files at CVH will or will not be for the purposes of studying Post-Traumatic Stress Disorder among Connecticut's Civil War veterans. I am aware of and appreciate your and any CVH staff concerns regarding the use of patient records and I would again like to assure you that my research team and I will treat the records of all patients with the utmost respect. Our interest is in telling the story of Civil War veterans, which we believe will be a meaningful contribution to the history of Connecticut and will be of particular interest to all Connecticut veterans.

Please inform me of when the files can be made available. We are anxious to pursue this important project and will work to address any additional concerns that you and the staff at CVH have.¹³

On April 1, 2009, the letter exchange continued, with Del Bianco writing, "While I appreciate your desire to conduct this research, we continue to have concerns about allowing open access to our medical records by your student(s)." She further noted "that medical records are expressly exempt from release under sec. 1-210 the FOIA; thus, it is inappropriate to submit this request under the Freedom of Information Act. Medical records are governed by Chapter 899 of the Connecticut General Statutes, as well as federal confidentiality statutes, and any access must be in accordance with applicable state and federal law." Del Bianco also addressed our specific evidence proving that Connecticut Civil War soldiers were treated at CVH, and directed us to provide her with their names "and we will try to assist you to the extent possible with those records." She noted that all identifying information in the files would be redacted, and, for the first time, offered information on applying to the Department of Mental Health and Addiction Services Institutional Review Board for permission to engage in a research study.¹⁴

Del Bianco was apparently realizing that we refused to go away, but the problem with her proposal to provide CVH with the names of soldiers we already had was twofold: First, CVH's stipulation that all names be redacted

13. Matthew Warshauer to Doreen Del Bianco, Mar. 23, 2009.

14. Doreen Del Bianco to Matthew Warshauer, Apr. 1, 2009.

would not allow us to engage in further research on any of the soldiers in question. How, for example, would we be able to take a particular patient file and connect it with a soldier's pension or service record to determine what he had experienced during the war? How would we search for letters at local historical societies? Second, we had only a preliminary list of soldiers and believed that many more were treated at the hospital. The opportunity to actually go through patient records was critical to gain as full an understanding as possible about Civil War soldiers at the facility. We had expressed a repeated respect for the needs of privacy and were willing to speak with CVH staff about this, and we were prepared to sign a contract promising not to publish the names of any soldiers without first making every reasonable attempt to track down descendants and gain permission. The difficulty was that we really had no idea what the CVH patient files might contain, had no idea as to the condition of the files, and believed that CVH staff had neither the time nor the historical training to engage in a thorough examination of the records.

After consulting with a team of graduate students working on this project and the wider preparation for the Civil War commemoration, we opted to pursue a formal request to the Freedom of Information Commission. This was determined in part by the views of one of the students, James E. Brown, who had returned to school after a thirty-four-year career as a corporate attorney. After reading Del Bianco's April 1 letter, Brown wrote in an email, "Del Bianco for the first time sets forth CVH's position on the legal issues. I believe she is misstating the law." He noted that Del Bianco had referenced "all applicable state and federal laws" but had given no indication "beyond the apparent erroneous reference to Chapter 899 of the C.G.S [which deals with physician-patient privilege]. . . . The burden is on CVH to show with specificity that access to their records is prohibited. They haven't done that." Brown pointed specifically to the Connecticut Freedom of Information exemption clause in section 1-210 (b), which I had cited in previous letters to CVH, and which states that exemption from FOIA is authorized only when "personal or medical files and similar files the disclosure of which would constitute an invasion of personal privacy." Brown explained that "in *Perkins v. Freedom of Information Commission et. al*, 228 Conn. 158 (1993), the Connecticut Supreme Court stated. . . . 'The burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption.'" Brown also argued that "CVH fails to address the fact that all of the individuals whose records would be involved in this project had been deceased for decades" and that

the privacy provisions under the law did not apply to deceased individuals, or to their families, in any event. In *Galvan v. The Freedom of Information Commission*, 201 Conn. 448 (1986), the Connecticut Supreme Court stated, "neither § 1-19 nor any other provision of the Freedom of Information Act provides a mechanism whereby a deceased person's family may invoke a right to privacy before the Freedom of Information Commission. In cases such as the one before us, the family members of the deceased have no standing to receive notice of an FOIC hearing, let alone to object or otherwise be heard at the hearing."¹⁵

On April 8, 2009, I sent the following letter to Del Bianco:

I write today as a courtesy to let you know that I have filed a request with the Connecticut Freedom of Information Commission to gain access to patient files at CVH. Whereas I certainly appreciate your willingness to copy certain files for my research, the staff at CVH are not trained as historians and do not necessarily know what to look for. Moreover, the project that my team and I are working on requires a fuller sampling of files to gain as much certainty as possible regarding the number of soldiers treated at CVH and the range of symptoms they experienced, as well as how doctors treated these men.

Based on my understanding of the laws in question, the court cases that have dealt with such matters, and on my exchange of information with Attorney Brown at the Commission, I believe that these files are in fact accessible under FOI and that the commission will ultimately require you to open the files. I would again like to assure you that we will treat any and all files with the utmost care and respect, and work with you and the staff at CVH to address privacy concerns.¹⁶

At this point, Del Bianco began scrambling, sending a letter dated April 28, 2009, which expressed a degree of exasperation at "our denying you and your students unfettered access to approximately 60 years' worth of psychiatric records held at Connecticut Valley Hospital in Middletown on thousands of

15. James E. Brown, e-mail to Matthew Warshauer, Apr. 8, 2009.

16. Matthew Warshauer to Doreen Del Bianco, Apr. 8, 2009.

patients in your quest to locate information on any Civil War soldiers who may have received psychiatric treatment from the State of Connecticut during that time.” She pointed to several sections of the Connecticut General Statutes, and again informed me, in bold type, that I could submit a research request, though she did not address any of my concerns regarding historical methods or sampling size, and concluded her letter, “Accordingly, seeking these materials via FOI request is an inappropriate submission under the Freedom of Information Act, and you must, instead, submit an application to conduct the proposed research to:” and she provided the name of the chief executive officer at CVH.¹⁷

