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The Aftermath of International Conflicts: Veterans Domestic Violence Cases and Veterans Treatment Courts

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**THE AFTERMATH OF INTERNATIONAL CONFLICTS:
VETERANS DOMESTIC VIOLENCE CASES AND VETERANS
TREATMENT COURTS**

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I. INTRODUCTION

“If you don’t hear from me in the next 24 hours, call the police,” whispered Kristi to Stacy—veterans’ wives—when she called her at 2:12 A.M. and then hung up.¹ They had become friends while their husbands were deployed overseas in 2004.² Kristi’s husband had served in three deployments and had recently come back from the last one.³ The day after the call, Kristi said to Stacy, “Mark tried to strangle me last night.”⁴ “Kristi’s husband adored her. He had no history of domestic violence, no pattern of abuse. He had made no attempts to isolate her from friends, family, or finances.”⁵ Kristi sought help, but to no avail.⁶

As if the experiences acquired during deployments were not enough, veterans often return home to struggle with family issues caused by the trauma suffered during combat.⁷ The impact of military service can manifest itself in “the lives of veterans and their families in [various] ways.”⁸ “[F]amily functioning is [unavoidably] affected” after a deployment.⁹ Upon

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1. Stacy Bannerman, *Husbands Who Bring the War Home*, THE DAILY BEAST (Sept. 25, 2010), <http://www.thedailybeast.com/articles/2010/09/25/ptsd-and-domestic-abuse-husbands-who-bring-the-war-home.html>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Bannerman, *supra* note 1.

7. Press Release, Witness Justice, Family Safety: A Significant Concern for Returning Veterans and Their Families (Oct. 24, 2008), *available at* <http://www.witnessjustice.org/news/natlssurveyresults.pdf>.

8. Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 357 (2009) [hereinafter Russell, *A Proactive Approach*].

9. AM. PSYCHOLOGICAL ASS’N, THE PSYCHOLOGICAL NEEDS OF U.S. MILITARY SERVICE MEMBERS AND THEIR FAMILIES: A PRELIMINARY REPORT 9 (2007).

return, service members find themselves battling another war at home.¹⁰ Significant rates of domestic violence in returning war veterans have caused a rising concern.¹¹ Most of them feel terrible that they cause all this trouble and do not want to hurt anyone.¹² Now more than ever, it is crucial that we recognize the effects that trauma is having on the relationships of military veterans, because compared to military conflicts of the past, the majority of currently returning veterans are married or are in a committed intimate relationship.¹³

This increase in crimes committed by veterans gave rise to veterans treatment courts.¹⁴ Judges across the country started to notice that veterans who came back from deployments and appeared in court, brought back similar personal issues.¹⁵ They began to suspect that these issues might have been related to their military service.¹⁶ Veterans treatment courts are modeled after other types of special courts that have proven to be successful in the past such as special drug and mental health courts.¹⁷ The program aims at “rehabilitation rather than incarceration” for eligible veterans¹⁸ by using treatment programs.¹⁹ Today, more than ninety veterans treatment courts exist in the United States.²⁰ Upon completion of the program, veterans could potentially have charges dropped or reduced.²¹

10. Lizette Alvarez & Deborah Sontag, *Across America, Deadly Echoes of Foreign Battles*, N.Y. TIMES, Jan. 13, 2008, at A1 [hereinafter Alvarez & Sontag, *Across America*].

11. Press Release, Witness Justice, *supra* note 7.

12. Alvarez & Sontag, *Across America*, *supra* note 10.

13. Candice M. Monson & Casey E. Taft, *PTSD and Intimate Relationships*, PTSD RES. Q., Fall 2005, at 1, 1.

14. Jillian M. Cavanaugh, Note, *Helping Those Who Serve: Veterans Treatment Courts Foster Rehabilitation and Reduce Recidivism for Offending Combat Veterans*, 45 NEW ENG. L. REV. 463, 463 (2011); Jim Spellman & Wayne Drash, *Soldier's Invisible War: Iraq Vet Charged with Attempted Murder*, CNN (Aug. 6, 2009), <http://www.cnn.com/2009/CRIME/08/06/accused.soldier.ptsd/index.html>.

15. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., FLORIDA SENATE INTERIM REPORT 2011-131, at 1 (2010).

16. *Id.*

17. *Id.*

18. Kathleen Haughney, *Senate Report Suggests Veterans Court*, ST. AUGUSTINE REC., Oct. 20, 2010, <http://www.staugustine.com/news/local-news/2010-10-20/Senate-report-suggests-veterans-court>.

19. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 1.

20. Duncan MacVicar, Cal. Veterans Legal Task Force, Swords to Plowshares Seminar: Veterans Treatment Courts: Dignified Handling of Traumatized Veterans, slide 3 (Mar. 6, 2012), <http://www.swords-to-plowshares.org/wp-content/uploads/2012/03/Veteran-court-presentation.pdf?df6bfc>.

21. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 4.

A controversy arises in deciding whether domestic violence cases should be allowed in veterans treatment courts due to the nature of the offense.²² “Only a few courts have [truly] addressed th[e] issue”²³ Critics note that in a domestic violence case, it could be dangerous to continue to have the victim in contact with the offender, that courts must have access to offender’s records, and that specialized training is needed for those providing services.²⁴ Due to these criticisms, the majority of cases involving violent crimes are being left to make their way through the traditional criminal justice system.²⁵

Abuse, when perpetrated by a veteran, has a unique distinctive pattern, which does not follow the cycle of abuse that is often found in books.²⁶ This article argues—through the integration of psychological studies which link domestic violence with the experiences that military personnel are exposed to while deployed—that domestic violence cases should be allowed in veterans treatment courts across the country as a form of restorative justice. The majority of studies find that at least 50% of veterans seeking treatment for posttraumatic stress disorder (PTSD) or mental disturbances related to combat, batter their wives.²⁷

As a matter of public policy, we owe our veterans much more than a *lock them up and throw away the key* approach. They should be offered further intervention, considering that the domestic violence is a result of their stay overseas.²⁸ Furthermore, restorative justice has proven effective in the past in repairing the harm done and reducing the rate of recidivism.²⁹

Part II of the article gives an overview of domestic violence as a global issue and mentions recent cases of domestic violence in the military that have added to the controversy.³⁰ It also outlines unique issues faced by victims of domestic violence of a military veteran.³¹ Part III of the article focuses on the many issues faced by veterans of different wars upon return

22. Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO ST. J. CRIM. L. 563, 570 (2010).

23. Amy Fairweather et al., *Veterans in the Justice System: Treatment of Violent Offenders*, L.A. DAILY J., Aug. 17, 2010, at 7.

24. *Id.*

25. Hawkins, *supra* note 22, at 571.

26. Bannerman, *supra* note 1.

27. *Id.*

28. See Lizette Alvarez & Deborah Sontag, *When Strains on Military Families Turn Deadly*, N.Y. TIMES, Feb. 15, 2008, at A1 [hereinafter Alvarez & Sontag, *When Strains on Military Families Turn Deadly*].

29. *Restorative Justice Works*, RESTORATIVE JUST. COUNCIL (Jan. 7, 2011), http://www.restorativejustice.org.uk/restorative_justice_works.

