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Prosecutor Pre-Trial Attitudes and Plea-Bargaining Behavior toward
Veterans with Posttraumatic Stress Disorder

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Abstract

Prosecutors are handling increasing numbers of criminal cases concerning veterans from the wars in Iraq and Afghanistan who suffer from posttraumatic stress disorder (PTSD). How these prosecutors handle such cases may reflect their attitudes toward veterans or offenders with PTSD. In turn, their attitudes may affect perceptions of blameworthiness, as well as negotiations about sentencing during the pre-trial stage. The present study investigated the effect of a defendant's military experience and mental health status (i.e., PTSD) on prosecutors' offers at the pre-trial stage and their ratings of the defendant's blameworthiness. Prosecutors' offers were more lenient to stress-disordered veterans; specifically, they were offered more diversion programs compared to veterans without PTSD and to other offenders with PTSD. Prosecutors also perceived veterans and those with PTSD as less criminally culpable; they also empathized and identified more with veterans and those with PTSD than non-veterans and offenders without PTSD.

Keywords: posttraumatic stress disorder; veterans; criminal justice system; prosecutors; plea-bargaining

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Recent epidemiological studies on soldiers returning from Iraq and Afghanistan have shown high numbers presenting with symptoms of posttraumatic stress disorder (PTSD). Hoge, Terhakopian, Castro, Messer, and Engel (2007), for example, found that 16.6% of soldiers met criteria for PTSD one year after their return from Iraq or Afghanistan. This is much higher than the lifetime prevalence rate for the general population, which has been estimated at 6.8% (Elhai, Grubaugh, Kashdan, & Frueh, 2008). Soldiers with PTSD often experience persistent, distressing nightmares or intrusive imagery, an exaggerated startle reflex, angry outbursts in reaction to everyday stressors, and a sense of alienation and detachment from others that strains interpersonal relationships (Wilson & Zigelbaum, 1983). Soldiers' particular spectrum of PTSD symptoms can lead to increased aggression and violence, as they may overreact to minor threats and use excessive force to respond (Aprilakis, 2005; Friel, White, & Hull, 2008; Silva, Derecho, Leong, Weinstock, & Ferrari, 2001). Jakupcak et al. (2007) linked increased severity of PTSD symptoms to increased anger and hostility in troops who served in Iraq and Afghanistan. In essence, a returning soldier experiencing the most severe and distressing symptoms of PTSD is at risk for committing physical assault.

Committing a physical assault will likely bring a veteran into contact with the criminal justice system. Recent news reports have documented how returning soldiers diagnosed with PTSD have been arrested and charged with crimes (Sullivan, 2009). In the next several years, criminal courts may see an increase in the numbers of defendants who are veterans still struggling with the psychological effects of war. How will the latest population of war veterans fare in the courts? Some veterans have already experienced a degree of sympathetic

understanding in their dealings with the justice system. In 1994, one judge gave a lenient sentence for a weapons charge to an American veteran of the war in Vietnam (Goldberg, 1994). A judge in England, after giving a lenient suspended prison sentence for a charge of physical assault, said to a veteran, "I cannot overlook that you went to Iraq on behalf of your country, and it changed you" ("Iraq veteran spared," 2007, p. 4). As Aprilakis (2005) has noted, instances of leniency are likely the direct behavioral result of unprecedented sympathy for veterans, especially those with PTSD. Slovenko (2004) observed that a defendant's claim of service-related PTSD is an appeal to patriotism that tends to evoke sympathy and can bring about lighter sentences, acquittals, and rehabilitative treatment versus incarceration.

Attitudes toward the Military

Positive attitudes toward the military and those who serve may impact the court's overall thoughts, feelings, and actions toward offenders who are military veterans. Research has revealed a generally high level of public support for troops in recent years. One national survey in the U.S. found that 79% of participants supported the military, with support highest among conservatives, those who trusted the government, and those who tended to be more religious (Leal, 2005). A survey conducted by the Pew Research Center for the People and the Press (2007) also found that 84% of respondents held favorable views of the military, with "very favorable" views held largely by political conservatives. An ABC news poll cited in Knickerbocker (2007) reported that 77% of Americans had a favorable general view of the military and espoused bipartisan support of veterans and veteran adjustment at home.

Blame, Sympathy, and Helping Actions

Social psychological research provides a backdrop to what may occur in the courtroom. Psychologists investigating attribution theory have developed theories relating blame, sympathy,

and helping behavior, and a few studies have included PTSD or veterans with PTSD as experimental variables. For instance, in a study with American and Canadian college students, Weiner, Perry, and Magnusson (1988) investigated the effects of 10 stigmas, including “Vietnam War syndrome” (pp. 739), on variables like blameworthiness, emotion, and charity. Participants viewed service-related PTSD as highly treatable and having an uncontrollable onset and thus attributed low responsibility for the illness and low blame in general. The diagnosis of PTSD elicited greater liking and pity and less anger than any other mental-behavioral stigma in the study. Participants who viewed veterans with PTSD as less blameworthy also exhibited charitable attitudes and a tendency toward helping behavior with such individuals, pointing to a possible link between attitudes and behavior. Because sympathy or positive affect is proposed to have a direct effect on behavior (Weiner, 1995), it is noteworthy that one research study found direct correlations between a measure of attitudes and a report of current behavior consistent with such attitudes (Heaven, 1985).

