

VETERANS AND PTSD

WHAT ATTORNEYS NEED TO KNOW

BY BOB BROWN AND JOE LOVELACE



Some U.S. veterans have returned from tours of duty with hurting souls. Their mental health has been dealt a serious blow by the things they have seen and done in combat. They suffer from maladies such as post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), major depression, and military sexual trauma (MST). Texas attorneys have the opportunity to serve those who have defended and protected our freedoms by helping them begin to put their lives back together.

When we counsel and represent these veterans, we have a duty to give them the best advice we can. We must provide our client with an informed understanding of his or her legal rights and obligations while explaining their practical implications. We have an obligation to recognize our client's mental and emotional framework and how it may impact the attorney-client relationship. We must develop skills to effectively communicate with clients who may be suffering from these conditions and to make sure they get referrals to appropriate mental health professionals for further evaluation and assistance.

According to the U.S. Census Bureau, in 2008, there were more than 1.6 million veterans in Texas. The majority are Vietnam-era veterans (39.6 percent), followed by the Gulf War (19.5 percent) and the wars in Iraq and Afghanistan (10.5 percent). Texas has the third-largest veteran population of any state, behind California and Florida. In addition, large military installations (Fort Bliss, Fort Hood, Lackland Air Force Base, Randolph Air Force, and Fort Sam Houston) with their troops and families call Texas home.

Nearly 40 percent of soldiers who have served in Iraq and Afghanistan struggle with their mental health when they return home, and one in three experience symptoms of PTSD or depression, or reported a possible exposure to a TBI while deployed. (*Invisible Wounds of War, Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery*, Terri Tanielian and Lisa H. Jaycox, eds., The RAND Center for Military Health Policy Research, 2008) Veterans of World War II, Korea, Vietnam, and the first Gulf War came back with the same issues, although they were often not properly diagnosed or treated.

Many returning veterans face financial issues, family difficulties, and problems adjusting to civilian life. Combat trauma and stress affect each soldier differently, but for those who suffer from PTSD, TBI, and depression, these conditions may influence the veteran client's evaluation of an attorney's advice, his or her priorities in resolving a legal issue or dispute, and even the ability to cope with the stress of the legal process. In fact, the effects of PTSD may be the underlying reason the veteran is in the lawyer's office, dealing with domestic problems, financial difficulties, or even



alcohol or substance abuse. It is in this context that the lawyer needs to be able to recognize the symptoms that may indicate a mental health issue and understand how to deal with that issue in the course of representation and to get the veteran the help he or she needs. The attorney may be one of the first to identify the veteran client's need for mental health evaluation and treatment.

A detailed discussion of symptoms of the various mental health conditions a veteran may face and techniques an attorney can use to recognize them is beyond the scope of this article. However, because PTSD is relatively common, especially with veterans likely to be seeking an attorney's advice about family and criminal issues, a brief discussion of PTSD is appropriate. PTSD can occur when a person has been exposed to a traumatic event that involves actual or threatened death or serious injury and the person's response involved intense fear, helplessness, or horror. The traumatic event can also be persistently re-experienced in a number of ways. PTSD's symptoms include nightmares, hypervigilance, anger, feeling of detachment, difficulty concentrating, and a sense of foreshortened future, among others. (*Diagnostic and Statistical Manual of Mental Disorders, Text Revision, Fourth Edition*, American Psychiatric Association, 2000)

Veterans who experience PTSD can be unable to manage the uncertainty and frustration of the legal process and can have difficulty effectively communicating with their attorney and assisting during trial preparation. Not only can they have trouble focusing and keeping appointments, they can experience distorted thinking, they might be willing to give up legal rights due to feelings of guilt or a (sometimes unconscious) desire to punish themselves, and they may lack the capacity to trust others. Sometimes the stress of litigation may trigger a physiological response that can override the decision-making or executive process of the brain.

This article used as primary sources two extensive treatises on the subject authored by Capt. Evan R. Seamone, Judge Advocate, U.S. Army: *Attorneys as First-Responders: Recognizing the Destructive Nature of Post Traumatic Stress Disorder on the Combat Veterans' Legal Decision-Making Process* (Military Law Review, Vol. 202, p. 144, 2009), and *The Veterans' Lawyer as Counselor: Using Therapeutic Jurisprudence to Enhance Client Counseling for Combat Veterans with Post Traumatic Stress Disorder* (Military Law Review, Vol. 202, p. 185, 2009). (Both articles are available at www.texasbar.com/veterans, under "Articles," or at Capt. Seamone's website, www.lawyerascounselor.com.)

Capt. Seamone argues that a veteran's attorney has the opportunity and the duty to recognize PTSD symptoms in his or her client that adversely affect the representation and to understand and offer interventions that remove or reduce barriers to an effective attorney-client relationship. He offers analysis of the attorney's duty in this regard and how such duty is compatible with state laws. He also discusses in detail the symptoms of PTSD and TBI and provides checklists and questionnaires that can help an attorney recognize that the veteran client may be suffering from combat-related mental injuries. He suggests techniques that don't constitute psychological counseling but can

help alleviate some of the veteran's symptoms to improve communication with the attorney and help the client understand the nature of the legal issues and participate in the representation. Any attorney who undertakes representing veterans, whether as a volunteer at a legal advice clinic or in private practice should consider reviewing these articles and becoming familiar with the symptoms and techniques suggested by Capt. Seamone.