30. See *infra* Part II.

31. See *infra* Part II.B.

from combat and the experiences lived while in combat.³² This section employs psychological studies to emphasize the link that these recurring issues have in causing domestic violence.³³ Part IV part of the article introduces veterans' treatment courts and their purpose.³⁴ It explores the controversies raised by cases of domestic violence in this type of court, and briefly discusses Florida, with special emphasis on the newly created Broward County's Veterans Treatment Court.³⁵ Part V and last part of the article argues that domestic violence cases should be allowed in veterans treatment courts in all jurisdictions as a form of restorative justice to repair the harm done by the veterans and the overseas deployment itself.³⁶ It also brings to light some public policy considerations and provides some recommendations to alleviate the criticisms that surround the issue of hearing domestic violence cases in this kind of court.³⁷

II. DOMESTIC VIOLENCE: AN OVERVIEW

Domestic violence—or, as some call it, intimate partner violence—is a pattern of behavior that someone uses to overpower and control another person.³⁸ “[D]omestic violence encompass[es] a . . . range of behaviors”³⁹ It can take the form of physical, sexual, emotional, psychological, and verbal acts.⁴⁰ Physical violence includes “[p]ushing, shoving, grabbing, slapping, [and] punching,” among other acts of physical contact and intimidation.⁴¹ Emotional domestic violence can range from coercive tactics to name calling and yelling.⁴² It knows no barriers and affects people anywhere in the world: Any age, religion, economic status, and nationality.⁴³ Most of the time, the

32. See *infra* Part III.

33. See *infra* Part III.B.

34. See *infra* Part IV.A.

35. See *infra* Part IV.B–C.

36. See *infra* Part V.

37. See *infra* Part V.A.1–2.

38. *The Facts About Domestic Violence*, VIOLENCE AGAINST WOMEN ONLINE RESOURCES (2010), <http://www.vaw.umn.edu/documents/inbriefs/domesticviolence/domesticviolence.html>.

39. Simeon Stamm, Note, *Intimate Partner Violence in the Military: Securing our Country, Starting with the Home*, 47 FAM. CT. REV. 321, 323 (2009).

40. *The Facts About Domestic Violence*, *supra* note 38.

41. *Id.*

42. *Id.*

43. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS (2007), [www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) [hereinafter NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS].

result is a trauma that can last a lifetime.⁴⁴ Statistics show that one in four women will be faced with a domestic violence experience at least once in her lifetime.⁴⁵

Around the world, one in three women have been a victim of physical or sexual abuse and at least “half of the world’s women [suffer from] violence in intimate relationships.”⁴⁶ “Domestic violence is . . . most common . . . against women and [represents a] major international health risk[] . . .”⁴⁷ Unfortunately, countless domestic violence incidents are never reported to the authorities, because of fear or hope that the person will change, among others.⁴⁸ In addition to causing emotional issues, domestic violence affects the economy by impeding the victims from attending work.⁴⁹ Domestic violence causes increased health care spending, clogged courts, and losses in educational achievement in countries around the world.⁵⁰ In fact, domestic violence was one of the first types of violence that gave rise to action at an international level.⁵¹

A. *Domestic Violence and War Veterans*

Domestic violence is an issue that affects all branches of the military in the United States.⁵² In a study performed among returning military from Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF), an alarming 60% of families referred for mental health evaluations have had an episode of domestic abuse.⁵³ Out of that 60%, 53.7% said that there had been shouting, pushing, or shoving.⁵⁴ In 2006, a study revealed that among

44. *Id.*

45. *Id.*

46. Bonita Meyersfeld, *Domestic Violence, Health, and International Law*, 22 EMORY INT’L L. REV. 61, 61–62 (2008).

47. *Id.* at 62.

48. *The Facts About Domestic Violence*, *supra* note 38.

49. See NAT’L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS, *supra* note 43.

50. Meyersfeld, *supra* note 46, at 61.

51. *Id.* at 77.

52. Pamela Kravetz, Note, *Way off Base: An Argument Against Intimate Partner Violence Cases in Veterans Treatment Courts*, 4 VETERANS L. REV. 162, 169 (2012).

53. Star Lara, Women Veterans Coordinator, Inst. for Veteran Policy, Swords to Plowshares Seminar: New Approaches for Addressing Domestic Violence in the Veteran Community, slide 4, 9 (Mar. 6, 2012), http://www.swords-to-plowshares.org/wp-content/uploads/2012/03/DV-Intervention-Presentation_Swords-to-Plowshares.pdf?df6bfc; see also Steven L. Sayers et al., *Family Problems Among Recently Returned Military Veterans Referred for a Mental Health Evaluation*, J. CLINICAL PSYCHIATRY, Feb. 2009, at e1, e6, tbl.3, available at <http://www.psychiatrist.com/privatepdf/2009/v70n02/v70n0202.pdf>.

54. Lara, *supra* note 53, at slide 9; Sayers et al., *supra* note 53, at e6 tbl.3.

returning veterans with current or recently separated partners, 27.6% of partners were afraid of the veteran.⁵⁵ The following cases are recent examples of domestic violence in returning veterans.

A few years after returning from Iraq in 2005, soldier and combat medic Thomas Delgado attempted to kill his wife, broke her nose, and tried to choke her.⁵⁶ Delgado was charged with one count of first-degree attempted murder.⁵⁷ Medical records revealed that Delgado had only limited memories of what happened that night.⁵⁸ The records also showed that while in service in Iraq, he lost fellow soldiers twice and he had been “feeling numb and disconnected since” the deployment.⁵⁹ Prior to this incident with his wife, Delgado’s only record was a minor traffic violation.⁶⁰ His wife, Shayla Delgado, insisted that her husband is a good person and deserves special treatment despite what happened.⁶¹ In “2010, Delgado accepted a plea bargain for second-degree assault involving domestic violence, a felony, and misdemeanor criminal mischief. He was given a four-year deferred sentence, four years probation, a . . . fine . . . and . . . a mandatory restraining order.”⁶² Since his conviction, Delgado has been charged with four other offenses, probably due to lack of treatment and following the traditional criminal justice approach.⁶³

In 2002, within only a six-week range, three sergeants who had just returned from Afghanistan murdered their wives and then killed themselves.⁶⁴ A more local example took place recently.⁶⁵ In April 2011, a former marine Paul Gonzalez, while in the chambers of Broward Judge Ronald Rothchild,⁶⁶ went into rage after being ordered to pay child support by the judge.⁶⁷

55. Sayers et al., *supra* note 53, at e6.

56. Spellman & Drash, *supra* note 14.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Spellman & Drash, *supra* note 14.

62. CHARLES E. CORRY, EQUAL JUSTICE FOUND., VIOLENCE AND VETERAN COURTS 3, http://ejfi.org/PDF/Violence_and_veteran_court_flyer.pdf.

63. *Id.* (stating that the traditional criminal justice system is not prepared to deal with the symptoms associated with military problems).

64. Alvarez & Sontag, *When Strains on Military Families Turn Deadly*, *supra* note 28.

65. See Rafael A. Olmeda, *Sentencing Postponed for Man Who Beat Wife*, S. FLA. SUN SENTINEL, Feb. 23, 2012, at 6B.

66. *Id.*

67. Lydia Warren, *Marine Who Beat Wife Unconscious in Front of Judge After Being Ordered to Pay Child Support at Divorce Proceeding Gets 15 Years Behind Bars*, MAIL ONLINE (Mar. 3, 2012, 8:10 PM), <http://www.dailymail.co.uk/news/article-2109858/marine-gets-15-years-bars-viciously-beating-wife-unconscious-judge.html>.

