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# PTSD AND ITS EFFECTS ON ELDERLY, MINORITY, AND FEMALE VETERANS OF ALL WARS

Craig M. Kabatchnick\*

*God and the Soldier, we adore,  
In time of danger, not before.  
The danger passed and all things righted,  
God is forgotten and the Soldier slighted.*  
— Rudyard Kipling

## INTRODUCTION TO POSTTRAUMATIC STRESS DISORDER

Posttraumatic Stress Disorder (PTSD) results from exposure to a traumatic situation.<sup>1</sup> According to the American Psychiatric Association, the disorder most often results from direct trauma in which the person's response to the traumatic event involves

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1. AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS DSM-IV-TR, 463 (APA 4th ed. 2000).

"intense fear, helplessness, or horror."<sup>2</sup> PTSD is "[a] syndrome occurring after a person experiences trauma outside the range of normal human experience. Symptoms may include flashbacks, nightmares, severe stress (with numbness to stimuli resembling the trauma whether actually or symbolically), anxiety, and depression. In some cases PTSD may trigger antisocial or suicidal behavior."<sup>3</sup>

This disorder can be divided into three different categories: acute, chronic, and with delayed onset.<sup>4</sup> Acute posttraumatic stress involves durational symptoms, which last less than three months; chronic posttraumatic stress symptoms last longer than three months.<sup>5</sup> The third category of posttraumatic stress is delayed onset, which involves a delay of at least six months between the traumatic event and the symptoms.<sup>6</sup>

The medical criteria for a diagnosis of PTSD includes the following:

- 1) The person has been exposed to a traumatic event;<sup>7</sup>
- 2) The traumatic event is persistently reexperienced;<sup>8</sup>
- 3) The person tries to avoid trauma by suppressing it or finding ways to numb the pain;<sup>9</sup>
- 4) The person experiences "[p]ersistent symptoms of increased arousal";<sup>10</sup>
- 5) The stress occurs for more than one month<sup>11</sup>; and
- 6) The stress results in changes in social functioning.<sup>12</sup>

Persistent symptoms include difficulty with sleep patterns, difficulty with concentration, irritability, or exaggerated

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2. *Id.*

3. 4-P ATTORNEYS' DICTIONARY OF MEDICINE 8552 (2005).

4. DSM-IV, *supra* note 1, at 465.

5. *Id.*

6. *Id.*

7. *Id.* at 467.

8. *Id.* at 468.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

responses.<sup>13</sup>

Common reactions to these symptoms include depression, guilt, suicidal thoughts, aggressive behavior, or substance abuse.<sup>14</sup> In particular, trauma-related guilt has been studied extensively in combat veterans.<sup>15</sup> The research on non-PTSD veterans and guilt done by Hendin and Haas that resulted in lower levels of guilt was confirmed by Kubany et al. when they proved a positive relationship between combat-related guilt and PTSD.<sup>16</sup> "Posttraumatic Stress Disorder is associated with increased rates of Major Depressive Disorder, Substance-Related Disorders, Panic Disorder, Agoraphobia, Obsessive-Compulsive Disorder, Generalized Anxiety Disorder, Social Phobia, Specific Phobia, and Bipolar Disorder."<sup>17</sup> Because PTSD can trigger these other mental disorders, it is extremely important that PTSD be diagnosed, especially in our current soldiers and veterans. "Studies of at-risk individuals . . . yield variable findings, with the highest rates . . . found among survivors of rape, military combat and captivity, and ethnically or politically internment and genocide."<sup>18</sup>

The purpose of this article is to focus solely on those soldiers who experienced combat during Korea, Vietnam, Afghanistan, and Iraq. Alarming, these veterans are aging without the proper care for PTSD. This article will highlight the effects that PTSD has on aging veterans while offering solutions to promulgate a proper care facility for PTSD patients. However, there is also a focus on veterans who are unable to receive special care and ultimately commit a crime because of

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13. *Id.* at 468.

14. National Center for PTSD, *Common Reactions After Trauma*, [http://www.ncptsd.va.gov/ncmain/ncdocs/fact\\_shts/fs\\_commonreactions.html](http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_commonreactions.html) (last visited March 28, 2009).

15. See Edward S. Kubany et al., *Initial Examinations of a Multidimensional Model of Trauma-Related Guilt: Applications to Combat Veterans and Battered Women*, 17-4 J. PSYCHOPATHOLOGY & BEHAVIORAL ASSESSMENT 353, 356 (1995), available at [http://www.ncptsd.va.gov/ncmain/nc\\_archives/nc\\_artics/id07688.pdf](http://www.ncptsd.va.gov/ncmain/nc_archives/nc_artics/id07688.pdf).

16. *Id.*

17. *Id.* at 465.

18. *Id.* at 466.

their PTSD. As a result, the concluding portion of this article will focus on those veterans who could possibly use PTSD as a viable legal defense.

### THE HISTORY OF POSTTRAUMATIC STRESS DISORDER IN THE AMERICAN MILITARY

Trauma-induced stress disorders have been noted since the Civil War, albeit under different names including "soldier's heart," "irritable heart," "war neurosis,"<sup>19</sup> "shell shock," and "nostalgia"<sup>20</sup> but the medical and legal professions lacked an adequate description of PTSD symptoms that could be used to diagnose, treat, and defend veterans. "As a result, psychiatrists frequently misdiagnosed the postwar reactions of many veterans as psychotic, substance dependent, or fictional."<sup>21</sup>

### KOREAN WAR

The Korean War veteran population involves some of the earliest statistical analysis of PTSD, even though it was not formally called PTSD until 1980.<sup>22</sup> The current data suggests that 80% of the veterans from this war suffer from PTSD.<sup>23</sup> Approximately 25% of the 200,000 troops that were involved in combat suffered from psychiatric casualties.<sup>24</sup>

The symptoms of PTSD during the Korean War stemmed from soldiers suffering cold injuries like frostbite.<sup>25</sup> Though the military downplayed the notion that the frostbite had anything

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19. *Frontline: The Soldier's Heart* (PBS television broadcast March 1, 2005) (extended interview with Matthew Friedman), <http://www.pbs.org/wgbh/pages/frontline/shows/heart/interviews/friedman.html>.

20. Michael J. Davidson, *Post-Traumatic Stress Disorder: A Controversial Defense for Veterans of a Controversial War*, 29 WM. & MARY L. REV. 415, 418 (1988).

21. *Id.* at 420.

22. Major Timothy P. Hayes, Jr., *Post-Traumatic Stress Disorder on Trial*, 190-91 MIL. L. REV. 67, 72 (2007).

23. *Id.* at 75.

24. *Id.* at 76.

25. EDGAR JONES & SIMON WESSELY, *SHELL SHOCK TO PTSD: MILITARY PSYCHIATRY FROM 1900 TO THE GULF WAR* 126 (2005).

to do with the soldiers' psyche, researchers like Pulla, Pickard, and Carnett have now verified that "[s]tress plays a central role in combat of cold injury because of both its behavioral and physiological manifestations."<sup>26</sup> It was Sampson who first hypothesized in 1984 that the "physical injury could have served as a defense against the psychiatric disorders."<sup>27</sup>

### VIETNAM WAR

As the military geared up for the war in Vietnam, America fully deployed psychiatric services based upon the stress indicators from WWI and WWII.<sup>28</sup> There were three divisible stages of the psychiatric make-up of the Vietnam War: 1) advisory period with no psychiatric cases, 2) the troop surge that resulted in low levels of psychiatric casualties, and 3) the withdrawal period where there were a large number of psychiatric casualties.<sup>29</sup>

Psychiatrists became excited at stage two of the Vietnam War.<sup>30</sup> To see that troops were responding well to the psychiatric interventions put in place from the mistakes of WWI and WWII were astounding.<sup>31</sup> However, stage two ended around 1968.<sup>32</sup> From the years 1968-1975, the psychiatric disposition of the troops went downhill.<sup>33</sup> High rates of substance abuse are believed to have masked the psychiatric disorder.<sup>34</sup> Before the disorder was known as PTSD, it was known as the post-Vietnam syndrome, which was caused by delayed massive trauma.<sup>35</sup>

The high rate of PTSD noted in Vietnam veterans has also

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26. *Id.*

27. *Id.* at 127.

28. *Id.* at 128.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 129.

33. *Id.*

34. *Id.* at 130.

35. *Id.*

been attributed to the nature of the conflict itself—non-existent battle lines, young age of soldiers, and public disgrace upon returning to America are all attributing factors.<sup>36</sup> In addition, the psychiatric community did not adequately address problems associated with post-combat stress reactions when the American military presence in Vietnam was at its peak.<sup>37</sup> After extensive research by veterans groups and the non-wavering push by Vietnam veterans, Thomas Burke believes this advocacy prompted the American Psychiatric Association to update its mental health classifications in the DSM-IV manual to include PTSD as a new category of illness<sup>38</sup>.

“The incidence of suicide, alcoholism, and mortality among Vietnam veterans is significantly greater than for veterans of other wars.”<sup>39</sup> Estimated rates of 70% of the Vietnam soldiers suffer from PTSD.<sup>40</sup> Strikingly, 25% of prison inmates in America are Vietnam veterans.<sup>41</sup> In comparison, the total number of “in-theater” deaths in Vietnam was 58,220 and the number of wounded totaled 153,303.<sup>42</sup>

PTSD was officially recognized as a mental disorder in 1979 in reaction to battle trauma suffered by Vietnam veterans.<sup>43</sup> Though estimates vary, it is estimated that 75% percent of Vietnam veterans meet the criteria for some form of PTSD.<sup>44</sup> Yet, the effects of combat stress were already known as “shell shock” or “battle fatigue.”<sup>45</sup>

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36. Davidson, *supra* note 20, at 416.

