# Combat-Related Posttraumatic Stress Disorder and Criminal Responsibility Determinations in the Post-Iraq Era: A Review and Case Report

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Since 2002, hundreds of thousands of United States troops have returned from the Iraq and Afghanistan theaters, many after multiple deployments. The high suicide rate and high prevalence of mood disorders, substance use disorders, and posttraumatic stress disorder (PTSD) in this population have been widely reported. Many returning soldiers have had difficulty adjusting to civilian life, and some have incurred legal charges. In this article, I review the prevalence and legal implications of combat-related PTSD in this population, including how symptoms of PTSD may be relevant in criminal responsibility determinations in jurisdictions that use a *M'Naughten* standard or American Law Institute (ALI) Model Penal Code test for criminal responsibility. Finally, an actual case in which a criminal defendant was found to lack criminal responsibility in a *M'Naughten* jurisdiction because of PTSD symptoms at the time of the alleged offense will be presented.

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In response to the terroristic events of September 11, 2001, in New York City; Arlington, Virginia; and Shanksville, Pennsylvania, United States military forces entered Afghanistan on October 7, 2001, in an effort to eliminate a safe haven for al-Qaeda terrorist cells. Within two years, U.S. forces would enter Iraq in search of weapons of mass destruction. At the time of the events of September 11, the Department of Defense reported that approximately 50,000 U.S. troops were deployed overseas. By March 2002 (after entry into Afghanistan), that number had doubled to more than 100,000. By May 2003 (after entry into Iraq), more than 400,000 U.S. troops were deployed overseas.[1]

According to widespread media reports, an alarming number of deployed soldiers have experienced mental health problems on returning to the United States from combat zones. Initially, high suicide rates were reported; the Army suicide rate hit a high of 18.8 per 100,000 soldiers in 2003, almost double the rate in the U.S. population of 10.8 per 100,000.[2] By 2006, the Army suicide rate had hit a 26-year high.[3] By 2010, 468 active service members and reservists had taken their own lives, more than the number of troops killed in combat in Iraq and Afghanistan during that year combined.[4]

In addition to suicide, rates of major depression, general anxiety disorder, and posttraumatic stress disorder (PTSD) have been high. In a large survey of troops before and three months after deployment, 17 percent of troops returning from Iraq and 11.2 percent of those returning from Afghanistan met diagnostic criteria for major depression, generalized anxiety disorder, or PTSD. Of those who met the diagnostic criteria for one of these disorders, only 23 to 40 percent sought mental health treatment.[5] In a survey of all returning troops, mental health problems were identified in 19.1 percent of those from Iraq and 11.3 percent in those from Afghanistan. Among troops from Iraq, 9.8 percent met diagnostic criteria for PTSD.[6]

Persons with PTSD may be at risk of arrest for criminal domestic violence and other crimes.[7] Male

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veterans with PTSD are two to three times more likely to be violent toward a female partner than are veterans without PTSD.[8] Among those with combat-related PTSD from the Vietnam War, 50 percent have a history of lifetime arrest after their military service.[9] In one study of combat-related PTSD and violence, approximately 33 percent of those in an intimate relationship reported perpetrating partner physical aggression in the previous year, and 91 percent reported partner psychological aggression.[10]

## PTSD and Legal Insanity

While PTSD has been encountered more frequently in civil litigation (e.g., personal injury cases), it is becoming a more common feature of criminal matters for both victims and perpetrators of violent crime. The relationship of PTSD to criminal behavior was first hypothesized following the Vietnam War.[11] Specifically, the relationship of a dissociative reaction to criminal behavior when a veteran enters a survival mode brought on by an environmental stimulus reminiscent of the combat trauma was postulated. An unconsciousness defense (not being conscious of one's actions at the time of the offense) was a successful insanity defense in a case involving a Vietnam veteran.[12] In addition to insanity, PTSD testimony has been introduced to support a claim of self-defense and diminished capacity.[13,14] However, although the diagnosis of PTSD may not be sufficient to produce a finding of insanity or diminished capacity, it may influence legal deposition. Judges may order psychiatric treatment instead of or in addition to incarceration.[15]