Gonzalez left his former wife with a fractured jaw and broken nose.⁶⁸ The former marine says that he does not recall what happened.⁶⁹

Paul Gonzalez was sentenced to fifteen years behind bars.⁷⁰ Perhaps if his PTSD was treated in time, this case could have been avoided. Gonzalez apologized to his ex-wife and admitted that he had failed her.⁷¹ In court, there is a certain expectation of safety.⁷² Common sense tells us that a rational person would not beat anyone in court—certainly not in the presence of a judge—if there was not something wrong with him or her. In fact, a psychiatric expert testified that the former marine was suffering from bipolar disorder and PTSD.⁷³ His attorney expressed his concern that he might not be able to get the kind of help he needs to overcome his issues in prison.⁷⁴

Overall, violent victimization rates among spouses of United States military personnel have “increased from 18.6 to 25.5 per 1000” spouses.⁷⁵ Some local observations corroborate that “intimate partner violence and related offenses [could be] up to one quarter of” the issues with which veterans enter the criminal justice system.⁷⁶

B. *Unique Issues for Victims of Domestic Violence by a Veteran*

Deployment to war often includes long separations that in turn, place a tremendous amount of pressure on military families, no matter how healthy the relationship is.⁷⁷ When these factors are added to the stress experienced in combat, and the injuries received, sometimes the *perfect storm* is created.⁷⁸ When there has been a deployment, the spouse who stays home—the wife most of the time—is likely to assume responsibility for the family and adapt

68. Olmeda, *supra* note 65.

69. Tonya Alanez, *No Bond for Man Accused of Beating Wife at Divorce Hearing*, S. FLA. SUN SENTINEL, June 6, 2011, http://articles.sun-sentinel.com/2011-06-06/news/fl-divorce-beating-bond-reduced-20110606_1_divorce-hearing-stun-gun-domestic-violence-cases.

70. Warren, *supra* note 67.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Facts and Statistics, DOMESTIC VIOLENCE IN THE MILITARY*, <http://userpages.aug.com/captbarb/violence.html> (last visited Apr. 21, 2013).

76. Fairweather et al., *supra* note 23.

77. Alvarez & Sontag, *When Strains on Military Families Turn Deadly*, *supra* note 28.

78. *See id.*

to new roles as head of the household.⁷⁹ When the soldier returns, role reversals might become a struggle for power.⁸⁰ When veterans return and see the autonomy of their partner, they might try to coerce them in order to regain control.⁸¹

Military spouses are also faced with the usual issues that civilian victims of domestic violence experience, such as fear, isolation, and economic concerns.⁸² However, in addition to these fears, there are other factors which are unique to military spouses, causing them not to report the abuse.⁸³ For example, there is a chance that the information military spouses share will not be kept confidential.⁸⁴ This adds to the unwillingness to report the violence because of the effect that it might have on the abusive veteran's career.⁸⁵ Economic dependency on the veteran's benefits, and the fear of losing them, could also be a cause of the lack of reports.⁸⁶ Also, the military becomes some families' identity, making spouses less likely to report domestic violence to preserve their honor.⁸⁷

III. COMING BACK HOME: THE EFFECT OF EXPOSURE TO VIOLENCE DURING OVERSEAS SERVICE

Many returning "veterans have [been] witness[es to] violence while deployed."⁸⁸ The training they receive, and combat itself animates aggressive behavior.⁸⁹ Military personnel are trained to attack enemies frivolously and fast.⁹⁰ A majority report that after deployment their family dynamics have

79. JUDITH E. BEALS, BATTERED WOMEN'S JUSTICE PROJECT, UNDERSTANDING THE MILITARY RESPONSE TO DOMESTIC VIOLENCE: TOOLS FOR CIVILIAN ADVOCATES 8 (Patricia Erwin ed., 2007), http://www.bwjp.org/files/bwjp/articles/BWJP_Military_Part1.pdf; Stamm, *supra* note 39, at 325.

80. Stamm, *supra* note 39, at 325.

81. Michelle D. Sherman et al., *Domestic Violence in Veterans with Posttraumatic Stress Disorder Who Seek Couples Therapy*, 32 J. MARITAL & FAM. THERAPY 479, 487 (2006).

82. Stamm, *supra* note 39, at 325.

83. *Id.*

84. *Id.*

85. *Id.*; see also Lizette Alvarez, *Despite Assurances from Army, an Assault Case Founders*, N.Y. TIMES, Nov. 23, 2008, at A24.

86. See Claire McCullough, *Swords to Plowshares Seminar: La Casa de las Madres*, slide 4 (Mar. 6, 2012), <http://www.swords-to-plowshares.org/wp-content/uploads/2012/03/La-Casa-DV-Presentation.pdf?df6bfc>.

87. See Stamm, *supra* note 39, at 325.

88. Press Release, Witness Justice, *supra* note 7.

89. Thomas L. Hafemeister & Nicole A. Stockey, *Last Stand? The Criminal Responsibility of War Veterans Returning from Iraq and Afghanistan with Posttraumatic Stress Disorder*, 85 IND. L.J. 87, 103 (2010).

90. *Id.*

changed.⁹¹ They report issues communicating and more frequent conflicts with their families.⁹² Wars are extremely intense and cause great damage not only to bodies, but also to minds.⁹³ Deployment causes changes that lead to mood swings, hostile attitudes, and emotional numbness.⁹⁴ Returning veterans who were deployed to Afghanistan and Iraq for recent conflicts—such as Operations Enduring Freedom and Iraqi Freedom—present higher rates of psychological injuries.⁹⁵ Soldiers returning home bring with them a constant sense of danger.⁹⁶

A. *What Military Personnel Are Exposed to While Deployed*

Recent years have seen the largest mobilization of troops to foreign soils since the Vietnam War.⁹⁷ Since the tragic events of September 11, 2001, troops' deployment time to foreign countries has become more extensive.⁹⁸ Some troops were even deployed more than once.⁹⁹ During their stay on foreign soil, military personnel are exposed to intensive combat.¹⁰⁰ The military live in fear of possible ambushes or bombs that kill or injure their fellow soldiers and cause destruction.¹⁰¹ Killing civilians and other enemy

91. Press Release, Witness Justice, *supra* note 7.

92. *Id.*

93. *See id.*

94. *Id.*

95. Terri Tanielian et al., *Introduction*, in *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* 3, 3–4 (Terri Tanielian & Lisa H. Jaycox eds., 2008), available at http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG720.pdf; Kravetz, *supra* note 52, at 177.

96. Matthew J. Friedman, *Posttraumatic Stress Disorder Among Military Returnees from Afghanistan and Iraq*, 163 *AM. J. PSYCHIATRY* 586, 587 (2006).

97. John Driscoll, *Traumatic Brain Injury Among 'Citizen Soldiers,'* 5 *BRAIN INJ.*, no. 2, 2009, at 18, 18; *see also* Lorri Hill, *Traumatic Brain Injuries in US Soldiers—The Cognitive and Psychological Effects 2* (Fall 2011) (unpublished student paper, University of North Texas), https://classes.lt.unt.edu/Summer_10W_2012/CECS_5420_020/lah0228/final-project/school-projects/documents/Hill-Paper-Revised.pdf.

