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## FOR THE ONES WHO ENDURED SO THAT A NATION MIGHT LIVE: A PLEA TO THE MISSISSIPPI LEGISLATURE AND JUDICIARY TO AMEND MISS. CODE. ANN. 9-25-1 AND ADOPT A MISSISSIPPI STATEWIDE VETERANS TREATMENT COURT

Hannah Grace Eckel  
*Mississippi College School of Law*

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FOR THE ONES WHO ENDURED SO THAT A NATION MIGHT LIVE:  
 A PLEA TO THE MISSISSIPPI LEGISLATURE AND JUDICIARY TO  
 AMEND MISS. CODE. ANN. 9-25-1 AND ADOPT A MISSISSIPPI  
 STATEWIDE VETERANS TREATMENT COURT

*By Hannah Grace Eckel\**

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\* Hannah Eckel is a 2023 graduate of Mississippi College School of Law. She would like to extend her sincerest gratitude to Professor Frank Rosenblatt for his guidance and support throughout the research and drafting of this Comment. Hannah would like to dedicate this article to every veteran, including her grandfathers, M.O. Eckel, Jr. and Lonnie Ferrell, who selflessly served our country. “It was a privilege to advocate on your behalf.”

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## I. INTRODUCTION

Honor to the Soldier, and Sailor everywhere, who bravely bears his country's cause. Honor also to the citizen who cares for his brother in the field, and serves, as he best can, the same cause -- honor to him, only less than to him, who braves, for the common good, the storms of heaven and the storms of battle.<sup>1</sup>

Veterans provide an invaluable service to protect and defend the ideals of this nation.<sup>2</sup> Today, there are roughly 18 million veterans living in the United

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1. Abraham Lincoln, *letter to George Opdyke and others*, in *Respectfully Quoted: A Dictionary of Quotations* 1724 (1989).

2. Throughout this Article, I use the term "veteran" more broadly than the statutory definition to refer to any person who has served in the American military. The United States Code defines "veteran" as, "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." 38 U.S.C. § 101(2).

States,<sup>3</sup> and Mississippi is home to over 187,000.<sup>4</sup> While many servicemen successfully integrate back into civilian life, trauma and addiction follow others which often leads to confrontations with the criminal justice system. The traditional Mississippi court system is ineffective for many veterans because the underlying issues that led to their incarceration cannot be treated with mere confinement.<sup>5</sup>

Veterans Treatment Courts (VTCs)<sup>6</sup> address the underlying issues that often lead to criminal activity and offer a veteran the opportunity to rehabilitate as an alternative to incarceration. Though three Mississippi Circuit Courts have implemented VTCs in their jurisdiction, Mississippi remains limited in its ability to efficiently and effectively aid justice-involved veterans due to limitations regarding jurisdiction, crime status, and discharge status.

To that effect, the ultimate purpose of this Article is to address the underlying, service-related issues that correlate with many veterans' involvement with the criminal justice system and propose a solution to properly rehabilitate every justice-involved Mississippi veteran. This objective may be accomplished in two ways: (1) The Mississippi Judiciary should adopt a statewide VTC; and (2) the Mississippi Legislature should amend Mississippi Code Annotated § 9-25-1 to remove VTC participation limitations concerning jurisdiction, discharge status, and crime status.

Section II provides a background on veterans, discussing how military culture often fosters a violent mentality in preparation for violent experiences. This section further contemplates the direct correlation between the military environment and mental illness, substance abuse, and criminal activity. Section III discusses how courts have tried to aid justice-involved veterans with the implementation of VTCs and examines the current state of Mississippi's VTCs. Finally, Section IV discusses the insufficiencies of the current Mississippi VTCs and proposes a model for a Mississippi statewide VTC.

## II. BACKGROUND: VETERANS IN THE UNITED STATES AND MISSISSIPPI

An analysis of military culture, along with service-related Post-traumatic Stress Disorder (PTSD) and Traumatic Brain Injuries (TBI) shows the correlation between psychological trauma, substance abuse, and criminal activity. The effect of incarceration among veterans further shows how traditional courts are ill-equipped to handle the matters of veterans who require treatment as opposed to confinement. Finally, a case explanation of *Moore v. State* emphasizes the need for a Mississippi statewide VTC by examining how the Mississippi Judiciary often overlooks service-related mental illness.

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3. JONATHAN E. VESPA, *THOSE WHO SERVED: AMERICA'S VETERANS FROM WORLD WAR II TO THE WAR ON TERROR 2* (U.S. Census Bureau ed. 2020).

4. *Veteran Population*, NAT'L CTR. FOR VETERANS ANALYSIS AND STAT., [https://www.va.gov/vetdata/Veteran\\_Population.asp](https://www.va.gov/vetdata/Veteran_Population.asp) (last visited Feb. 11, 2023).

5. See EVAN R. SEAMONE, *RESCUING SOLDIERS OF MISFORTUNE: A FULL SPECTRUM APPROACH TO VETERANS IN THE CRIMINAL JUSTICE SYSTEM FROM ARREST TO REENTRY 15* (Charles C Thomas 2019).

6. Veterans Treatment Courts are a branch of Problem-Solving Courts that aim to rehabilitate justice-involved veterans as opposed to incarcerating them.

### A. Military Culture

Once a military recruit enters boot camp, they are forced to rid themselves of their civilian life and assume the priorities and values of the military.<sup>7</sup> For better or worse, change is inevitable.<sup>8</sup> “[M]ilitary culture indoctrinates a sense of ‘violent and aggressive behavior’ in which ‘[t]oughness and aggressiveness are highly favored characteristics and are often equated with “leadership . . . .”<sup>9</sup> One author described civilian and military cultures as:

. . . antithetical, and the average civilian may well be disaffected to the point of immobility at the prospect of violence and mayhem, killing and/or being killed, and the necessity for blind obedience to orders from superiors. The civilian must be converted into that which he was not—a warrior with war like proclivities.<sup>10</sup>

During an interview, former Marine Matt Young described his transition from civilian to soldier stating, “I shaved my head like one of my drill instructor’s and copied from my senior Marines hard turns of phrases that relayed disgust of everything feminine, anything vulnerable.”<sup>11</sup> Young recalled listening to senior Marines drunkenly tell war stories and then state, “You’re going to die . . . [Y]ou’re all f-ups. You’re going to get us killed.”<sup>12</sup> He also noted that while in the infantry, everyone “screamed ‘kill’ for every repetition of cadence during stretching exercises and calisthenics—‘1!’ “KILL!” “2!” “KILL” “3!” “KILL”—to make the thought of killing commonplace . . . [and later commented,] ‘I was bloodthirsty. I wanted to kill.’”<sup>13</sup>

### B. The Causes of Mental Illness and Substance Abuse Among Veterans

#### 1. Psychological Trauma Among Veterans

Though the grit of military culture is disconcerting, it should be noted that the fostering of violent mentalities is ultimately in preparation for violent experiences. The Global War on Terror (GWOT), a term that refers to counterterrorism military actions after the September 11, 2001 attacks on the United States, challenged American soldiers in unprecedented ways.<sup>14</sup> There are three characteristics of the Iraq and Afghanistan wars that correlate with psychological injuries and subsequent crime:<sup>15</sup> (1) the current structure of the American military; (2) the endurance of different types of combat; and (3) the

7. See SEAMONE, *supra* note 5, at 6.

8. *Id.* (“[T]he moment the infantry recruit walks down the cinder-block path from his childhood home at 0430 hours and enters a recruiting sergeant’s car via the passenger door, he crosses over into a new plane of existence.”).