In July 2009, I received a telephone call from Assistant Attorney General Jacqueline Hoell. Because DMHAS is a state agency, the Connecticut attorney general’s office represents it in all legal matters. We discussed my communications with Del Bianco, the problems connected with her desire that I either allow CVH staff to do the research or file a formal research plan, and how doing so would not provide the type of information we needed to gain a full understanding of Civil War soldiers’ experiences, because of the mandated redaction of patient names. On July 22, not long after this conversation, I received a letter from the DMHAS research director, Dr. Linda Frisman, “Re: Your Request to conduct research at Connecticut Valley Hospital,” in which she outlined the required guidelines. Although it was now clear that CVH would allow us open access to all patient books so we could look for as large a sample as possible, they still required “assurance that no identifying information will be recorded by the investigators related to any records they review, and that no identifying information related to any of the records reviewed will be removed from CVH.”¹⁸ Once again, staff at CVH failed to appreciate that the names of soldiers were essential for researching soldiers’ experiences. I had discussed this matter specifically with Hoell and again offered to sign a contract stating that we would not release or publish the names of any soldiers without first making a reasonable attempt to gain permission of descendants, but that the ability to cross-reference patients with service and pension records was critical to the history.

At about this same time, in June 2009, the media began to get wind of

17. Doreen Del Bianco to Matthew Warshauer, Apr. 28, 2009.

18. Phone conversation between Assistant Attorney General Jacqueline Hoell and Matthew Warshauer, July 2009; Linda Frisman to Matthew Warshauer, July 22, 2009.

the issue. *Hartford Courant* reporter Jesse Leavenworth published an article titled "Researchers Want Access to Civil War Veterans' Health Records," in which he quoted DMHAS spokesman Wayne Dailey, who noted, "the department supports research into PTSD, but is concerned about living relatives of the Civil War soldiers." "This type of information might impact them and the legacy of their ancestors," Dailey said. "The other side is the benefit that research might have for military personnel today. These are both important issues, but we want to proceed cautiously so that in the interest of assisting people today we're not somehow having a negative impact on living descendants." The article also interviewed Michael Sturges, who insisted, "The attitudes today toward PTSD are accepting. . . . I would be very surprised if the population was opposed to it, although it's not a bad idea for us to contact living relatives and get their say-so." He continued, "The fact that the war didn't end in 1865 for so many [veterans], I would think that's a story they would want to be told." Leavenworth also interviewed me, quoting, "CVH . . . is holding the key to a lock that would open a tremendous story of the men who served for Connecticut in the Civil War, and we really want to be respectful of their patient files, but we also want to see them."¹⁹

The wheels moved slowly forward and the Freedom of Information Commission scheduled a hearing initially slated for July 29, 2009, which was postponed to September 2, after a request from Assistant Attorney General Hoell. In preparation for the initial hearing, Brown prepared a "Memorandum of Law" in support of our position. (It is important to note here that our memorandum and that prepared by the Attorney General's Office were made available, as per law, to each of the parties involved prior to the FOI hearing). Brown's memorandum outlined what we believed were the two key Connecticut statutes that dealt with the case: Title 1, Chapter 14, Freedom of Information Act—specifically CGS § 1-210 et. al., access to public records; and Title 52, Chapter 899, Evidence—specifically CGS § 52-146d et.al., confidentiality of communications between psychiatrists and their patients. Brown stipulated, "It is CVH's position that the Freedom of Information Act (FOIA) has no applicability in this case, based upon the erroneous assertion that medical records are, without qualification, exempt from the scope of that law. Further, CVH erroneously asserts that the medical records in question are protected

19. Jesse Leavenworth, "Researchers Want Access to Civil War Veterans' Health Records," *Hartford Courant*, June 1, 2009 (Brackets in original).

from disclosure as privileged psychiatrist-patient communications, and that the only statutory route for access to such records is via a CVH-approved research plan." He continued, explaining that the FOIA does apply in the case, mandating the disclosure of medical records unless CVH could demonstrate that disclosure would, "a) be highly offensive to a reasonable person, and b) not related to a matter of legitimate public interest. Further, it is Professor Warshauer's position that CVH must make such demonstration without reliance upon the statutory protection for communications between psychiatrists and their patients." The key was our argument that Connecticut C.G.S. § 52-146d et. al., which established the psychiatrist-patient privilege in 1961, was "not intended to and do not apply in a case such as this—where the patients whose records are in question have been dead for up to 100 years or more, and who were treated by doctors long before Connecticut recognized psychiatry as a profession distinct from the practice of medicine, and long before physicians practicing medicine were required to be licensed in this state."²⁰

The memorandum Brown prepared is a lengthy document, outlining the totality of the correspondence between me and DMHAS staff, as well as citing a long list of relevant Connecticut court cases. In summary, here are our principal arguments. As noted, the FOIA clause dealing with exemptions for medical records, CGS section 1-210 (b), states:

- (b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:
- (1) Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure;
 - (2) Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.

We argued that for FOIA exclusions to be applied, it was CVH's responsibility to convincingly demonstrate that the information on PTSD among Connecticut Civil War soldiers was not a matter of public concern and that a reason-

20. FIC No. 2009-200, In the Matter of a Complaint by Professor Matthew Warshauer against Commissioner, Department of Mental Health and Addiction Services; and State of Connecticut, Department of Mental Health and Addiction Services, Memorandum of Law in Support of Professor Matthew Warshauer's Notice of Appeal under the Freedom of Information Act, prepared by James E. Brown, JD, 2 (hereafter Brown memorandum).

able person would be highly offended by the disclosure of such information. Brown noted, "CVH has not addressed the fact that all of the individuals whose records would be involved in this project have been deceased for up to a century or more." Moreover, he asserted, "the fact that decades have passed since the deaths of the soldiers in question has a direct impact upon the analysis of whether a reasonable person would find it 'highly offensive' to learn from scholarly research in 2009 that a soldier who served in the Civil War appears to have suffered thereafter from PTSD. It should be noted that the applicable statutory standard is not the potential reaction to the disclosure of a Civil War soldier's surviving relatives, but rather the potential reaction by a 'reasonable person.'" Brown insisted that "without question, the topic of PTSD among Civil War soldiers is a 'legitimate matter of public concern.' That the public, and in particular Connecticut veterans, would be interested in learning about this issue is simply undeniable."²¹