98. VANESSA WILLIAMSON & ERIN MULHALL, *IRAQ & AFG. VETERANS OF AM., INVISIBLE WOUNDS: PSYCHOLOGICAL AND NEUROLOGICAL INJURIES CONFRONT A NEW GENERATION OF VETERANS* 6 (2009), available at http://iava.org/files/IAVA_invisible_wounds_0.pdf; *see also* LAWRENCE KORB ET AL., *CTR. FOR AM. PROGRESS, BEYOND THE CALL OF DUTY: A COMPREHENSIVE REVIEW OF THE OVERUSE OF THE ARMY IN THE ADMINISTRATION'S WAR OF CHOICE IN IRAQ* 10 (2007).

99. WILLIAMSON & MULHALL, *IRAQ & AFG. VETERANS OF AM.*, *supra* note 98, at 6; *see also* KORB ET AL., *supra* note 98, at 9.

100. *See* Friedman, *supra* note 96, at 586.

101. *Id.* at 586–87.

combatants is also a strong experience.¹⁰² Soldiers come to feel helpless and fear these unpredictable attacks.¹⁰³ While in combat, they also have to deal with the aftermath such as having to handle dead bodies, being the witnesses of destroyed communities and homes.¹⁰⁴ The exposure to sounds and devastating sights of people dying around them creates anxiety.¹⁰⁵

B. *Problems Faced by Returning Veterans and the Link to Domestic Violence*

Upon return from war, and after being exposed to all of the stressors discussed above,¹⁰⁶ the transition from an environment requiring hypervigilance¹⁰⁷ can be a tough one. ““One minute you are in Baghdad waiting for a bomb to go off and the next minute you are in Burger King There is a lot of disorientation.””¹⁰⁸ Combat trauma has a long-term impact in the proper functioning of a family.¹⁰⁹ Some military returnees are just not able to leave all of these experiences behind and adapt to their home environment.¹¹⁰

The witnessing of violence and death increases the likelihood of aggressive behavior.¹¹¹ Some studies show that frequent deployment makes it more likely that combat trauma will occur, which increases the risk of domestic violence.¹¹² In other words, the more they have witnessed in combat the more likely the domestic violence is.¹¹³ Veterans who displayed more fear in the war zone tend to be more violent toward their partners.¹¹⁴ Also, a comprehensive study by the National Vietnam Veterans reveals that veterans

102. *Id.* at 586.

103. *Id.* at 586–87.

104. *Id.*

105. Friedman, *supra* note 96, at 587.

106. *Id.* at 586–87.

107. *Id.* at 587.

108. Alvarez & Sontag, *When Strains on Military Families Turn Deadly*, *supra* note 28 (quoting Judge Pamela Iles, a superior court judge).

109. Sayers et al., *supra* note 53, at e1.

110. Friedman, *supra* note 96, at 587.

111. Thomas E. Church, *Returning Veterans on Campus with War Related Injuries and the Long Road Back Home*, 22 J. POSTSECONDARY EDUC. & DISABILITY 43, 44 (2009).

112. Alvarez & Sontag, *When Strains on Military Families Turn Deadly*, *supra* note 28.

113. *Id.* (quoting Dr. Jacquelyn Campbell, a professor of nursing who was a member of the Pentagon task force).

114. LYNDIA A. KING & DANIEL W. KING, MALE-PERPETRATED DOMESTIC VIOLENCE: TESTING A SERIES OF MULTIFACTORIAL FAMILY MODELS, at II–7–10 (2004), available at <http://www.ncjrs.gov/pdffiles1/nij/199712.pdf>.

who participated in the Vietnam War “with high levels of war-related trauma” had a greater risk of engaging in domestic violence.¹¹⁵

The truth is, the same type of behavior that in a war zone can allow the veteran to survive is the same behavior that causes them trouble reintegrating upon return.¹¹⁶ The complex issue of reintegration brings with it psychological and clinical complications such as depression, anger, blame, shame, substance abuse, or psychiatric disorders.¹¹⁷ Along with these disorders other factors that might cause difficulty and conflict at home could be: Coolness and detachment as a result of controlling emotions in combat, inability to accept that some situations are out of his control, overreactions, and aggressiveness.¹¹⁸

By the year 2014, at least “some 1.5 million members of the United States Armed Forces will have served in . . . active combat.”¹¹⁹ As many as one in five of them will suffer from traumatic brain injury (TBI), PTSD, severe depression, or substance abuse.¹²⁰ Studies have found that combat exposure quadruples the risk of domestic violence.¹²¹

1. PTSD in Different International Conflicts

PTSD occurs when a person has experienced an event that involved death, injury to themselves and others, and the person reacts with horror and fear.¹²² As a result the affected individual will experience trauma over feelings, dreams, detachment, and avoidance.¹²³ As much as 30% of military personnel exposed to war zones show signs of PTSD.¹²⁴

Some studies show that there is a relationship between PTSD and the increase of domestic violence.¹²⁵ One research study analyzed veterans who sought help with marital relationships and determined that those who had

115. Sayers et al., *supra* note 53, at e1–2.

116. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 2.

117. Friedman, *supra* note 96, at 588.

118. Lara, *supra* note 53, at slide 17, 20, 22.

119. Hawkins, *supra* note 22, at 563.

120. *Id.*

121. Eric B. Elbogen et al., *Improving Risk Assessment of Violence Among Military Veterans: An Evidence-Based Approach for Clinical Decision-Making*, 30 CLINICAL PSYCHOL. REV. 595, 598 (2010); Holly G. Prigerson et al., *Population Attributable Fractions of Psychiatric Disorders and Behavioral Outcomes Associated with Combat Exposure Among US Men*, 92 AM. J. PUB. HEALTH 59, 60 (2002).

122. Church, *supra* note 111, at 47.

123. *Id.*

124. *What Is PTSD?*, NEB. DEPARTMENT OF VETERAN’S AFF., <http://www.ptsd.ne.gov/what-is-ptsd.html> (last visited April 21, 2013).

125. Alvarez & Sontag, *When Strains on Military Families Turn Deadly*, *supra* note 28.

been diagnosed with PTSD “were significantly more likely to perpetrate violence toward their partners.”¹²⁶ In fact, combat veterans with PTSD have a higher level of anger than those who have not been diagnosed.¹²⁷ This anger, in turn, is reflected in acts of domestic violence.¹²⁸ Another study shows that around 63% of veterans with “PTSD had been aggressive to their partners in the last year.”¹²⁹ When combined with other issues that returning military have to face—such as depression, substance abuse, and relationships distress—the risk of violence heightens.¹³⁰ The veteran’s ability to see that what he is doing is wrong is impaired by PTSD.¹³¹ It has even been recognized in some criminal cases that PTSD is linked to diminished culpability.¹³²

a. *World War II*

It is estimated that one in every twenty veterans who participated in World War II experienced symptoms of PTSD.¹³³ Some of the symptoms include nightmares, irritability, and memories from the incidents.¹³⁴

b. *Korea*

A study shows that “as many as 30 percent” of veterans of the Korean War that are still alive are suffering from PTSD.¹³⁵

c. *Vietnam*

Thirty-one percent of Vietnam veterans were diagnosed with PTSD upon return from deployment, and almost half of male Vietnam veterans with PTSD had been arrested at least once after their return.¹³⁶

126. Sherman et al., *supra* note 81, at 484.

127. *Id.* at 480.

128. *Id.*

129. *Id.*

130. *Id.* at 484.

131. Hafemeister & Stockey, *supra* note 89, at 105.

132. *Id.* at 126.