9. *Id.*

10. *Id.*

11. Matt Young, *I Hope the Military Doesn’t Change My Brother Like It Did Me*, TIME (Mar. 13, 2018), <https://time.com/5193840/military-afghanistan-service-marine-corps/>.

12. *Id.*

13. *Id.*

14. Raquel Andres-Hyman & Scott M. Hyman, *Wounds of War: The Symposium Edition: An Overview of Combat-Related Posttraumatic Stress Disorder (PTSD)*, 37 NOVA L. REV. 617, 620 (2013).

15. Tiffany Cartwright, “To Care for Him Who Shall Have Borne the Battle”: *The Recent Development of Veterans Treatment Courts in America*, 22 STAN. L. & POL’Y REV. 295, 299-300 (2011).

impediments of receiving mental health treatment after returning home.

The modern structure of the American military often produces professional soldiers who serve frequent, long deployments without much time in between redeployments.<sup>16</sup> It was estimated that one-third of soldiers serving in Iraq and Afghanistan had previously been deployed.<sup>17</sup> Redeployment increases a soldier's chance of combat exposure and subsequent psychological damage.<sup>18</sup> One study found that twenty-five percent of soldiers experienced PTSD symptoms after serving three or four tours.<sup>19</sup>

The different types of combat are another major contributing factor to psychological trauma. For example, not only are U.S. soldiers faced with the common stressors of war such as separation from family, adaptation to harsh living environments, and exhaustion, they are also faced with urban guerilla warfare.<sup>20</sup> Enemy forces dressed as the general public make it difficult to distinguish enemies from civilians, which causes a heightened sense of anxiety.<sup>21</sup> Without a traditional front line, danger is seemingly everywhere.<sup>22</sup> To cope, many soldiers develop survival habits that often obstruct their ability to re-adapt to civilian life.<sup>23</sup> These habits include carrying a weapon at all times, aggressive driving, and hypervigilance, all of which may result in criminal behavior after the soldier returns home.<sup>24</sup>

Studies have shown that one in four servicemen show signs of mental health conditions such as PTSD, substance use disorders, bipolar disorder, and depression.<sup>25</sup> Further, military members are fifteen times more likely to suffer from PTSD than civilians, and alcohol and drug abuse are common coping mechanisms.<sup>26</sup>

PTSD is a result of traumatic or stressful life events, and it can interfere with social, physical and psychological functioning. PTSD is characterized by intrusive thoughts in which the trauma is re-experienced, avoidance of situations that might trigger the trauma, a state of hyperarousal or vigilance and negative alterations in cognition and mood which may cause irritability and aggression.<sup>27</sup>

Service members exposed to combat are at a higher risk of developing PTSD due to the stressors of war.<sup>28</sup> Typically, when an individual encounters acute stress, "fight or flight" takes over, and their body only settles when the threat is no longer present. PTSD develops when "the individual lives in a

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16. *Id.* at 300.

17. *Id.*

18. *Id.*

19. *Id.*

20. Andres-Hyman & Hyman, *supra* note 14, at 620.

21. *Id.*

22. Cartwright, *supra* note 15, at 300.

23. *Id.*

24. *Id.*

25. *Mental Illness in the Military*, NAT'L ALL. ON MENTAL ILLNESS, <https://www.namigmv.org/mental-illness-in-the-military/> (last visited Feb. 11, 2023).

26. *Id.*

27. Sara Kintzle et al., *PTSD in U.S. Veterans: The Role of Social Connectedness, Combat Experience and Discharge*, MDPI 1 (2018), <https://www.mdpi.com/2227-9032/6/3/102>.

28. *Id.* at 2.

chronic state of heightened arousal that can result in subjective feelings of anxiety and diminished control.”<sup>29</sup> Because PTSD results from events that “shake the foundation that [their] mental health is built on, [it creates] a disconnect between the victim’s expectation and reality . . . . This disconnect causes sufferers to lose faith in the stability and normality of their world.”<sup>30</sup>

Along with PTSD, TBIs are also prevalent among veterans who served in Iraq and Afghanistan.<sup>31</sup> A TBI is a closed head trauma that typically occurs from the impact of explosions.<sup>32</sup> Because the Vietnam war occurred before the life-saving technology of body armor, Vietnam veterans suffered more fatal injuries than TBIs.<sup>33</sup> In Iraq and Afghanistan, however, the soldiers wore body armor which usually saved their lives, but often resulted in a TBI.<sup>34</sup> Researchers have estimated that twenty to thirty percent of soldiers who served in the battlesands of Southwest Asia suffer from a TBI.<sup>35</sup> The effects of PTSD and TBI may cause, “poor impulse control, loss of temper, impaired thinking, and poor exercise of judgment.”<sup>36</sup>

The biggest barrier that often prevents a soldier or veteran from receiving mental health treatment is stigma.<sup>37</sup> The fear of being labeled cowardly prevents many from seeking help which has had a devastating impact on many soldiers. In 2008, for example, six soldiers committed eight homicides within a period of twelve months. Within the next few years, ten soldiers, within a 3500-person brigade, were convicted of manslaughter, attempted murder, or murder.<sup>38</sup> It was later reported that each perpetrator was a part of one combat team that experienced remarkably higher levels of combat intensity than the other combat teams.<sup>39</sup> Coverage of the story told anecdotes describing how “sergeants . . . refused to let soldiers seek help, taunted them for being weak, or punished those who did seek treatment.”<sup>40</sup> This stigma has prevented many soldiers from seeking help, and with seemingly nowhere to turn, many succumb to violence or substance abuse.<sup>41</sup>

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29. Andres-Hyman & Hyman, *supra* note 14, at 620.

30. *The Far-reaching Effects of PTSD in Veterans*, NAT’L VETERANS FOUND. (Dec. 18, 2015), <https://nvf.org/effects-of-ptsd-in-veterans/>.

31. Jessica Lynn Wherry, *Kicked Out, Kicked Again: The Discharge Review Boards’ Illiberal Application of Liberal Consideration for Veterans with Post-Traumatic Stress Disorder*, 108 CAL. L. REV. 1357, 1371 (2020).

32. *Id.* at 1371-72.

33. *Id.* at 1372.

34. *Id.* at 1373.

35. BERNARD EDELMAN, *VETERANS TREATMENT COURTS: A SECOND CHANCE FOR VETS WHO HAVE LOST THEIR WAY 8* (U.S. DEPT. OF JUST. 2016), <https://s3.amazonaws.com/static.nicic.gov/Library/030018.pdf>.

36. Wherry, *supra* note 31, at 1376.

37. Cartwright, *supra* note 15, at 301.

38. *Id.* at 298-99.

39. *Id.* at 299-300.

40. *Id.* at 301.

41. *Id.* at 302.

## 2. Substance Abuse Among Veterans

After returning to civilian life, many servicemembers turn to drugs and alcohol to cope with stress, sleep deprivation,<sup>42</sup> and PTSD. Among the most common forms of substance use disorders (SUDs) in veterans is alcohol abuse.<sup>43</sup> Veterans who were exposed to combat are at a high risk of developing a binge drinking addiction.<sup>44</sup> Opioid use is another SUD prevalent among veterans. Opioid addiction may develop when a veteran is treated at the Veterans Administration (VA) for migraines, chronic pain, or mental illness.<sup>45</sup> Oxycodone, a highly addictive opioid, is the drug prescribed most frequently.<sup>46</sup> In fact, a veteran with PTSD may receive *two* prescriptions for high doses of opioids, and even get an early refill.<sup>47</sup> Substance abuse among veterans has had a devastating effect not only on the well-being of the veteran but also on their families. One study found that “30% of completed [veteran] suicides were preceded by alcohol or drug use, and an estimated 20% of high-risk behavior deaths were attributed to alcohol or drug overdose.”<sup>48</sup>

### *C. The Correlation Between Mental Illness, SUDs, and Criminal Activity*

Studies have discovered a direct correlation between mental illness, substance abuse, and criminal activity.<sup>49</sup> When reflecting on how the military reshaped his mind, one veteran stated, “I wanted to kill because the military billed its dehumanizing philosophies as wisdom—something special we’d received.”<sup>50</sup> He commented on the degrading phrases the soldiers used for Iraqi civilians, and stated, “it made us feel like we saw the world for what it really was—like we’d developed a second sight that cut through the politically correct shades of grey that the civilian world is mired in. We knew that the outside world would never be able to see that truth.”<sup>51</sup> It is no surprise, therefore, that when soldiers are trained to lose sight of humanity, many become unaffected towards violence and aggression.

