

## **Fighting Back: An Affirmative Defense for Victims**

### **I) Introduction**

- A) Legislation must be implemented to allow Affirmative Defenses, specific to victims suffering from Post-Traumatic Stress Disorder, (PTSD)<sup>i</sup>, and other related disorders.<sup>ii</sup> Violent crimes, such as Sexual Assault, Domestic Violence, Child Sexual Assault/Molestation; are the highest rated crimes that produce PTSD in victims.<sup>iii</sup> The innocent sufferers of these crimes are held responsible for their own abuse and are labeled with stereotypical ideals that our society has held for years, even within our own legal system.
- B) Symptoms stemming from this disorder, cause victims of PTSD to perceive danger differently than other non-victims.<sup>iv</sup> The perception of the victim may lead them to see no other way to handle a situation. He/she may react, believing that there is a physical danger, even though the belief is not reasonable to another person without such a history.<sup>v</sup> The law makes allowances for some elements in these situations, concerning defense and even punishment. Our Justice System has failed to preserve the rights of these victims, by definition, as was intended with the creation of the Bill of Rights of the U.S. Constitution. The very people, intended to protect innocent victims, are themselves guilty of turning their backs on victims at their most vulnerable times. For centuries law enforcement, the Criminal Justice System and society, as a whole; have enabled victimization of crimes committed against, primarily women and children.
- C) California is the first State to begin a positive, change, with the passage of law<sup>vi</sup>, enabling an alternative sentencing scheme for veterans, involved in criminal behavior, suffering with PTSD. Additionally, State and Federal Courts have begun to accept PTSD, and its scientific substance as evidence in support of abused women. Expert witness testimony is accepted in criminal trials to prove the existence of a PTSD diagnosis in victims and defendants<sup>vii</sup>. Yet, this is not enough. An affirmative defense must be realized to restore victim's rights and lives. I intend to prove that victim/defendants of retaliatory crimes, committed against their assailants, require and are entitled to an implementation of a policy supporting Affirmative Defense for the victims of violent crimes.

## II) Components of PTSD and their elements

- **Rape Trauma Syndrome, Battered Woman Syndrome and Post Combat Stress Disorder**

Post-Traumatic Stress Disorder, (PTSD), is a mental disorder that is sustained by the victim of a traumatic event that is characteristically outside the realm of usual trauma. Symptoms from the disorder arise from the emotional intensity of the traumatic event or long term trauma from experiences of multiple events that involve actual or threatened death or injury to themselves or another, and where intense fear was felt along with feelings of helplessness and horror.<sup>viii</sup>

PTSD takes on three basic specifiers;

1. Acute – Symptoms lasting under 3 months,
2. Chronic – Symptoms lasting 3 months or longer,
3. Delayed on-set – At least 6 months have passed between the trauma and the on-set of the disorder.

PTSD is the brains method of coping with an occurrence that is so stressful and traumatic in nature, that the brain is put in to an alert state. Adrenaline levels released during the event are at such a high level that it causes the brain to imprint an image of the traumatic event, actually etched into a victim's memory. This imprint is permanent and is the brains mode of assuring that the victim will never forget it, lest it may reoccur.

“PTSD is believed to be a normal reaction to an abnormal stress level, brought on by trauma.”<sup>ix</sup> This specific event, not typically part of normal life experience, evokes symptoms of distress. The disorder and its subsets are brought on by sudden horrific events which leave the victim with feelings of hopelessness, intense fear, an on-going certainty of life threat or potential of physical violence, etc. Some or all of these symptoms rarely, completely subside throughout the course of the victim's life. The victim continues to live in a state of hyper vigilance.<sup>x</sup> Most of us, those that have never been victimized, are able to walk around in a relaxed state free from the feeling of impending doom. If this were not the case, we would walk this earth on a heightened state of alert. Heart rates would be up, we would not be able to concentrate on the task at hand, and we would be very suspicious of those around us. This is true of the victim. Prior to the assault, they took comfort in a normal routine. Things were very predictable until the unpredictable happened. Feeling as if the world is not safe, creates a fearful environment. Walking around in a fearful state is what leads to the heightened anxiety. The sense of pending doom lingers and the victim seeks safety in many ways. Safety in such a crazed world means either fighting your way through life or withdrawing all together. Relationships can be tainted with suspicion and intimacy is nearly lost.

Behaviors displayed by the victims of PTSD can occur within weeks of the original event and continue for decades after signs materialize. Some characteristics shown by victims are

fear, anxiety, anger, irritability; (that can be so intense that it can lead to violent and frightening behavior), depression, hyper alertness, guilt, drug and alcohol abuse, nightmares, flashbacks, a negative view of the world, are all symptoms of this disorder.