Within the criminal context, court personnel like judges and prosecutors may hold attitudes toward veterans with PTSD that could impact judgments of culpability and blameworthiness. Prosecutors may view veterans experiencing posttraumatic stress symptoms as less blameworthy for the alleged crime and less deserving of punishment. Defendants with PTSD generally may be offered lighter sentences and more treatment options as a result of lowered perceived responsibility (Marciniak, 1986; Sparr & Atkinson, 1986). A veteran’s diagnosis of PTSD is not considered necessary by some accounts; simple proof of combat and subsequent symptoms of combat stress may be enough to reduce culpability and lower sentences (Sparr, Reaves, & Atkinson, 1987). In research with community members, Robinson and Darley (1995) found that mental incapacity (as one may see in PTSD) generally lessens criminal

culpability. With regard to PTSD, Heath, Stone, Darley, and Granneman (2003) examined various excuse defenses (categorized as biological, environmental, or psychological) and tested PTSD among different psychological defenses to criminal acts. Not surprisingly, mock jurors viewed the PTSD defense as highly excusable, with low criminal culpability and control over illness relative to other defenses. Thus, jurors generally tend to view people with PTSD as less responsible for criminal offenses. Such beliefs, together with feelings of sympathy, could influence verdicts and sentencing behavior of judges, jurors, and prosecutors.

The Pre-Trial Role of the Prosecutor

Usually PTSD does not qualify for an insanity defense (Sparr, 1990; Sparr, 1996), so the diagnosis is often presented at the plea-bargaining stage for sentence reduction (Lipkin, Scurfield & Blank, 1983; Marciniak, 1986; Packer, 1983; Silva et al., 2001; Sparr, 1990). Prosecutors prefer to settle cases before a trial through plea-bargaining because it saves time and money for the state (McAllister & Bregman, 1986). At the pre-trial stage, it may be most valuable to focus on the prosecutors' decisions, as they elect from a variety of options including jail, probation, community corrections, or diversion programs that may be available to offer defendants. The prosecutor also prepares a proposed length of sentence. The penalty offered to the defendant in a plea-bargain may be less than what a judge or jury would decide, should the trial go to court.

With the soldiers returning from battle assignments in Iraq and Afghanistan, increasing numbers of criminal cases will involve veterans who suffer from PTSD. Prosecutors' attitudes toward such cases may affect perceptions of blameworthiness, as well as recommendations for sentencing during plea-bargaining. Attorneys for the state can offer less time in jail, probation, or diversion to mental health treatment.

Slovenko (2004) posits patriotism as a motive for reduced punishment of veterans. The defendant's veteran status and diagnosis of PTSD operate as extra-legal factors, or information that exists outside of legally relevant information for jury verdicts of "guilty" or "not guilty." Legally relevant information should include level of responsibility for the crime, extent of damage or injury to others, demonstration of criminal intent, and other factual information; however, extra-legal factors exhibit measurable influences on judge and juror decision-making (Hagan, 1975; Rector & Bagby, 1997; Stalans, 1993).

The Present Study

The present study investigated the relation of defendants' military experience and mental health (i.e., PTSD) to prosecutors' offers at the pre-trial stage as well as prosecutors' ratings of the defendants' blameworthiness. We hypothesized that defendants who are veterans would be found less blameworthy by prosecutors than non-veteran defendants, meaning that prosecutors would find them less criminally culpable and more deserving of empathy, would identify with them more, and would view their actions as more justified. Similarly, we expected that defendants with PTSD would be seen as less blameworthy than those without the diagnosis. PTSD was anticipated to have a significant effect on sentence; specifically, shorter sentences and greater proportions of diversion programs were expected for those with the diagnosis. We also looked at interactions between veteran status and PTSD with respect to prosecutors' perceptions of the defendant's blameworthiness.

Method

Participants

A sample of 35 active prosecutors (22 men and 13 women) from Alabama, Mississippi, California and Kansas participated in the study. The mean age of the sample was 38.9 years (*SD*

= 9.9 years). On average, the participants possessed 8.4 years of experience ($SD = 8.8$) as state prosecutors. Participants constituted a convenience sample gathered through social networking. That is, an initial contact was made with a deputy district attorney in Tuscaloosa, Alabama, who then suggested other offices to contact. A total of 73 packets were sent out to various district attorney offices, and 35 packets were returned for a response rate of 48%. This response rate exceeds the low response rates for most self-administered mail surveys (Visser, Krosnick, & Lavrakas, 2000) and equals or exceeds the response rates for other survey research with a population of prosecutors (Ramsey & Frank, 2007; Stevens, 2008).

Design

This study used a within-subjects 2 (PTSD presence vs. absence) x 2 (veteran status vs. non-veteran status) factorial design to vary defendant characteristics. Manipulation of the independent variables created four different conditions: veteran with PTSD, veteran without PTSD, non-veteran with PTSD, and non-veteran without PTSD (control condition). Using a balanced Latin Square design, we counterbalanced the presentation of conditions among the packets distributed to participants to address order effects.