Three typologies are used to show how PTSD symptoms may manifest themselves into criminal behavior: (1) sensation-seeking syndrome; (2)

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42. Erika J. Brooke & Jacinta M. Gau, *Military Service and Lifetime Arrests: Examining the Effects of the Total Military Experience on Arrests in a Sample of Prison Inmates* (2018) (research article, *Criminal Justice Policy Review*) (on file with Mississippi College Law Review).

43. See Jenni B Teeters et al., *Substance Use Disorders in Military Veterans: Prevalence and Treatment Challenges*, *DOVE PRESS* 69, 70 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5587184/pdf/sar-8-069.pdf>.

44. *Id.* at 71 (“High levels of combat exposure confer greater risk of problematic alcohol use; those with high levels of combat exposure are more likely to engage in heavy (26.8%) and binge (54.8%) drinking relative to other military personnel (17% and 45%, respectively).”).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 70.

49. Christine Timko et al., *Systematic Review of Criminal and Legal Involvement After Substance Abuse and Mental Health Treatment Among Veterans: Building Toward Needed Research*, 14 *SAGE* 1 (2020).

50. Young, *supra* note 11.

51. *Id.*



dissociative reaction; and (3) depression-suicidal syndrome.<sup>52</sup> Sensation-seeking syndrome occurs when a veteran “seek[s] out activities [such as skydiving or unlawful drug ventures] that offer a level of danger similar to their combat experiences in an effort to maintain control over their surroundings.”<sup>53</sup> Dissociative reaction occurs when a veteran is triggered by the environment in ways that remind the servicemember of the original stress. The servicemember then “enters into what some call ‘survivor mode’ with typical physiological symptoms of PTSD such as hyperalertness, hypervigilance, and excessive nervous system arousal.” The person may go ‘automatic’ in this state, and for a combat veteran, this could mean “a search-and-destroy mentality in which his or her automatic reaction is to find and kill any perceived source of danger.”<sup>54</sup>

Lastly, depression-suicide may symptomize through survivor guilt, hopelessness, despondency, and a deep depression. A veteran may feel guilty for surviving combat, and this syndrome can lead the veteran to “subconsciously act out his anger through criminal acts,” even going so far as to seek out “suicide by cop”—engaging in criminal behavior to antagonize law enforcement to shoot.<sup>55</sup>

#### *D. The Effects of Incarceration Among Veterans*

It is believed that because veterans are not “de-programmed” from the aggressive behavior instilled in them during training, they carry that violent disposition back into civilian life which may lead to criminal activity and subsequent incarceration.<sup>56</sup> An estimated 181,500 veterans are currently incarcerated in jails and prisons which accounts for eight percent of the incarcerated population in the United States,<sup>57</sup> and more than half suffer from mental illness.<sup>58</sup> However, because seventy percent of the United States criminal justice corrections are operated through parole and probation, the total number of veterans involved in the criminal justice system is unknown.<sup>59</sup>

Incarceration is ineffective for many veterans because confinement often exacerbates their mental illness.<sup>60</sup> Moreover, once a veteran is in the confines of correctional administrators and officers, they are statutorily barred from receiving VA funds that could treat their mental illness until they are out of custody.<sup>61</sup> Studies have shown that once a veteran encounters the criminal justice system, they become a high risk for suicide.<sup>62</sup> In 2021, Mississippi Veterans

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52. Wherry, *supra* note 31, at 1375.

53. *Id.* at 1376.

54. *Id.* at 1375-76.

55. *Id.* at 1376.

56. Brooke & Gau, *supra* note 42.

57. Andrea K Finlay et al., *A scoping review of military veterans involved in the criminal justice system and their health and healthcare*, 7:6 HEALTH AND JUST. 2 (2019), <https://healthandjusticejournal.biomedcentral.com/track/pdf/10.1186/s40352-019-0086-9.pdf>.

58. Mike Richman, *Veterans and the Criminal Justice System*, U.S. DEP’T OF VETERANS AFF. (Sept. 7, 2018), <https://www.research.va.gov/currents/0918-VA-researcher-examines-Vets-who-collide-with-criminal-justice-system.cfm>.

59. Timko et al., *supra* note 49, at 1.

60. See SEAMONE, *supra* note 5, at 15.

61. *Id.* at 16.

62. Richman, *supra* note 58.

Affairs Director Stacey Pickering reported that, on average, Mississippi loses seven veterans and military members each day to suicide.<sup>63</sup>

*E. The One Who Slipped Through the Cracks: Moore v. State*

The following case emphasizes Mississippi's need for a statewide VTC by offering an illustration of how Mississippi courts often overlook service-related mental illness and addiction. The background of this case involves Corey Patrick Moore who served in the Gulf War in 1991 and received five gunshot wounds before he was discharged.<sup>64</sup> Following this, he was diagnosed with PTSD, and admitted that he struggled with substance abuse—effects of war.<sup>65</sup> Moore was treated for a mental condition in the psychiatric ward of the VA hospital.<sup>66</sup>

1. Facts and Procedural History

In August 2014, officers arrested Moore for burglarizing his alleged girlfriend's home.<sup>67</sup> Moore was absent on the first day of trial. When he showed up the next day, he told the court that he was arrested, not because he was a violent person, but because he suffered from PTSD and addiction.<sup>68</sup> Moore had only spoken to his attorney, Clayton Lockhart, a few times, but they had not discussed his case.<sup>69</sup>

After hearing Moore's explanation, the judge proceeded even though Moore "felt he was being rushed into trial."<sup>70</sup> Lockhart had only met Moore once in person and believed that was because Moore always gave an excuse for why he could not meet Lockhart.<sup>71</sup> One of the instances Lockhart was referencing was when Moore was in the VA after being diagnosed with PTSD.<sup>72</sup> After considering Lockhart's statements, the judge proceeded with trial, with only a five minute recess break.<sup>73</sup> When the court reconvened, Moore was gone.<sup>74</sup>

The next day, Moore once again did not appear in court, but another attorney, Robyn Teague, appeared and informed Lockhart that Moore had contacted her to represent him.<sup>75</sup> Teague refused Moore's request, but she still wanted to explain the communications between herself and Moore to the court.<sup>76</sup> Teague explained that Moore had previously tried to retain her, but that he never finished paying the retainer.<sup>77</sup> Additionally, Teague mentioned that Moore's

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63. Kelly Bennett, *Veterans suicide rate declines*, SUPERTALK MISS. MEDIA (Nov. 13, 2021), <https://www.supertalk.fm/veterans-suicide-rate-declines>.

64. *Moore v. State*, 287 So. 3d 189, 192-94 (Miss. 2020).

65. *Id.*

66. *Id.* at 193.

67. *Id.* at 192.