”The determination of how a victim copes with these factors and the combat of the negative feelings being experienced is based on the victim’s genetic make-up and personality. These characteristics have a large effect on the chances of developing PTSD and its symptoms, as well.”<sup>xi</sup>

“Post-traumatic Stress Disorder is the most common diagnostic category used to describe the symptoms that arise from emotionally traumatic events. The Disorder assumes that the event involves actual or threatened death or injury and that the victim felt intense fear, helplessness or threatened death or injury. In addition, there are symptom clusters that make up the diagnostic criteria if the symptoms continue for more than a month after the event and if they cause clinically intense distress or impairment. The separate diagnosis of these subsets are described in the Diagnostic and Statistical Manual of Mental Disorders<sup>xii</sup> or, more commonly referred to as the DSM.”<sup>xiii</sup>

Here are some of the symptoms that explain the diagnosis of Stress Disorder, another subset of PTSD. Stress Disorder is a short term disorder lasting only four weeks in duration. However the criteria can be quite debilitating to the victim. “Acute Stress Disorder is described by experiencing three of the following criteria<sup>xiv</sup>:

- (1) a subjective sense of numbing, detachment, or absence of emotional responsiveness
- (2) a reduction in awareness of his or her surroundings (e.g., "being in a daze")
- (3) derealization
- (4) depersonalization
- (5) dissociative amnesia (i.e., inability to recall an important aspect of the trauma)

The event is re-experienced at least one of these ways:

- 1.) By recurring images,
- 2.) thoughts,
- 3.) dreams,
- 4.) illusions,
- 5.) flashbacks, or
- 6.) feelings or sense of reliving the experience; exposure to reminders of the event.

Avoidance of stimuli that arouse recollections of the trauma, such as thoughts, dreams, flashbacks, etc., are common in victims. Symptoms of anxiety or increased arousal by difficulty sleeping, irritability, poor concentration, hyper vigilance, and exaggerated startle response, are symptoms that can also be experienced by the victims.”<sup>xv</sup>

PTSD, is similar in symptomatic elements to Acute Stress Disorder and has three main symptom clusters, which are; intrusions, (flashbacks, nightmares), where the event is re-experienced;

avoidance, (reduction of the exposure to people or things that may bring feelings that encourage intrusive symptoms); and, hyper arousal, (hyper vigilance or startle response). These disturbances cause clinically significant distress or impairment in socialization, at work and other areas of their life. They impair the individual's ability to pursue necessary tasks, and this can make it very difficult to seek assistance from family and health personnel. These disturbances will last a minimum of 2 days and will occur within four weeks of the event. "The disturbance is not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication) or a general medical condition."<sup>xvi</sup>

Officially PTSD is classed as an anxiety disorder, some however, feel that it fits more closely with the dissociative disorders and others argue that it needs to be classified by itself. PTSD is a "typical" traumatic disorder in description; however, some people or stressors present variations on the theme. Three other disorders which may also show after traumatic experiences; those are Anxiety, Depression and Dissociation. This also, is related to how the particular victim deals with their stress; most likely their interpretation of the stress is also a factor. "The difference of this interpretation will affect both the severity and type of the symptoms experienced."<sup>xvii</sup>

To understand PTSD victims, it is important to understand the plight of the victims which lead them to the present mental trauma they suffer from today. The following will show how each group of victims are affected in a different manner and by what means.

#### **IV) PTSD victims**

##### **A) In woman**

"Women are much more likely to be traumatized in the control of intimate relationships than men are. 63% of almost 4 million reported assaults on men are by strangers. Yet, 62% of almost 3 million reported attacks on women in the United States are by persons they know,"<sup>xviii</sup> and "61% of all rapes in the U.S. happen before the victim is 18 years old. 29% of forcible rape occurs before 11 years old, and usually by family members."<sup>xix</sup>

Traumas resulting from crime bring along many issues that confront women on a more personal level than those issues of their male counterparts. These obstacles are even more difficult for women to face, due to the overwhelming stereotyping and victim blaming created by society, not to mention the lack of education most laypersons have on crimes against women. These problems manifest into huge obstacles placed on women during and immediately after a traumatic event occurs in their life.

**Rape Trauma Syndrome** is a subset of PTSD; and is likely to occur in women who have been the victim of a Sexual Assault; forcible rape, attempted rape or date rape, etc. Woman who have experienced anyone of these crimes, have also been exposed to all necessary criteria in the form of a traumatic event to warrant a diagnosis of PTSD. When a woman is the victim of a Sexual Assault, she has undergone a crime that has stripped her of her self-esteem, security and her privacy. Her attacker often has made her to believe that he will take her life, he has held her against her will, taken every bit of control away from her, which has left her feeling helpless and in terror. His control over her is total and she must subside to

any of his distorted demands. Once his control over her is established, she is forced, sometimes for long periods of time, to submit to brutal abuse, both physical and sexual. If she does not comply with his demands, more harm will be inflicted on her, leaving her completely void of choices.