Materials

Case scenarios. Case scenarios were developed for each of the four conditions. All scenarios listed the criminal charge, the details of the event resulting in the charge, the defendant's plea prior to indictment, prior criminal history, and extra-legal information about the defendant. The details of the event, classified as a physical assault, remained constant for each condition, as did the defendant's guilty plea and lack of prior criminal history.

The defendant's veteran status and mental health status were presented at the end of the scenario and varied in each condition. The two PTSD conditions (veteran and non-veteran)

included a description of the source of recent psychological trauma as well as a list of symptoms that led to clinical assessment and diagnosis (Blanchard & Hickling, 1997; Jakupcak et al., 2007). In our study the veteran defendant with PTSD had experienced a traumatic episode wherein a bomb destroyed his military vehicle, injured him, and killed two men from his unit. The non-veteran defendant with PTSD experienced a traumatic civilian car accident that injured him and killed his passenger. Each physical assault scenario closed with the victim's comment that he was ambivalent about pressing charges for the crime and a comment by the defendant's girlfriend, a witness to the event, that the assault was uncharacteristic of him.

Pre-trial offer. The pre-trial offer outcome measure first presented standard items of information commonly used as a reference by state prosecutors in making decisions during all stages of a trial. The measure noted that the details of the offense would normally correspond to a specific criminal charge of low-level felony assault (Alabama Criminal Code, 2008). The measure also presented a recommended range of sentence length and disposition type modeled after Alabama state sentencing guidelines (Alabama Sentencing Commission, 2006).¹ Judges and prosecutors are allowed to deviate somewhat from the guidelines for individual circumstances, allowing for a moderate amount of discretion. The pre-trial offer measure was open-ended for the prosecutors to increase external validity; however, we asked participants to list a specific sentence length and to consider, in particular, the categories of prison, community

¹ Even though the charge and guidelines are modeled after those of the state of Alabama, they are similar to the guidelines or sentencing practices for the other states represented in the study (Kansas Sentencing Commission, 2009; L. Clemons, personal communication, August 29, 2010).

corrections, probation, and diversion for mental health treatment. We asked participants to limit their answer on each pre-trial offer to only one recommendation.

Blameworthiness questionnaire. The researchers developed a five-item questionnaire to assess concepts related to prosecutors' perceived blameworthiness of the defendant (see Table 1 for items). The five items were not summed for a total score. Participants rated their answers on a 10-point Likert scale, ranging from 1 (*not at all*) to 10 (*extremely or a great deal*).

Demographics. Also included in the study was a basic demographic questionnaire that inquired about the participants' age, sex, ethnicity, years of prosecutorial experience, military service, religiousness, and political orientation.

Procedure

Participants received packets either in person from the researchers, from a contact person working in their office, or by mail. Packets included a general informational and instructional letter, consent forms, case scenarios, pre-trial offer forms, blameworthiness questionnaires, a demographics questionnaire, and a debriefing form. Participants were presented with case scenarios representing each of the four conditions. Following each case scenario, prosecutors filled out a pre-trial offer form and a blameworthiness questionnaire for that condition. Lastly, participants filled out the demographic form. We asked participants to complete all enclosed measures without assistance from others.

Results

Pre-Trial Offer

The pre-trial offer given by each prosecutor for each condition was coded for three factors: recommended category of disposition, potential recommendation for a mental health evaluation and/or treatment, and recommended sentence length (given in number of months).

Participants proposed three categories of disposition: jail, probation, and diversion programs, in which adherence to mental health treatment would lead to dismissal of criminal charges.

Although the pre-trial offer measure was open-ended, no prosecutors opted for other options, such as community corrections or a pre-trial dismissal of charges.

Category of disposition. Figure 1 presents prosecutors' recommendations for disposition in the four conditions. Probation was the most common choice and jail was the least common among all conditions. For defendants in the experimental conditions, only 2.9% of prosecutors selected jail as the disposition. Statistical analyses of the within-subjects data for four groups and a categorical dependent variable required a nonparametric test, for which we used Cochran's Q (DeCoster, 2006; Sheskin, 2004). Of the three recommended disposition categories, jail represented a very small number in frequency and was combined with probation for statistical comparison to the offer of diversion programs. We therefore had a dichotomous dependent variable (probation/jail vs. diversion).

An overall significant effect was found for the category of disposition offered to defendants at the pre-trial stage, $Q(3) = 18.60, p < .001$. Pairwise comparisons indicated that veterans with PTSD were given more diversion and less jail and probation than veterans without PTSD, $Q(1) = 5.00, p = .025$, non-veterans with PTSD, $Q(1) = 4.00, p = .046$, and non-veterans without PTSD, $Q(1) = 11.00, p = .001$. Veterans without PTSD and non-veterans with PTSD were not given significantly different dispositions by prosecutors, $Q(1) = 0.14, p = .71$; however, veterans without PTSD were offered more diversion programs than non-veterans without PTSD, $Q(1) = 6.00, p = .014$. For the non-veteran defendants, prosecutors offered more diversion to defendants with PTSD than to defendants without PTSD, $Q(1) = 7.00, p = .008$. Having either

PTSD or veteran status made it more likely that a defendant would be offered a diversion program at the pre-trial stage.