The second principal component of our argument focused on the psychiatrist-patient privilege statute, CGS § 52-146d (7), enacted in 1961, which stated, "Psychiatrist' means a person licensed to practice medicine who devotes a substantial portion of his time to the practice of psychiatry, or a person reasonably believed by the patient to be so qualified." Brown argued that "CVH must demonstrate that the statutory provisions establish a psychiatrist-patient privilege (CGS § 52-146d) apply to communications that occurred over a century ago."²²

We argued two primary points: First, when the Connecticut General Assembly enacted the statute, it did so prospectively, expecting that it would be used from 1961 forward, and not applied retroactively. This practice is consistent with CGS. § 55-3: "No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have a retrospective effect."²³

21. Brown memorandum, 5.

22. Brown memorandum, 8.

23. This was a point argued in the original Brown memorandum but further expanded upon in a response to Assistant Attorney General Hoell's pre-hearing memorandum. Brown's response is FIC No. 2009-200, In the Matter of a Complaint by Professor Matthew Warshauer against Commissioner, Department of Mental Health and Addiction Services; and State of Connecticut, Department of Mental Health and Addiction Services, Memorandum in Response to Respondent's Pre-Hearing Memorandum and In Support of Complainant's FOIA Appeal, prepared by James E. Brown, JD. Consistent with this directive, the Connecticut Supreme Court has repeatedly stated that such new laws apply prospectively only, unless the general assembly has, by "clear and unequivocal legislative intent," expressed its desire that the new

Second, the statute outlining psychiatrist–patient privilege referred specifically to “a person licensed to practice medicine.” Brown argued both that psychiatrists have never been licensed in Connecticut as such, but rather are licensed physicians who specialize in psychiatry, and more importantly that “During and after the Civil War doctors practiced medicine without licensure. There was no requirement that physicians be licensed in Connecticut until enactment in 1893 of chapter 158, ‘An Act Concerning the Practice of Medicine, Surgery, and Midwifery.’”²⁴ Thus, the files we were interested in researching, dated between 1868 and the 1890s, were totally exempt from that statute defining psychiatrist–patient privilege. The statutory privilege applies to communications between a patient and “a person licensed to practice medicine”; no one was licensed to practice medicine prior to 1893.

On August 21, Assistant Attorney General Hoell filed the State’s “Pre-Hearing Memorandum,” outlining the basic timeline of my communication with the DMHAS staff and their offers to allow access via a research proposal. Nowhere did Hoell address the problem of redacting names from patient files. Instead, she stated that there were provisions that “allow . . . the researcher to access records which identify patients if he first submits a research plan,” and that I had received a communication “outlining, with specificity, the process.” She noted that “the people of the State of Connecticut enjoy broad psychiatrist–patient privilege that protects confidential communications or records of patients seeking diagnosis and treatment,” then cited the Connecticut Court case *State v. Jenkins*, 271 Conn. 165, 182 (Conn. 2004), and she insisted that “State law does, in fact, require the confidentiality of psychiatric records and communications allows for disclosure only in certain specified circumstances.” She then cited the psychiatrist–patient confidentiality statutes (CGS § 52–146 et al.) that Brown had addressed but failed to respond to our arguments about the retroactive applicability of such statutes or about

requirements should apply retroactively to cases pending on the law’s effective date or more broadly. *Anderson Consulting v. Commissioner of Revenue Services*, 255 Conn. 498 (2001); *Circle Lanes of Fairfield, Inc. v. Fay*, 195 Conn. 534 (1985); *Shelton v. Commissioner*, 193 Conn. 506 (1984). The psychiatrist–patient protections established by Public Act 61–519 and extended to mental health facilities by Public Act 69–819 became effective on October 1, 1961, and October 1, 1969. There is nothing in the language of either act that demonstrates a “clear and unequivocal legislative intent” that the requirements of either act were to be applied retroactively in any case to communications made or medical records created prior to October 1, 1961.

24. Brown memorandum, 8.

physician licensure.²⁵ In all, the assistant attorney general's "Pre-Hearing Memorandum" was a brief three and half pages, compared to Brown's eleven pages in support of our position.

On the same day Hoell submitted her "Pre-Hearing Memorandum," she also issued a "Motion To Recuse" FOI commissioner Sherman D. London from the hearing because he and Del Bianco "are acquainted with one another." Hall explained that "Ms. DelBianco [*sic*] is a former state representative from Waterbury and Commissioner London was formerly on the editorial board of the *Waterbury Republican American* newspaper. During this period of time, Commissioner London wrote and/or approved several editorials regarding DelBianco [*sic*] that were personally unflattering." One of those articles was entitled "Goodbye and Good Riddance" and another article referred to Ms. DelBianco [*sic*] as "Little Miss Outrage." Commissioner London recused himself.²⁶

On September 2, 2009, the two parties appeared at the FOI offices in Hartford. Sturges, Brown, and I were present, as were Hoell and Del Bianco. I had the opportunity to read a statement that placed our desire for the records into historical context, and in that regard, I presented a letter of support from Eric Dean, who had returned to the practice of law and was living in Connecticut. He wrote:

In order for me to pursue my work, it was absolutely necessary for me to have access to the records of the mental institutions . . . , and as a result of said access being granted, I believe that my book sheds considerable light on the topic of the lives of the common Civil War soldier. Since I wrote my book in 1997, next to nothing has appeared on the topic of the psychological travails of Civil War soldiers and veterans. . . . More work on this historical topic needs to be done, but it cannot and will not be done as long as access to the records in issue is denied.²⁷

25. FIC No. 2009-200, Matthew Warshauer, *Plaintiff v. State of Connecticut*, Department of Mental Health and Addiction Services, Respondent, Freedom of Information Commission, Pre-Hearing Memorandum, Aug. 21, 2009, 2-3.

26. FIC No. 2009-200, Matthew Warshauer, *Plaintiff, v. State of Connecticut*, Department of Mental Health and Addiction Services, Respondent, Freedom of Information Commission, Motion to Recuse, Aug. 21, 2009.

27. Eric T. Dean Jr. to Dr. Matthew Warshauer, Aug. 1, 2009.

Brown then presented the legal components of our position, which have already been outlined.