Although rare, PTSD has been used as the basis for an insanity defense. In one survey, it constituted only 0.3 percent of all insanity pleas.[16] The use of PTSD as an insanity defense has come under criticism as being more subject to abuse than other diagnoses when introduced into the courtroom through expert testimony.[17] Another criticism is that the assessment of PTSD symptoms is often based on the complainant's own report and presumes that the complainant is truthful. Although they are controversial, numerous PTSD-based insanity acquittals have occurred.[18] In one recent case, PTSD was the basis for a successful insanity defense against two counts of armed robbery of pharmacies for prescription pain killers.[19] In this case, the defendant had PTSD related to deployment in Bosnia and later became addicted to pain killers. In such cases, acquittals may be linked to jury sympathy for a former soldier who was psychologically damaged from his service experience rather than actual symptoms of PTSD that are directly related to a criminal act. Such acquittals have sparked both public and judicial-legal debates, as PTSD symptoms are mostly subjective, often nonspecific, usually well-publicized, and relatively easy to imitate. For those clinicians who perform criminal responsibility evaluations, a finding of PTSD symptoms in a defendant that appear directly related to the alleged offense requires significant caution when applying a legal test of insanity.

## Modern Criminal Responsibility Standards

The most commonly used test of legal insanity in the United States is the *M'Naughten* standard, derived from the 1843 trial of Daniel McNaughton who was accused of murdering the British Prime Minister's personal secretary. McNaughton was acquitted by reason of insanity, and Queen Victoria summoned the Law Lords to determine what should be the appropriate test for legal insanity. Therefore, *M'Naughten* (*M'Naghten* in court records of the case) became the first appellate case of insanity.[20] This test requires that "the party accused was laboring under such a defect of reason . . . as not to know the nature and quality of the act he was doing; or, . . . he did not know what he was doing was wrong . . . in respect to the very act with which he is charged."[21]

The second most commonly used criminal responsibility standard in the United States is the American Law Institute (ALI) Model Penal Code, which was developed in 1955, was adopted from 1972 until 1984 in Federal Courts, and is currently used in many state courts. This test is an attempt to incorporate a lack of volitional control as a basis for legal insanity. It holds that a criminal defendant is not criminally responsible if, because of mental disease or defect, he lacks the capacity to appreciate the criminality of his conduct, or, he cannot conform his conduct to the requirements of the law. The terms mental disease or defect do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

## Definition of PTSD

In addition to exposure to a life-threatening event involving actual or threatened death or serious injury or a threat to the physical integrity of self or others,

PTSD is characterized by three clusters of symptoms: reexperiencing phenomena, avoidance of stimuli associated with the trauma, and persistent symptoms of increased arousal, including irritability or outbursts of anger. These symptoms must be present for longer than one month and must cause significant distress or impairment in social, occupational, or other important areas of functioning.

To complicate matters, under a new process instituted by the Department of Veterans Affairs for disability claims of posttraumatic stress disorder, veterans will no longer have to engage in actual combat to make the case that they sustained psychological injury in war. Instead, the new policy recognizes that living with the fear of death and injury may be enough for troops to have impaired mental health. Veterans will not have to cite specific incidents of stress (exposure to an individual explosive device, for instance) and then back up the claim with documentation. Instead, veterans now will have to show only that they served in a combat zone and had a job consistent with conditions related to PTSD symptoms. Many more veterans will now be able to file disability claims for PTSD, including troops who did not have direct contact with the enemy.[22] This relaxation of the trauma requirement has implications for criminal cases as well. Because this policy is new, it is unclear whether criminal courts will accept it, because it has not been proposed by the American Psychiatric Association, is not contained in the Diagnostic and Statistical Manual of Mental Disorders (DSM), Fourth Edition, Text Revision,[23] and is not being considered for DSM-5.[24]

## Application of PTSD Symptoms to Criminal Responsibility Standards

The application of PTSD to the insanity defense is problematic because it requires two levels of causation: that the trauma be responsible for the development of symptoms and that the symptoms be directly related to the alleged offense. In one article, the authors have proposed specific links between PTSD symptoms and criminal behavior, with the crime itself being an actual or symbolic representation of the combat experience.[11] Proof of a defendant's combat experiences and the behavior and circumstances of the crime therefore become critical determinates in the evaluation of legal insanity.[25]

In jurisdictions using a *M'Naughten* or modified *M'Naughten* standard, it is difficult to use PTSD as a basis for an insanity defense because, to have lacked knowledge of the wrongfulness of a criminal act, a defendant has traditionally been required to have a specific delusion that negates knowledge of wrongfulness or to be so out of contact with reality as not to know the nature and quality of his actions. However, in the rare event that the crime occurred during a dissociative flashback, an argument may be made that the individual was unable to recognize the nature and quality of his act and therefore is not criminally responsible. Although rare, flashbacks appear to be more common among late 20th and 21st century veterans than in those from World Wars I and II.[26] Determinations that a flashback occurred are very difficult, because dissociative mental states are usually fleeting and unverifiable and have clear potential for significant secondary gain.