Mental health treatment. The presence or absence of a recommendation for mental health treatment was analyzed using Cochran's Q . The results are presented in Figure 2. An overall significant effect was found for the potential for mental health treatment to be part of the pre-trial offer to a defendant, $Q(3) = 27.00, p < .001$. Pairwise comparisons indicated that both PTSD conditions were treated about the same and both non-PTSD conditions were treated the same by prosecutors. In particular, mental health treatment recommendations were made for veterans with PTSD significantly more than veterans without PTSD, $Q(1) = 9.00, p = .003$, and non-veterans without PTSD, $Q(1) = 14.00, p < .001$. Non-veterans with PTSD were also significantly more likely to have a mental health treatment recommendation than veterans without PTSD, $Q(1) = 6.00, p = .014$, and non-veterans without PTSD, $Q(1) = 11.00, p = .001$. The recommendations for veterans with PTSD did not significantly differ from non-veterans with PTSD, $Q(1) = 3.00, p = .08$, and the recommendation for veterans without PTSD did not significantly differ from non-veterans without PTSD, $Q(1) = 2.78, p = .10$.

Sentence length. All continuous dependent variables, including the recommended length of the sentence in the prosecutors' pre-trial offer and the ratings of blameworthiness, were analyzed using a 2 (veteran vs. non-veteran) x 2 (PTSD vs. no PTSD) repeated measures multivariate analyses of variance (MANOVA). The overall omnibus test was significant for veteran status, Wilks' $\lambda = .45, F(6, 29) = 5.95, p < .001, \eta_p^2 = .55$, as well as for PTSD status, Wilks' $\lambda = .42, F(6, 29) = 6.61, p < .001, \eta_p^2 = .58$. The interaction between veteran status and PTSD status was not significant, Wilks' $\lambda = .87, F(6, 29) = 0.75, p = .62, \eta_p^2 = .13$.

We further examined the effects of veteran status and PTSD status by conducting univariate tests for each dependent variable. Table 1 presents the means and standard deviations for all continuous dependent variables, including recommended sentence length by condition. The effect of a defendant's veteran status on sentence length was marginally significant, $F(1, 34) = 4.09, p = .051, \eta_p^2 = 0.11$. Specifically, prosecutors were somewhat more likely to recommend shorter sentences to veterans versus non-veterans. The main effect for a defendant's PTSD on sentence length was not significant, $F(1, 34) = 3.74, p = .06, \eta_p^2 = .10$. Exploratory simple effects testing using a Bonferroni-corrected alpha of .0083 indicated no significant differences between any pair of conditions.

Ratings of Blameworthiness

We examined the univariate ANOVAs to determine the effect of veteran status and PTSD on the five blameworthiness items. Table 1 presents means and standard deviations for this group of dependent variables.

How justifiable were the defendant's actions? There was a significant effect for PTSD on perceived justification for a defendant's actions, $F(1, 34) = 4.57, p = .040, \eta_p^2 = .12$, in which prosecutors considered defendants who had PTSD to have significantly greater justification for their criminal actions than defendants who did not have PTSD. There was no significant effect for veteran status on justification for criminal offenses, $F(1, 34) = 3.73, p = .06, \eta_p^2 = .10$. For additional exploratory analyses, we conducted simple effects testing using a Bonferroni-corrected alpha of .0083, and found no significant differences between any pair of conditions.

How criminally responsible is the defendant? There was a significant effect for veteran status on perception of criminal culpability, $F(1, 34) = 6.23, p = .018, \eta_p^2 = .16$. Veterans were seen by prosecutors as less culpable than non-veterans. There was also a significant effect for

PTSD on perceptions of culpability, $F(1, 34) = 23.01, p < .001, \eta_p^2 = .40$; prosecutors viewed defendants with PTSD as less responsible for their crimes than those without PTSD. We performed exploratory simple effects testing using a Bonferroni-corrected alpha of .0083 to examine each of the six pairwise comparisons. The veteran with PTSD ($M = 7.86, SD = 2.35$) was considered significantly less criminally culpable than the veteran without PTSD ($M = 8.63, SD = 2.21$), $t(34) = -4.31, p < .001$, the non-veteran with PTSD ($M = 8.20, SD = 2.08$), $t(34) = -2.97, p = .005$, and the non-veteran without PTSD (the control) ($M = 9.23, SD = 1.33$), $t(34) = -4.32, p < .001$. Thus, prosecutors in the study viewed a defendant who has PTSD and is a veteran to be significantly less blameworthy for a crime, compared to all other conditions. In addition, the non-veteran with PTSD was rated as less criminally culpable than the non-veteran without PTSD, $t(34) = -3.99, p < .001$. Non-veteran defendants who have PTSD are less culpable, according to the participants, than non-veteran defendants who do not have PTSD.