One of the other particularly interesting aspects of the case was that by the time the hearing occurred, CVH was already in the process of turning over its century-old patient books to the Connecticut State Library. During the summer of 2009, I had the opportunity to speak with Mark Jones, Connecticut state archivist, who informed me that he had been contacted about the transfer of records. Apparently, no mention was made of the pending FOI hearing and the state library paperwork filled out by CVH staff placed no restrictions on access to the files. This was a rather bizarre occurrence, and to this day we are unsure if our FOI request spurred the file transfer. What is certain is that CVH's left hand had no idea what its right hand was doing. Hoell and Del Bianco were visibly surprised to learn at the hearing that all of the Civil War files in question and many other patient books had been removed to the state library and were a mere stone's throw from where we sat on the day of the FOI hearing. I will admit to a certain greedy pleasure in providing this information on the day of the hearing and questioning how concerned DMHAS really was regarding patient confidentiality of people from well over a hundred years ago.

What is also apparent is that the assistant attorney general had underestimated our tenacity and preparation. Her very brief "Pre-Hearing Memorandum" failed to address any of the particulars of the law we argued. Following the hearing she filed two additional memoranda. The first of these, "Post-Hearing Memorandum," issued on September 16, 2009, was six pages long, with a five-page attachment on the history of psychiatry printed from Wikipedia. Hoell immediately focused on our argument of retroactivity, insisting, "the statute should be applied retroactively" and asserting without support, "that the legislature intended the statutes, which require confidentiality of sensitive information, to apply both retroactively and prospectively." She also attempted to dodge our argument about physician licensure, stating, "DMHAS did not raise the argument as to when licensed physicians or psychiatrists began practicing. Nor was DMHAS aware that this would be an argument raised by the Complainant."²⁸ Brown's memorandum had detailed this point and cited relevant Connecticut statutes.

28. FIC NO. 2009-200, Matthew Warshauer, *Plaintiff, v. State of Connecticut*, Department of Mental Health and Addiction Services, Respondent, Freedom of Information Commission, Post-Hearing Memorandum, Sept. 16, 2009.

On February 22, 2010, the FOI Commission released its proposed final decision. After outlining the various issues related to the case, the commission determined a series of important findings. Prior to the 1961 statute creating a psychiatrist–patient privilege, “there was no psychiatrist–patient or any other doctor–patient privilege or confidentiality under the common law of Connecticut.” Therefore, the records of “persons treated at CVH in or around the 1860s through the 1880s, which time frame precedes the enactment of Connecticut’s psychiatrist–patient privilege . . . by approximately 100 years” makes the 1961 statute inapplicable. The commission announced without qualification, “It is found that the respondents failed to prove that the legislature clearly and unequivocally intended that Connecticut’s psychiatrist–patient privilege be applied retroactively.” It also commented on the methodological problems inherent in the proposed CVH research model, announcing, “It is found that, according to the respondents’ testimony, any research plan approved by the respondents would not include the ability of the researcher to identify in a research report any single individual.”²⁹

The commission also addressed the historical issue of psychiatry as an established field of medicine, stating, “that the respondents failed to produce any evidence that would tend to show that the records, which were created in the 19th century, were created at the behest of a ‘psychiatrist’—that is ‘a person licensed to practice medicine who devotes a substantial portion of his time to the practice of psychiatry,’ or ‘a person reasonably believed by the patient to be so qualified.’” The proposed decision noted that the assistant attorney general continually referred to the files as “psychiatric records” but acknowledged during the hearing, “I don’t know if [these records] were created before the science of psychiatry, I’m not an expert in that, but it is our position that these records . . . [are psychiatric records],” causing the commission to determine that they were made “without providing an evidentiary basis for such statements, they failed to prove that the records at issue . . . are psychiatric communications or records within the meaning” of the statutes.³⁰ To some extent, these findings exceeded our goals, as we had not attempted to discredit psychiatry as a field of medicine. Rather, we focused on when physicians in the State of Connecticut were licensed.

29. FIC No. 2009–200, Matthew Warshauer, *Complainant(s), v. State of Connecticut*, Department of Mental Health and Addiction Services, *Respondent*, Freedom of Information Commission of the State of Connecticut, Transmittal of Proposed Final Decision, Feb. 22, 2010, sections 12, 16, 17–19, 21, pp. 4, 5.

30. *Ibid.*, sections 22–23, p. 6.

Finally, the commission addressed the legislated exceptions for medical records under the state FOIA regulations, announcing, "It is found that the records pertain to legitimate matters of public concern. It is further found that the disclosure of such information concerning long-dead individuals would not be highly offensive to a reasonable person" and that it "would not constitute an invasion of personal privacy." Ultimately, the commission determined that CVH and DMHAS had "violated the disclosure provision of § 1-210 (a), G.S., by denying the complainant's request for access to the records."³¹

Local news media immediately announced the decision. On February 27, 2010, Jesse Leavenworth wrote in the *Hartford Courant* that FOI Commission hearing officer Mary Schwind "found that the state mental health department could not retroactively apply 20th-century doctor-patient confidentiality laws to 19th-century records. Also, the state cannot claim that the researchers' work would be an invasion of privacy, in part, Schwind found, because the soldier-patients are all dead." Leavenworth discussed how many of the records in question had already been turned over to the state library, and he therefore determined, "The panel's decision, however, is likely moot because many of the records in question were transferred last year to the State library."³² His determination soon proved incorrect.

Reporter Thomas Scheffey followed in an April 26 *Connecticut Law Tribune* article, commenting that "it took no small amount of legal maneuvering in a freedom of information case that wrapped up last month for the documents to be declared public records." Scheffey contacted DMHAS spokesman James Siemianowski, who stated that the department did not intend to appeal because "the ruling in this case was limited to the period of 1860 to 1880" and that DMHAS was "more concerned about the broader finding by the FOI hearing officer, that the psychiatrist-patient privilege was not intended to be applied retroactively. That, said Siemianowski, could have had an impact on records for much more recent wars, including World War II, for which there are living veterans."³³

Interestingly, what had occurred in the short window between the two newspaper stories apparently affected DMHAS's decision to not appeal the

31. *Ibid.*, sections 22-29, 33, p. 7, 8.

32. Jesse Leavenworth, "Researchers Gain Access to Mental Health Records of Civil War Veterans," *Hartford Courant*, Feb. 27, 2010.