37. JONES & WESSELY, *supra* note 25, at 129-30.

38. *Frontline*, *supra* note 19, at <http://www.pbs.org/wgbh/pages/frontline/shows/heart/interviews/burke.html> (extended interview with Col. Thomas Burke).

39. Davidson, *supra* note 20, at 415.

40. *Id.*

41. *Id.* at 415-16.

42. Vietnam Conflict—Casualty Summary, <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/vietnam.pdf>.

43. TERRI TANELIAN & LISA H. JAYCOX, INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES 5 (2008).

44. *Id.*

45. *Id.* at 4.

*AFGHANISTAN & IRAQ*

The realization of the effects of PTSD on Vietnam veterans has led the military to develop screening methods.<sup>46</sup> Currently, each soldier returning from Iraq or Afghanistan is required by the Department of Defense to complete a Post-Deployment Health Assessment.<sup>47</sup> This form is completed electronically and contains questions related to identification of emotional problems, such as being exposed to vehicle blasts or dead bodies, or drinking tendencies on leave, for example.<sup>48</sup> The form provides the option to check 'yes' or 'no' if the soldier wants to visit a health care provider or chaplain to address stress or emotional concerns.<sup>49</sup> However, this form is not enough; therefore, soldiers are required to complete a face-to-face health assessment also.<sup>50</sup>

According to the American Medical Association, "Operation Iraqi Freedom veterans used inpatient and outpatient mental health services at higher rates after deployment than [Operation Enduring Freedom—Afghanistan] veterans and service members who deployed to other locations."<sup>51</sup> The circumstances of the current conflict contribute to excessive psychological injuries.<sup>52</sup> "The current war in Iraq and Afghanistan offers a unique opportunity to study the impact of deployment on mental health care utilization immediately after returning from deployment due to the availability of

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46. See Department of Defense, DD Form 2796 (2008), ENHANCED POST-DEPLOYMENT HEALTH ASSESSMENT PROCESS, available at [http://www.pdhealth.mil/dcs/dd\\_form\\_2796.asp](http://www.pdhealth.mil/dcs/dd_form_2796.asp) (last visited October 5, 2008).

47. *Id.*

48. *Id.*

49. *Id.*

50. D.O.D. DEPLOYMENT HEALTH CLINICAL CENTER, GUIDELINES FOR POST-DEPLOYMENT HEALTH SCREENING UTILIZING THE DD FORM 2796, May 9, 2003, [http://www.pdhealth.mil/dcs/downloads/2796\\_Primer.pdf](http://www.pdhealth.mil/dcs/downloads/2796_Primer.pdf).

51. Charles W. Hoge et al., *Mental Health Problems, Use of Mental Health Services and Attrition From Military Service After Returning From Deployment to Iraq or Afghanistan*, 295 JAMA 1023, 1028 (2006), available at <http://jama.ama-assn.org/cgi/content/full/295/9/1023>.

52. See TANIELIAN & JAYCOX, *supra* note 43, at 5.



integrated electronic health care databases that are population-based."<sup>53</sup> The Rand Corporation, a non-profit think tank, has recently released a study by the Center for Military Health and Policy Research on the psychological and cognitive injuries affecting soldiers and veterans.<sup>54</sup> According to the Rand study, the exposure to hostile forces, injured civilians, improvised explosive devices which causes traumatic brain injury, and similar circumstances makes the soldier of the current conflicts particularly prone to psychological trauma.<sup>55</sup> *Psychiatric Times* has described the relationship between combat experiences and the prevalence of PTSD as a "strong relationship."<sup>56</sup> The *Washington Post* reports that as many as 30% percent of deployed soldiers suffer symptoms of PTSD.<sup>57</sup>

The military conflicts in Afghanistan and Iraq have a higher rate of survivorship than previous wars.<sup>58</sup> Military deaths as a result of Operation Iraqi Freedom were 4,212 as of January 16, 2009.<sup>59</sup> The number of wounded in action as a result of Operation Iraqi Freedom was 44,897 as of January 16, 2009,<sup>60</sup> a ratio of over ten wounded to every soldier killed in action. In Afghanistan, the number of military deaths as a result of Operation Enduring Freedom was 626 as of January 16, 2009.<sup>61</sup> The number of military wounded in action as a result of Operation Enduring Freedom was 2,627 as of January 16, 2009.<sup>62</sup> The ratio is similar in Afghanistan with over four wounded to

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53. Charles W. Hoge, *supra* note 51.

54. TANELIAN & JAYCOX, *supra* note 43, at 6, 50.

55. *Id.*

56. Arline Kaplan, *Hidden Combat Wounds: Extensive, Deadly, Costly*, *PSYCHIATRIC TIMES*, Jan. 1, 2006, at 1.

57. Ann Scott Tyson, *Military Diagnosing More Post-Traumatic Stress*, *WASH. POST*, May 28, 2008, at A02, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/27/AR2008052701512.html>.

58. TANELIAN & JAYCOX, *supra* note 43, at 6.

59. Global War on Terrorism-Operation Iraqi Freedom, <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/OIF-Total.pdf> (last visited January 26, 2009).

60. *Id.*

61. Global War on Terrorism-Operation Enduring Freedom, By Casualty Type Within Service, <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/WOTSUM.pdf> (last visited January 26, 2009).

62. *Id.*

every soldier killed in action.<sup>63</sup>

These physically wounded soldiers have been exposed to combat stress and may have psychological problems as a result. The result is that the healthcare system for returning veterans is being taxed not only by the extended conflicts in both Iraq and Afghanistan, but, by the increased survival rate of wounded soldiers.

The number of active duty and veteran service-members suffering from PTSD is clearly increasing. In 2003, just over 1,000 soldiers were diagnosed with PTSD.<sup>64</sup> The number of deployed soldiers, newly diagnosed with PTSD, increased from 6,876 in 2006 to 10,049 in 2007, a 46% percent increase.<sup>65</sup> Through 2007, 28,364 deployed soldiers have been diagnosed with PTSD.<sup>66</sup> And, not everyone is being diagnosed. A study, quoted in *Psychiatric Times*, found that fear of being stigmatized deterred active duty service-members from seeking care.<sup>67</sup> According to the Rand study, less than half (roughly 23-40%) of service members with PTSD sought help from a physician or healthcare provider.<sup>68</sup> Veterans also experienced a dramatic increase, with "the number of veterans receiving disability compensation for service-connected PTSD [having] increased from 120,000 in 1999 to 328,923 in May 2008."<sup>69</sup> This number includes 37,460 from Operation Iraqi Freedom and Operation Enduring Freedom.<sup>70</sup>

The reaction to the increase in PTSD has been the subject of criticism. The Institute of Medicine (IOM) was asked by

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63. *Id.*

64. David Wood, *Suicides in Army Increase by 13%, 115 Soldiers Killed Themselves in '07, According to Report*, BALTIMORE SUN, May 30, 2008 at 1A, available at <http://www.globalresearch.ca/index.php?context=va&aid=9466>.

65. *Id.*

66. *Id.*

67. Kaplan, *supra* note 56, at 1.

68. TANIELIAN & JAYCOX, *supra* note 43, at 7.

69. VETERANS' 'INVISIBLE' WOUNDS, S. COMM. ON VETERAN AFFAIRS, 110TH CONG. (June 4, 2008) (statement of Patrick W. Dunne, Acting Under Sec'y, Veterans Benefits Administration Dep't of Veterans Affairs).

70. *Id.*

Congress to re-evaluate the diagnostic criteria for PTSD.<sup>71</sup> Some say this was an effort to make PTSD harder to diagnose and reduce disability payments.<sup>72</sup> But, the IOM supported the existing criteria established by the American Psychiatric Association in 1980.<sup>73</sup> The Washington Post reported on June 18, 2007 that most soldiers evacuated from Iraq due to mental problems are sent to Walter Reed Army Medical center.<sup>74</sup> "For amputees, the nation's top Army hospital offers state-of-the-art prosthetics and physical rehab programs, and soon, a new \$10 million amputee center with a rappelling wall and virtual reality center."<sup>75</sup> But, the Post reports, there is no PTSD center and the psychiatric treatment is weak, even though Army soldiers diagnosed with PTSD outnumber all amputees by a ratio of 43 to 1.<sup>76</sup> The Los Angeles Times reports that "only 27 of the VA's 1,400 hospitals have in-patient [PTSD] programs."<sup>77</sup> And, certain treatments for PTSD that have shown to be effective are not currently available at all treatment facilities.<sup>78</sup> The Los Angeles Times also reports that a class action lawsuit, on behalf of hundreds of thousands of veterans, has been filed against the U.S. Department of Veterans Affairs.<sup>79</sup> The suit alleges a backlog of 600,000 claims, inadequate services, and long waits for mental health care - particularly for PTSD.<sup>80</sup> The consensus seems to be that the care for veterans suffering from PTSD is wholly inadequate.

In addition, many people experience delayed symptoms of

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71. Betsy Streisand, *Treating War's Toll on the Mind*, U.S. NEWS & WORLD REPORT, Oct. 9, 2006, available at [http://health.usnews.com/usnews/health/articles/061001/9ptsd\\_6.htm](http://health.usnews.com/usnews/health/articles/061001/9ptsd_6.htm).

72. *Id.*

73. *Id.*

74. Ann Hull & Dana Priest, *Little Relief on Ward 53*, WASH. POST, June 18, 2007, at A01.

75. *Id.*

76. *Id.*

77. Henry Weinstein, *Vet's Lawsuit Combats VA's 'Meltdown'*, L.A. TIMES, July 24, 2007, at B-1 available at <http://articles.latimes.com/2007/jul/24/local/me-veteran24>.