How much could the prosecutors empathize with the defendant? Analyses indicated a significant effect for veteran status on a prosecutor's empathy, $F(1, 34) = 23.06, p < .001, \eta_p^2 = .40$, in that prosecutors felt more empathy toward veterans than non-veterans. There was also a significant effect for PTSD on empathy, $F(1, 34) = 26.54, p < .001, \eta_p^2 = .44$. Prosecutors felt a greater ability to empathize with defendants who had PTSD than those who did not have PTSD. Utilized as an additional exploratory analysis of the conditions, simple effects testing using a Bonferroni-corrected alpha of .0083 resulted in a number of significant pairwise comparisons of the four conditions. Prosecutors reported empathizing significantly more with the veteran who had PTSD ($M = 5.49, SD = 3.00$) than the veteran without PTSD ($M = 4.06, SD = 2.58$), $t(34) = 3.33, p = .002$, the non-veteran with PTSD ($M = 4.06, SD = 2.38$), $t(34) = 3.13, p = .004$, and the non-veteran without PTSD ($M = 2.31, SD = 1.47$), $t(34) = 6.35, p < .001$. Hence, participants

rated their highest empathy for a defendant who has PTSD and military background, compared to all other conditions. In addition, the control condition garnered significantly less empathy than the veteran without PTSD, $t(34) = 4.60, p < .001$, and the non-veteran with PTSD, $t(34) = 4.66, p < .001$. The experimental variables appear to add incremental amounts of justification for empathy in prosecutors.

How much did they identify with the defendant? Veteran status exerted a significant effect on sense of identification with a defendant, $F(1, 34) = 5.02, p = .032, \eta_p^2 = .13$.

Prosecutors were more likely to identify with veterans than non-veterans. There was also a significant effect for PTSD on identification with the defendant, $F(1, 34) = 6.02, p = .019, \eta_p^2 = .15$, in that prosecutors identified more with defendants with PTSD than those who did not have PTSD. Exploratory simple effects testing did not produce any significant differences between the conditions.

How much did they identify with the victim? No significant effects emerged for veteran status on the sense of identification with the victim, $F(1, 34) = 3.27, p = .08, \eta_p^2 = .09$.

The effect of PTSD diagnosis on identification with the victim was also not significant, $F(1, 34) = 1.42, p = .24, \eta_p^2 = .04$.

Demographic Variables

We tested the continuous demographic variables as covariates in the overall analysis and included categorical demographics as blocked variables. None of the demographic variables exerted significant effects over and above the experimental manipulation. Therefore, we left the demographic variables out of our final models.

Discussion

This study found significant main effects for veteran status on several dependent variables. Overall, prosecutors viewed veterans as less blameworthy for the low-level offense than non-veterans. As hypothesized, prosecutors were significantly more likely to empathize and identify with veteran defendants, as well as find them less criminally culpable, than with non-veteran defendants. These findings are consistent with Weiner, Perry, and Magnusson's results (1988) in which Vietnam veterans elicited greater liking, pity, and charity, and less blame and anger. Prosecutors may also be heeding the call to patriotism observed by Slovenko (2004) that could evoke sympathy for veterans.

We anticipated that prosecutors would recommend similar sentences and dispositions to veterans and non-veterans alike, but sentencing leniency for veterans almost reached statistical significance. A further important finding was that veterans were offered significantly more treatment-focused diversion programs than non-veteran defendants, as opposed to simply jail or probation. This finding may be explained by current events; large numbers of military members are returning from the Middle East, and the public, represented by prosecutors, recognize that these servicemen and women may be experiencing problems in their readjustment to civilian life. Such problems are compounded when symptoms of PTSD are evident. This cultural recognition of veterans' potential for adjustment problems is evident in the recent trend in many jurisdictions to introduce special veterans' courts (Lithwick, 2010; National Association of Drug Court Professionals, 2009).

Overall main effects were found for PTSD, showing that mental health concerns are evident in prosecutors' perceptions of criminal activity. Prosecutors found defendants with PTSD to be less blameworthy than those without PTSD. They identified and empathized significantly more with such defendants, found them less criminally culpable, and found their actions more

justifiable. A diagnosis of PTSD did meet expectations regarding pre-trial offers of diversion programs; that is, prosecutors offered significantly greater proportions of diversion programs, and less jail and probation, to defendants with PTSD. Such attitudes and behavior toward mentally ill defendants may reflect some of the recent trends in criminal courts across the United States to divert these defendants to specially sanctioned mental health courts.

The omnibus interaction between veteran status and PTSD did not emerge as significant for any of the dependant variables. Descriptive data indicated, however, that attorneys offered greater numbers of diversion programs to veterans with PTSD over non-veterans with PTSD, and to veterans without PTSD over non-veterans without PTSD. Also, exploratory pairwise comparisons of the individual conditions indicated the defendant with PTSD from his military experience was viewed with the most empathy and the least blame. Because these comparisons of the conditions were exploratory analyses, future research studies need to test for similar findings to see if our tentative conclusions remain true.

Empathy and identification toward criminal defendants was relatively low in all conditions, despite differences by condition. This finding is consistent with the occupational roles of the prosecutor sample. Most defendants were considered to be criminally culpable by prosecutors. The hierarchy of least to most culpable was veterans with PTSD, veterans without PTSD, non-veterans with PTSD, and non-veterans without PTSD; however, the absolute differences were small between conditions. Non-veterans without PTSD were rated as the least justifiable in their actions, compared to defendants in the other conditions. However, participants judged all defendants to have little justification for their offense of physical assault in the given situation.