Some victims may choose to fight, some will opt to submit to avoid the consequences of his anger and still others will simply check out emotionally. A natural mental defense tactic used by victims of extreme trauma is to find a way out, albeit, if only in the mental state. This tactic of defense is designed specifically for moments when the emotional trauma is too great for the mind to cope with. The victim is able to open a safe passage out of the situation that is causing the trauma. A victim can almost literally watch as her soul passes through that open passage way to safety, while leaving the physical being behind to endure the pain alone. Much the same as an out of body experience, she can see her body enduring the event, as if watching from another place, a safer place. This phenomenon is called Dissociative Disorder and is typically experienced in victims of ongoing traumatic conditions. It is an extremely effective coping skill. However, it can become pathological, when used frequently. Although it protects the victim from awareness of the pain immediately, when a victim uses it often, it may affect her sense of personal identity, relationship difficulties and inability to function, especially when under stress.

“As many as 99% of people developing Dissociative Disorders have histories of repetitive, overwhelming and life-threatening trauma at a sensitive developmental stage of childhood, before the age of nine). The rate of Dissociative Disorder is highest among sexual abuse survivors and addicts. It is primarily recognized among women.”<sup>xx</sup>

**Battered Woman’s Syndrome** is another subset of PTSD, and “a term used to describe the effects of the physical and psychological abuse a woman suffers at the hands of her abuser, with whom she shares a personal intimate relationship. It can be characterized as a post-traumatic stress disorder which emphasizes a woman’s economic and emotional dependency on her abuser.”<sup>xxi</sup>

The abuser typically employs control tactics over the battered partner which include, but are not limited to, physical and sexual abuse, isolation, humiliation, threats and deprivation of money. These tactics make it seem virtually impossible for an abused woman to leave her abuser, whether she wants to or not. Though she may engage in efforts to stop the abuse, the battered woman often finds herself held hostage in a vicious cycle of violence which tends to intensify over a period of time, leaving her helpless and hopeless.

## **B) In children**

“Studies show that about 50% of abused children, physically and sexually, will suffer with PTSD within their lifetime.”<sup>xxii</sup> Children, especially young children, have less ability to defend against traumatic events in their lives. “They are also, less likely to be able to make sense of the emotional event or to avoid it, leaving them in a state of even less control, real or perceived. Therefore, more shy, quiet, sensitive or introverted children will likely have a stronger emotional reaction to the event and the trauma”<sup>xxiii</sup>.

In children the onset of the disorder is acquired in the same manner as adults, a traumatic event in the child's life brings on the symptoms of PTSD. However, in children they do not relive the traumatic event repeatedly, as in adults. But they have a belief that their lives will be shorten and are not able to imagine themselves as growing to adulthood. They also have an omen syndrome, a belief that they can foretell the future events of happening. Children also suffer from physical symptoms; such as headaches and stomach aches.

Children seem to suffer more often than do adults, from one of the symptoms. If the abuse is severe and/or continues for long periods of time, the Dissociative Disorder can manifest into Dissociative Identity Disorder. "Dissociative Disorder becomes more severe, with multiple personalities showing up in their lives. This Disorder characteristically takes on multiple personalities in which the child is not even aware of. These personalities are thought to protect the child from the on-going abuse that they have no control over."<sup>xxiv</sup> The alter egos shield them from the reality of abuse and allow them to remove themselves from the abuse and pain that is inflicted on them. By allowing the personalities to take over, they also take on much of the inflictions brought on by the abuse. Therefore, allowing the child's primary personality to remain unharmed, in the child's mind. It also allows the child to keep a belief that their caretaker is a loving and nurturing parent, when that is not always the case.

### **C) In Veterans of War**

Unlike most other trauma victims related to the onset of PTSD, Veterans of War have additional elements in their experiences of events they endure as a precursor to PTSD. Separate from other PTSD victims, veterans must also withstand, not only the trauma sustained themselves, but also, be exposed to continuous incidences of watching others around them be hurt or killed. In addition, the veterans are often far from home and loved ones. Veterans are forced to face a number of high stressors in combat; routinely viewing dead bodies, being shot at, attacked and ambushed and knowing friends that are killed or seriously injured.

Now the military is faced with yet another obstacle, with women playing an active role in combat, it is easy to understand why the high jump in cases of PTSD now being reported. Women not only react to trauma at a higher rate than men do, but now the rate of sexual assault on female military personnel is more prevalent than ever before in combat areas. Subsequently, both men and women have a higher rate of exposure to PTSD related traumas.