78. TANIELIAN & JAYCOX, *supra* note 43, at 8.

79. Weinstein, *supra* note 77.

80. *Id.*

PTSD months after traumatic events happen.<sup>81</sup> According to Neil McKenna, a readjustment counselor at the Brockton, Massachusetts Vet Center, up to one in every three cases of PTSD may be delayed.<sup>82</sup> Early intervention is the key (to minimize delayed PTSD).<sup>83</sup>

## THE EFFECTS OF POST TRAUMATIC STRESS DISORDER ON MINORITIES

Among those who screened positive for a mental disorder- men with severe PTSD and alcohol-related symptoms were the most likely to report receiving mental health care.<sup>84</sup> Whites are more likely to commit suicide than are African-Americans, and older white men have the highest risk of suicide among all age and race groups.<sup>85</sup>

However, in light of this information, the Institute of Medicine's Committee on Treatment of Posttraumatic Stress Disorder Board on Population Health and Public Health Practice noted the following: "The literature is almost entirely silent on the efficacy of treatment in discrete ethnic and cultural minorities, and on related issues of potential subgroup differences."<sup>86</sup> The purpose of this section is to discuss that limited realm of literature that does shed some light on the effect of PTSD on the elderly, racial, and gender minorities.

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81. Thomson Reuters, *Post Traumatic Disorder*, <http://www.pdrhealth.com/disease/disease-categories.aspx> (last visited March 10, 2009) (search Diseases A-Z, then select Post Traumatic Stress Disorder).

82. Kevin Bowe, *A Prosecutor Anticipates Post-Traumatic Stress Disorder*, 39-AUG PROSECUTOR 30, 33, (2005).

83. *Id.*

84. Cheryl S. Hankin et al., *Mental Disorders and Mental Health Treatment Among U.S. Department of Veterans Affairs Outpatients: The Veterans Health Study*, 156 AM. J. PSYCHIATRY 1924, 1927 (1999).

85. University of Michigan Health System, *Veterans, Depression & Suicide: New VA/U-M Study Yields Key Findings for All Veterans' Care*, (October 30, 2007), <http://www.med.umich.edu/opm/newspage/2007/vaumstudy.htm>.

86. Institute of Medicine of The National Academies, *TREATMENT OF POSTTRAUMATIC STRESS DISORDER: AN ASSESSMENT OF THE EVIDENCE*, The National Academies Press 142 (Institute of Medicine 2008).

*ELDER MINORITY*

Elderly veterans face many challenges from day to day. Fortunately, there are several studies being conducted by the VA in response to the demand to meet the crisis faced by elderly veterans. Family support and continued VA support are necessary to help the millions of elderly veterans continue to live healthy and fulfilling lives. In 2006, 9.2 million veterans were considered elderly, that is, sixty-five years of age or older.<sup>87</sup> 33% of all living veterans served during the Vietnam War era (1964-1975).<sup>88</sup> 3.2 million living veterans served in World War II, 3.1 million in the Korean War (1950-1953), and only three living veterans served in World War I.<sup>89</sup> With so many elderly veterans among us, it begs the question of how they fare and cope with life and their issues many years after their tour(s).

The VA provides some benefits for elderly veterans, such as for care in nursing home facilities.<sup>90</sup> These facilities may offer temporary or long term services for the veteran's stay.<sup>91</sup> "Veterans with chronic stable conditions including dementia, PTSD, and those requiring rehabilitation or short term specialized services, such as respite or intravenous therapy, or those who need comfort and care at the end of life are served in the VA Nursing Home Care Units."<sup>92</sup> These facilities are not without their eligibility requirements.<sup>93</sup> To qualify for a VA nursing home care unit care the following criteria must be met: "a. [t]he veteran must be medically and psychiatrically stable, b. [t]he primary type of service needed must be documented . . . , c. [t]he anticipated length of stay [must be] documented; d. [t]he anticipated discharge disposition from the VA Community

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87. United States Census Bureau, *Facts for Features*, CB07-FF.16, (October 11, 2007), <http://www.census.gov/Press-Release/www/releases/archives/cb07ff-16.pdf>.

88. *Id.*

89. *Id.*

90. U.S. Dep't Vet. Affairs, *Veterans Administration Community Living Center* (January 19, 2009), <http://www1.va.gov/GeriatricsSHG/page.cfm?pg=52>.

91. *Id.*

92. *Id.*

93. *Id.*

Living Center is documented[,] and e.[p]riority is established and documented[.]”<sup>94</sup> In addition to these criteria, the veteran must be enrolled in the VA for health care.<sup>95</sup> For the elder veterans, obtaining a diagnosis of PTSD is difficult because PTSD is a relatively new diagnosis. Regardless, many of these veterans suffer from the effects of PTSD and there are not enough services available for them to receive effective treatment.

### *RACIAL MINORITIES*

In efforts to identify whether or not there were racial differences in treatment at VA hospitals, the American Medical Association in 2001 performed a study in order to answer this pressing issue.<sup>96</sup> “Our results suggest that equal access to care provided by the VA health care system has closed—and perhaps even crossed—the racial gap in health outcomes for common medical conditions.”<sup>97</sup>

A National Vietnam Veterans Readjustment Survey (NVVRS) was done between November, 1986 and February, 1988.<sup>98</sup> The survey included 3,016 American vets selected as sample vets who served in armed forces during the Vietnam Era and found that the PTSD was higher in African-Americans (27.9%) versus Caucasians (13.7%).<sup>99</sup> Higher rates of PTSD in African Americans were found to be significantly linked with the following factors: limited economic opportunities; racism (as a cause of stress in military and civilian life after discharge from military); and not being a member of a dominant culture.<sup>100</sup>

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94. *Id.*

95. *Id.*

96. Ashish K. Jha et al., *Racial Differences in Mortality Among Men Hospitalized in the Veterans Affairs Health Care System*, *American Medical Association*, 285(3) JAMA 297 (2001), available at <http://jama.ama-assn.org/cgi/content/full/285/3/297>.

97. *Id.* at 302.

98. U.S. Dep’t of Vet. Affairs, *Epidemiological Facts about PTSD*, [http://www.ncptsd.va.gov/ncmain/ncdocs/fact\\_shts/fs\\_epidemiological.html](http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_epidemiological.html) (last visited March 10, 2009).

99. Matthew J. Friedman et al., *Post-Traumatic Stress Disorder in the Military Veteran*, 17-2 PSYCHIATRIC CLIN. OF NORTH AM. 265, 266 (June 1994).

100. *Id.* at 270.

Recently, the Department of Defense has taken some action to alleviate the stigma combat stress.<sup>101</sup> Unfortunately, many barriers make screening for PTSD difficult, including perceived stigmatization, co-morbidity with drug use, and the complex nature of the illness itself.<sup>102</sup> According to a recent study published in the *New England Journal of Medicine*, a majority of soldiers diagnosed with mental health problems did not seek immediate care, "with 65% surveyed fearing they would be viewed as weak if they sought help."<sup>103</sup> Among African-Americans, a 2008 VA study suggests that they are less likely to be screened for mental health problems.<sup>104</sup> This is consistent with a 1999 VA study indicating that younger, Caucasian men, and those who reported more traumatic exposure, were more likely to report receiving mental health treatment than others who screened positive for mental disorders, including depression, PTSD and alcohol-related disorders.<sup>105</sup>

A 2000 VA Medical Center study outlines the results from the NVVRS and predicts that Hispanic veterans exhibit a higher risk of developing PTSD than veterans of other racial or ethnic backgrounds.<sup>106</sup> Conceptual issues are addressed and, where possible, further analyses of the NVVRS data set are conducted to identify factors that account for ethnic differences in rates of the disorder.<sup>107</sup> "Possible mediators of the effects of Hispanic ethnicity on vulnerability to PTSD are identified, including psychosocial factors (racial or ethnic discrimination and

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101. Donna Miles, *Military Works to Eliminate Perceived Mental Health Treatment Stigma*, AMERICAN FORCES PRESS SERVICE NEWS ARTICLES, May 7, 2008, <http://www.defenselink.mil/news/newsarticle.aspx?id=49811>.

102. See Bradley D. Grinage, *Diagnosis and Management of Post-Traumatic Stress Disorder*, 68-12 AMERICAN FAMILY PHYSICIAN 2401 (2003), available at <http://www.aafp.org/afp/20031215/2401.html>.

103. Bove, *supra* note 82.

104. Karen H. Seal et al., *Getting Beyond "Don't Ask, Don't Tell": An Evaluation of US Veterans Administration Postdeployment Mental Health Screening of Veterans Returning From Iraq and Afghanistan*, 98 AM. J. PUBLIC HEALTH 714 (2008).

105. Hankin, *supra* note 84, at 1927.

106. Anna Marie Ruef et al., *Hispanic Ethnicity and Risk for Combat Related Posttraumatic Stress Disorder*, 6 CULTUR. DIVERS. ETHNIC MINOR. PSYCHOL. 235 (2000).

107. *Id.* at 236.

alienation) and sociocultural influences (stoicism and normalization of stress, alexithymia, and fatalism)."<sup>108</sup>

A study of approximately 300 Asian American vets found adverse race-related events were risk factors for PTSD.<sup>109</sup> "Seventy-seven percent . . . of the participants reported exposure to one or more negative race-related events in the military."<sup>110</sup>

Some studies, however, show that PTSD treatment based upon race is unfounded. Paula Schurr indicated that "[s]ociodemographic characteristics are risk markers[;] they predict, but do not explain, why some sociodemographic groups differ in risk of PTSD."<sup>111</sup> It is important to note the 1998 Medical University of South Carolina empirical review of the literature on combat-related PTSD and race found minimal differences between racial groups.<sup>112</sup> They concluded that much of the literature was conceptual in nature and based on single case or anecdotal reports with little scientific rigor.<sup>113</sup> At first glance, minority combat veterans (i.e., Blacks and Hispanics) have been shown to have higher absolute rates of PTSD.<sup>114</sup> However, secondary analyses suggest that differential rates of PTSD between racial groups may be a function of differential rates of traumatic stressors and other pre-existing conditions.<sup>115</sup> This study suggests further research is necessary before drawing conclusions from the literature.<sup>116</sup>

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108. *Id.* at 235.