Ultimately, the results of the present study could imply a number of different decisional processes in prosecutors, all of which may be true to some degree. Differential perceptions of defendants with PTSD could indicate a recognition that traumatic mental illness affects a person's propensity to commit a crime like physical assault (National Center for PTSD, 2010). This may be coupled with the generally accepted idea that the effects of mental illness like PTSD legally mitigate culpability for committing an offense and would be considered during a sentencing phase of a trial (Sparr, 1996). In cases of fairly low level crimes, the need for treatment can easily override the community's perceived need for punishment and provides ideological support for the nation's mental health courts. Similarly, in the case of defendants who are military veterans, prosecutors may recognize that some experience significant practical and psychological barriers to readjustment to civilian life. Thus, veterans may be found somewhat less culpable for committing crimes and may receive a treatment approach from the courts, instead of retribution.

One may question whether the treatment approach to veterans and those with PTSD is a prosecutor's own appreciation of difference or the result of studying the decisions of jurors from the community. Research has shown plea-bargaining decisions by prosecutors to be based partly on the degree of guilt they predict jurors would attribute to the defendant (McAllister, 1990). Prosecutors are more likely to focus time and energy on cases they can win, and less time on cases where jurors may decide that insufficient evidence or culpability for a crime has not been proven beyond a reasonable doubt (e.g., Frazier & Haney, 1996). In cases where a defendant has salient characteristics that may excuse or explain illegal behavior, the prosecutor is faced with an additional challenge. When a crime is not very serious, and a defendant is a veteran or has a mental illness, the jurors could empathize with the defendant and find him or her less

blameworthy. The increased empathy for mentally ill defendants or those who are veterans in this study may be either an accurate estimation of a prosecutor's feeling toward such individuals or a reflection of attitudes that may be considered socially desirable by the local populace. There is empirical evidence, however, to support the notion of a measurable congruence between prosecutors' personal opinions and their legally bound opinions (Cheatham & Litwack, 2003).

The results from the present study also suggest broader possible implications. As previously noted, the reported attitudes of prosecutors may reflect the tide of public opinion, in particular for men and women who served the country (Slovenko, 2004). Care and concern for our veterans has effectively stimulated the rapid growth of veterans' courts around the country. The study results could reflect preferential treatment by the courts and could affect the type and extent of personal information presented by defense attorneys to prosecutors at the pre-trial stage. Defense attorneys may use this information more often (e.g., introducing military background as a semi-psychological mitigating factor). Some offenders may consider it advantageous to use military background and/or symptoms of trauma as an excuse for illegal activities.

Implications from this study not only affect the court system but also place a new emphasis on the work of the psychologist. Results of the present study suggest that psychological diagnoses exert a significant effect on legal proceedings. The criteria for posttraumatic stress disorder have undergone notable changes since the introduction of the disorder to the *Diagnostic and Statistical Manual of Mental Disorders* in 1980 (DSM-III; American Psychiatric Association, 1980), in particular widening the net for individuals to become diagnosed with the disorder (McNally, 2004). Whether a psychologist adopts a more liberal criterion set for diagnosis of PTSD could potentially impact the process and outcome of a trial. A more liberal criterion set would likely increase the number of individuals diagnosed with PTSD, adding to the number of

people who may be perceived as less worthy of blame and more worthy of a treatment approach by courtroom personnel.

For veterans and those with mental illness like PTSD who come in contact with the criminal justice system, there is a nation-wide interest in applying a treatment approach rather than a punitive one, through specially sanctioned courts and other related services. Based on the model of successful drug courts, in 2008, Judge Robert Russell of Buffalo, New York was the first to develop a special court to deal with veterans who committed low level offenses and could be diverted to treatment services conditioned upon cooperation (Russell, 2009). The creation of veterans courts has been officially sanctioned and promoted by the American Bar Association and the National District Attorneys Association and supported by legislation in Congress under the Services, Education, and Rehabilitation for Veterans (SERV) Act in 2009 (National Association of Drug Court Professionals, 2009). Working in tandem with these special courts, the Department of Veterans Affairs developed a Veteran Justice Outreach Initiative to offer supportive services to veterans who come in contact with the law (Department of Veterans Affairs, Veterans Health Administration, 2009). This effort to provide treatment to certain offenders of low level crimes may be justified in a number of ways. As with many drug courts, the mental health courts and veterans courts are the more cost-effective methods of treating low-risk offenders, in that the cost of incarceration and processing is substantially reduced along with subsequent criminal behavior (Russell, 2009). In addition, the courts' treatment approach to dealing with those veterans who come in contact with the law reflects public support and empathy for our nation's dedicated soldiers, an effort perceived as "giving back" to those who served. Results from the present study provide concrete evidence of the trend to empathize with and help veterans and those with PTSD.

One limitation of the present study was the use of a within-subjects design. The prosecutors rated persons in all four of the studied conditions. Also, packets were distributed to participants and returned to the researchers at the convenience of the prosecutor, which means that the experimental environment was not controlled against collaborations, interruptions, and other factors that could affect the validity of the data. It is possible that participants ascertained the variables being studied by comparing the case scenarios. As a result, prosecutors may have responded with what they *thought* they should do (assuming an expectation of political correctness) versus what they would actually do. This possibility affects the generalizability of the present study to predicting actual prosecutor behavior. The difficulty in mobilizing a large sample of prosecutors served as the justification for using a within-subjects model. Future studies could build on the present findings by using a between-subjects research design with a greater number of participants in a controlled environment.