"Studies report that during the 2002-2009, 1 million troops left active duty and became eligible for VA services. Of those men and women, 46% of them were eligible for VA care and of those eligible for care, 48% were diagnosed with mental health disorders. It is also reported that 10-18% of the troops returning home are likely to be diagnosed with PTSD. Excessive use of alcohol and tobacco are another problem for these victims."<sup>xxv</sup>

## V) Understanding how PTSD affects the victim

*“A traumatic experience shakes the foundations of our beliefs about safety, and shatters our assumptions of trust in the world.”<sup>xxvi</sup>*

Because of PTSD’s widely misunderstood symptoms and the method in which the criteria for this disorder can materialize without the conscience knowledge of its victims, precluding the involuntary behavior that is played out through no fault of the victim. “It has been established that the victims of PTSD can rapidly snap “like a light switch, causing even benign references to the trauma to throw victims into an unstable emotional state.”<sup>xxvii</sup>

“Ramifications of Judicial System; the women who are imprisoned in the U.S. for murdering their spouse or live in partner, have been consistently shown to be themselves victims of Domestic Violence. Yet in court, they are not allowed to use this as a defense. Estimates range between 40-80% of women convicted of murder acted in self-defense against their abusers and male aggression is evident in almost all homicides, even when women are the ultimate offenders. These women generally do not have criminal histories, yet women serving time for Murder I or Murder II or Voluntary Manslaughter comprise about 10-15% of women in prison in 2006.”<sup>xxviii</sup>

## VI) MORE MISCELLANEOUS FACTS ON PTSD VICTIMS

Victims suffering from PTSD, become ensnared into a web-like effect of re-victimization. Their core beliefs about themselves, along with the stereotypical ideals of society and the trauma they suffer with, is likely to affect their ability to ward off new attacks by attackers who are, of course, predatory in nature. Multiple experiences of trauma will be even more difficult to face than most single instances. “This is further complicated by the fact that passive defenses, such as freezing or dissociation, are used frequently with these victims, rather than active defenses as the fight or flight.”<sup>xxix</sup>

For the victims who suffer from this re-victimization, the lifetime prevalence rates of PTSD are increased dramatically, along with evidence that early traumatic experiences, especially prolonged or repeated victimization may increase the chances of PTSD symptoms appearing as an exposed adult.

“One possibility of this effect could be contributed to learned behavior; responses of past terrifying events are automatically repeated, though more appropriate responses, like active defenses, are now possible.”<sup>xxx</sup>

# THE COUNTER ATTACK

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## VII) Rationale and Reasoning for an Affirmative Defense for Victims of Violent Crime

These disorders alone provide a reasonable explanation for a need of an Affirmative Defense for the victims of such consequences. It provides an alternative reasoning for the crimes committed by those victims. Also, helping to explain the mens rea, or lack thereof, for criminal intent. Without proof by the prosecution of both; *actus rea* and *mens rea*, technically there is no crime. These disorders can help to prove that the culpability of the defendant is not present. These disorders can also help to prove that if there is a level of responsibility, no matter how minute, it can be excused by the symptoms of the disorder in the defendant.

Of course, it is an obvious assumption that there will be critics that respond to this tactic with the assertion that defendants will abuse this rule and simply attempt the pretense of the disorder, in some cases. However, we can prove that there are expert witnesses available and if employed by the Court Systems for use throughout the State, can be available in short notice. This will not hinder the time period of the trial duration and will still allow the defendant the right to a fair trial. These experts can testify to the fact that symptoms of these disorders are distinguishable to the point of separation from any other mental health issues, if present. Furthermore, this has been proven in case law, (See; *Allewalt v. State*, 61 Md. App. 503, 516, 487 A.2d 664, 670), (5. *Id. at 516, 487 A.2d at 670*), in which the Circuit Court of Maryland for Baltimore County ruled that the testimony was admissible, in a case to prove non-consent in a criminal rape trial. The judge, hearing the case, held that “because PTSD is accepted generally with the scientific community and would be helpful to the jury in its determination as to whether the sexual intercourse was consensual.”

The jury found the defendant guilty of second degree rape, but the Court of Special Appeals of Maryland reversed the conviction and remanded for a new trial. The Court of Special Appeals held that PTSD testimony is inadmissible to prove non-consent in a criminal rape trial because of the testimony’s prejudicial effect, which outweighs its probative value. However, The Court of Appeals of Maryland reversed the judgment of the special appeals court and held that the trial court did not abuse its discretion in admitting the PTSD testimony.<sup>xxxii</sup>

Many women are still living with violent, abusive partners, enduring repetitive victimization. These are mainly women and women with children who have had to live with not only the physical and sexual abuse in Battering Relationships; but also, as stated earlier, they have survived emotional and mental terrorism from these same partners who have kept them captive for years, in their own homes. Due to these stipulations it is apparent that, when a diagnosis of PTSD is achieved, the victim will display many, if not all of the symptoms of the disorder. Therefore, proving that a defendant suffering from Battered Women’s Syndrome, would also have a view of the world and in others that would influence her trust of others, (such as Law Enforcement and Criminal Court Systems), as well as her perception of a sense of safety in everyday life.