68. *Id.*

69. *Id.*

70. *Id.* at 193.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

mother told her that “Moore had ‘mental issues,’ that he had been treated for a ‘psychiatric condition’ at the VA hospital, and that he was ‘in and out of the psychiatric ward’ in jail.”<sup>78</sup>

Before Teague left, she stated that she believed Moore was aware that the court would try his case in his absence, but added, “I’m not a medical professional—but common sense tells me that he’s not stable at all . . . I think he’s dangerous. And he’s not in his right mind; I do know that.”<sup>79</sup> Teague’s information prompted the judge to ask Lockhart why he had not filed a motion for a mental examination to which Lockhart responded that he had “never detected anything over the phone where [Moore] had any kind of mental issues,” and that Moore “always seemed competent over the telephone.”<sup>80</sup> The trial judge decided to proceed with trial by absentia stating, “[Moore’s] absence is clearly willful, voluntary, and deliberate. And I’m finding that he’s aware of his trial.”<sup>81</sup> Moore was convicted in the Circuit Court, Hinds County of burglary.<sup>82</sup>

Moore attended the sentencing hearing where he apologized for not returning to court and stated that he was “innocent of the burglary charges and that he was not a criminal, just an addict.”<sup>83</sup> He added that he had used drugs and alcohol to self-medicate since returning from the Gulf War.<sup>84</sup> Regardless, Moore was sentenced to twenty-five years as a habitual offender.<sup>85</sup>

## 2. The Majority Opinion

Justice Ishee of the Mississippi Supreme Court delivered the opinion.<sup>86</sup> Moore presented five issues on appeal: (1) whether Moore received ineffective assistance of counsel at trial, (2) whether the circuit court committed plain error by allowing ineffective assistance of counsel, (3) whether the circuit court erred by trying Moore in absentia, (4) whether the circuit court erred by failing to conduct a competency hearing, and (5) whether the verdict is supported by the weight of the evidence.<sup>87</sup>

Only issues three and four are relevant to this discussion.<sup>88</sup> Regarding whether the circuit court should have ordered a hearing to determine Moore’s competency, the court held that the circuit court did not err in its decision to withhold the hearing.<sup>89</sup> The relevant law stated,

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78. *Id.*

79. *Id.*

80. *Id.* at 194.

81. *Id.*

82. *Id.*

83. *Id.* at 194.

84. *Id.*

85. *Id.* at 192.

86. *Id.*

87. *Id.* at 194.

88. The court combined issues (1) and (2) because they were the same and denied relief because the presented facts were insufficient to make a determination. *Id.* at 196. Regarding issue (5), the Court found that Moore’s defense that he was at the victim’s house with permission was unsupported by the presented evidence, and therefore held that his “conviction was not against the overwhelming weight of the evidence.” *Id.* at 199.

89. *Id.* at 198.

The trial court must order a mental evaluation and conduct a competency hearing if it has ‘reasonable ground to believe that the defendant is incompetent to stand trial.’ A defendant is presumed competent [so] [t]he burden of proof rests on the defendant to prove that he is mentally incompetent to stand trial.<sup>90</sup>

The Court then had to decide whether the circuit court judge received enough information that could have objectively and reasonably led him to doubt Moore’s competency to “understand the proceedings, appreciate their significance, [or] rationally aid his attorney in his defense.”<sup>91</sup> Reasonableness was left to the trial judge’s discretion.<sup>92</sup>

The court began its analysis by noting that Moore suffered from PTSD, and that he was taking medication.<sup>93</sup> The court considered Teague’s comments about Moore not being in his right mind, and that it was likely that he was dangerous.<sup>94</sup> Lockhart’s account, however, suggested that, though he and Moore had only spoken a few times, he never saw Moore’s competency as cause for concern, and therefore never requested a mental evaluation.<sup>95</sup>

The court cited to several cases where a diagnosis alone failed to suggest that a defendant was incompetent.<sup>96</sup> Based on this analysis, the court found that Moore was competent because he appeared in court, spoke to the trial judge, provided a defense, and admitted that his actions were a byproduct of addiction and not mental illness.<sup>97</sup> The court affirmed the trial court’s determination that Moore was competent on the grounds that the trial court is in the best position to observe a defendant’s mental state.<sup>98</sup>

Regarding whether the trial court erred by trying Moore while he was absent, the Court found the issue without merit because no evidence showed that Moore’s absence was involuntarily.<sup>99</sup> The relevant law stated:

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90. *Id.* at 196. The governing law is now the Mississippi Rules of Criminal Procedure which did not become effective until after Moore’s trial. *Id.*

91. *Id.* (“A competent defendant is one (1) who is able to perceive and understand the nature of the proceedings; (2) who is able to rationally communicate with his attorney about the case; (3) who is able to recall relevant facts; (4) who is able to testify in his own defense if appropriate; and (5) whose ability to satisfy the foregoing criteria is commensurate with the severity of the case.”).

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 197. “This Court has found that no competency hearing was required in cases in which the defendant was diagnosed with schizophrenia, *Conner v. State*, 632 So.2d 1239, 1248 (Miss. 1993), overruled on other grounds by *Weatherspoon v. State*, 732 So. 2d 158 (Miss. 1999), bipolar disorder, *Hearn*, 3 So. 3d at 729, and mental retardation, *Harden*, 59 So. 3d at 601.” *Id.* Though Rule 12 of the Mississippi Rules of Criminal Procedure was not in effect at the time of Moore’s trial, it states, “[t]he presence of a mental illness, defect, or disability alone is not grounds for finding a defendant incompetent to stand trial.” *Id.*

97. *Id.*

98. *Id.* The Court cited *Harden v. State*, 59 So. 3d 594, 601 (Miss. 2011) to reach its conclusion. In that case, Harden suffered from mental retardation and his attorney requested a mental examination and a competency hearing and both were refused, and Harden was convicted. *Id.* The Court affirmed the conviction stating, “[a]lthough this Court lacks the benefit of having observed Harden, given the broad discretion afforded to trial courts in determining whether to order a mental evaluation and competency hearing, we cannot say the ruling was outside the trial court’s discretion.” *Id.* 198.

99. *Id.* at 199.

[T]he decision to try a felony defendant in absentia [is] within the discretion of the trial court. But this discretion necessarily must be limited by the fact that a felony defendant has a constitutional right to be present at trial. A waiver of a constitutional right is ordinarily valid only if there is “an intentional relinquishment of a known right or privilege.” Specifically, the right to be present at trial “may be waived based on a defendant’s willful, voluntary, and deliberate absence from trial.”<sup>100</sup>

Moore cited *Jay v. State*.<sup>101</sup> There, a defendant suffered from a traumatic brain injury, and the court proceeded with his trial despite the defendant’s absence and the lack of the defendant’s psychiatric examination report.<sup>102</sup> On appeal, the court reversed Jay’s conviction because a competency hearing was not held after the psychiatric evaluation was ordered.<sup>103</sup> The court found that the *Jay* case was not analogous to Moore’s case because a psychiatric evaluation was not ordered for Moore since the circuit judge had no reason to believe that Moore was incompetent to stand trial.<sup>104</sup> Finding no merit to Moore’s arguments on appeal, the court affirmed Moore’s twenty-five-year conviction.<sup>105</sup>

### 3. The Dissent

In his dissent, Justice Kitchens argued that Moore’s constitutional due process right was violated because the trial judge had reasonable grounds to believe that Moore was mentally incompetent to stand trial.<sup>106</sup> Justice Kitchens argued that while the trial judge had discretion to determine what constitutes reasonable ground, the failure to order a mental competency examination was an abuse of discretion because the facts, when viewed objectively, demonstrated that Moore lacked the capacity to stand trial.<sup>107</sup> Justice Kitchens reasoned that the information provided by Teague was sufficient to demonstrate that “Moore was in no mental condition to have consulted with his attorney with a rational degree of understanding and that he lacked a rational understanding of the proceedings.”<sup>108</sup>

The dissent noted that even the trial judge exhibited some doubt as to Moore’s competency when he asked Lockhart why he had not filed a motion for a mental evaluation.<sup>109</sup> Justice Kitchens concluded that Lockhart’s comment, “Moore had seemed mentally competent over the phone,” was an insufficient excuse for three reasons: (1) Lockhart and Moore had never met in person; (2) Lockhart and Moore had never discussed Moore’s case over the phone; and (3)

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100. *Id.* at 198.