33. Thomas B. Scheffey, "A Legal Skirmish over Civil War Records," *Connecticut Law Tribune*, Apr. 26, 2010.

ruling. On March 12, 2010, Assistant Attorney General Hoell issued a new memorandum of law with an important addition regarding the commission's decision concerning retroactivity of the law: "The effect of the Proposed Final Decision, should it be upheld, would presumably reach beyond the records of Civil War veterans. The Proposed Final Decision finds that the statute should not be applied retroactively and that therefore these records are not protected. Should that become the final decision, there are many records which pertain to individuals who are still very much alive which, should the statute be found not to be retroactive, would have no protections placed on them since they received treatment prior to the enactment of Conn. Gen. Stat. § 52-146e."³⁴ Brown had addressed this issue in his memorandum: "The psychiatrist-patient privilege was not intended to apply to medical records created in the 1950s, 1940s, etc., and most certainly was not intended to apply to medical records of Civil War soldiers treated at CVH in the 1860s and 1870s." He argued further, "If in a future case the FOI Commission were asked to approve access to and disclosure of medical records of soldiers who had been CVH patients at any time after October 1, 1961 . . . we believe it would be reasonable to conclude that access/disclosure would not be allowed."³⁵

Although Hoell's concerns regarding retroactivity were absolutely correct and should be addressed by legislation, it was unnecessary and incorrect to assume that based on the commission's proposed decision, medical files would be released for individuals from the 1940s through 1961. This wrongly assumed that the medical exemption statutes within the FOIA, those related to "an invasion of personal privacy" and whether release of records would be "highly offensive to a reasonable person," failed to apply. Still, the FOI Commission released a new report on March 31, 2010, eliminating six sections of its original report. All of these had to do with the psychiatrist-patient privilege statute and the fact that there had been no confidentiality in the common law of Connecticut.

34. FIC No. 2009-200, Matthew Warshauer, *Plaintiff, v. State of Connecticut*; Department of Mental Health and Addiction Services, Respondent, Freedom of Information Commission, Memorandum of Law, Mar. 12, 2010.

35. FIC NO. 2009-200, In the Matter of a Complaint by Professor Matthew Warshauer against Commissioner, Department of Mental Health and Addiction Services; and State of Connecticut, Department of Mental Health and Addiction Services, Memorandum in Response to Respondent's Pre-Hearing Memorandum and In Support of Complainant's FOIA Appeal, 11-12.

Of particular note in the new report was page 4, item 11, which stated, "It is found that the records described in paragraph 2, above, relating to persons treated at CVH in or around the 1860's through the 1880's." This same statement had appeared in the commission's original report, on page 5, item 16, although the new report deleted a small section of the paragraph, following "through the 1880's." The original report had included "through the 1880's, which timeframe precedes the enactment of Connecticut's psychiatrist-patient privilege codified as § 42-146d, et seq., G.S., by approximately 100 years." The commission may have intended that the specificity of naming the dates "1860's through the 1880's" served as limiting the chronological scope of the decision, though this same phrase had appeared in the original report. Also of particular importance was the removal of item 12 on page 4, which had stated, "It is found that prior to the enactment of Public Act 61-529, there was no psychiatrist-patient or any other doctor-patient privilege or confidentiality in the common law of Connecticut."³⁶

The commission's new findings had no impact on the relevance of the ruling as per our needs. CVH and DMHAS were still found in violation of the FOIA and ordered to provide access to patient records, although now the ruling dealt more directly with the FOIA exemption language rather than the broader issue of statutory or common law protection of confidentiality between a psychiatrist and patient. Based on DMHAS spokesman James Siemianowski's comments in the *Connecticut Law Tribune*, the commission's alterations satisfied the State's concerns. But they did not, really.

Someone was still upset and apparently began preparations to circumvent the FIOA process entirely, through legislative fiat. This, however, was only determined in the final days of the 2011 legislative session, which ended in June. DMHAS staff had, presumably, prepared new language regarding confidentiality: "(10) Records, tax returns, reports and statements exempted by federal law or [state] the general statutes or communications privileged by the attorney-client relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist patient relationship or any other privilege

36. The last quotation in this paragraph had also included "confidentiality in the common law of Connecticut." See *Edelstein v. Dep't of Pub. Health & Addiction Serv.*, 240 Conn. 658, 662, A.2d 803 (1997) (stating that '[a] common law of privilege for communications made by a patient to a physician has never been recognized in the state'). The changes in the February 22 and March 31 reports are evident when one places them side by side.

established by the common law or the general statutes.”³⁷ On March 17, 2011, public hearings were held, at which Doreen Del Bianco and other DMHAS staff members were invited to testify. No one bothered to invite anyone involved in initiating the FOI complaint. Journalist Thomas Scheffey spoke with Del Bianco, stating that she “did not alert other interested parties, including Warshauer, the state historian, the state archivist or the legislative watchdogs for the FOIC. In an interview, she said she had no obligation to do so.”³⁸

The new language was incorporated into House Bill 6618 and passed on April 6. It then moved quickly to the Senate, which approved it two days later. Following the governor’s signature, it repealed and substituted section 1-210 of the general statutes dealing with exemptions under the FOIA.³⁹ The new law, Public Act 11-242, went into effect on October 1, 2011. It was aimed directly at the sections of the FOI Commission report that had been removed from their original proposed report. Reporter Thomas Scheffey wrote that after “DMHAS lost, it didn’t appeal—it had larger ambitions. . . . Instead of a Court of Appeal, DMHAS appealed to the legislature, seeking a mega-exemption shrouding information subject to every privilege known to the law, whether created by legislators or the courts.” Scheffey could not determine who actually crafted the new language, “although DMHAS Commissioner [Patricia] Rehmer described Assistant Attorney General Jacqueline Hoell as being ‘involved from the start to the finish with this.’” Scheffey added that “Hoell denied working on the changes, and declined to speak directly with a *Law Tribune* reporter.”⁴⁰

37. The full language read: “Sec. 37. Subdivision (10) of subsection (b) of section 1-210 of the general statutes is repealed and the following is substituted in lieu thereof (Effective Oct. 1, 2011): (10) Records, tax returns, reports and statements exempted by federal law or [state] the general statutes or communications privileged by the attorney-client relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or the general statutes, including any such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes.”

38. Thomas B. Scheffey, “FOI Exemption a ‘Victory’ No One Claims,” *Connecticut Law Tribune*, Nov. 14, 2011.

39. The path of the bill is reported in “An Act Concerning Privileged Communications and the Freedom of Information Act,” at the Connecticut General Assembly Web site, http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=943&which_year=2011&SUBMIT1.x=14&SUBMIT1.y=10 and <http://www.cga.ct.gov/2011/TOB/s/pdf/2011SB-00943-Roo-SB.pdf>.