With an altered sense of safety and trust in “*The System*”, a woman would reasonably believe, that trusting a legal alternative to escape her captor, is not even an option for her. Especially, if there have been prior attempts at contacting law enforcement, who cannot or will not assist her escape and safety. It is very possible that the victim’s view of her situation is she has no choice but to stay in a violent atmosphere. A woman’s behavior is characterized as logical within the context of her abuser’s behavior and past reinforcement of his control. And also, functional in its attempts to stop the violence and abuse, or attempt to keep it to a minimum. It should be quiet clear to any layperson who have been educated in the overall thought process and disorder symptoms, that women who have remained in abusive relationships have an undistorted view of their own reality and not a mental health problem.

One of the biggest threats to women in abusive relationships is that, unfortunately, the abuse does not get better; it almost always increases in severity. When a victim of this abuse comes to the realization that the violence has escalated to the degree that assumed injury will be so great as to make the leap to the next phase of imminent death. (It has been proven that “even with mental health problems, such as PTSD and depression the empirical evidence has found that predictions of risk of future assault by women who have experienced domestic violence are often correct.”)<sup>xxxii</sup> These women have a very reasonable belief that they have no choice left. In an abused women’s mind, they are left now with only one option, “kill or be killed”, they have no choice. The only necessary element to prove self-defense is that the defendant must have a reasonable belief that her death or great injury was imminent to her defending herself with a reasonable amount of force as is essential to the attack. The key word here is “reasonable”, without education it is not reasonable for any person, not previously experienced with the fundamental facts of abuse, to be able to make a “reasonable “decision on this fact. It is however, reasonable, with only the time that a potential jury is sitting in a jury room awaiting selection, to be educated in the facts that surround this case: Specifically, “Domestic Violence”.

A woman is not only justified to have a real belief in her own mind that imminent death is assured in some abusive relationships. But, also in an educated society, it will be clear that the scenario of “imminent death” of the same woman is practical in its application. Thus, the defense of Self-Defense is sounder in its use by the defendant who is on trial for the death of her abusive partner.

It has been decades of unjust protection for the weaker, unprivileged, lower economic and minority citizens of this country to have to endure. We, as a country. that enjoys our freedom of Constitutional Rights, should be in an uproar over the lack of justice served on this minority category, of women and children. It would be unheard of to allow this kind of prejudice in any other minority, except women. We still live in a world where it is out of the norm for woman to hold the same status as their male counterparts. In some parts of the country, it is still openly acceptable for men to slap or hit their women when necessary. This must be changed, it would not be tolerated by any other minority category, and it must not be allowed by our Justice System.

Of course, tax payers and critics, will scream that there are no funds to justify the implementation of any new programs. However, new legislature can be implemented at a very low economic burden to the Judicial Council or the Bar Association in any State. A very practical idea is to create documentary videos, using the camera as through the eyes of the victim. This would allow any viewer to watch the information, given in the video, a realistic demonstration of a victim's view. These videos should be very graphic in nature and apply all the known circumstances a victim is confronted with in Domestic Violence, Rape, Child Molestation, Child Abuse, War, etc. The footage should come to its end with the victim lying on the ground in a pool of blood. This would reinforce the reality dealt with by victims. Some will protest that the content of these videos are too graphic and not appropriate to be viewed by potential jurors. This can be retorted with one sentence; "if this is too graphic to be viewed by ordinary people, what do you think that the impact of this kind of violence is on children and women."

"On the average a woman is killed by their partners every day in the United States, but for some reason it is still difficult for many people to comprehend that women in abusive relationships constantly fear for their lives, even in moments when they aren't being physically attacked."<sup>xxxiii</sup> Prosecutors will argue that the victims of domestic violence that come to kill their abusers had an opportunity to leave the abuse and get help. This shows how very little people are educated in the dynamics of an abusive relationship. This is why it is extremely important to educate all law enforcement personnel, Criminal Justice employees, Prosecution members, Defense Attorneys, Judges and especially juries. By educating the Judges who hear these cases, the victims that are now on trial as the defendant, have a good chance at a fair trial. If there is a better understanding of the dynamics of Domestic Violence and an understanding of what a woman is faced with in that situation, the judge in these cases could be better prepared to hand down jury instructions that better accommodate her particular case.

In the case of Sexual Abuse victims, they will never again feel as if they are safe, not even in their own homes, they will live in a constant state of fear and hyper vigilance that may never subside. Child Molestation causes even more severe symptoms of the Disorder or from the further debilitating Dissociative Identity Disorder, along with countless other mental health issues that must be faced

There are two other relevant factors to take into consideration when speaking of the effects on the victims of PTSD. One is Dissociative Disorder, which was briefly covered earlier in this paper, and will be discussed further and the other is Post-Traumatic Anger, which is thought to be associated with PTSD symptoms, especially in crimes committed by civilians.