109. Chalsa M. Loo et al., *Adverse Race-Related Events as a Risk Factor for Posttraumatic Stress Disorder in Asian American Vietnam Veterans*, 193 J. NERV. MENT. DIS. 455 (2005).

110. *Id.* at 459.

111. Aaron Levin, *Role of Sociodemographics Still Unclear in PTSD*, 43 Psychiatric News (No. 21) 17 (2008), available at <http://pn.psychiatryonline.org/cgi/content/short/43/21/17?rss=1>.

112. Loo, *supra* note 109, at 412.

113. *Id.*

114. *Id.*; see also TANIELIAN & JAYCOX, *supra* note 43, at 144.

115. *Id.*

116. *Id.* at 413.



*GENDER MINORITY*

A 2005 University of Arkansas study found that among homeless veterans in an inpatient substance abuse program, men and women had different stressors for suicidal thoughts and attempted suicides.<sup>117</sup> “[C]hildhood and current sexual and physical abuses, depression, fearfulness, relationship problems, limited social support, and low self esteem [were] more strongly associated with suicidal thoughts and attempts for [female] than for [male] veterans.”<sup>118</sup> “[A]lcohol and drug abuse, aggression, resilience, self-efficacy, combat exposure, combat-related PTSD, and work problems were more strongly associated with suicidal thoughts and attempts for men than for women.”<sup>119</sup>

While early information on trauma and PTSD developed through studies of male veterans, the Department of Veterans Affairs recognized the need to perform exclusive female studies concerning PTSD and it launched a \$6 million dollar project to do so.<sup>120</sup> “Like their male combat veteran counterparts . . . female service members are” being exposed to similar war zone incidents that trigger PTSD.<sup>121</sup> However, PTSD doubly disables female veterans because for many servicewomen, PTSD has also been triggered by sexual assaults and rape.<sup>122</sup>

Generally, a person suffering from PTSD has witnessed or suffered a horrible event, in which he or she feels a sense of danger.<sup>123</sup> While the incident is occurring, one may feel a loss of

117. Brent Benda, *Gender Differences in Predictors of Suicidal Thoughts and Attempts Among Homeless Veterans That Abuse Substances*, 35 SUICIDE LIFE THREATENING BEHAVIOR 106 (2005).

118. *Id.*

119. *Id.*

120. Kirsten Scharnberg, *Stresses of Battle Hit Female GIs Hard; VA Study Hopes to Find Treatment for Disorder*, CHICAGO TRIB., March 20, 2005, available at [http://www.military.com/NewContent/0,13190,Defensewatch\\_032805\\_Scharnberg,00.html](http://www.military.com/NewContent/0,13190,Defensewatch_032805_Scharnberg,00.html).

121. *Id.*

122. *Id.*

123. U.S. Dep't of Veteran Affairs, *What is Posttraumatic Stress Disorder?*, [http://www.ncptsd.va.gov/ncmain/ncdocs/fact\\_shts/fs\\_what\\_is\\_ptsd.html](http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_what_is_ptsd.html) (last visited January 26, 2009).

control.<sup>124</sup> "After the event, you may feel scared, confused, or angry."<sup>125</sup> When these feelings do not go away or worsen, PTSD may develop.<sup>126</sup> "PTSD symptoms usually start soon after the traumatic event; but they may not happen until months or years later."<sup>127</sup> Those who suffer from PTSD may find daily activities unmanageable.<sup>128</sup>

A person suffering from PTSD may experience a variety of symptoms.<sup>129</sup> They may relive the event through nightmares, flashbacks, or other triggering events which bring back the memory of the traumatic event.<sup>130</sup> Common coping techniques may manifest through avoidance of thoughts, feelings, and situations related to the event in order to avoid having to talk or think about what happened.<sup>131</sup> Alternatively, a person may experience a state of hyperarousal, in which they become increasingly jittery, jumpy, alert, or on a constant lookout for danger.<sup>132</sup> PTSD may lead to other problems including drinking, failure to obtain gainful employment, depression, and other physical symptoms.<sup>133</sup> Some PTSD symptoms are more common in women than men.<sup>134</sup> Women are more likely to experience hyperarousal, trouble with feeling emotions, and avoidance.<sup>135</sup> They are also more likely to feel depressed and anxious,<sup>136</sup> whereas men are more likely to experience more anger management problems and resort to alcohol or drug use.<sup>137</sup>

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124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Mental-health-today.com, *Post-Traumatic Stress Disorder*, <http://www.mental-health-today.com/ptsd/part.htm> (last visited April 3, 2009).

131. *What is Posttraumatic Stress Disorder?*, *supra* note 123.

132. *Id.*

133. *Id.*

134. See Dawne Vogt, National Center for PTSD, *Women, Trauma, and PTSD*, [http://www.ncptsd.va.gov/ncmain/ncdocs/fact\\_shfts/fs\\_women\\_lay.html](http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shfts/fs_women_lay.html) (last visited March 28, 2009).

135. *Id.*

136. *Id.*

137. *Id.*

The most common trauma(s) experienced by women include sexual assault, child sexual abuse, domestic violence, or sudden death of a loved one.<sup>138</sup> An estimated one out of ten women will develop PTSD at some point in her life.<sup>139</sup> Women are twice as likely to develop PTSD as men.<sup>140</sup> The reason for this difference might be because women are more likely to experience sexual assault, and sexual assaults may cause PTSD more often than other traumatic events.<sup>141</sup> Women tend to blame themselves for sexual assaults rather than other traumatic events.<sup>142</sup> Although not all women who experience a traumatic event will develop PTSD, the likelihood of PTSD increases with each woman's past mental health problems, sexual assaults, or a lack of good social support.<sup>143</sup>

Women in the military are likely to develop PTSD because the role of women in the military has changed to include exposure to combat action.<sup>144</sup> They are at high risk for exposure to traumatic events, especially during wartime.<sup>145</sup> Nevertheless, women are slightly less likely to experience trauma than men.<sup>146</sup> Currently, women comprise almost 15% percent of our active duty personnel and represent 7% of all veterans in the United States today.<sup>147</sup> Generally, men are more likely to experience combat, but a growing number of women are also being exposed to combat situations.<sup>148</sup> Women in the military are more likely to be victims of sexual harassment or sexual assault than men and are particularly at risk for PTSD from these experiences.<sup>149</sup> It has

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138. *Id.*

139. *Id.*

140. *Id.*

141. Andrea Bopp Stark, Note, *Posttraumatic Stress Disorder in Refugee Women: How To Address PTSD In Women*, 11 GEO. IMMIGR. L. J 167, 182 (1996).

142. *Id.* at 184.

143. *Id.* at 180.

144. Penny Wakefield, *PTSD Doubly Disabling for Female Vets*, 35-2 A.B.A. HUMAN RIGHTS 19 (Spring 2008).

145. *Id.*

146. See Vogt, *supra* note 134.

147. *Id.*

148. *Id.*

149. See *id.*

been reported that one third of female veterans have been sexually assaulted or raped while on active duty, while others experienced serious sexual harassment.<sup>150</sup> Therefore, PTSD is doubly disabling for female veterans because they are more likely to be exposed to both combat and sexual assaults.

Sexual assault is the unwanted sexual activity between two or more people in which one person involved is being touched against his or her will.<sup>151</sup> The scope of the unwanted sexual activity may include "grabbing, oral sex, anal sex, sexual penetration with objects, or sexual intercourse."<sup>152</sup> There are many ways sexual assaults are perpetrated on women. Some women are forced to have sex by inappropriate use of authoritative power, threat, or being unable to give consent due the influence of alcohol or drugs.<sup>153</sup> Despite common belief, most women who are sexually assaulted are attacked by an aggressor who is known to the victim.<sup>154</sup> Estimating the number of sexual attacks is often a difficult process because women fail to report crimes of this type.<sup>155</sup> According to the National Crime Victimization Survey, an estimated 500,000 sexual assaults occurred in the U.S. from 1992 to 1993, including about one third rapes and 28% attempted rapes."<sup>156</sup>

Women experience a wide range of reactions to their sexual assault. While some women are affected for long periods of time, others appear to recover quickly.<sup>157</sup> A majority of women who are sexually assaulted immediately feel some sort of shock, intense fear, confusion, anxiety, denial, or numbness.<sup>158</sup> They may have a difficult time comprehending their experience and therefore downplay the intensity, especially if the aggressor was

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150. *Id.*

151. Sue Orsillo, *Sexual Assault Against Females*, National Center for PTSD (2007), [http://ncptsd.va.gov/ncmain/ncdocs/fact\\_shts/fs\\_female\\_sex\\_assault.html](http://ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_female_sex_assault.html).

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. Bopp Stark, *supra* note 141, at 186-87.