MENTAL HEALTH RESOURCES FOR VETERANS

Attorneys should also be aware of the many resources that can help veterans with mental health issues. Individuals who are eligible for services through the U.S. Department of Veterans Affairs (VA) can contact the National Resource Directory at (877) 424-3838, the general VA Hotline at (800) 827-1000, or the Vet Center at (800) 905-4675. Returning veterans from Iraq and Afghanistan have access to a number of mental health services, including, but not limited to, readjustment counseling, inpatient acute care, cognitive behavioral therapy, acceptance and commitment therapy, prolonged exposure, cognitive processing therapy, sexual trauma counseling, and alcohol/drug recovery counseling. Additionally, National Guard and Reserve personnel may qualify for health care services, including sexual trauma counseling, readjustment counseling, and alcohol and drug dependency treatment. For a more in-depth descrip-

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tion of mental health services provided by the VA, visit www.mentalhealth.va.gov. For more information on services specific to returning OEF/OIF service members, visit www.oefoif.va.gov. For a summary of VA Benefits for National Guard and Reserve personnel, visit www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1138.

A veteran who is not eligible for VA services or may not have ready access to VA services may be eligible for other community services. For example, the veteran may be eligible for services through one of 39 local mental health and mental retardation (MHMR) centers if he or she is in a mental health crisis situation, diagnosed with one of three qualifying diagnoses (schizophrenia, bipolar disorder, or major depression), or have substance abuse issues. To determine the MHMR center where a veteran might receive services, visit <http://webds.dshs.state.tx.us/mhservices> and enter the veteran's county of residence.

In addition to the physician services that MHMR centers provide in communities, they have recently become involved in special initiatives to serve veterans. State funds have enabled most local MHMR centers to develop veteran service coalitions, bringing together community organizations to develop community-wide strategic plans and offer veterans support programs, such as In the Zone and Operation Resilient Families, which provide peer-to-peer and family-to-family counseling. Some centers have partnered with the VA to provide a treatment and a home to homeless veterans suffering with substance abuse and PTSD. As an example of the community collaboration possible, MHMR Tarrant County has established Liberty House under a VA grant, and the first Texas Lawyers for Texas Veterans legal clinics operated by the Tarrant Coun-

ty Bar Association have been held at Liberty House, with some of the first veteran clients being residents.

Another wealth of resources is TexVet: Partners Across Texas (www.texvet.com), a collaborative effort of federal, state, and local organizations that focuses on bringing information to anyone who is serving or has served in any branch of the military, as well as those who care about them. As part of the TexVet initiative, the Texas Information and Referral Network, 2-1-1 Texas, which links callers to local services, has, in many areas, staff trained to help veteran callers find the mental health and substance abuse assistance they need.

The Texas Veterans Commission has established the Fund for Veterans' Assistance with a portion of the proceeds of the sale of veteran lottery games and has awarded grants totaling more than \$7 million for veteran-directed programs that provide a wide range of services for veterans, including emergency financial assistance, transportation, employment, and job training as well as mental health and family counseling. Among the programs being funded are several partnerships of mental health providers and stakeholders in communities throughout the state who have developed programs to provide mental health treatment and peer support programs for Texas veterans and their families.

The Texas Resources for Iraq-Afghanistan Deployment (TRIAD) fund provides funding for various organizations, such as Mental Health America, to provide counseling and other services to veterans and families, including inpatient treatment, clinical counseling, case management, referral services, emergency assistance, education, career counseling, reintegration therapy, substance abuse treatment, employment training, and financial assistance. These resources each have their own eligibility guidelines, but they tend to provide great flexibility in the services provided.

Most attorneys have experience with clients under stress or who exhibit less than optimal understanding, focus, and motivation with respect to their legal issues. The difference in dealing with veterans is that, in many cases, the reason they are in our office or clinic or are having difficulty with the legal process is because of the very real trauma they suffered while serving on the front lines of America's wars. We need to be properly equipped to recognize the issues and help these brave men and women navigate the legal system and assist them in finding the resources that will heal their souls and support their pursuit of the American dream they fought so valiantly to preserve for the rest of us.

TEXAS VETERANS COMMISSION ADVOCATING FOR VETERANS AND THEIR FAMILIES

The Texas Veterans Commission (TVC) is the state-appointed advocate for veterans who are trying to receive the benefits they deserve for bravely serving their country. Created in 1927, TVC is dedicated to helping servicemen and women navigate the complicated VA system. TVC services include claims representation and counseling, veterans employment services, a veterans education program, and the TVC Fund for Veterans' Assistance — a program that awards grants to charitable organizations that serve veterans and their families.

More than 1.7 million veterans call Texas home. Through TVC's hard work, Texas is the leader among large states in recovering monetary benefits for veterans. Each year, \$1.5 billion dollars is distributed to veterans and their families and, in 2009, TVC helped more than 47,500 veterans find employment.

For more information, visit www.tvc.state.tx.us.

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