"Post Traumatic Anger is speculated to be a peri-traumatic reaction to emotions resulting from the original traumatic event. These emotions may be interpreted as resulting from anger rooted threat perceptions and share similarities with posttraumatic intrusion symptoms. Cross-sectional data indicated that posttraumatic anger and several indices of PTSD were highly interconnected and were persistent at follow-up in research."<sup>xxxiv</sup>

Dissociative Disorder, as discussed earlier is a symptom of PTSD, especially when relating to long term Sexual Abuse, and more severely in childhood sexual abuse. It is a fairly normal coping strategy when confronted with overwhelming stress. Unfortunately, as stated earlier, when relied upon for repetitive assistance in dealing with trauma, as in long term abuse, it is pathological. When it is severe, as in Dissociative Identity Disorder, it becomes a condition that is in need of specialized treatment. The research in severe cases of Dissociation Disorder and Dissociation Identity Disorder is leading to suggest that differential diagnosis for chronic traumatic histories is in need. The research has suggested that a Complex PTSD may be more frequent in individuals with adult traumas that complicate chronic or unresolved childhood traumatic experiences.

The diagnosis of these subsets of PTSD is evidence to show a valid claim of Automatism. Dissociative Disorder, especially has, every element necessary to prove Automatism. It has been shown that the disorder is a victim's inability to emotionally handle the stress of a particular trauma. This should be sufficient to show that there is no mens rea and excuse any wrong doing of the crime. Again this has been proved in case law, in which a woman was raped a few days before a robbery and she was able to prove that medical evidence proved she suffered with PTSD and was in a dissociated state caused by the rape. The court found that she could not be held accountable for her actions.<sup>xxxv</sup>

Veterans of War are among the most unwarranted victims, due to their service to this country. They, willing fought for the people of this country and were willing to give their lives for the safety and freedom of all others in the United States. Yet ironically, they and all the other victims of unspeakable crimes, in which PTSD is a factor, are held in turmoil and suffrage by this Disorder.

### **VIII) Criminal Justice System**

These are a few areas that should be addressed in the Criminal Justice System and the Children's Court System:

- A) Constitutional questions should be raised of the implementation of the Welfare and Institution Codes and the Protocol used by Department of Children Services and the Children's Court Systems.
- B) Legislation should be passed to abolish WIC Rule 361.5 that enables the Children's Protective Agency to remove children from the custody of their natural mothers, due to the abuse of her partner.<sup>xxxvi</sup>

### C) Implementing Affirmative Defense for Victims of Violence

- i) A defendant, who, sincerely held beliefs that she was in physical danger might warrant a departure, even if that belief could not be deemed objectively reasonable. <sup>xxxvii</sup>
- ii) A woman's best defense is automatism, a combination of excuse and exculpation, arguing that this excuses from liability and free from culpability for any injury of damages. <sup>xxxviii</sup>
- iii) It is also imperative that jurors understand the characteristics of batterers as well as their victims, to understand the scenario of abuse in its entirety.
- iv) Public Service type video should be created with the camera shot looking through the eyes of the victim, for domestic violence victims, child molestation victims, rape victims, etc. These videos should be made realistically and in graphic detail, made to repulse the average person when watching them. If the viewer is uncomfortable by the enactment then they can, at last, have a small grasp of the context of the victims suffering.

### D) Juries

- (i) Education on PTSD victims and its effects.
- (ii) It is essential that judges and jurors have the necessary information to extensively and fairly understand the defendant's situation. Especially, because a jury will be asked to put themselves in the defendant's shoes.
- (iii) If we are to be judged by a jury of our peers, it would follow that the jury would be those of understand and empathy for the defendant's situation.
- (iv) Expert testimony for PTSD and subset disorders.
  - (a) Expert opinion to aid jurors in the criminal trial of a child sexual abuse case. <sup>xxxix</sup>
  - (b) Demonstrative videos on separate scenarios that cause victimization.
- (v) Court must begin to inform juries of finding mitigating sentencing.
- (vi) A jury should be instructed by the court that our legal system makes allowances for victims who have no criminal intent.

### E) Society's Perceptions of Victims

- (i) Society needs to be made more aware of the plight of victims suffering from PTSD and its subsets, in order to change the stereotypical views that are held by mainstream society. These same views are the cornerstone of continual victimization and victim blaming of these innocent, women and children.