158. Orsillo, *supra* note 151.

not a stranger.<sup>159</sup> A few days or weeks after a sexual assault, she may relive the memories of the event, having nightmares, disorientation, and difficulty in concentrating and sleeping.<sup>160</sup> If the problems persist, she may experience Acute Stress Disorder.<sup>161</sup> Alternatively, she may experience Major Depressive Disorder symptoms including inability to enjoy things, feelings of guilt, hopelessness, and decreased self-esteem.<sup>162</sup> This depression can last for a long period of time with suicidal thoughts being common.<sup>163</sup> As labeled, Major Depressive Disorder (MDD) can cause a myriad of symptoms with depression as the cause.<sup>164</sup> "The National Women's Study reported that almost one-third of all rape victims develop PTSD sometime during their lives."<sup>165</sup>

Women who have been sexually assaulted may experience social problems in their personal relationships.<sup>166</sup> They may find it difficult to trust others or to develop new relationships.<sup>167</sup> A long-standing problem for victims may be fear and avoidance of any sexual activity.<sup>168</sup>

PTSD is a severe and complex disease, however, treatments are available.<sup>169</sup> Cognitive-behavioral therapy appears to be the most effective type of counseling for PTSD.<sup>170</sup> Another kind of therapy called EMDR, or eye movement desensitization and reprocessing is also available.<sup>171</sup> In addition, medications, like

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159. *Id.*

160. *Id.*

161. *Id.*; Laura E. Gibson, Ph.D., Nat'l Ctr. For PTSD, *Acute Stress Disorder: A Brief Description*, [http://www.ncptsd.va.gov/ncmain/ncdocs/fact\\_shts/fs\\_asd\\_public.html](http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_asd_public.html) (last visited May 13, 2009).

162. *Id.*; PsychCentral, *Major Depressive Disorder: Symptoms*, <http://psychcentral.com/disorders/sx22.htm> (last visited May 13, 2009).

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. Orsillo, *supra* note 151.

168. *Id.*

169. *What is Posttraumatic Stress Disorder?*, *supra* note 123.

170. *Id.*

171. *Id.*; EMDR Institute, Inc., <http://www.emdr.com/> (last visited May 13, 2009).

selective serotonin reuptake inhibitors (SSRI) can be effective.<sup>172</sup> Unfortunately, not everyone who develops PTSD seeks treatment, but women are more likely to seek help,<sup>173</sup> .

Because women are willing to seek treatment, proper health care is needed. Although the VA medical facilities have changed, they have not done so at the speed needed. They now offer more services oriented towards women and their special needs, but much work still needs to be done.<sup>174</sup> The nation still lacks the appropriate health care available to many female service members and veterans who suffer from PTSD.<sup>175</sup> For example, women have been placed in coed group therapy sessions, when often the assaults from men contributed to their underlying cause of PTSD.<sup>176</sup> Currently, there are only four PTSD clinics focusing on women, but the department has acknowledged more are forthcoming.<sup>177</sup> New bills, such as the Women Veterans Health Care Improvement Act of both November 2007 and 2008, ensure equal access to healthcare for women, but provide systems tailored to their unique needs.<sup>178</sup> Therefore, women veterans should not be apprehensive about seeking the care they need through the VA. Some women who sought treatment have found that it has made a difference in reducing symptoms and improving quality of life.

#### **THE EFFECTS OF POST TRAUMATIC STRESS DISORDER ON SOLDIERS & VETERANS**

Despite programs and efforts by the VA and the general public, every year thousands of veterans remain homeless and hundreds decide to take their own lives. Robinson, the executive director of the National Gulf War Resource Center and

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172. *Id.*

173. Vogt, *supra* note 134.

174. Wakefield, *supra* note 144.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

a national leader in addressing the readjustment of returning veterans, says:

There is a strong need for better coordination on the part of the Department of Defense (DOD) when discharging personnel that have already shown acute and severe PTSD symptoms. Soldiers are being released with mental health care needs and the local communities are not being notified. The safety net of the Department of Defense (DOD) and the VA has huge gaps, Robinson said, highlighting the need for community-based responses such as the one DA Keating is initiating. Once they come home, the only direction soldiers with PTSD have, without getting help, is downhill, Robinson said. Left untreated, PTSD is the gateway to drug dependency, alcohol abuse, spousal abuse, family and marital problems and child neglect.<sup>179</sup>

When the veteran goes for treatment though, the demographics such as age, race, and gender of the veteran who suffers from combat related PTSD should be taken into account.<sup>180</sup> A review of the NVVRS suggests ethnic differences in the rates of PTSD and attributes these findings to psychosocial factors (racial or ethnic discrimination and alienation) and sociocultural influences (stoicism and normalization of stress, alexithymia, and fatalism), but also admit to the need for further research in these areas.<sup>181</sup> These findings are supported by more recent studies focusing on the effects of racial/ethnic discrimination on the health status of minority veterans, where neighborhood racial composition and adverse race-related events during military service were found to affect the use of outpatient care.<sup>182</sup> This evidence suggests minority status, gender, and age may all affect the screening, diagnosis, and treatment of the veteran who suffers from PTSD, but a

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179. Bove, *supra* note 82, at 33.

180. APApractice.org, American Psychological Association Practice Organization, *Clinical Conversation on Treating Post-Traumatic Stress Disorder (PTSD) Related to Military Combat*, Feb. 14, 2008.

181. See generally Ruef et al., *supra* note 106.

182. Linda Sohn, *Effects of Racial/Ethnic Discrimination on the Health Status of Minority Veterans*, 173 MIL. MED. 331, 333-34 (2008).

plethora of studies have begun to question how these factors affect homelessness and suicide among the PTSD veteran.

If left untreated, PTSD is a serious disorder. It could have devastating effects on both the individual and on his or her potential offspring. Individuals who suffer from this illness are at risk of having more medical problems.<sup>183</sup> “Emotionally, PTSD sufferers may struggle more to achieve as good an outcome from mental-health treatment as that of people with other emotional problems.”<sup>184</sup> Common effects of PTSD are recurring nightmares, alcohol or drug abuse, suicide, and anger or aggressive behavior.<sup>185</sup> The effects of PTSD can lead to homelessness.

### HOMELESSNESS

“There are 200,000 homeless veterans in America today. . . [and among those] 76% suffer from drug, alcohol, or mental health problems.”<sup>186</sup> The factors of homelessness though are not commonly associated with the experiences in the military. “Despite common perceptions that homeless veterans are more likely to be mentally ill or suffer from high rates of Post Traumatic Stress Disorder (PTSD), the characteristics of homeless veterans actually look similar to other homeless adults..<sup>187</sup> To mention a few, those factors include poverty and lack of affordable housing.<sup>188</sup>

The Rand study points out that most studies regarding the mental health of the homeless look at the prevalence of mental problems among the already homeless and not at the fact that

183. *What is Posttraumatic Stress Disorder?*, *supra* note 123.

184. Medicinenet.com, Roxanne Dryden-Edwards, *Posttraumatic Stress Disorder*, [http://www.medicinenet.com/posttraumatic\\_stress\\_disorder/page2.htm](http://www.medicinenet.com/posttraumatic_stress_disorder/page2.htm) (last visited February 9, 2009).

185. *What is Posttraumatic Stress Disorder?*, *supra* note 123.

186. Tracy Carbasho, *Shepherd's Heart Veterans Home Representatives Give Update On Their Efforts To Help Homeless Vets*, 9 No. 24 *LAWYERS J.* 5, 5 (2007).

187. NATIONAL ALLIANCE TO END HOMELESSNESS, *FACT CHECKER ACCURATE STATISTICS ON HOMELESSNESS: VETERANS AND HOMELESSNESS*, November 2006, available at <http://www.endhomelessness.org/content/article/detail/1401>.

188. *Id.*



psychological problems, such as PTSD, may cause homelessness.<sup>189</sup> One study showed that about 75% of individuals with PTSD developed the diagnosis before becoming homeless.<sup>190</sup> The Rand study pointed out that those who experience stress in a war zone have been a stronger predictor of homelessness than those who were exposed to a war zone alone.<sup>191</sup> Further, the adverse effects associated with PTSD, such as substance abuse and unemployment, were also associated with veterans' homelessness.<sup>192</sup> Veterans comprise 20% to 33% of the homeless that use shelters.<sup>193</sup> If you combine the increase in PTSD cases and the less than adequate response of quick and effective treatment, the number of homeless veterans will likely rise.

### SUICIDE

Over a twenty-five year period, the annual prevalence for PTSD was stable but the rate of drug dependence decreased from 16% to 6%.<sup>194</sup> Conversely, the rates of suicide increased during that period.<sup>195</sup> "Drug dependence appeared to exacerbate both PTSD and suicidality in young adulthood[.]"<sup>196</sup> A strong correlation was identified between drug use as a young adult, and PTSD or suicide and subsequent drug use in middle age, as a form of self-medication.<sup>197</sup>

Veterans may be at particularly high risk for suicide as a result of their high prevalence of depressive disorders and comorbid psychiatric conditions. According to the Veterans'

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189. TANELIAN & JAYCOX, *supra* note 43, at 141.

190. *Id.*

191. *Id.* at 140.

192. *Id.*

193. STATES NEWS SERVICE, *Bond Holds Senate Hearing on Homelessness*, May 1, 2008.

194. Rumi Kato Price et al., *Post-traumatic Stress Disorder, Drug Dependence, and Suicidality Among Male Vietnam Veterans with a History of Heavy Drug Use*, 76 DRUG & ALCOHOL DEPENDENCE (Supplement) S31, S36 (Dec. 2004).

195. *Id.* at S39.