40. Scheffey, “FOI Exemption A ‘Victory’ No One Claims.”

Scheffey concluded that “this time-machine treatment was designed to thwart historian Mark [*sic*, Matt] Warshauer, a professor at Central Connecticut State University. He and his students have been researching the treatment of ‘soldier’s heart’ in the Civil War, to compare it with what people now call post traumatic stress disorder.” DMHAS commissioner Rehmer noted that they were primarily worried about future requests for records of veterans who are still alive or objections from relatives of the deceased but stated that the agency “did have concern about the outcome of the Civil War FOI because it seemed you could have family members who could be upset about it.”⁴¹ Tom Hennick, public information officer for Connecticut’s Freedom of Information Commission, commented that the amendment was “snuck in,” that it “leaves a bad taste in your mouth legislatively,” and “creates an incredible retroactivity.”⁴²

Clearly troubled over the extensive nature of the new legislation, Scheffey continued to investigate the matter, publishing a follow-up article, “Stealthy Amendment by Hospital Hampers Historians.” He declared, “Scholarly researchers, book authors and genealogists will have to contend with one of the more sweeping—and impenetrably abstruse—exemptions ever to hit Connecticut’s Freedom of Information Act.” He also interviewed Mitch Pearlman, former longtime director of the FOIC, at length: “This is what we’ve been seeing more and more over the past ten years, that the exemptions are becoming more and more broadly drafted, so they’re taking deeper bites into the disclosure provisions of the FOI act.”⁴³

Others were also interested in the matter. Early in 2012, Claude Albert, president of the Connecticut Council on Freedom of Information, contacted both me and State Librarian Kendall Wiggin to discuss his organization’s efforts to lobby the Connecticut General Assembly and draft new legislation. This effort continued for several months, into the spring, but resulted in no changes.⁴⁴

41. *Ibid.*

42. You-Jin Han, “New Connecticut Law Restricts Access to Privileged Records,” *Reporters Committee for Freedom of the Press*, Oct. 3, 2011, <http://www.rcfp.org/node/123512>. See also, Jacqueline Smith, “A Sneaky, Last-Minute Amendment Restricts Public’s Right to Know,” *Danbury News-Times*, Sept. 24, 2011, <http://www.newstimes.com/news/article/THE-SCOOP-Jacqueline-Smith-A-sneaky-last-minute-2187185.php>.

43. Thomas B. Scheffey, “Stealthy Amendment by Hospital Hampers Historians,” *Connecticut Law Tribune*, Dec. 8, 2011.

44. E-mail exchanges between Claude Albert, Matthew Warshauer, and Kendall Wiggin, Jan. 6–Apr. 19, 2012.

Although it might seem that the long road through the Connecticut Freedom of Information Commission was all for naught, there still existed an opportunity. The records had been released to the state library and the new legislation did not go into effect until October 1, 2011. This provided the summer to pour over the CVH patient books. What we found was amazing and disappointing; amazing because the soldiers' stories told through the entries of CVH staff provided a remarkable glimpse into the horrors of the Civil War and the lasting trauma that affected veterans—disappointing because the records were so incomplete. Out of some twenty-seven casebooks recorded from 1868 through 1915, twenty-four were missing, leaving us with only three to study. Unless these records are someday found on the CVH campus, this part of the history of PTSD and the wider story of early mental health in America has been lost forever.⁴⁵ We do not believe that there was any malfeasance on the part of CVH staff to withhold certain record books, primarily because the transfer of records had unwittingly begun without the knowledge of CVH staff involved in the FOI complaint.

While this article is not focused on the actual findings in the CVH patient records, it is important to provide some indication of what we found.⁴⁶ One of the truly intriguing stories was that of Lt. Col. Sanford H. Perkins. His service record reveals that he enlisted in Torrington, Connecticut, on May 23, 1861, and was mustered in as a captain in the 1st Connecticut Heavy Artillery, Company I, on the same day. The regiment was engaged for the first time at the Siege of Yorktown, Virginia, between April 30 and May 4 and again at Hanover Court House on May 27, 1862. On June 7, Perkins transferred to the 14th Connecticut Volunteer Infantry and was promoted to major. He returned to Connecticut to help with the organization of this new regiment, which

45. After the CVH patient books were turned over to the Connecticut State Library, Assistant State Archivist Paul Baran organized and catalogued the records, providing us with an Excel spreadsheet of the total volumes and which ones were at the library. Sturges had originally created a spreadsheet with the names of eighty-eight men who potentially served in the war and were treated at CVH. Only an actual study of the patient files could reveal if his estimation was correct. Moreover, the estimate included only men listed in some other sort of documentation and therefore could not possibly have incorporated soldiers who ended up at CVH and were found only through a search of those files.

46. For more specifics on the story of PTSD and individual soldiers from Connecticut, see Michael Sturges, "Soldier's Heart," *Connecticut Explored* 9, no. 2 (Spring 2011): 44–49; Michael Sturges, "Post-Traumatic Stress Disorder in the Civil War: Connecticut Casualties and a Look into the Mind," in Warshauer, *Inside Connecticut and the Civil War*.



Lieutenant Colonel S. H. Perkins, 14th Connecticut. Image courtesy of the Civil War Photographs Collection, Prints & Photographs Division, Library of Congress, Washington, D.C.

was mustered into service on August 23, 1862. Prior to that date, on August 4, he was promoted to lieutenant colonel. The regiment left Connecticut for Washington, D.C., on August 25.⁴⁷

The 14th received its baptism by fire at the Battle of Antietam. After a mere two weeks of training and receiving their rifles only days before marching into Maryland, the men were thrown into the single deadliest day of the Civil War, where twenty-three thousand were killed or wounded. Located directly in front of the Sunken Road, or Bloody Lane, as it also known, the regiment suffered 19 killed, 103 wounded, and 1 missing.⁴⁸ During the battle Perkins was said to

47. *Record of Service of Connecticut Men in the Army and Navy of the United States during the War of Rebellion* (Hartford: Case, Lockwood & Brainard, 1889), 119, 156, 552; see also Blaikie Hines, *Civil War Volunteer Sons of Connecticut* (Thomaston, Maine: American Patriot Press, 2002), 165.