### F) Children's Protection Agency's

- 1) Law must be amended to change the handling of victims of Domestic Violence in the Children's Court System.
  - (i) In the Welfare and Institution Code, the Codes that govern the Children's Protective Services; a battered woman is held responsible for her own abuse.
  - (ii) A mother, who is a victim of domestic violence in the home, can and is, regularly charged with "having the child in an endangering situation", if she does not try to leave the batterer and file charges on him after he has committed an abusive act on her.
  - (iii) Under Welfare Institution Code, Section 361.5 the children who are present when a man is abusing their mother are taken out of the home and removed from their

mother's custody to be placed in the foster care system if there is no immediate family available to receive custody and care for them. This is true even if the children do not witness the abuse, but simply reside in the same household of the abuse. The mother is then, subsequently charged with WIC Section 361.5 in the Children's Court System.<sup>x1</sup>

## IX) CONCLUSION

To further hinder the chance for a normal existence after such crimes have shattered all of the things that we all take for granted. Unless you have yourself been a victim of the crime of Domestic Violence, Rape, War; it can never really be understood completely, just what is lost when your life is touched by the type of trauma that causes PTSD.

In a substantial amount of these cases, woman who have been subjected to these crimes are then further harmed by the handling of police officers, detectives and other government personnel, the justice system and society are all to blame for their ignorance and lack of understanding of the victims they deal with. For most of these women, all trust is lost that anyone will be able to understand or help them. They fear; and rightly so, that no one will clearly understand the effects of continual abuse on your body, both physical and sexual, your self-esteem, emotions, mental exhaustion. It drains every bit of hope from their lives, and they live with the constant hyper-vigilance of the impending violence that looms everywhere and creeps into every fiber of your daily routine. There is no excuse to further persecute these innocent victims. Instead we need to provide protection and implement laws for their on-going safety.

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i *Post Traumatic Stress Disorder (PTSD) is a mental disorder or illness triggered by major trauma, generally an event that is not normally part of one's culture or personal development. Events such as rape and domestic abuse, wartime atrocities, a terrorist's act, a devastating natural disaster, and a catastrophic accident can adversely affect a person permanently. Even the death of a loved one, a "normal" event, sometimes triggers PTSD.*

ii *Rape Trauma Disorder, a type of PTSD that is characterized by two phases, and Battered Women Syndrome, which is also linked to PTSD.*

iii *31% of Rape victims develop RR-PTSD and 51% of Battered Women will develop full PTSD.*

*(Department of Behavioral Sciences, Ben-Gurion University of the Negev., Harvey, Mary & Judith Herman. (1992). "The Trauma of Sexual Victimization: Feminist Contributions to Theory, Research, and Practice." PTSD Research Quarterly, 3(3): 1-3., (J Interpers Violence. 2003 Nov;18(11):1335-46. The toll of domestic violence. PTSD among battered women. Sharhabani-Arzy R, Amir M, Kotler M, Liran R.)*

iv *See: State v. Mechling, 633 S.E.2d 311, 326 – W. Va.: Supreme Court of Appeals (2006)*

v *See; U.S. v. Sachdov, 279 F.3d 25, 30: Court of Appeals, 1st Circuit, (2002)*

vi *California Penal Code, Section 1170.9, is available for veteran's diagnosed with PTSD that is charged with a non-violent act, that is not a felony,*

*and are eligible for probation. This Code offers alternative sentencing by means of mental health treatment in place of jail time. The statute used to be limited to combat veterans, but it was amended in 2010 to eliminate the "combat theater" requirement.*

vii *State v. Allewalt, 308 Md. 89, 517 A.2d 741 (1986), the Circuit Court of Maryland in a rape case, where defendant used the defense of consent, allowed expert witness testimony, a psychiatrist; who testified that the victim in the case suffered from PTSD, he also testified that he believed that the disorder was caused by the rape. The defendant was found guilty of fourth degree sexual offense and common law assault.*

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viii One of the typical symptoms of PTSD victims is re-victimization, this is caused by lack of self-esteem, feelings of worthlessness, shame, guilt, self-blame and from external sources, such as; victim-blaming, stereotyping and gender bias within our society.

<sup>ix</sup> According to the DSM – 1 yr.

<sup>x</sup> Hypervigilance is an “enhanced state of sensory sensitivity accompanied by an exaggerated intensity of behaviors whose purpose is to detect threats.” Some of the symptoms appear to be very similar to paranoia, however, the difference is that while paranoia is a mental illness, thought to be a minor variation in the balance of brain chemistry, hypervigilance is a response to an external event such as violence, disaster, violation, intrusion, stalking, domestic violence, etc. It is also one of the symptoms of several disorders, among them is Post-Traumatic Stress disorder, Acute Stress Disorder, etc.