101. *Jay v. State*, 25 So. 3d 257, 263-64 (Miss. 2010).

102. *Id.*

103. *Id.* at 264.

104. *Moore v. State*, 287 So. 3d 189, 198 (Miss. 2020).

105. *Id.*

106. *Id.* at 199-200. “A criminal defendant has a federal and state right constitutional due process right to be tried while mentally incompetent. *Pate v. Robinson*, 383 U.S. 375, 385, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966); *Williams v. State*, 205 Miss. 515, 524, 39 So. 2d 3, 4 (1949) (citing Miss. Const. art. 3, 26).”

107. *Id.* at 201-02.

108. *Id.* at 201.

109. *Id.*

besides the phone call where Lockhart informed Moore of his trial, Lockhart and Moore had not spoken on the phone for over a year before the date of the trial.<sup>110</sup> By contrast, Teague, who had known Moore for over two years, informed the court that, judging by her *recent* phone conversation with Moore, she believed he was mentally unstable and dangerous.<sup>111</sup> Justice Kitchens found Teague's account more impactful than Lockhart's because when "objectively considered, [Teague's information] should have alerted the judge to the need for a mental incompetency evaluation."<sup>112</sup>

Lastly, regarding the majority's principle argument that the trial judge's finding of Moore's competency should be left undisturbed because he was able to observe Moore during the proceedings,<sup>113</sup> Justice Kitchens countered by emphasizing Moore's absence from a majority of the proceedings, and concluded that the judge "lacked a meaningful opportunity to assess Moore's mental competency based on personal observation of his demeanor and behavior."<sup>114</sup> Today, Corey Patrick Moore, a Mississippi veteran, suffering from PTSD and substance abuse, is serving his twenty-five-year sentence in East Mississippi Correctional Facility.<sup>115</sup> His tentative release date is August 18, 2042.<sup>116</sup>

### III. A PROMISING SOLUTION: VETERANS TREATMENT COURTS

One solution offered to assist veterans facing criminal charges is Veterans Treatment Court. Most VTCs are modeled after drug courts, mental health courts, and juvenile courts.<sup>117</sup> This section introduces America's first VTC and discusses the general function, purpose, and expansion of VTCs across the United States. Delaware's VTC, in particular, provides an example of an effective statewide VTC to guide the implementation of a statewide VTC in Mississippi. This section ends with a discussion of Mississippi's current VTC, leading into the portion of this Article which will detail the insufficiencies of the Mississippi VTC.

#### A. A BRIEF HISTORY OF VTC

In 2008, Judge Robert Russell created the first VTC in Buffalo, New York and modeled it after the county's existing drug court and mental health court.<sup>118</sup> Thirteen years later, over 460 VTCs have expanded across the United States, and

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110. *Id.*

111. *Id.*

112. *Id.*

113. The majority focused heavily on the *Harden* case where the judge was able to experience the demeanor of Harden. *Id.* at 197.

114. *Id.*

115. MISS. DEP'T OF CORRECTIONS, <https://www.ms.gov/mdoc/inmate/Search/GetDetails/68856> (last visited Feb. 19, 2023).

116. *Id.* See *infra* part IV(D) for an application of Moore's case to the proposed model for a Mississippi statewide VTC.

117. Caroline I. Jalain & Elizabeth L. Grossi, *Take a Load off Fanny: Peer Mentors in Veterans Treatment Courts*, 31 CRIM. JUST. POL'Y REV. 1165, 1165 (2020).

118. Eric Merriam, Note, *Non-Uniform Justice: An Equal Protection Analysis of Veterans Treatment Courts' Exclusionary Qualification Requirements*, 84 MISS. L.J. 685-86, 695 (2015).

many are modeled after Judge Russell's VTC.<sup>119</sup> Their purpose is to address and treat underlying issues that contribute to the criminal activity of veterans. While reprimanding crime is vital, VTCs recognize that veterans' situations are unique because their criminal actions often correlate with certain habits and trauma that developed during their time in service. The goal of the VTCs, therefore, is to provide justice-involved veterans the opportunity to complete the program and reduce or dismiss their criminal charges.<sup>120</sup>

A major difference between a VTC and a traditional court is the courtroom dynamic. Unlike traditional courts, VTCs take a nonadversarial approach by rehabilitating and reintegrating the veteran as an alternative to incarceration.<sup>121</sup> Representatives from the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), State Departments of Veterans Affairs, and volunteer veteran mentors are often present in court to actively assist veterans and ensure they receive the most effective treatment.<sup>122</sup> The VHA accesses the veteran's medical records and makes treatment appointments while all parties are present in court.<sup>123</sup> The VBA typically has a representative available to ensure that the veteran receives disability compensation as well as educational and training benefits.<sup>124</sup>

### 1. The Effectiveness of VTCs

Judge David Shakes who presides over a Veterans Court in Colorado finds these courts effective because veterans come "to an environment where everybody else in the room has been there also, this helps them get grounded to work on their particular problem . . . If you recognize that it's a medical problem versus shamming [because] they just want the benefits or whatever, that's a key step."<sup>125</sup> A 2018 national study found that only fourteen percent of veterans were arrested within the first twelve months after completing VTC.<sup>126</sup> Further, the recidivism<sup>127</sup> rate is between twenty-three and forty-six percent in the United States.<sup>128</sup> Veterans are incentivized to remain in VTC because if they recidivate, the VHA by law cannot provide healthcare services to them while they are incarcerated.<sup>129</sup>

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119. *Id.* at 695.

120. *Id.*

121. Jalain & Grossi, *supra* note 117, at 1165-66.

122. *What is a Veterans Treatment Court?*, JUSTICE FOR VETS (2022), <https://justiceforvets.org/what-is-a-veterans-treatment-court/>.

123. *Id.*

124. *Id.*

125. Edelman, *supra* note 35, at 6.

126. *Veterans Treatment Court Statistics*, GOLDMAN WETZEL, <https://www.goldmanwetzels.com/blog/veterans-treatment-court-statistics/> (last visited Feb. 19, 2023).

127. Recidivism is the tendency for a criminal defendant to reoffend.

128. GOLDMAN WETZEL, *supra* note 126.

129. Daniel M. Blonigen et al., *Recidivism Treatment for Justice-Involved Veterans: Evaluating Adoption and Sustainment of Moral Reconation Therapy in the US Veterans Health Administration*, SAGE 1-2 (2021), <https://link.springer.com/article/10.1007/s10488-021-01113-x>.