In jurisdictions using the ALI Model Penal Code, PTSD symptoms may be easier to link to the volitional prong (i.e., lacking sufficient ability to conform one's conduct to the requirements of the law). Once again, if the crime occurred during a dissociative flashback, an argument for impairment in the defendant's capacity to conform his conduct can be made. Some experts have attempted to link the symptoms of increased arousal to the volitional prong. For example, assaultive behaviors have been linked to PTSD criterion D (2) irritability or outbursts of anger. Whether PTSD-related irritability can rise to a level of impairing capacity to conform is controversial, in part, because of the inherent difficulty in differentiating an irresistible impulse from an impulse that a criminal defendant chose not to resist.

## A Case Report

This de-identified case report was exempt from institutional review board approval, but was reviewed and approved by the Privacy Officer for the Division of Inpatient Services of the South Carolina Department of Mental Health. There were no concerns about disclosure of private health information (PHI). The subject in the case report reviewed the article and consented to its publication.

An active-duty Army soldier was referred for a criminal responsibility evaluation in a jurisdiction in which the *M'Naughten* standard definition of legal insanity was used. He had been arrested for six counts of assault and battery with intent to kill, discharging a firearm into a dwelling, and possession of a weapon

during a violent crime. While on leave visiting relatives several states away from his army base, he awoke at 4 a.m. and informed a relative that someone was shooting at him. He grabbed his assault rifle, drove his truck to a residence a short distance from his relative's house, banged on the front of the residence door demanding entry, and, when entry was not forthcoming, began kicking the front door. He finally fired four rounds into the door jam. Six people, including four children, were inside the residence, and one of them immediately called the police. According to the police report:

> On arrival we observed a [race omitted] male lying on the ground in front of a parked vehicle. A long dark object believed to be a rifle [was laying] on the ground next to the male subject. After taking a tactical cover position we drew our weapons. The subject began to crawl around the front driver side of the vehicle. Lt. [Doe] ordered the subject to come out with his hands up. The subject was not responding. . . . Additional units arrived. As subject crawled out from the front of the vehicle, units moved into position to take subject into custody. The subject was placed in handcuffs and transported to the detention center.

The defendant had no history of prior psychiatric treatment or treatment by a primary care provider for mental health problems before the alleged offense. He had no history of medical illness. He had a history of one prior arrest for driving while intoxicated after he graduated from high school. He drank socially but denied the use of illicit substances. There was no family history of mental illness. He was the younger of two children. There was no history of developmental delays, and he reportedly got along well with other children. He had no history of behavioral problems as a child or adolescent. He completed high school and initially worked in commercial cable installation. He left this job to join the Army. He had never married.

In the Army, he was assigned to an infantry division and had been deployed to Iraq on two occasions before the alleged crime. While in Iraq, he was never injured but witnessed a fatal injury to a fellow soldier in a tank accident during his first one-year deployment. He was redeployed to Iraq for three months. According to information obtained from his military records, in the second deployment, he was involved in door-to-door operations in Fallujah, Iraq, that were designed to find and capture insurgents. During this deployment, his unit experienced daily mortar attacks. He also reported the onset of combat nightmares during this deployment which worsened after he left Iraq. The nightmares occurred two to four times a month and involved combat situations, but were always different and involved different locations. One of his recurring nightmares involved being under fire and discovering that he did not have his weapon. He described feelings of detachment and estrangement from others and reported a restricted ability to have loving feelings for others. He also described diminished interest in enjoyable activities. He described hypervigilance and gave several examples of incidents when he had experienced an exaggerated startle response. These symptoms persisted after his second deployment. At the time of the alleged offense, he had not sought treatment for the symptoms. Since the alleged offense, he had been treated at his army base for PTSD and was prescribed sertraline and zolpidem.

According to his military commander, the week before the defendant went on leave, his unit was engaged in training drills involving intensive breeching training, going door to door to clear out potential neighborhoods in combat zones. When asked, the commander stated that his unit had been trained to open locked doors by disabling the lock with a shot fired into the door jamb. The defendant was described as a very good soldier. There was no history of significant disciplinary actions other than one Article 15 (a misdemeanor) for being involved in a bar fight after deployment.

The alleged victims in his current offenses did not know the defendant and had had no prior contact with him.

According to the defendant, he did not know the alleged victims. He was amnestic for much of the alleged offense. He recalled feeling irritable that day about work-related problems, especially a new military policy that would increase the number of military personnel per armored vehicle. He had consumed two beers earlier that evening at dinner but had been asleep since 11 p.m. He stated that he remembered being shot at, arguing with his relative about something, and being asked by police at the crime scene why he had shot at the door.