48. Matthew Warshauer, *Connecticut in the American Civil War: Slavery, Sacrifice, and Survival* (Middletown, Conn.: Wesleyan Univ. Press, 2011), 85–87; Hines, *Civil War Volunteer Sons of Connecticut*, 166.

have "handsomely rallied" the regiment, and at one point in the unit's official history he is referred to as "Acting Colonel Perkins." He commanded troops on the right side facing the road, where "three times they formed under a severe cross-fire." In his official report two days after the battle, Perkins wrote of the withering fire and shells that rained down upon his men, stating, "Our colors are riddled with shot and shell, and the staff broken. . . . As you are aware, our men, hastily raised and without drill behaved like veterans, and fully maintained the honor of the Union and our native state."⁴⁹

In December, the 14th was one of only two Connecticut units that fought at Marye's Heights in Fredericksburg, Virginia. As one of the lead regiments, they made their way through the city for a charge on the ever-rising hill. Regimental historian Charles Page wrote, "Shells came crashing down into the city, tearing down the walls and scattering death and destruction around. . . . Lieutenant-Colonel Perkins ran on foot at the head of the regiment cheering the men by his voice and example." "Ah, that charge!" continued Page, "Here Col. Perkins shouted his last command to the Fourteenth. He dashed ahead and his brave boys followed. A few rods over ground every foot of which was lashed by artillery, and the level guns on the direful wall coolly waiting spoke out in unison terrific." Page questioned,

Who can depict the horrors of that scene? What language can adequately portray the awful carnage of that hour? The belching of two hundred pieces of artillery seemed to lift the earth from its foundation, shells screeched and burst in the air among the men as if possessed by demons and were seeking revenge, the shot from tens of thousands of musketry fell like rain drops in a summer shower, brother saw brother writhing with the agony of mortal wounds and could offer no succor, comrades saw comrade with whom he had marched shoulder to shoulder in the wearisome marches or shared the meager food on their cheerless bivouac, still in death. Men fell like pins in an alley before the well aimed ball of a skillful bowler.⁵⁰

The adjutant general's report noted that Lieutenant Colonel Perkins had been "wounded in neck, severely." Col. O. H. Palmer wrote "that Lieutenant-Colonel Sanford H. Perkins, in command of the Fourteenth Connecticut

49. Charles D. Page, *History of the Fourteenth Regiment, Connecticut Vol. Infantry* (Meriden, Conn.: Horton Printing Co., 1906), 38, 49, 57.

50. *Ibid.*, 85.

Volunteers, a brave and fearless officer, was severely wounded in the neck by a musket ball nobly discharging his duties at the head of his regiment, and had to be carried from the field.”⁵¹ Perkins’s service record is brief, stating that he was wounded at Fredericksburg on December 13, 1862, and subsequently received a disciplinary discharge on April 20, 1863.⁵² Here, the story would end, if not for the patients’ records at Connecticut Valley Hospital.

Lieutenant Colonel Perkins suffered a psychotic break at Fredericksburg, something that could not possibly be known based on the amorphous entry “Disc. dis.” in his service record. Because of the many missing records from the hospital, it is impossible to say when Perkins arrived at the facility, but it is the 1873–74 records that list him as a patient. Staff recorded that he had “delusions about his whereabouts” and that while recovering in a military hospital from a glancing neck wound was convinced that he was in a hotel, even treating nurses and doctors as hotel staff. While at CVH, he desired to be left alone, refused to socialize with other patients or staff, and had an obsession with a fictional character he called “Swino.” Perkins drew Swino the pig on virtually every piece of available paper, and it was the regular subject of conversation with doctors. His hospital records reveal a variety of symptoms and multiple addenda. Entries included “paranoia,” “irrational excitability,” “violent fits,” and “withdrawal from social life.” Staff consistently noted that the cause of insanity was rooted in his war experience, theorizing that it was perhaps in part a side effect from his neck wound or the result of intemperate behavior picked up in camp.⁵³ Such theoretical conclusions were standard fare for doctors at the time. Rather than considering the possibility that horrific experiences could in themselves cause insanity, physicians hypothesized that either a physical injury had thrown off the body’s humours or nervous system or that immoral behavior, such as alcohol or drug use (intemperate behavior picked up in camp), was the cause of mental disorder, rather than a disease in its own right or a coping strategy for dealing with past trauma.⁵⁴

Perkins’s story is a perfect example of why unfettered access to Civil War-era

51. *Ibid.*, 82–83, 85–86, 95, 101–2. Both the adjutant’s report and Colonel Palmer’s report are in this volume, pages 100–103.

52. *Record of Service of Connecticut Men*, 552.

53. His records from the Connecticut Hospital for the Insane are Connecticut Hospital for the Insane, CSL, RG 021:001, Connecticut Valley Hospital, case-history books, vol. 3, Oct. 1, 1873–Sept. 1, 1874, 233–34.

54. John C. Nemiah, “Early Concepts of Trauma, Dissociation, and the Unconscious: Their History and Current Implications,” in *Trauma, Memory, and Dissociation*, ed. J. Douglas

patient files is necessary to tell the story of PTSD during the nation's bloodiest conflict. The lieutenant colonel was not on our initial list of the veterans cared for at CVH; he came to our attention only as a result of perusing the files. Moreover, had we been required to follow CVH research guidelines, redacting all names so that we could not do follow-up research on a given soldier's service during the war, we could never have placed Sanford Perkins's patient files into any sort of context to understand why he suffered combat trauma.