*B. Delaware: America's First Statewide VTC*

Delaware's VTC is offered as a model to show how a statewide VTC court operates. Unlike Delaware, Mississippi law is currently so restrictive that very few veterans have been able to take advantage of the VTC law. Hence, there is not much to study. In February of 2011, Delaware implemented the first statewide VTC into its judicial system to serve veterans throughout the entire state.<sup>130</sup> Within this system, the Delaware Superior Court, Department of Justice (DOJ), VA, Office of Public Defender, and Treatment Access Center (TASC) collaborate to serve veterans charged with felonies and misdemeanor crimes.<sup>131</sup> The VTC offers both a diversion and a probation track.<sup>132</sup> The court uses a teamwork approach to support each veteran throughout the judicial process,<sup>133</sup> by combining components from drug treatment courts and mental health treatment courts.<sup>134</sup>

### 1. The Players

As the leader of the VTC, the judge provides ongoing supervision of the veteran's treatment to enforce each veteran's compliance and encourage them that they are not alone.<sup>135</sup> The VTC judge is well-equipped to decide the most effective route for the veteran because they take special care to understand the mental health or SUDs that the veteran may have.<sup>136</sup>

A Judicial Case Manager is then assigned and tasked with "creating and managing all VTC calendars, files, reviewing status reports on all participants, and serving as a liaison between the court and the treatment team, the various treatment providers, and the various state and federal agencies."<sup>137</sup> Probation and parole officers assist in the selection of eligible veterans and maintain contact with the veteran to ensure compliance with the law.<sup>138</sup> These officers also provide status reports to the court and treatment providers.<sup>139</sup>

The prosecutor is the Deputy Attorney General (DAG) who plays a non-adversarial role while monitoring the veteran's case, and making recommendations regarding the veteran's sentence, probations, or sanctions.<sup>140</sup> When a veteran is recommended for graduation from VTC, the DAG reviews their case.<sup>141</sup> An Assistant Public Defender (APD) assists not only with the

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130. Judge Jurden et al., *Superior Court of Delaware Veterans Treatment Court Probation and Diversion Program Manual for Kent County and New Castle County*, DEL. SUPER. CT. 1, 4 (2014), [https://courts.delaware.gov/superior/veteranscourt/veterans\\_court\\_news.aspx](https://courts.delaware.gov/superior/veteranscourt/veterans_court_news.aspx).

131. *Id.* at 4.

132. *Id.*

133. *Id.* at 7.

134. *Id.*

135. *Id.* at 12.

136. *What is a Veterans Treatment Court?*, JUSTICE FOR VETS (2022), <https://justiceforvets.org/what-is-a-veterans-treatment-court/>.

137. Judge Jurden et al., *supra* note 130, at 12.

138. *Id.*

139. *Id.* at 13.

140. *Id.* at 14.

141. *Id.*



veteran's voluntary entry into the VTC, but also assists in the development of treatment solutions while protecting their client's legal interest.<sup>142</sup> Additionally, the APD serves as a source of encouragement to their client and advises them of the legal ramifications of noncompliance.<sup>143</sup>

Lastly, mentors serve an invaluable role during a veteran's participation in a VTC and assist in ways neither the Court nor the attorneys can. Mentors are not counselors, but simply friends of the veteran who help them navigate through the VTC process.<sup>144</sup> Mentor duties include: (1) appearing for court sessions; (2) leading and participating in mentoring sessions; (3) empathizing with the difficulties the veterans are facing; (4) ensuring the veteran understands the court procedures and the VA system.<sup>145</sup> To be eligible for mentorship, the person must be a veteran or an active duty servicemember.<sup>146</sup> Military service is a crucial component to forming a bond between the mentee and mentor because the mentor can better empathize with their mentee.<sup>147</sup>

## 2. Veteran Eligibility

Because of limitations on VTC eligibility, not every veteran can participate in the Delaware VTC. A veteran is ineligible for participation if they are charged with a "Class A" or "Class B" felony.<sup>148</sup> In other words, if a veteran has a history of violence, domestic violence, or sex offenses, he or she may not participate.<sup>149</sup> However, a veteran charged with a "Class C" felony may be eligible if they are approved by the DAG.<sup>150</sup>

Even if a veteran is admitted to a VTC, they may not qualify for VA benefits.<sup>151</sup> In those cases, TASC steps in to assess the veteran's case and refers them for any service they need.<sup>152</sup> A TASC manager monitors the veteran and frequently meets with them to ensure their compliance with treatment.<sup>153</sup> The TASC manager is also responsible for reporting the veteran's progress to the court and stays with the veteran until graduation or termination.<sup>154</sup>

## 3. The Admission Process

First, a justice-involved veteran is referred to VTC by a family member, the Court, the Officer of the Public Defender, the TASC, the Veteran Justice Outreach Specialist, the Probation Officer, or the Delaware DOJ.<sup>155</sup> Next, a

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142. *Id.*

143. *Id.* at 15.

144. *Id.*

145. *Id.*

146. *Id.*

147. Jalain & Grossi, *supra* note 117, at 1170.

148. Judge Jurden et al., *supra* note 130, at 18.

149. *Id.* at 16.

150. *Id.* at 18.

151. *Id.* at 13.

152. *Id.* at 14.

153. *Id.*

154. *Id.*

155. *Id.* at 16.

Veteran Justice Outreach Specialist confirms the individual's military status, and if the veteran has already been convicted, they are directed towards the probation track.<sup>156</sup> If the veteran has been charged, but not convicted, they proceed toward the diversion track.<sup>157</sup> The veteran is under no obligation to accept treatment from the VTC and may continue through the traditional court process.<sup>158</sup>

#### 4. The Treatment and Completion of a VTC

Before allowing a veteran to graduate, the VTC reviews “co-occurring problems such as primary medical problems, transmittable diseases, homelessness, basic educational deficits, unemployment and poor job preparation; spouse and family troubles—especially domestic violence—and the ongoing effects of war time trauma.”<sup>159</sup> To graduate from the program, the Delaware judicial system requires a participant to be sober for at least ninety (90) consecutive days.<sup>160</sup> A participant may be terminated from the program if they are a risk to the community or fail to comply with treatment or supervision.<sup>161</sup> However, every participant is given the opportunity to explain their conduct and the reasons why they were unable to comply with treatment or supervision.<sup>162</sup>

#### *C. The Current State of Mississippi VTCs*

##### 1. The Governing Statute: Mississippi Code Annotated § 9-25-1

In 2014, the Mississippi Legislature enacted a new law to allow for the creation of VTCs in the state.<sup>163</sup> The Statute provides that a circuit court judge may establish a VTC either as a separate court program or under the umbrella of an existing intervention court program.<sup>164</sup> The circuit judge has the discretion to operate the VTC in one county and may allow veteran participants from all counties within the circuit to participate in the program.<sup>165</sup>

To be eligible for participation in the VTC program, the attorney representing the state must consent to the defendant's participation in the program, and the court must find that the defendant is a veteran under Title 38 USCS § 101(2).<sup>166</sup> By definition, a veteran is “a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.”<sup>167</sup> Additionally, the veteran may only participate in VTC if they are within the court's jurisdiction.<sup>168</sup>

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156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at 8.

160. *Delaware Problem-Solving Courts Best Practice Standards*, NAT'L CTR. FOR STATE CTS. 1, 11 (2018), <https://courts.delaware.gov/forms/download.aspx?id=106778>.

161. *Id.*

162. *Id.* at 12.

163. MISS. CODE ANN. § 9-25-1 (2014).

164. *Id.*

165. *Id.*

166. *Id.*

167. 38 U.S.C.S. § 101(2).