A second limitation to this study was the use of a convenience sample of prosecutors. Future studies could benefit from a random selection of prosecutors equally distributed among various states or regions of the United States. The procedure used, although not ideal, allowed temporary and valuable access to a group of individuals who are not usually accessible for research studies.

Lastly, the present study utilized a fairly minor level of criminal offense in the case scenario, which may have affected the range and quality of responses. Prosecutors may respond with positive bias for veterans or those with PTSD up to a certain threshold of criminal offense, but respond with considerably less bias when charges are more serious (e.g., murder or sexual assault), in that the seriousness of a charge will then outweigh any personal or extralegal characteristics of the defendant. Empirical studies support the importance of crime severity on

prosecutorial decisions before and during trial (Frazier & Haney, 1996; McAllister & Bregman, 1986). Future studies may vary the nature and seriousness of the defendant's alleged offenses in order to test these same variables and examine the level of attitudinal and decisional bias present.

Conclusion

Members of our armed forces are returning in large numbers, and the nation is rallying to support them. There are resources available to treat the psychological aftereffects of their combat experiences, but many question whether enough of these men and women are getting the proper help. Administrative offices of the military are trying to change the culture of “show no weakness” that hinders veterans from seeking services, yet the image of psychological strength and toughness is a fundamental principle taught in preparation for battle. Active duty members of the armed forces also fear the impact on assignments and promotions when they come forward with various combat-related psychological symptoms. Thus, while administrators work to increase the number of services and their availability for our veterans, barriers still exist toward proper care for mental health issues (Hoge, Auchterlonie, & Milliken, 2006; Hoge, Castro, et al., 2004).

In the same way that research is burgeoning regarding the clinical psychopathology of the growing veteran population, studies involving the psychosocial struggles experienced by this population are also increasing. When sizeable numbers of veterans avoid seeking treatment for psychological symptoms, the consequences can include damage to marriages and families, alcohol abuse, decreased occupational and social functioning, risk for suicide, and impulsive and/or illegal behavior (Milliken, Auchterlonie, & Hoge, 2007).

Researchers have suggested that a diagnosis of posttraumatic stress disorder may assist a defendant the most if the issue is raised during the pre-trial stage of a criminal trial (Sparr &

Atkinson, 1986), and perhaps a defendant's experience in Iraq or military service in general would serve the same purpose. A defendant's diagnosis of PTSD and veteran status may alter a prosecutor's perception of the offender's blameworthiness, and the attorney may suggest a more lenient pre-trial offer. Positive regard or sympathy for veterans suffering from PTSD may benefit such offenders. The benefits may reflect not only the personal leanings of the prosecuting attorney, but also the general trend of public opinion to the extent that state prosecutors represent the wishes of their constituents. As the numbers of returning veterans increase, public opinion toward this population may shift towards more favorable attitudes and this trend may be reflected in the courts of law.

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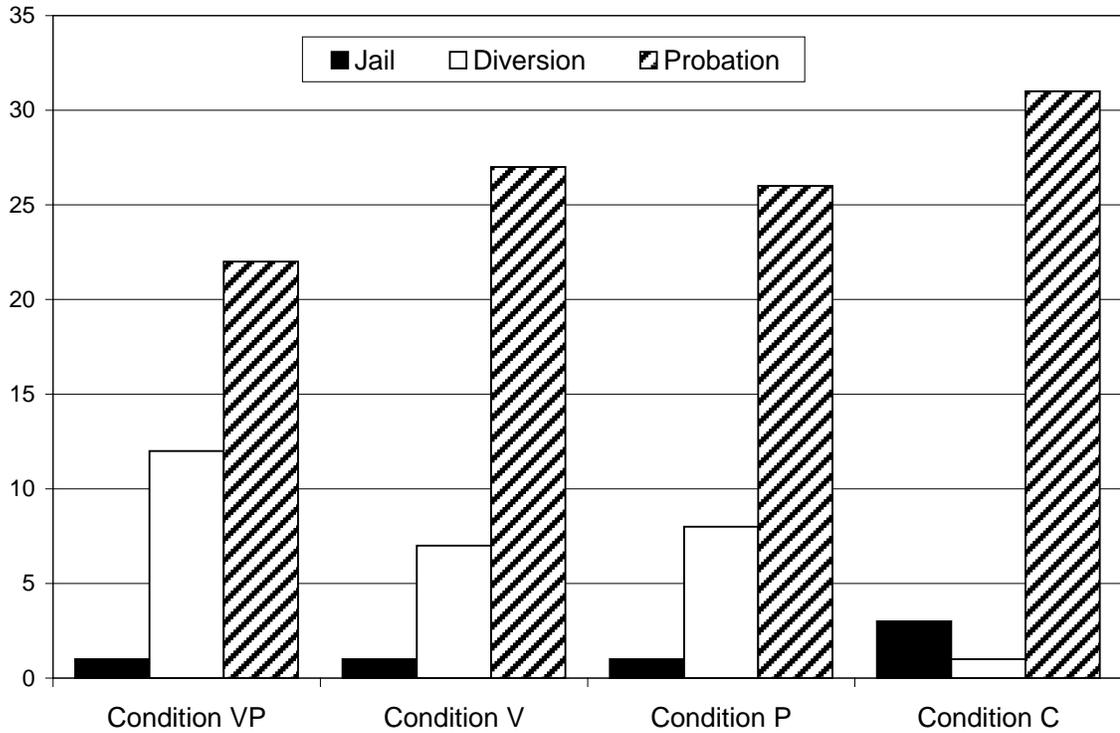


Figure 1. Frequency counts of disposition categories given in prosecutors’ pre-trial offers. Condition VP = defendants who are veterans with PTSD; Condition V = defendants who are veterans without PTSD; Condition P = defendants who are non-veterans with PTSD; Condition C (control) = defendants who are non-veterans without PTSD.