196. *Id.*

197. *Id.*

Health Study, the prevalence of significant depressive symptoms among veterans is 31%, two to five times higher than among the general U.S. population.<sup>198</sup> In 2002, 12% of veterans treated in VA health care facilities were diagnosed with depressive disorders by a health care provider during an encounter.<sup>199</sup> “Among veterans, as in the general population, completed suicide is usually associated with a mental disorder, most often depressive disorders and alcohol or substance use disorders; those with co-morbid psychiatric disorders are at highest risk.”<sup>200</sup>

The VA’s Retroactive analysis (1999-2004) yields a suicide rate of 0.21% (1,683 of 807,694) among depressed veterans.<sup>201</sup> Increased risk was observed among young male, non-Hispanic, white patients.<sup>202</sup> Increased risk was also found among veterans without service-connected disabilities, who had inpatient psychiatric hospitalizations in the year prior to their diagnosis of depression with co-morbid substance use, and lived in the southern or western U.S.<sup>203</sup> In this study, “PTSD with co-morbid depression was associated with lower suicide rates and younger depressed vets with PTSD had higher suicide rates than did older depressed vets with PTSD.”<sup>204</sup>

The Psychiatric Times reported on Jan. 1, 2006, that between 2003 and July 19, 2005 there were fifty-three suicides in Iraq and nine in Afghanistan.<sup>205</sup> But, the article acknowledges that most suicides occur after the soldier returns home.<sup>206</sup> According to the American Psychiatric Association, PTSD can be acute, with symptoms lasting less than three months; chronic, with

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198. Kara Zivin et al., *Suicide Mortality Among Individuals Receiving Treatment for Depression in the Veterans Affairs Health System: Associations with Patient and Treatment Setting Characteristics*, 97 (12) AM. J. PUB. HEALTH 2193, 2193 (2007).

199. *Id.*

200. *Id.* at 2193

201. *Id.* at 2194

202. *Id.* at 2195

203. *Id.*

204. *Id.* at 2193

205. Kaplan, *supra* note 56, at 1.

206. *Id.*

symptoms lasting over three months; or delayed onset, where there is at least a six month gap between the traumatic event and the onset of symptoms.<sup>207</sup> The rate of suicide in the U.S. is about ten per 100,000.<sup>208</sup> The Rand study quotes a Department of Defense study that lists the rate of suicide in 2003 between ten and thirteen per 100,000.<sup>209</sup> This would be close to the national average. However, a five-month CBS News investigation purported to uncover a much more serious problem.<sup>210</sup> Using the Freedom of Information Act, CBS received a document showing that between 1995 and 2000 there were 2,200 suicides.<sup>211</sup> The document was limited to "active duty" soldiers only.<sup>212</sup> CBS asked Dr. Ira Katz, head of mental health for the Department of Veterans Affairs, why there wasn't a national study to find out how many veterans had committed suicide. According to CBS, he replied, "The research is ongoing."<sup>213</sup> CBS obtained and compiled suicide statistics from forty-five states and found that the suicide rate for 2004 and 2005 was 8.9 per 100,000 for non-veterans and 18.7 to 20.8 per 100,000 for veterans.<sup>214</sup> The investigation further showed that veterans aged twenty to twenty-four, who served during the war on terror had a suicide rate between 22.9 and 31.9 per 100,000.<sup>215</sup> Dr. Katz challenged the validity of CBS's figures at a House Committee hearing on Dec. 12, 2007.<sup>216</sup>

The problem is not subsiding. The Baltimore Sun reported a 13% increase in suicides from 2006 to 2007.<sup>217</sup> The Baltimore

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207. DSM-IV, *supra* note 1, at 465.

208. TANELIAN & JAYCOX, *supra* note 43, at 128.

209. *Id.*

210. CBSNews.com, *Suicide Epidemic Among Veterans, A CBS News investigation Uncovers A Suicide Rate for Veterans Twice That of Other Americans*, November 13, 2007, [http://www.cbsnews.com/stories/2007/11/13/cbsnews\\_investigates/main3496471.shtml](http://www.cbsnews.com/stories/2007/11/13/cbsnews_investigates/main3496471.shtml).

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. States News Service, *supra* note 193.

217. Wood, *supra* note 66.

Sun quoted then Senator Barack Obama as saying that the Pentagon and Veterans Administration “are still unprepared to treat the unseen wounds of battle . . . too many [soldiers] are falling through the cracks because they need help but feel they can’t get it.”<sup>218</sup>

### DRUG/ALCOHOL ABUSE

Drinking or “self-medicating” with drugs is a common way many cope with upsetting events because it can help them deal with the difficult thoughts, feelings, and memories related to the trauma. While this may offer a quick solution, it can actually lead to more problems. The common explanation for this high occurrence of substance abuse is the drive to “self-medicate” to treat the symptoms and effects of PTSD.<sup>219</sup> If the veteran begins to lose control of drinking or drug use, it is important to assist them in getting appropriate care.<sup>220</sup>

A large segment of Vietnam veterans seen at Veterans’ Affairs Medical Centers (VAMCs) are being treated for substance abuse.<sup>221</sup> For example, 36% of the more than 250,000 discharges of Vietnam veterans nationwide in 1996 were related to substance abuse.<sup>222</sup> 25% of these veterans were diagnosed with substance abuse, and 40% of the chemical abusers were reported to have a co-morbid condition (i.e., substance abuse or other psychiatric affliction).<sup>223</sup> The most prevalent psychiatric diagnoses among co-morbid substance users receiving VAMC inpatient treatment are personality disorders and depression, although there are several other psychiatric disorders that

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218. *Id.*

219. C. T. Taft, *PTSD Symptoms, Physiological Reactivity, Alcohol, & Aggression Among Military Vets*, 116 J. ABNORMAL PSYCHOL. 498, 499 (2007).

220. National Center for PTSD, *Common Reactions after Trauma*, [http://ncptsd.va.gov/ncmain/ncdocs/fact\\_shts/fs\\_commonreactions.html](http://ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_commonreactions.html) (last visited February 9, 2009).

221. Benda, *supra* note 117, at 108.

222. Katherine S. Virgo et al., *Substance Abuse as a Predictor of VA Medical Care Utilization among Vietnam Veterans*, 26:2 J. BEHAVIORAL HEALTH SERVS. & RES., 126, 126 (1999).

223. *Id.* at 127.

coexist with substance abuse among homeless veterans.<sup>224</sup> According to one study, "[i]ncidence estimates suggest the rates of [substance abuse] among persons with PTSD may be as high as 60%- 80% . . . ."<sup>225</sup>

### NIGHTMARES

"Nightmares refer to complex dreams that cause high levels of anxiety or terror."<sup>226</sup> They can occur anytime during rapid eye movement (REM) sleep.<sup>227</sup> When nightmares occur as a part of PTSD, they tend to involve the original threatening or horrifying set of circumstances that was involved during the traumatic event.<sup>228</sup> For example, with regards to soldiers returning from war, they may have nightmares involving horrifying images such as blood, body parts, comrades dying, and constant fighting.

Nightmares are 1 of 17 possible symptoms of PTSD. One does not have to experience nightmares in order to have PTSD. However, nightmares are one of the most common of the re-experiencing symptoms of PTSD, seen in approximately 60% of individuals with PTSD. A recent study of nightmares in female sexual assault survivors found that a higher frequency of nightmares was related to increased severity of PTSD symptoms. Little is known about the typical frequency or duration of nightmares in individuals with PTSD.<sup>229</sup>

### ANGER/AGGRESSIVE BEHAVIOR

"Vivid memories of the trauma, of the abuse, will be written

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224. *Id.*

225. Beverly Donovan & Edgardo Padin-Rivera, *Transcend: Program For Treating PTSD and Substance Abuse in Vietnam Combat Vets*, 8 NAT'L CTR. PTSD CLINICAL Q. 51, 51 (Summer 1999).

226. Laura E. Gibson, *Nightmares*, [http://www.ncptsd.va.gov/ncmain/ncdocs/fact\\_shts/fs\\_nightmares.html](http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_nightmares.html) (last visited February 9, 2009).

227. *Id.*

228. *Id.*

229. *Id.*

in stone."<sup>230</sup> Because trauma is connected with anger and aggressive behavior, the memories could trigger these emotional responses.<sup>231</sup>

Every time they are recalled, every time any little thing reminds them of that event, the memory will induce another full-blown stress response. The re-experiencing of the traumatic event in PTSD is extremely damaging because it will boost the stress response and lead to high circulating levels of glucocorticoids, putting even more brain cells at risk. The next stress response will then be a little stronger, producing more damage—a vicious cycle of brain damage caused by a bad memory from which they cannot escape.<sup>232</sup>

### SOLUTIONS TO HELPING SOLDIERS WITH POST TRAUMATIC STRESS DISORDER

The Rand study makes the following recommendations: First, increase the amount of healthcare providers that are trained and certified in delivering care proven to be effective.<sup>233</sup> Second, change policies to encourage active duty personnel and veterans to seek care.<sup>234</sup> Third, deliver uniform proven services at all treatment facilities.<sup>235</sup> And, invest in more research to understand the problems that face individuals suffering from PTSD or other psychological problems.<sup>236</sup> The Department of Veterans Affairs has acknowledged the growing number of PTSD cases.<sup>237</sup> It has been widely reported, by the Rand report and many news organizations, that the treatment is not adequate.<sup>238</sup> The Rand report lists the consequences of PTSD as

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230. Edgar Garcia-Rill et al., *Gatekeeping Stress: The Science and Admissibility of Post-Traumatic Stress Disorder*, 24 U. ARK. LITTLE ROCK L. REV. 9, 21 (2001).

231. *Common Reactions after Trauma*, *supra* note 220.

232. Garcia-Rill et al., *supra* note 230.

233. TANELIAN & JAYCOX, *supra* note 43, at xxvii-xxviii.

234. *Id.* at xxvii.

235. *Id.* at xxx.

236. *Id.* at xxxi.

237. *Id.* at xix.