168. MISS. CODE ANN. § 9-25-1 (2014).

A veteran is ineligible for participation if:

- (i) The crime before the court is a crime of violence [or] . . .
- (ii) [t]he defendant does not demonstrate a willingness to participate in a treatment program.
- (iii) The defendant has been previously convicted of a felony crime of violence including, but not limited to: murder, rape, sexual battery, statutory rape of a child under the age of sixteen (16), armed robbery, arson, aggravated kidnapping, aggravated assault, stalking, or any offense involving the discharge of a firearm or where serious bodily injury or death resulted to any person.<sup>169</sup>

The Administrative Office of the Courts (AOC) is responsible for ensuring that the VTC complies with state and federal rules.<sup>170</sup> The AOC is also responsible for entering into agreements to advance the purposes of the VTC.<sup>171</sup> Finally, The State Intervention Court Advisory Committee is charged with developing statewide rules and policies for the VTC.<sup>172</sup> Regarding funding, the VTC may receive financial assistance from private or governmental sources or other court-approved financial assistance.<sup>173</sup>

## 2. The Statute in Action

Currently, the First, Twelfth, and Nineteenth Mississippi Circuits have implemented a VTC.<sup>174</sup> In other words, only veterans in twelve out of Mississippi's eighty-two counties live in a jurisdiction with a VTC.<sup>175</sup> Kathy Caldwell, general counsel for Mississippi Veterans Affairs, explained the general process of VTC: "It's a three-year program and it's very strict. Once they complete the program their record is expunged. They are tested just about every day, and they meet once every week or month, depending on what phase they are in. They have to read a book, attend meetings, and do so many hours of community service."<sup>176</sup> When discussing how a veteran might end up in VTC, Ms. Caldwell stated:<sup>177</sup>

We have this 18-year-old, or however old they are, we send them off, they come back, they've been on their own, they've had the discipline, and have had to live a certain way . . . and now you're putting them back in the real world and

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169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. See William Moore, *New Court to Help Area Veterans*, DAILY J. (Feb. 4, 2020), [https://www.djournal.com/news/new-court-to-help-area-veterans/article\\_d11c0c00-06a2-5011-9f56-d764cf6a276a.html](https://www.djournal.com/news/new-court-to-help-area-veterans/article_d11c0c00-06a2-5011-9f56-d764cf6a276a.html); Sarah Ulmer, *AG Jim Hood Joins States Urging Congress to Pass the Veteran Treatment Court Coordination Act*, MAGNOLIA TRIB. (Nov. 13, 2019), <https://yallpolitics.com/2019/11/13/ag-jim-hood-joins-states-urging-congress-to-pass-the-veteran-treatment-court-coordination-act/>.

175. Moore, *supra* note 174; Ulmer, *supra* note 174.

176. Interview with Kathy Caldwell, Gen. Couns., Miss. Veterans Aff., in Jackson, Miss. (Feb. 9, 2022).

177. *Id.*

saying, “act like the rest of us.” The world is not what it was when they left—and so they self-medicate. I blame it on our system to some degree. This one group is self-medicating because of what they have gone through. They do it to try to forget what they’ve seen.

Caldwell stated that VTCs are best for most veterans because it groups them together which is important because, “there’s just this camaraderie and understanding they have with each other—something they’ve all gone through. It’s like a club.”<sup>178</sup>

When asked about the jurisdiction issue, Caldwell noted that, as of now, veterans who live outside of VTC jurisdiction are ineligible for VTC unless a circuit judge with a VTC authorizes the veteran to crossover to its jurisdiction.<sup>179</sup> The problem, however, is that “judges don’t always like to give up their jurisdiction.”<sup>180</sup>

#### IV. ANALYSIS: THE INSUFFICIENCIES OF THE CURRENT MISSISSIPPI VTCs AND A PROPOSAL FOR A MISSISSIPPI STATEWIDE VTC

Mississippi Governor, Tate Reeves, once stated, “We must care about each other enough to overcome our differences. We must be faithful to each other enough to outlast our shortcomings.”<sup>181</sup> Regardless of a veteran’s shortcomings, the fact remains that many suffer from invisible wounds inflicted on them during their time in service. Without proper treatment, many become a danger not only to themselves, but also to their communities. Though Mississippi has implemented some VTCs, many veterans remain ineligible to participate in the program either because of jurisdiction, crime status, or discharge status.

This Article proposes the adoption of a statewide VTC and offers several alternatives concerning discharge status, crime status, and jurisdiction. The proposed alternatives are not a “get out of jail free” card because each veteran must still complete the rigorous process of VTC or risk incarceration in the traditional courts. Instead, these alternatives provide treatment to help our veterans reintegrate back into civilian life.

##### A. THE ONES LEFT BEHIND

In a letter to Congress, Mississippi’s former Attorney General, Jim Hood, stated that Mississippi needs VTCs because when “veterans are not properly identified, they become lost in the criminal justice system without the necessary help, medical treatment, and therapy they are entitled to or deserve. This encourages a cycle of recidivism, hopelessness, non-recovery, and sometimes, serious injury or death.”<sup>182</sup> Additionally, when a veteran is ineligible for VTC

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178. *Id.*

179. *Id.*

180. *Id.*

181. Office of Gov. Tate Reeves, *Thank You for Visiting my Website*, <https://governorreeves.ms.gov/home-page/> (last visited Feb. 19, 2023).

182. Letter from Att’y Gen. Ashley Moody, et al. to Chairman Graham and Ranking Member Feinstein (Nov. 8, 2019), NAAG Letter - Veteran Treatment Court Coordination Act of 2019 (ca.gov).

and continues in the traditional court system, he or she may be at risk of homelessness, unemployment, or suicide.<sup>183</sup>

Judge Marcia Hirsch, the presiding judge of treatment courts in Queens, New York, noted that incarceration, particularly male incarceration, is a strong predictor of homelessness.<sup>184</sup> In 2018, it was estimated that over 37,000 veterans experience homelessness every year.<sup>185</sup> Another study found that of those homeless veterans, eighty percent suffered from mental illness or SUDs.<sup>186</sup> Judge Hirsch also stated that untreated clinical needs may interfere with a veteran's ability to maintain employment.<sup>187</sup> For example, homelessness for Iraq and Afghanistan veterans rank much higher than that of civilians in the same age class.<sup>188</sup> The following proposals, therefore, are designed to provide an opportunity for war-torn veterans to heal and integrate back into Mississippi society.

*B. Three proposed alternatives for discharge status, jurisdiction, and crime status.*

Every soldier knows that many men, even in his own company, had poor records, but no one ever heard of a soldier protesting that only the more worthy should receive general veterans' benefits. "This man evaded duty, he has been a 'gold bricker,' he was hard to live with, *yet he was a soldier*. He wore the uniform. He is one of us." So they feel. Soldiers would rather some man got more than he deserves than that any soldier should run a chance of getting less than he deserves.<sup>189</sup>

1. On Discharge Status

After leaving military service, every servicemember is assigned a discharge status.<sup>190</sup> A servicemember administratively separated from the service receives either honorable, general under honorable conditions, other than honorable (OTH), or uncharacterized (Entry-level status) service characterization.<sup>191</sup> A

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183. Robert V. Wolf, *In Practice: Addressing Housing Insecurity Among Justice-Involved Veterans* (2021), <https://www.courtinnovation.org/publications/podcast-in-practice-addressing-veterans-housing-insecurity>.

184. *Id.*

185. *Id.*

186. Chloe Topolski, et al., *Understanding and Assisting Veterans Involved in the Criminal Justice System*, ILL. CRIM. JUST. INFO. AUTH. CTR. FOR JUST. RSCH. AND EVALUATION 1, 3 (2021), [http://www.icjia.state.il.us/assets/articles/understanding\\_and\\_assisting\\_veterans-191021T19590943.pdf](http://www.icjia.state.il.us/assets/articles/understanding_and_assisting_veterans-191021T19590943.pdf).

187. Wolf, *supra* note 183.

188. John Furman Wall, IV, *The Veterans Treatment Court Program Act: South Carolina's Opportunity to Provide Services for Those Who Have Served*, 65 S.C. L. REV. 879, 886 (2014).