133. Jack Epstein & Johnny Miller, *U.S. Wars and Post-Traumatic Stress Disorder*, S.F. GATE, June 22, 2005, <http://www.sfgate.com/health/article/U-S-wars-and-post-traumatic-stress-disorder-2627010.php>.

134. *Id.*

135. *Id.*

136. *Id.*

d. *Afghanistan*

Veterans returning from deployments to Afghanistan have high rates of psychological disorders, including some presenting with PTSD.¹³⁷

e. *Iraq*

In a study of 168,528 Iraqi Veterans, a total of 20% had some sort of psychological disorder, including PTSD.¹³⁸ The Marines and Army had higher chances of developing PTSD because of their enhanced exposure to combat while deployed.¹³⁹

2. Traumatic Brain Injury (TBI)

TBI is a trauma to the head—such as one that military personnel receive while in combat—that could be temporary or permanent, and interferes with the proper functioning of the brain.¹⁴⁰ Often, while in the combat field, veterans receive injuries from bullets, hits to the head, or bomb blasts.¹⁴¹ When an explosion detonates, the blast could cause an invisible wound, which has the ability to damage the brain with no visible marks.¹⁴² This is important because the severity of TBI is determined by what occurred when the injury was received.¹⁴³ Symptoms of TBI can be very similar to those of PTSD: Irritability, impatience, anger, and inability to control impulses.¹⁴⁴ Other symptoms include increased verbal and/or physical aggression.¹⁴⁵ TBI has the ability to make PTSD symptoms worse and vice versa.¹⁴⁶ TBI has recently become the “signature injury” that veterans returning from their deployment in Iraq face.¹⁴⁷ Some special issues faced by the soldiers in Iraq are

137. *Id.*

138. Epstein & Miller, *supra* note 133.

139. *Id.*

140. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 1–2.

141. WILLIAMSON & MULHALL, IRAQ & AFG. VETERANS OF AM., *supra* note 98, at 3.

142. *Id.*

143. Katherine H. Taber & Robin A. Hurley, *OEF/OIF Deployment-Related Traumatic Brain Injury*, PTSD RES. Q., Winter 2010, at 1, 1.

144. BATTERED WOMEN’S JUSTICE PROJECT, VICTIM ADVOCATE GUIDE: INTIMATE PARTNER VIOLENCE (IPV) AND COMBAT EXPERIENCE 2 (2011).

145. *Id.*

146. *Id.*

147. WILLIAMSON & MULHALL, IRAQ & AFG. VETERAN OF AM., *supra* note 98, at 1; Emily Singer, *Brain Trauma in Iraq*, MIT TECH. REV. (Apr. 22, 2008), <http://www.technologyreview.com/featuredstory/409938/brain-trauma-in-iraq/>.

the electromagnetic pulse of explosions, in addition to the sound and light of the blast.¹⁴⁸

3. Depression and Substance Abuse

Although there is no major cause of depression, environmental factors such as the ones that veterans are exposed to while present in the combat zone serve as an aggravating factor.¹⁴⁹ War experiences can lead veterans to a great state of depression and increased suicidal thoughts.¹⁵⁰ These high levels of depression in veterans are correlated with violence.¹⁵¹ A study shows that approximately 81% of veterans who suffered from depression had “engaged in at least one [violent] act toward their partner[] in the last year.”¹⁵² Thoughts of suicide seem to also play as a risk factor that increases partner violence.¹⁵³

In order to deal with the difficult experiences of combat, some veterans drink or abuse drugs.¹⁵⁴ Although alcohol “abuse does not cause domestic violence, there is [certainly] a . . . correlation between” them.¹⁵⁵ Domestic violence studies often show that there is an increase in the risk of becoming violent when the person is using drugs and alcohol.¹⁵⁶ Also, drug and alcohol use is correlated with violence among intimate partners.¹⁵⁷ A study in 2003 “found that 56.6% of veterans had used alcohol and 7.5% reported heavy alcohol use.”¹⁵⁸ In addition, there were indicators of “higher use of marijuana by veterans.”¹⁵⁹ The use of substances represents an increased risk of lethal violence.¹⁶⁰

148. WILLIAMSON & MULHALL, IRAQ & AFG. VETERANS OF AM., *supra* note 98, at 3.

149. See NAT’L ALLIANCE ON MENTAL ILLNESS, DEPRESSION AND VETERANS FACT SHEET (2009), http://www.nami.org/Template.cfm?Section=Depression&Template=/Content_Management/ContentDisplay.cfm&contentID=88939.

150. BATTERED WOMEN’S JUSTICE PROJECT, *supra* note 144, at 3.

151. Sherman et al., *supra* note 81, at 486.

152. *Id.*

153. BATTERED WOMEN’S JUSTICE PROJECT, *supra* note 144, at 3.

154. *Id.* at 2.

155. NAT’L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE AND SUBSTANCE ABUSE, <http://ncadv.org/files/SubstanceAbuse.pdf>.

156. *Id.*

157. *Id.*

158. Russell, *A Proactive Approach*, *supra* note 8, at 358; see also *Alcohol Use and Alcohol-Related Risk Behaviors Among Veterans*, NSDUH REP. (Substance Abuse and Mental Health Services Administration), Nov. 10, 2005, at 1, 2.

159. Russell, *A Proactive Approach*, *supra* note 8, at 358.

160. See BATTERED WOMEN’S JUSTICE PROJECT, *supra* note 144, at 3.

IV. A DIFFERENT APPROACH: VETERANS TREATMENT COURTS

A. *Creation and Purpose*

Veterans treatment courts arose in response to an alarming increase in veterans who upon return home from combat would commit crimes.¹⁶¹ When judges across the country started to notice that veterans who appeared in court brought similar personal issues, they began to suspect that these issues might have been related to the time they spent in service in foreign nations.¹⁶² The inability to cope with problems on their own has sparked initiatives in some jurisdictions to promote and establish veterans treatment courts.¹⁶³ Veterans treatment courts are modeled “after other [types of] special[] courts [that have proven successful so far], such as drug courts and mental health courts.”¹⁶⁴ The program aims at “rehabilitation rather than incarceration,”¹⁶⁵ employing treatment programs.¹⁶⁶

“The first veterans’ court was established in Buffalo.”¹⁶⁷ Veterans eligible for the program were “identified using . . . assessments and . . . then given the [choice] to participate in the program.”¹⁶⁸ Using a “combin[ation] [of] rigorous treatment and personal accountability”¹⁶⁹ these courts give veterans the sources to manage their issues and convert them into productive and law abiding citizens.¹⁷⁰ Eligible veterans are identified and referred to the program by Veterans Justice Outreach Specialists (VJOSs).¹⁷¹ Since 2008, California, Colorado, Texas, Nevada, Illinois, Connecticut, New Mexico, New York, Minnesota, and Oklahoma “have either adopted or considered [adopting] legislation” to bring these courts into existence.¹⁷²

161. Spellman & Drash, *supra* note 14.

162. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 1.

163. *Id.*

164. *Id.*

165. Haughney, *supra* note 18.

166. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 1.

167. Haughney, *supra* note 18.

168. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 3.

169. OFFICE OF NAT’L DRUG CONTROL POLICY, EXEC. OFFICE OF THE PRESIDENT, FACT SHEET: VETERANS TREATMENT COURTS 1 (2010), available at http://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/veterans_treatment_courts_fact_sheet_12-13-10.pdf.

170. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 3.