238. *See id.*

homelessness, decreased work productivity, and family relation problems.<sup>239</sup> The *Psychiatric Times* pointed out the importance of early detection to prevent some of the consequences of PTSD.<sup>240</sup>

Moreover, the 2008 Institute of Medicine's Committee on Treatment of Posttraumatic Stress Disorder made several recommendations related to certain findings dealing with PTSD.<sup>241</sup> The first finding involved the fact that "the treatment of PTSD had not received the level of research activity needed to support conclusions about the potential benefits of treatment modalities."<sup>242</sup> The recommendation to this finding was that the VA improve the treatment standardization.<sup>243</sup> Without a method of standardization, the VA programs for PTSD will not improve efficiency of helping veterans. The second finding showed pharmaceutical companies sponsoring the drug studies.<sup>244</sup> The recommendation to this finding was that there be a checks and balances system on the VA and the sponsoring pharmaceutical companies who might have an underlying financial interest to sway the data.<sup>245</sup> The third finding resulted in significant gaps being found concerning interventions with comorbidity (mixture of PTSD and another disorder).<sup>246</sup> The proposal to this finding was that the VA assist in designing a specific research program geared toward those veterans with comorbidity.<sup>247</sup> The fourth finding validates that the research on PTSD is inadequate to propose interventions and treatment lengths.<sup>248</sup> The VA has to educate itself, and this requires money. As a result, the committee recommended that the

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239. *Id.* at 429.

240. Kaplan, *supra* note 56, at 7.

241. TREATMENT OF POSTTRAUMATIC STRESS DISORDER, *supra* note 86, at 140-45

242. *Id.* at 140

243. *Id.*

244. *Id.* at 141

245. *Id.*

246. *Id.* at 142

247. *Id.*

248. *Id.* at 144

money and resources come from Congressional funding.<sup>249</sup> Lastly, the fifth finding showed that the interventions practiced by the VA are not necessarily addressing the needs of the veterans suffering from PTSD.<sup>250</sup> Increasing research for psychotherapy and evaluating the psychotherapy sessions was the recommendation for future research focus.<sup>251</sup> With these proposals, the VA could increase its effectiveness in order to help veterans suffering from PTSD.

### POSTTRAUMATIC STRESS DISORDER AS A LEGAL DEFENSE

Of course, the Rand study and Institute of Medicine offer feasible solutions for those veterans who are able to attend a local VA in order to receive the particular type of care. However, what happens to the veterans with PTSD who have not received the proper care but have committed a crime as a result of their PTSD? In cases specifically involving veterans, PTSD largely impacts the legal system in the pretrial diversion, plea bargaining, and sentencing stages.<sup>252</sup> PTSD is often being used as justification or mitigation during sentencing.<sup>253</sup>

The legal and psychiatric communities have growing concerns that pushing a mental disorder diagnosis in other cases may pose a threat in the cases involving PTSD, especially because assessing the disorder involves in large part a self-report by the person seeking treatment.<sup>254</sup> "The danger of malingering is real."<sup>255</sup> "It is important that the diagnosis of PTSD not be brought into disrepute by becoming the basis of the insanity defense on the spurious grounds that it is a mental disease and thus that, automatically, all persons with the

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249. *Id.*

250. *Id.* at 145

251. *Id.*

252. Liza Gold, M.D., *The Role of PTSD in Litigation*, 22 PSYCHIATRIC TIMES, 30 (2005).

253. *Id.*

254. Mark S. Fettman, *Classification of Mental Disorders*, 1995, <http://www.fettman.com/pdf/ptsd.pdf>.

255. *Id.*



diagnosis are not responsible for their behavior.”<sup>256</sup> In 1992, a study that examined the allegation of abuse in our legal system in using PTSD as the basis for the defense of not guilty by reason of insanity revealed that PTSD constituted only 0.3% of the cases.<sup>257</sup> However, in order to prevent diluting the diagnosis of PTSD, a clear distinction between PTSD leading to a dissociated state in criminal acts versus combat experiences must be made whenever possible.<sup>258</sup> Otherwise we risk stretching PTSD well beyond its original intent to argue a criminal defense.<sup>259</sup>

In fact, the 1992 study investigators felt that their data did not reflect fears of widespread misuse of the PTSD diagnosis relating to the insanity defense.<sup>260</sup> Exploitation of the diagnosis of PTSD often results from using the diagnosis for nonclinical purposes.<sup>261</sup> Therefore, despite the adversarial nature of the legal system, it is important that in-court testimonies of forensic experts reflect clinical analysis and the DSM handbook.<sup>262</sup> Psychiatrists who participate in the legal process should always provide reliable, credible testimony relating to the diagnosis of PTSD, especially when it is raised as a legal defense.<sup>263</sup> To maintain credibility when using PTSD as a diagnostic in litigation, psychiatrists should understand the definition of this disorder instead of merely regarding PTSD as any emotional disturbance that follows a stressful event.<sup>264</sup> Judges and juries often fail to fully comprehend the scientific intricacies of a PTSD defense.<sup>265</sup> The historic prevalence of the defense's failure to prevent culpability can be attributed to the very nature of the

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256. G. Mendelson, *The Concept of Posttraumatic Stress Disorder: A Review*. INT. J. LAW PSYCHIATRY 1987; 10:45- 62, 45, 58 (1987).

257. Deborah Funk, *PTSD Defense Used More and More in Court: "Flashbacks" Cited to Explain Criminal Acts*, Aug. 8, 2005, <http://www.tricare.mil/eenews/downloads/080305PTSD.doc>.

258. Fettman, *supra* note 254.

259. *Id.*

260. Funk, *supra* note 257.

261. Gold, *supra* note 252.

262. Fettman, *supra* note 254.

263. Gold, *supra* note 252.

264. *Id.*

265. Garcia-Rill et al., *supra* note 230, at 9.

PTSD condition, in that the condition is transient and judges and juries often do not comprehend how a defendant can be sane in the vast majority of instances and yet, upon a trigger, commit a heinous crime.<sup>266</sup> A greater understanding among legal professionals of PTSD and mental health conditions would greatly improve our criminal justice system, both in terms of recidivism and the underlying theme of justice.

In 1986, the first veteran, David Livingston Funchess, was executed for killing two people during a robbery.<sup>267</sup> Prior to his trial, Funchess had been formally diagnosed with PTSD.<sup>268</sup> Even with evidence that Funchess had drugs in his system and that substance abuse is a well-known result of PTSD, he was still executed even after presenting this information during the appellate stages of his case.<sup>269</sup>

“About 12% to 20% of soldiers and Marines had PTSD after serving in Iraq. About 6% to 11% of soldiers had PTSD after serving in Afghanistan.”<sup>270</sup> There is and will continue to be a rising demand upon the criminal justice system and the VA to deal with PTSD related issues. It is imperative that we prepare our courts to preserve the legitimacy of justice and prepare our veterans’ programs to take adequate preventative measures to alleviate the system.

Often cases cite drug use and alcoholism as factors to reduce the importance of recognizing PTSD as a mitigating factor in terms of sentencing and culpability. This reasoning is fallacious, as alcoholism and drug addiction are well-documented to be the types of “self medication” that trauma-induced anxiety disorder victims turn to, which often exacerbate

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266. *Id.* at 24.

267. Debra D. Burke & Mary Anne Nixon, *Post-Traumatic Stress Disorder and The Death Penalty*, 38 HOW. L.J. 183, 186 (1994).

268. *Id.*

269. *Id.*

270. National Center for PTSD, *An Overview of the Mental Health Effects of Serving in Afghanistan and Iraq*, [http://www.ncptsd.va.gov/ncmain/ncdocs/fact\\_shts/overview\\_mental\\_health\\_effects.html?opm=1&rr=rr1773&srt=d&echorr=true](http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/overview_mental_health_effects.html?opm=1&rr=rr1773&srt=d&echorr=true) (last visited March 29, 2009).

the pre-existing lack of volitional control in their actions.<sup>271</sup> While stress disorders can be treated with therapy and drugs, few veteran inmates receive treatment.<sup>272</sup> This is most often the case with non-inmate veterans as well, as the VA has inadequate facilities and resources to cope with the growing homelessness and to treat, or even diagnose, all of the PTSD cases it is presented with.<sup>273</sup> In interpreting many studies, the majority tend to show a positive correlation between vagrancy, homelessness, drug abuse, violence, and PTSD.<sup>274</sup>

Courts often follow the M'Naghten and irresistible impulse tests for applying an argument of diminished mental capacity as a mitigating factor in a criminal defense.<sup>275</sup> The M'Naghten test requires that "[t]o establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong."<sup>276</sup> The Irresistible Impulse test asks whether the defendant had volitional control over his actions at the time the crime was committed.<sup>277</sup> These two established tests for culpability clearly show the importance of a competent system in recognizing a defendant's PTSD condition. Few courts at this point in time have adopted the view that a PTSD diagnosis can allow for dismissal of culpability altogether; rather, modern courts view PTSD as a mitigating

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271. See Edward J. Khantzian, *The Self-Medication Hypothesis of Addictive Disorders: Focus on Heroin and Cocaine Dependence*, 142 AM. J. PSYCHIATRY 1259 (1985); Alexander C. McFarlane, *Epidemiological Evidence About the Relationship Between PTSD and Alcohol Abuse: The Nature of the Association*, 23 ADDICTIVE BEHAVIORS, 813 (1998); Roger D. Weiss et al., *Drug Abuse as Self-Medication for Depression: An Empirical Study*, 18 AM. J. DRUG & ALCOHOL ABUSE 121 (1992).

272. George Hackett, *From Patriots to Pariahs*, NEWSWEEK, July 4, 1988, at 21.

273. See Trustees of Indiana University, Florence Wagman Roisman, *National Ingratitude: The Egregious Deficiencies of the United States' Housing Programs for Veterans and the "Public Scandal" of Veterans' Homelessness*, 38 IND. L. REV. 103 (2005).

274. Burke & Nixon, *supra* note 267, at 186.

275. 21 AM. JUR. 2d *Criminal Law* § 54.

276. *M'Naghten's Case*, (1843) 8 Eng. Rep. 718, 722 (K.B.); see *Clark v. Arizona*, 548 U.S. 735, 747 (2006).