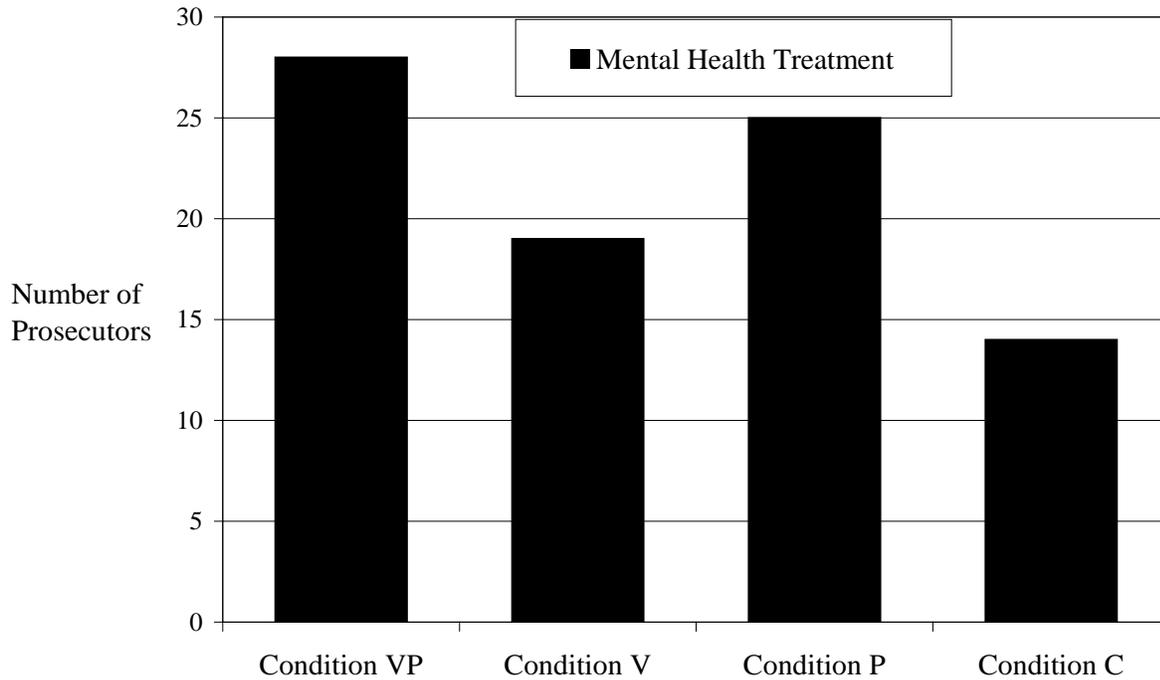


Figure 2. Frequency counts of recommended mental health treatment in prosecutors' pre-trial offers. Condition VP = defendants who are veterans with PTSD; Condition V = defendants who are veterans without PTSD; Condition P = defendants who are non-veterans with PTSD; Condition C (control) = defendants who are non-veterans without PTSD.

Table 1.

Continuous Dependent Variable Means by Condition

Dependent Variable	<i>M</i> (and <i>SD</i>) for Condition:			
	VP	V	P	C
<u>Sentence length*</u>	15.17 (12.28)	16.23 (12.12)	16.20 (11.77)	18.03 (12.22)
<u>Concepts of blameworthiness**</u>				
How justifiable were the defendant's actions?	2.06 (1.49)	1.89 (0.96)	2.00 (1.24)	1.63 (0.77)
How criminally responsible is the defendant?***	7.86 (2.35)	8.63 (2.21)	8.20 (2.08)	9.23 (1.33)
How much can you empathize with the defendant?	5.49 (3.00)	4.06 (2.58)	4.06 (2.38)	2.31 (1.47)
How much do you identify with the defendant?	2.43 (1.96)	2.09 (1.63)	1.97 (1.58)	1.69 (1.37)
How much do you identify with the victim?	3.54 (2.25)	3.57 (2.28)	3.66 (2.27)	3.83 (2.37)

Note. $N = 35$. Condition VP = defendants who are veterans diagnosed with posttraumatic stress disorder (PTSD); Condition V = defendants who are veterans without PTSD; Condition P = defendants who are non-veterans with PTSD; Condition C (control) = defendants who are non-veterans without PTSD.

*Recommended sentence lengths are given in months. **Prosecutors rated the blame questionnaire items on a Likert scale from 1 (*not at all*) to 10 (*extremely or a great deal*). ***The question referring to the defendant's criminal responsibility is reverse-scored.