171. See Rachel M. Guerra & Elizabeth Brett, Swords to Plowshares Seminar: Veterans Justice Outreach, slide 7 (Mar. 6, 2012), http://www.swords-to-plowshares.org/wp-content/uploads/2012/03/VJO-Presentation_Rachael-and-Liz.pdf.

172. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 1.

Today, there are over ninety veterans treatment courts in the United States.¹⁷³ Although, courts in all jurisdictions have slight variations, all of them follow a similar program.¹⁷⁴ Veterans in the program have access to fellow veterans who serve as mentors.¹⁷⁵ “The way veterans interact with each other is helpful. They respond better and are more receptive when they feel understood.”¹⁷⁶ “There have been reports [from] other [v]eterans [t]reatment [c]ourts that veterans adapt faster to these types of courts”¹⁷⁷ Upon completion of the program veterans could have charges dropped or lessened.¹⁷⁸

B. *Controversies and Criticisms Regarding Domestic Violence Cases and Veterans Treatment Courts*

Veterans treatment courts encourage the family of the veteran to get involved in the treatment as a way of support and motivation.¹⁷⁹ Although it is generally accepted that our veterans should receive special treatment—including “medical care, educational support, and employment” opportunities—that same special treatment seems to be causing the controversy.¹⁸⁰

For example, “[a]dvocates for victims of domestic [violence] in Nevada” like the idea of veteran courts, however feel like the “escalating nature of [domestic violence] offenses” should not be within the reach of those courts.¹⁸¹ In 2009, a teleconference was held that included forty-nine organizations and professionals to discuss in-depth the possibility of admission of violent offenders in veterans treatment courts.¹⁸² The following categories of cases were discussed: Domestic violence, illegal possession of firearms, aggravated substance abuse and offenses, and cases of simple assaults.¹⁸³ Even though national advocates and justice professionals countrywide feel like domestic violence is an important problem among veterans, “only a few

173. MacVicar, *supra* note 20, at slide 3.

174. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 3.

175. *Id.* at 4.

176. Telephone Interview with Dr. Giovanna Delgado, Veterans Justice Outreach Coordinator, Miami VA Healthcare Sys. (July 27, 2012) (on file with *Nova Law Review*).

177. *Id.*

178. See COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 4; Hawkins, *supra* note 22, at 568.

179. Russell, *A Proactive Approach*, *supra* note 8, at 369.

180. Hawkins, *supra* note 22, at 569–71.

181. *Id.* at 570.

182. Fairweather et al., *supra* note 23.

183. *Id.*

courts have [truly] addressed th[e] issue.”¹⁸⁴ Some courts, like the one in Orange County, California, have started to take on a case-by-case approach for offenders of intimate partner violence with the requirement that they demonstrate a clear relationship between the deployment and the violence.¹⁸⁵

Perhaps the most troubling fact of allowing domestic violence cases in veterans treatment courts seems to be the fact that the victim often continues to have some sort of contact with the offender and people fear they might be in additional danger.¹⁸⁶ Critics also note that the court must have access to all of the previous information from the offender and deployment, and that specialized training will be needed.¹⁸⁷

All of these criticisms have had an effect on the type of cases accepted into these courts.¹⁸⁸ The cases accepted have generally been limited to non-violent offenses, leaving the violent ones to the traditional criminal justice system.¹⁸⁹ In fact, to get an idea as to which courts do allow domestic violence cases to be heard is a challenge because programs are reluctant to reveal that information due to the controversial nature of the topic.¹⁹⁰ Other programs are full of contradictions when it comes to defining whether they accept them or not.¹⁹¹

C. *Florida’s Veterans Treatment Courts and Domestic Violence*

Florida has past experience with special courts: The drug courts and the mental health courts.¹⁹² Okaloosa County’s veterans cases primarily involve domestic violence and substance abuse.¹⁹³ Palm Beach County is not currently taking domestic violence misdemeanors to be heard in their courts, and those cases are referred to another division.¹⁹⁴

The most recent addition to Florida’s veterans treatment courts has been in Broward County—opened April 30, 2012—presided by Judge Edward H.

184. *Id.*

185. *Id.*

186. *See id.*

187. Fairweather et al., *supra* note 23.

188. Hawkins, *supra* note 22, at 571.

189. *Id.*

190. Kravetz, *supra* note 52, at 184.

191. *Id.* at 184–85.

192. COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 4.

193. *Id.* at 6.

194. Robin I. Bresky, *New Veteran’s Court Division*, PALM BEACH COUNTY B. ASS’N BULL., Jan. 2011, at 5, 5.

Merrigan, a veteran himself.¹⁹⁵ Broward County's Veterans Treatment Court aims to provide returning veterans that enter the system through another division, opportunities for rehabilitation.¹⁹⁶ It consists of a twelve to eighteen month program to help veterans with "behavioral, mental health, or substance abuse disorders."¹⁹⁷

Dr. Giovanna Delgado, a psychologist, is the Veteran Justice Outreach Coordinator (VJOC) for the counties of Miami-Dade, Broward, and Monroe.¹⁹⁸ As a VJOC, Dr. Delgado works with community partners such as judges, police departments, and other agencies to give them training and a better understanding of the issues affecting veterans.¹⁹⁹ "We are part of the courtroom and we link veterans to services."²⁰⁰ Regarding domestic violence cases Dr. Delgado said:

I have not really dealt with any domestic violence cases. I would say that they should be considered in a case-by-case basis. If someone has a history of domestic violence pre-deployment, it is not the same case as someone who does not. The court should determine the criteria.²⁰¹

Broward County's Veterans Treatment Court is currently willing to handle domestic violence cases; however, no case of this type has been presented yet.²⁰² When asked his opinion about having domestic violence cases heard in veterans treatment courts, Judge Merrigan said:

I think having domestic violence cases in Veterans Treatment Courts is a good idea because it will benefit them in a way that traditional courts cannot. . . . It does not matter how understanding the family is, there is some friction and they need professional help. Whether or not they are successful is a different story, but we have to give them access to the program.

195. *Veterans Court Begins in Broward County*, 17TH JUD. CIRCUIT. CT. FLA., <http://www.17th.flcourts.org/index.php/announcements/186-veterans-court-begins-in-broward-county> (last updated May 4, 2012).

196. *Id.*

197. *Id.*

198. Telephone Interview with Dr. Giovanna Delgado, *supra* note 176.

199. *Id.*

200. *Id.*

201. *Id.*

202. Interview with Edward H. Merrigan, Jr., Broward Cnty. Judge, Veterans' Treatment Court, Lieutenant Colonel, U.S. Army Reserves (July 26, 2012) (on file with *Nova Law Review*).

....

I think that even if they have a history previous to deployment, we should accept them. I think it would still benefit them.²⁰³

V. FIXING AT HOME WHAT WAS BROKEN ABROAD: A RESTORATIVE APPROACH

“Restorative justice is a [relatively] new [idea] in the fields of victimology and criminology [that] [a]cknowledg[es] that crime[s] cause[] injury to people and communities.”²⁰⁴ It follows the idea that the harm done should be repaired and the parties involved should be allowed to participate in the process.²⁰⁵ This initiative allows the victims and the offenders to be “involved in responding to the crime.”²⁰⁶ It takes a social, rather than isolated approach to criminal justice issues.²⁰⁷ The program encourages face-to-face meetings that address the injuries and what should be done to repair them.²⁰⁸ There is some evidence that the willingness of individuals to participate in restorative justice programs is high.²⁰⁹ It is likely that a victim of domestic violence whose partner was never violent pre-deployment, but has now become so, will be willing to give one last attempt to fix the issue. This is particularly true if the victims become aware that the program involves trained experts.