277. *Criminal Law*, *supra* note 275, at 56-64.

factor to be considered in sentencing.<sup>278</sup>

The M'Naghten and Irresistible Impulse tests are problematic for afflicted defendants seeking to use a PTSD defense, because the very nature of the condition is transitory, being that its manifestation is conditional upon the existence of an adequate stressor at the time to induce the altered mental state. In 1992, a study examined the allegation of abuse in our legal system in using PTSD as the basis for the defense of not guilty by reason of insanity revealed that PTSD constituted only 0.3% of the cases.<sup>279</sup> However, in order to prevent diluting the diagnosis of PTSD, a clear distinction between PTSD leading to dissociate state in criminal acts versus combat experiences must be made whenever possible.<sup>280</sup> "It is important that the diagnosis of PTSD not be brought into disrepute by becoming the basis of the insanity defense on the spurious grounds that it is a mental disease and thus that, automatically, all persons with the diagnosis are not responsible for their behavior."<sup>281</sup> In the case of the combat-exposed veterans, the pre-requisite event is easily discernible - war. PTSD has been readily recognized as a mitigating factor in many cases; however, in general, the defense fails to hold the exculpatory power of a traditional insanity defense, again seemingly due to the condition's transient nature and lack of understanding of it.

Traditionally, PTSD has been used as the underlying mental condition necessary for the insanity defense. It has also been used to mitigate criminal responsibility in cases involving battered women, the defense of diminished capacity, and in determining criminal intent.<sup>282</sup> In cases specifically involving veterans, PTSD largely impacts the legal system in the pretrial diversion, plea bargaining, and sentencing stages.<sup>283</sup> The legal

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278. See *People v. Saldivar*, 497 N.E.2d 1138 (Ill. 1986) (PTSD used as a mitigating factor to reduce sentence).

279. Funk, *supra* note 257.

280. Fettman, *supra* note 254.

281. Mendelson, *supra* note 256, at 58.

282. Fettman, *supra* note 254.

283. *Id.*

and psychiatric communities have growing concern that pushing a mental disorder diagnosis in other cases, may well pose a threat in the cases involving PTSD. Especially because assessing the disorder involves in large part a self-report by the person seeking treatment. The danger of malingering is real.<sup>284</sup> The potential usefulness of PTSD to the legal system has been quickly recognized by military law experts. They predict that the Afghanistan and Iraq wars will increase the chances that troops could suffer from PTSD, which may be introduced as a legal defense should troops commit crimes.<sup>285</sup> Many mental health experts agree that PTSD has a positive correlation of causation to certain criminal behaviors, such as drug use and violence.<sup>286</sup> The fact that veteran inmates tend to be model prisoners supports and is explained by the nature of a PTSD affliction, in that their criminal conduct is dependent upon a "trigger" which set their psychosis into action.<sup>287</sup>

The question of the admissibility of a PTSD defense has been left by the courts to a case by case basis, considering all circumstances, and perhaps rightfully so. However, we need not concern ourselves greatly with cases where the question has been adequately pondered and litigated. The danger comes from situations in which the condition has not been recognized or the actors of the legal system do not fully comprehend the defense. In looking at the case history of the PTSD defense, regardless of its application, there comes the overwhelming conclusion that there is a positive correlation between violence, crime, and PTSD that has been recognized by the court system in various instances. The recognition by the courts of PTSD as mitigating, and in some instances exculpatory circumstance, in addition to large number of cases which cite PTSD as a causation related factor, go to show the need in our society to recognize the effects of military service. By increasing resources and

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284. Fettman, *supra* note 254.

285. Funk, *supra* note 257.

286. Hackett, *supra* note 272, at 21.

287. *Id.* at 21.

treatment, we can reduce the number of crimes committed by veterans and the number of those who are unjustifiably sentenced to imprisonment or death from the wounds they bear in service of our country.

There are a number of ways PTSD can be used to attack a charge of murder. One way is to attack the prosecution's case directly by asserting that the defendant did not have the *mens rea*, or criminal intent, necessary for the prosecution's prima facie case. A person suffering from PTSD may "experience dissociative states that last from a few seconds to several hours, or even days, during which components of the event are relived and the person behaves as though experiencing the event at that moment."<sup>288</sup> Evidence can be offered showing that the defendant was experiencing this state of mind and did not have the necessary intent.

North Carolina has recognized a defense of diminished capacity.<sup>289</sup> In *State v. Shank*, the North Carolina Supreme Court stated, "a defendant who does not have the mental capacity to form an intent to kill . . . cannot be lawfully convicted of murder in the first degree, whether such mental deficiency be due to a disease of the mind, intoxication . . . or some other cause."<sup>290</sup> The great advantage is that if the defendant prevails, the prosecution has not made its case and there is no criminal medical confinement. This diminished capacity defense is not recognized in all jurisdictions.<sup>291</sup> In those jurisdictions that do not recognize diminished capacity, evidence of mental impairment must be introduced through an insanity defense.<sup>292</sup>

PTSD can also be used to establish insanity as a defense. Establishing a defense of insanity depends on the jurisdiction. The Model Penal Code abrogates responsibility if the defendant "lacks substantial capacity either to appreciate the criminality

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288. DSM-IV, *supra* note 1, at 464.

289. *State v. Shank*, 367 S.E.2d 639, 644 (N.C. 1988).

290. *See id.*

291. *State v. Mott*, 931 P.2d 1046, 1051 (Ariz. 1997).

292. *See id.*

[wrongfulness] of his conduct or to conform his conduct to the requirements of law."<sup>293</sup> Under this definition, even if the defendant knew it was wrong, but could not control himself, he is not guilty. If the defendant is successful, he still faces potentially infinite involuntary confinement.

The question then becomes how to establish an insanity defense. Evidence of the traumatic event is certainly relevant to whether the defendant is suffering from PTSD, as it has "[tends] to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."<sup>294</sup> In relation to combat-caused PTSD, evidence of the horrors of war and the experience of the affected veteran would go a long way in impacting a jury. A court may find the evidence too attenuated, as in *State v. James*, where the 1<sup>st</sup> Circuit Court of Appeals ruled that the trial court did not err in refusing to show the film "Good Morning Vietnam."<sup>295</sup>

Expert testimony will be needed for a successful defense. The U.S. Supreme Court has set out the criteria for the admissibility of expert testimony. The factors to consider are whether the theory has been tested, whether it "has been subjected to peer review and publication," its known error rate, and whether it has attracted "widespread acceptance . . . ."<sup>296</sup> PTSD was officially recognized as a mental disorder in 1979.<sup>297</sup> It was included in scientific literature in 1980.<sup>298</sup> Detailed criteria for diagnosing PTSD have been published.<sup>299</sup> North Carolina will admit testimony related to PTSD.<sup>300</sup> Less established mental disorders have been admitted. In California, expert testimony of a derivative disorder, Battered Women's Syndrome, has been

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293. MODEL PENAL CODE § 4.01 (1962).

294. FED. R. EVID. 401.

295. *State v. James*, 459 So. 2d. 1299, 1299-30 (1st Cir. 1984).

296. *Id.*

297. TANIELIAN & JAYCOX, *supra* note 43, at 5.

298. 49 AM. JUR. 2d POF *Post-Traumatic Stress* § 73, 84 (1987).

299. DSM-IV, *supra* note 1.

300. *State v. Jones*, 414 S.E.2d 360, 363 (N.C. App. 1992).

admitted.<sup>301</sup> Although admission was based on a statute, this syndrome has not been included in the American Psychiatric Association's Diagnostic and Statistical Manual.<sup>302</sup> PTSD has a much stronger foundation for acceptance.

PTSD could also be used as a self-defense argument. This depends largely on the statute or case law defining self-defense. The Model Penal Code authorizes "the use of force . . . when the actor believes that such force is necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion."<sup>303</sup> A sufferer of PTSD may "experience the world as unreal or dreamlike."<sup>304</sup> Someone suffering from PTSD may have a subjective belief that they need to protect themselves.

A murder defendant suffering from PTSD should assert the condition to challenge the government's prima facie case, as self-defense or an insanity plea, and also as a mitigating factor at sentencing if necessary. The notion that PTSD is a treatable disease leads into a topic not covered by this article but that is worth noting—"the question arises as to whether a state can medicate prisoners in order to render them sufficiently competent for execution."<sup>305</sup>

## CONCLUSION

The 2008 Committee on Treatment of Posttraumatic Stress Disorder Board on Population Health and Public Health Practice formed by the Institute of Medicine concluded the following: "The principal finding of the committee is that the scientific evidence on treatment modalities for PTSD does not reach the level of certainty that would be desired for such a common and serious condition among veterans."<sup>306</sup>

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301. *People v. Humphrey*, 921 P.2d 1, note 1 (Cal. 1996).

302. *Id.* at 5.

303. MODEL PENAL CODE § 3.04 (1962) (emphasis added).

304. See DSM-IV, *supra* note 1, at 463-68.

305. *Burke & Nixon*, *supra* note 267, at 195.

306. TREATMENT OF POSTTRAUMATIC STRESS DISORDER, *supra* note 86, at 140.



More could be done for our elderly, minority and female veterans. With all of the scientific and historical data concerning the effects of PTSD on veterans, the VA services provided now are not enough. As the war in Iraq continues, it is hypothesized that greater amounts of soldiers will be suffering from PTSD. It is time for the VA to prepare the proper facilities for addressing the issue of PTSD because as stated in this article, PTSD becomes the triggering effect for many other issues such as homelessness, suicide, drug/alcohol abuse, and criminal behavior. If the VA starts to deal with the root of these problems, which is PTSD, then our soldiers and veterans would be able to lead better lives. For what our soldiers and veterans have done for our country, these services would be a miniscule repayment.