<sup>xi</sup> David Baldwin, PhD, Eugene, Oregon USA \* <http://www.trauma-pages.com>. (The Trauma pages, 1995-2012)

<sup>xii</sup> A current version of the DSM is the Fourth Edition, Text Revision, (DSM-IV-TR) published in June 2004 by the American Psychiatric Association

<sup>xiii</sup> Although this Manual provides effective help in understanding the symptoms of PTSD, and it can assist technicians and mental health care providers gain the knowledge of the criteria to help in the diagnosis of the disorder, the manual is not designed or intended to be more than a source of use to enhance agreements among clinicians and investigators. It cannot be a substitute for the diagnosis of a professionally trained, staff with specialized clinical training skills. The proper diagnosis of PTSD can only be made by such a person.

<sup>xiv</sup> Diagnostic criteria for 308.3 Acute Stress Disorder, as found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. Copyright 2000 American Psychiatric Association

<sup>xv</sup> <sup>xv</sup> American Psychiatric Association. (1994). *Diagnostic and statistical manual of mental disorders, fourth edition*. Washington, DC: American Psychiatric Association.

<sup>xvi</sup> *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*. Copyright 2000 American Psychiatric Association

<sup>xvii</sup> American Psychiatric Association. (1994). *Diagnostic and statistical manual of mental disorders, fourth edition*. Washington, DC: American Psychiatric Association.

<sup>xviii</sup> (Acierno, Risnick, Kilpatrick, Saunders and Best, 1999)

<sup>xix</sup> (Acierno, et. al., 1999)

<sup>xx</sup> Bessel A. van der Kolk, Susan Roth, David Pelcovitz, Susanne Sunday and Joseph Spinazzola; (*Disorders of Extreme Stress: The Empirical Foundation of a Complex Adaptation to Trauma*) [http://www.traumacenter.org/products/pdf\\_files/specialissuecomplextraumaoci206jts3.pdf](http://www.traumacenter.org/products/pdf_files/specialissuecomplextraumaoci206jts3.pdf)

<sup>xxi</sup> <http://libguides.law.gsu.edu/content.php?pid=110018>

<sup>xxii</sup> American Psychiatric Association. (1994). *Diagnostic and statistical manual of mental disorders, fourth edition*. Washington, DC: American Psychiatric Association.

<sup>xxiii</sup> David Baldwin, PhD, Eugene, Oregon USA, <http://www.trauma-pages.com> (The Trauma pages, 1995-2012)

<sup>xxiv</sup> American Psychiatric Association. (1994). *Diagnostic and statistical manual of mental disorders, fourth edition*. Washington, DC: American Psychiatric Association.

<sup>xxv</sup> These figures are reported by the United States Department of Veterans Affairs, (National Center for PTSD, Washington, D.C., 2011)

<sup>xxvi</sup> David Baldwin, PhD, *The Trauma pages, 1995-2012*

<sup>xxvii</sup> Brown, (*The United States Department of Veterans Affairs. (National Center for PTSD, Washington, D.C. 2011)*)

<sup>xxviii</sup> Rally for Clemency (<http://www.solidarity-us.org/node/729>)

<sup>xxix</sup> Bessel A. van der Kolk, Susan Roth, David Pelcovitz, Susan Sunday and Joseph Spinazzola, (*Disorders of Extreme Stress: The Empirical Foundation of a Complex Adaptation to Trauma*)

<sup>xxx</sup> David Baldwin, PhD, *The Trauma pages, 1995-2012*

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(Bell, Cattaneo, Goodman & Dutton, 2008, Bell Goodman & Dutton, 2007; Heckert & Gondolf, 2004; Weisz, Tolman & Saunders 2000)

<sup>xxxiii</sup> <http://libguides.law.gsu.edu/content.php?pid=11018&sid=829277>

<sup>xxxiv</sup> M.J.J. Kunst, PhD, LLOM, Leiden University, Faculty of Law, Institute for Criminal Law and Criminology, (<http://jiv.sagepub.com/content/26/17/3561.abstract>)

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R v. T (1990) Crim LR 256.

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xxxvi It is protocol for The Department of Child and Family Services to hold victims, of Domestic Violence, responsible for their own abuse, by charging the victim/mother with one count of child endangerment for every child that resided in the household during the period of time the abuse is taking place. The definition for “child endangerment” by the Department of Child Services is; “having the child in an endangering situation due to participation in domestic violence within the household, constituting an unsafe environment. Failure to protect the child’s physical and emotional well-being by continuing to remain in the household where violence occurs.”

xxxvii U.S. v. Sachdov, 279 F.3d 25: Court of Appeals, First Circuit (2002)

xxxviii Mary Ann Dutton, Ph.D., Professor and Associate Director - Center for Trauma and the Community, Department of Psychiatry at Georgetown University Medical Center

xxxix State v. J.A., 617 A.2d – N.J. Supreme Court (1993)

xl Welfare Institution Code §361.5 361.5. - (a) Except as provided in subdivision (b), or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child.

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