A. *Veterans Treatment Courts as a Restorative Type of Justice in Domestic Violence Cases*

“Social support is a [very] powerful protective factor”²¹⁰ and could help the returning military to feel accepted. Veterans treatment courts seem promising when compared with much older therapeutic courts, such as drug

203. *Id.*

204. CTR. FOR JUSTICE & RECONCILIATION, PRISON FELLOWSHIP INT’L, WHAT IS RESTORATIVE JUSTICE? 1 (2008), available at <http://www.pfi.org/cjr/restorative-justice/introduction-to-restorative-justice-practice-and-outcomes/briefings/what-is-restorative-justice/view>.

205. *Id.*

206. *Id.*

207. TONY F. MARSHALL, HOME OFFICE RESEARCH DEV. & STATISTICS DIRECTORATE, RESTORATIVE JUSTICE: AN OVERVIEW 5 (1999), available at <http://tna.europarchive.org/20100413151441/http://www.homeoffice.gov.uk/rds/pdfs/occ-resjus.pdf>.

208. CTR. FOR JUSTICE & RECONCILIATION, PRISON FELLOWSHIP INT’L, *supra* note 204, at 1.

209. MARSHALL, HOME OFFICE RESEARCH DEV. & STATISTICS DIRECTORATE, *supra* note 207, at 8.

210. Friedman, *supra* note 96, at 589.

courts.²¹¹ Intervening early can serve to stop a cycle of violence.²¹² Furthermore, restorative justice allows the family and victim of the offender to receive emotional and spiritual support.²¹³ Allowing meetings between the veteran with his or her spouse or partner on a regular basis can permit the offender to take responsibility for his or her actions and develop a plan to cope with the issue.²¹⁴ Victims also receive a much needed apology and see the regret in the veteran, which can be healing.²¹⁵

Using veterans treatment courts as a restorative approach will allow offenders to repair the harm done and reintegrate to society.²¹⁶ Intimate partners represent a great role in the maintenance of one's health and could encourage the veteran to finish the treatment.²¹⁷ So far the courts have proven effective and have even made positive changes in veterans lives.²¹⁸ Some have also been able to fix their relationships and get "their lives back on track."²¹⁹

Since veterans are a unique group of individuals and their needs are even more unique²²⁰—as with domestic violence—then it follows that special treatment of these individuals' needs is required.²²¹ Traditional courts do not consider the great interaction between the issues presented by veterans and domestic violence.²²² "And to have the police catch these veterans, often at great danger, beat them with a conviction for some crime of which they may or may not be guilty, and then turn them out on the street without testing or treatment, as is common practice now, is insane."²²³ Traditional courts also

211. See COMM. ON MILITARY AFFAIRS & DOMESTIC SEC., *supra* note 15, at 6.

212. Spellman & Drash, *supra* note 14.

213. CTR. FOR JUSTICE & RECONCILIATION, PRISON FELLOWSHIP INT'L, *supra* note 204, at 1–2.

214. See *id.*

215. *Id.* at 2.

216. See *id.* at 1–2.

217. See Monson & Taft, *supra* note 13, at 2.

218. Russell, *A Proactive Approach*, *supra* note 8, at 370.

219. *Id.*

220. Robert T. Russell, *Veterans Treatment Courts Developing Throughout the Nation*, NAT'L CENTER FOR ST. COURTS, 130 (2009), <http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/spcts/id/204/rec/13>.

221. See Lily Casura, *Combat Veterans, PTSD and Domestic Violence—A Sometimes Deadly Combination*, HEALING COMBAT TRAUMA (Dec. 18, 2008), <http://www.healingcombattrama.com/2008/12/combat-veterans-ptsd-and-domestic-violence-a-sometimes-deadly-combination.html>.

222. See Lara, *supra* note 53, at slide 9; Russell, *A Productive Approach*, *supra* note 8, at 366.

223. CORRY, *supra* note 62, at 1.

do not consider the fact that these veterans are trained to be violent before their deployment.²²⁴

Initial data on the effectiveness of these courts suggest that there is a decrease in re-offense for misdemeanors from 15% in veteran courts to 40-50% in regular courts.²²⁵ For felonies the numbers also seem promising: 15% in veteran courts versus 70% in regular courts.²²⁶

Since military personnel have been disciplined and have had to follow orders before, they are likely to follow the program, even if domestic violence is included.²²⁷ Receiving help from other veterans with similar experiences could be a motivating factor.²²⁸ The concern that the victim is in constant contact with the offender and could be in further peril²²⁹ is one without merit.²³⁰ When presented with this issue, Judge Merrigan said: “We still keep in place restraining orders and the no weapon policy. Safety and protection of the victims should not be a concern, because it is the same as in traditional programs.”²³¹

It is likely that a veteran’s partner who has not had an issue of violence with the veteran before—but has an incident after deployment—will be willing to be proactive and try to fix it. Veterans that commit violent offenses whose conduct is a consequence of issues acquired during their stay overseas will be more suitable to be treated in veterans treatment courts.²³² Also, they should be eligible because they are suffering from the same underlying conditions that have led veterans that have committed non-violent offenses to do so.²³³ The mental illnesses presented by the returning veterans are a direct effect from the combat environment they were exposed to while on foreign soil, and treatment is likely to break the cycle.²³⁴ Fairness requires that the same system of rewards and sanctions be offered to domestic violence offenders and non-violent offenders.²³⁵ “The violent offenders need help more than anybody’ If you are going to create special judicial programs to

224. See Lara, *supra* note 53, at slide 27.

225. MacVicar, *supra* note 20, at slide 13.

226. *Id.*

227. See Cavanaugh, *supra* note 14, at 981.

228. *Id.* at 483–84.

229. See Fairweather et al., *supra* note 23 (discussing the concern that in domestic violence cases contact between the victim and the offender could be dangerous).

230. See Interview with Edward H. Merrigan Jr., *supra* note 202.

231. *Id.*

232. Cavanaugh, *supra* note 14, at 486. The current article only focuses on domestic violence cases. Although still controversial, other violent offenses are beyond the scope of this article.

233. *Id.*

234. *Id.* at 487.

235. *Id.*

help veterans, does it make sense to give special services only to those who need help the least?"²³⁶

Using veterans treatment courts as a restorative justice approach seems promising because of previous results of restorative justice programs.²³⁷ There is evidence that restorative justice can satisfy the needs of the victim and has the power to reduce the frequency that the offender will reoffend up to 27%.²³⁸ Instead of feeling that everyone wants to punish him, the veteran will be motivated to reform and have the feeling that society will reaccept him.²³⁹

Some think that a restorative justice approach is "soft" or lenient.²⁴⁰ However, many aspects of restorative justice programs are tougher than regular programs because they require the offender to take full responsibility for his actions and repair the harm done.²⁴¹ The imposition of "[e]xcessive [punishment] does not equate with being tougher on crime."²⁴² Punishment has a tendency to work better when all of the parties involved accept it, and when it is carefully calculated to address the issue.²⁴³ This flexible approach could prove beneficial to veteran families in distress as a result of domestic violence. It will heal them, instead of imposing a severe prison sentence on the veteran and placing an economic burden on the criminal justice system.