Staff at CVH and DHMAS failed to understand or even consider these factors. Perhaps this was a result of not knowing historical methodology, but it is far more likely that they were mired in a sort of bureaucratic myopia. It is clear from the earliest letters concerning our research interests that they did not take us seriously, focusing more on steering us away and limiting the scope of our investigation than on discussing potential ways their concerns about patient privacy and our needs for information might coalesce. We were certainly willing and expressed that repeatedly. Additionally, their oft-expressed concerns about patient privacy were, we believe, far overshadowed by their administrative attitude that "these files are ours, and you can't have them." This is seen in a number of ways: It's evident, first, in their repeated unwillingness to discuss a compromise, and second, in their refusal to recognize the importance of studying PTSD during the Civil War and its impact for today's veterans. DMHAS's attitude focused more on hiding the records of mental trauma in wartime and, in this sense, stigmatizing psychological disorders. As DMHAS is the state agency primarily responsible for destigmatizing mental health problems, these attitudes are both disappointing and paradoxical. Third, DMHAS's excessive legislative game playing in the aftermath of their failure to win the FOI hearing is even more disconcerting. Again, it revealed no true interest in what it is historians do, failing to even invite those involved in the case (or the state historian, state librarian, or state archivist, for that matter) to the "public" hearing. Rather, it secretly and

Bremner (Washington D.C.: American Psychiatric Press, 1998), 11; Edward Shorter, *A History of Psychiatry: From the Era of the Asylum to the Age of Prozac* (New York: Wiley, 1997), 15; Norman Dain, *Concepts of Insanity in the United States, 1789-1865* (New Brunswick, N.J.: Rutgers Univ. Press 1964), 55. Further general histories of nineteenth-century psychology in the United States include John A Popplestone, *An Illustrated History of American Psychology* (Akron, Ohio: Univ. of Akron Press 1999); Cherie Goodenow O'Boyle, *History of Psychology: A Cultural Perspective* (Mahwah, N.J.: L. Erlbaum Associates 2006), 191-201; Lawrence B. Goodheart, *Mad Yankees: The Hartford Retreat for the Insane and Nineteenth Century Psychiatry* (Amherst: Univ. of Massachusetts Press, 2003), 75; Dean, *Shook over Hell*, 79-81.

what some might consider manipulatively slipped into the FOIA language an amendment so broad that historians, librarians, and archivists still have no idea of its full extent. State Librarian Wiggin commented after the passage of the legislation, "At the moment we're going to basically shut off access to quite a few categories of records," he said, as it is "not clear as to how the law will really affect them until we get a better clarification."⁵⁵

To be fair, real concerns over physician-patient confidentiality are important. Yet with some consideration and creativity, the needs of physicians and historians can be met. When the news of Connecticut Civil War PTSD research became known to Dr. Harold Schwartz, psychiatrist in chief and vice president of behavioral health at Hartford Hospital's Institute of Living (formerly the Hartford Retreat, where many Civil War soldiers resided), he not only invited us to share with two hundred hospital staff members what we had learned, he also agreed to aid our efforts in gaining access to the institute's records while still satisfying the hospital's legal obligations, especially the Health Information Portability and Accountability Act (HIPAA), which establishes the privacy rule for personal health information. After I met with Dr. Schwartz and a hospital attorney, it was determined that the best path forward was to request access to the records through the Hartford, Connecticut, Probate Court. A hearing was scheduled, notice was published in the local newspapers, and on May 29, 2012, Judge Robert K. Killian Jr. ordered that "Professor Matthew Warshauer be allowed access to the psychiatric records of Civil War veterans located at the Institute of Living. No identifying or personal information is to be published as part of the research."⁵⁶ This research is currently under way. Our second step after reviewing the files and determining which soldiers' records are most useful will be to research descendants and gain permission to publish their ancestors' stories.

As a final note, even the U.S. Department of Health and Human Services (HHS) has recognized that its broad HIPAA guidelines have hampered the efforts of history professionals. A 2005 subcommittee on privacy proposed

55. Scheffey, "FOI Exemption a 'Victory' No One Claims." The new statute raises interesting questions about the various records we used to locate information on CVH. Do, for example, the Fitch Home records originally recorded at CVH but returned to Fitch's upon the death of the men involved, which we utilized to launch our investigation, fall under the new FOIA exemptions?

56. Request for the probate hearing was made via e-mail, Matthew Warshauer to Judge Robert Killian, Apr. 30, 2012; Decree, Regarding the Release of Historic Medical Records, State of Connecticut, Probate Court, Town of Hartford, District of Hartford, May 29, 2012.

new guidelines, recognizing that “archivists, biographers and historians have expressed frustration regarding the lack of access to ancient or old records of historical value held by covered entities, even when there are likely few remaining individuals concerned with the privacy of such information. . . . Accordingly, we propose to amend § 164.502 (f) to require a covered entity to comply with the requirements of the Privacy Rule with regard to the protected health information of the deceased individual for a period of 50 years following the date of death.”⁵⁷ While wrestling with the difficulties of our FOI case, I contacted Maya Bernstein, the lead attorney in the Office of Civil Rights at HHS, and inquired about the status of the subcommittee’s recommendations. The response was, “Unfortunately, a final rule has not yet been published, and I do not know when it will be published. In addition, we cannot say whether the final rule will accept the proposed provisions.”⁵⁸

Remarkably, on January 25, 2013, while I was writing this article, HHS released its new modifications regarding HIPAA privacy guidelines, adopting in their entirety the proposals the 2005 subcommittee made concerning the “Period of Protection for Decedent Information.” The fifty-year rule is now federal law.⁵⁹ This does not automatically open the CVH patient files. The new HHS guidelines state: “Covered entities may continue to provide privacy protections to decedent information beyond the 50-year period, and may be required to do so under other applicable laws or as part of their professional responsibility.” What the new federal rules make certain are two things: first, Hartford Hospital’s Institute of Living and the Hartford Probate Court will most certainly cancel any restrictions regarding use of the Civil War era files, and, second, DMHAS and the Connecticut General Assembly should reconsider their newly created statute regarding privacy in the FOIA.

57. Department of Health and Human Services National Committee for Health Statistics, Subcommittee on Privacy and Confidentiality, Jan. 11–12, 2005, Washington, D.C., Minutes, Section: E. Protected Health Information about Decedents. 1. Section 164.502 (f)—Period of Protection for Decedent Information, available at <http://www.ncvhs.hhs.gov/050111mn.htm>. See also Susan C. Lawrence, “Access Anxiety: Hipaa and Historical Research,” *Journal of the History of Medicine and Allied Sciences* 62, no. 4 (Jan. 2007): 422–60.

58. Matthew Warshauer, e-mail to Maya Bernstein, Feb. 1, 2012; Louis Altarescu, e-mail to Matthew Warshauer, Feb. 1, 2012.

59. *Federal Register*, vol. 78, no. 17, Jan. 25, 2013, part 2, Department of Health and Human Services, 45 CFR parts 160 and 164, “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule, 5. Protected Health Information About Decedents. a. Section 164.502(f)—Period of Protection for Decedent Information,” 5613–14.