According to the defendant's relative, the defendant had come into the relative's bedroom and stated that someone had been shooting at him and he was "going to have to kill somebody." His relative informed him he would get in trouble if he killed anyone, and he responded, "I will not get in trouble for killing these people." According to his relative, the defendant "looked like a deer in headlights [*sic*]".

The defendant's relative tried to get him to stay in the house; however, the defendant was able to pull away. When the defendant left the house, he was described as sneaking to his truck between other vehicles on his hands and knees. His relative immediately called the police. He stated that the defendant did not appear to be intoxicated when he left the house. After his arrest, at the police station, the defendant asked his relative who had put him in jail and why.

According the senior police officer at the scene, the defendant seemed to be "coming in and out of it." At one point, the defendant had asked him, "Why are you stopping me from doing my job?" He reported that the defendant did not appear to be in his right mind; at times he was oriented and at other times he did not seem to know where he was. According to the officer, "I think he thought he was in Iraq."

### *Forensic Opinion*

A court-appointed expert opined that the defendant's actions on the night of the alleged criminal act were most consistent with a PTSD-related dissociative flashback. Because the defendant's behavior during the offense was consistent with both his military training and his behavior in combat, the expert stated that the defendant most likely did not appreciate the nature and quality of his actions or the wrongfulness of his actions.

## Discussion

The relationship of posttraumatic stress disorder symptoms to criminal behavior is complex. It is most appropriate to consider an insanity defense based on PTSD symptoms in cases in which the criminal act took place during a dissociative flashback.[27]

Behaviors during dissociative flashbacks are unpremeditated and sudden and uncharacteristic of the individual. There is usually a retrievable history of one or more traumatic combat events that are reenacted while dissociated. Furthermore, there does not appear to be an alternate motive. Most individuals experience amnesia for the episode and are unaware of the specific ways they have repeated or reenacted war experiences. In jurisdictions using a *M' Naughten* standard, it is important to examine the defendant's behavior at the time of the alleged offense for signs that he may have recognized the wrongfulness of his acts. For example, destruction of evidence or other self-protective acts at the time of the alleged offense suggest that the defendant, whether experiencing a flashback or not, was criminally responsible. In this case, the defendant made no attempt to conceal his behavior or intentions from the police. In jurisdictions that use a definition of legal insanity that includes volitional impairment (i.e., ALI Model Penal Code jurisdictions), a stronger argument may be made that a dissociative flashback impaired the defendant's ability to conform his conduct to the requirements of the law, rather than impairing knowledge of wrongfulness.

In evaluating the possibility of an insanity defense, it is important to check numerous collateral sources. Military records should be requested to ascertain that a criminal defendant has actually been deployed on combat-related missions and likely experienced traumatic events that involved a serious threat to life or physical integrity. In addition, other potential motives should be eliminated. In this particular case, the lack of a prior relationship or contact between the defendant and the victims would also suggest that the motive was based in mental illness.

Most important, it is crucial to interview as many witnesses to the defendant's behavior as possible, ideally including those who were present both before and after the criminal act. In this case, his relative was able to describe a potential trigger for a dissociative flashback: the defendant's assertion that someone was shooting at him. It is unclear why the defendant had this perception, but he may have awoken from a nightmare. His relative was also able to describe the odd manner in which he left the house (crouching between cars) which is consistent with troop movement when under fire. The arresting police officer was also able to describe a dazed look and disorientation, both of which are consistent with dissociation, a disruption in the usually integrated functions of consciousness, memory, identity, and perception.

Although not necessary in this case, contact with a crime victim may be needed if there are no witnesses available or as an adjunct to witness reports. Interviewing the victim is especially important if the offense involves criminal domestic violence toward an intimate partner. If the offense was violent, it is usually best to obtain such contact through a victim's advocate, if available.

In this case, the forensic report was admitted into evidence without psychiatric testimony. The presiding judge, *sua sponte*, decided to dismiss the charges against the defendant and allow him to return to his Army base several states away. The judge indicated

that he felt the Army was in the best position to initiate treatment for the defendant's PTSD and offer him the services he needed. This ruling prevented the defendant from having to end his military career and having to enter a civil forensic hospital for prolonged treatment.

Given the large number of deployed soldiers returning from the Iraq and Afghanistan theaters with PTSD, forensic clinicians may see more criminal defendants with this disorder as well. Careful attention to the evaluation process and obtaining the extensive collateral information that is needed to assess criminal responsibility in defendants with PTSD is crucial to reaching accurate and supportable opinions.

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