1. Public Policy Considerations

Americans all over the nation must be aware that we are indebted to our military veterans who have gone overseas to protect us.²⁴⁴ Even though there is imminent danger in combat, serious challenges await our veterans when they return home.²⁴⁵ If anyone in this country deserves to be treated in a special manner—particularly when it comes to issues related to their families—it is our veterans. What we do for them is a reflection of who we are as a country. Hearing domestic violence cases in veteran treatment courts will

236. *Id.* at 486.

237. *See Restorative Justice Works, supra* note 29.

238. *Id.*

239. *See* MARSHALL, HOME OFFICE RESEARCH DEV. & STATISTICS DIRECTORATE, *supra* note 207, at 11.

240. *Id.* at 26.

241. *Id.*

242. *Id.*

243. *Id.*

244. OFFICE OF NAT'L DRUG CONTROL POLICY, EXEC. OFFICE OF THE PRESIDENT, *supra* note 169, at 1.

245. *Id.*

not only make them productive citizens,²⁴⁶ but also return the peace of mind to their partners, who had to be strong through deployment and now have their relationships destroyed by domestic violence.²⁴⁷ Even if the task is challenging, it is no excuse to ignore the issue altogether. Individuals who are involved with these types of courts agree that incarceration is not really the way to go in trying to solve the veterans issues.²⁴⁸ “I do not think they are being treated different, I think they are being given the benefits they have earned,” said Judge Merrigan.²⁴⁹

2. Program Recommendations

The traditional criminal justice system is not prepared to handle the symptoms associated with some of the issues the military face as a consequence of deployment.²⁵⁰ This is why the veterans treatment courts specializing in these kinds of issues are able to more adequately solve them. It is important for therapists and professionals to recognize the higher risk of domestic violence presented by veterans suffering from depression and PTSD.²⁵¹ Targeting the symptoms that have triggered the domestic violence²⁵² instead of trying to convict veterans could be a more effective way to deal with the problem.²⁵³ Since treatments for domestic violence are different from those to cure some mental health issues such as PTSD there should be a combination of those with specialized domestic interventions.²⁵⁴

The assistance and collaboration of professionals is required, not only in regular cases, but also in domestic violence cases. Family counselors should be used along with other trained personnel, like psychologists. In an effort to avoid the problem before it arises, the courts should also offer military personnel and their partners pre-deployment “preparatory [and] educational materials,”²⁵⁵ which would help them cope with the distance while on international soil and prepare them to face post-deployment issues. The critics complain that there is no protocol to follow;²⁵⁶ however, a lot of methods can

246. See Russell, *A Proactive Approach*, *supra* note 8, at 366, 370–71.

247. See *id.* at 359; see also Bannerman, *supra* note 1.

248. Cavanaugh, *supra* note 14, at 480.

249. Interview with Edward H. Merrigan, Jr., *supra* note 202.

250. See CORRY, *supra* note 62, at 2.

251. Sherman et al., *supra* note 81, at 487.

252. See KING & KING, *supra* note 114, at II-7-10 to II-7-11.

253. See CORRY, *supra* note 62, at 3.

254. Casura, *supra* note 221.

255. See Monson & Taft, *supra* note 13, at 2.

256. Kravetz, *supra* note 52, at 165–66.

be integrated into the program that are already in existence.²⁵⁷ For example, Critical Interaction Therapy exists, which “focuses on . . . resolving [the] ‘critical interaction’ that develop[] between spouses” as a result of trauma experiences.²⁵⁸ Also, Emotion Focused Therapy can be adapted to fit marital distressed couples.²⁵⁹ Some of these treatments have showed promising results²⁶⁰ and should be integrated to veterans treatment courts when dealing with domestic violence.

As long as ongoing risk assessments and safety planning are done²⁶¹ admitting domestic violence cases to veteran treatment courts would do more good than harm. Of course, limits should be placed. Veterans who have no history of domestic violence, but upon return become violent towards their partner should be given priority to enter the program. Veterans with a prior history of domestic violence should be considered on a case-by-case basis. Furthermore, currently efforts are being made by various organizations to solve these types of challenges by using studies, funds, and increasing community based-partnerships.²⁶²

Domestic violence is a serious issue nationwide and the response should be as serious, while protecting the needs and the well-being of veterans and their families.²⁶³ Even if training and preparation is expensive, there is also a serious cost when nothing is done.²⁶⁴ Healthy and formerly functional families are being torn apart by this unfortunate reality.

Perhaps another consideration for the program would be to offer them mental treatment when returning home regardless of the likeliness of committing an offense.²⁶⁵ When approaching a domestic violence incident, the source of the conduct should be considered when deciding the appropriate way to intervene.²⁶⁶ It would be pointless to put the veteran through a veteran program without first addressing the underlying issue.²⁶⁷ The interven-

257. See Monson & Taft, *supra* note 13, at 2–3.

258. *Id.* at 3.

259. *Id.*

260. *Id.*

261. See Fairweather et al., *supra* note 23.

262. *Id.*

263. See *id.*

264. Hawkins, *supra* note 22, at 570.

265. Cavanaugh, *supra* note 14, at 485.

266. 1 DEBORAH D. TUCKER, DOMESTIC VIOLENCE, PTSD AND BRAIN INJURY: MILITARY AND CIVILIAN CHALLENGES 5 (2009), http://www.ncdsv.org/images/MFLJ_Domestic%20Violence%20and%20PTSD_Tucker_Pt%201_4-2009.pdf.

267. *Id.*

tion should be aimed at fitting not only the offense, but also the circumstances under which it occurred.²⁶⁸

VI. CONCLUSION

For a veteran, it is unfortunate to lose a friend in combat; but perhaps the most devastating part is returning home and losing his or her family as well. Our veterans and their loved ones, who are often surrounded with uncertainty in a deployment, should be able to at least rest assured that their family life upon their return will be safeguarded.²⁶⁹ It is an irony to train soldiers to survive in such a hostile environment, to kill and trust no one, and then expect them to come home and be peaceful without any type of intervention. The current aversion in some jurisdictions against cases of domestic violence involving veterans being admitted to veterans treatment courts should not continue. The support for our troops should not be limited to sending them letters and food when they are away; it should continue when they come back and are on the verge of losing their families, facing time in jail, or both. Allowing domestic violence cases in veterans treatment courts will serve one of the main purposes of restorative justice²⁷⁰ and contribute to the long-term commitment in this country to healing the internal wounds of war.²⁷¹

—“Freedom is not free.”²⁷²

268. *Id.*

269. See THE WHITE HOUSE, STRENGTHENING OUR MILITARY FAMILIES: MEETING AMERICA’S COMMITMENT 8–22 (2011), available at http://www.defense.gov/home/features/2011/0111_initiative/strengthening_our_military_january_2011.pdf (detailing nearly 50 commitments by Federal agencies to supporting military families).

270. See MARSHALL, HOME OFFICE RESEARCH DEV. & STATISTICS DIRECTORATE, *supra* note 207, at 20.

271. See THE WHITE HOUSE, *supra* note 269, at 1.

272. *Korean War Veterans Memorial*, NAT’L PARK SERVICE, <http://www.nps.gov/kowa/index.htm> (last visited Apr. 21, 2013). These words are engraved in the Washington D.C.’s Korean War Memorial. See *id.* This phrase is an idiom usually used to express gratitude to our troops. See *id.* It implicitly says that the benefits we enjoy today are owed to the sacrifices taken by our military by going to foreign nations and fighting for our freedom. See *id.*