189. Major Jeremy R. Bedford, *Other Than Honorable Discharges: Unfair and Unjust Life Sentences of Decreased Earning Capacity*, 6 U. PA. J.L. & PUB. AFF. 687, 732 (2021) quoting H.R. REP. NO. 1510, at 9 (1946).

190. VETERANS LEGAL CLINIC AT THE LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL, *TURNED AWAY: HOW VA UNLAWFULLY DENIES HEALTH CARE TO VETERANS WITH BAD PAPER DISCHARGES*, 1 (2020), <https://www.legalservicescenter.org/wp-content/uploads/Turn-Away-Report.pdf>.

191. Bedford, *supra* note 189, at 691.

servicemember who is punitively discharged receives either a dishonorable or a bad-conduct discharge.<sup>192</sup>

For a veteran to qualify for VTC, he or she must meet the statutory definition of a “veteran.”<sup>193</sup> Per Mississippi law,<sup>194</sup> only veterans who were discharged “under conditions other than dishonorable” qualify to participate in VTC.<sup>195</sup> The statutory definition of a “veteran,” however, is not the same language used by military services when deciding discharge status.<sup>196</sup> This ambiguity requires the VA to independently determine whether a statutory<sup>197</sup> or regulatory<sup>198</sup> bar exists rendering the veteran ineligible for VA benefits.<sup>199</sup> If a bar applies, the servicemember is not a “veteran” and is therefore ineligible for VTC.<sup>200</sup> Assuming other factors are met, a veteran who receives an “honorable” or “general under honorable” discharge will qualify for VTC. Veterans who are punitively discharged are currently ineligible for VTC. An OTH discharge, however, is a gray area that creates issues for veterans who need VTC.

OTH discharges are different from punitive discharges because the procedures lack the protections afforded to someone receiving a punitive discharge—judicial trials and court-martials.<sup>201</sup> OTH discharge qualifications are

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192. *Id.*

193. *Id.* at 692. According to the USCS, a veteran is “. . . a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.” 38 U.S.C.S. § 101(2).

194. To be eligible for participation in the VTC program, the attorney representing the state must consent to the defendant’s participation in the program, and the court must find that the defendant is a veteran under Title 38 USCS § 101(2). MISS. CODE ANN. § 9-25-1 (2014).

195. 38 U.S.C. § 101(2).

196. Bedford, *supra* note 189, at 692.

197. *Id.* at 693 (citing 38 U.S.C. § 5303(a) (“The discharge or dismissal by reason of the sentence of a general court-martial of any person from the Armed Forces, or the discharge of any such person on the ground that such person was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, or as a deserter, or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Secretary that there are compelling circumstances to warrant such prolonged unauthorized absence, or of an officer by the acceptance of such officer’s resignation for the good of the service, or (except as provided in subsection (c)) the discharge of any individual during a period of hostilities as an alien, shall bar all rights of such person under laws administered by the Secretary based upon the period of service from which discharged or dismissed, notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of title 10.”). If the person was insane at the time of the offense leading to the separation from service, the person retains eligibility for VA benefits. *Id.* § 5303(b).

198. *Id.* at 735 fn.22. (citing 38 C.F.R. § 3.12(d) (2019)). These offenses are “(1) [a]cceptance of undesirable discharge to escape trial by general court-martial; (2) [m]utiny or spying; (3) [a]n offense involving moral turpitude. This includes, generally, conviction of a felony. (4) [w]illful and persistent misconduct . . . [and] (5) [h]omosexual acts involving aggravating circumstances or other factors affecting the performance of duty.” *Id.*

199. *Id.* at 692.

200. MISS. CODE ANN. § 9-25-1 (3)(a) (2014). “(3) *Eligibility.* (a) In order to be eligible to participate in a Veterans Treatment Court program established under this section, the attorney representing the state must consent to the defendant’s participation in the program. Further, the court in which the criminal case is pending must have found that the defendant is a veteran of the United States Armed Forces as defined in Title 38 USCS.”

201. VETERANS LEGAL CLINIC AT THE LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL, *supra* note 190, at 3. (“Bad Conduct and Dishonorable discharges are “punitive” discharges because only a military court-martial can impose such status as punishment for a criminal conviction. A Bad Conduct discharge may be

highly discretionary and may be imposed swiftly and with little procedural safeguards.<sup>202</sup> For example, if a commanding officer is preparing for deployment or under pressure to be “mission capable and ready,” they may OTH discharge a servicemember who is suffering from stress or trauma in order to bring in another servicemember.”<sup>203</sup> Other times, a service member may receive an OTH discharge for misbehavior that is strongly correlated with PTSD or Military Sexual Trauma.<sup>204</sup>

Imagine surviving war and then being denied the opportunity to cope in civilian life. This was a reality for former Marine, Dwayne Smith who survived a deadly deployment just to be denied the opportunity to get the help he desperately needed.<sup>205</sup> Smith’s service in Afghanistan left him suffering from PTSD and TBI.<sup>206</sup> He received an OTH discharge after self-medicating to cope with PTSD and leaving his post when a member of his family was diagnosed with cancer.<sup>207</sup> The VA turned him away and told him he was ineligible to receive treatment for his military injuries.<sup>208</sup> After much litigation, Smith was able to receive VA benefits.<sup>209</sup>

Many veterans, however, experience a different outcome than that of Smith. An alarming number of veterans are at the mercy of the VA which often illegally dismisses veterans by telling them that, because of their military discharge status, they are not allowed to even apply for benefits.<sup>210</sup> In the last forty years, over 575,000 service members have received OTH, Bad Conduct, or Dishonorable discharge and of that number, eighty-one percent were OTH discharged.<sup>211</sup> Additionally, a 2017 study found that sixty-two percent of servicemembers discharged for misconduct were diagnosed with a mental health condition in the two years that followed their discharge—about one in four of those servicemembers were OTH discharged.<sup>212</sup>

## 2. A proposed solution: remove all discharge status limitations for veterans suffering from service-related PTSD, TBI, and SUDs.

The gratitude expressed in, “Thank you for your service” should not dissipate when a soldier retires their uniform and returns home with unfavorable papers. As aforementioned, substance abuse and criminal behavior are often byproducts of PTSD and TBI,<sup>213</sup> and the symptoms may manifest themselves after an honorably discharged veteran integrates back into society or while a

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imposed through a special court-martial or a general court-martial; a Dishonorable discharge may be imposed only through a general court- martial.”).

202. *Id.* at 6.

203. *Id.* at 4.

204. *Id.* at 5.

205. *Id.* at 1.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.* at 7-8.

212. *Id.* at 25.

213. *See supra* part II(D).

servicemember is still on active duty. Psychological trauma symptoms may not appear until months after a veteran returns home.<sup>214</sup> Discharge status, therefore, should not affect eligibility for VTC solely because PTSD and TBI symptoms debut themselves during different timelines of a servicemember's life. The Mississippi Legislature, therefore, should amend its statutory eligibility requirements to include all veterans, regardless of discharge status.

The concept of allowing participation in VTC, regardless of discharge status, is currently implemented by Judge Hirsch of the Queens, New York VTC.<sup>215</sup> Because the VA does not offer benefits for veterans with a punitive discharge and in some cases, OTH discharge, Judge Hirsch utilizes the Veterans Justice Outreach Program to connect the veterans with private services for "community-based substance abuse treatment and community-based mental health services."<sup>216</sup> Mississippi, therefore, should adopt the same approach to allow the servicemembers who sacrificed their minds and bodies an opportunity to heal from the wounds inflicted on them during their time in service.

### 3. On Violent Crime Exclusions

As mentioned above, Mississippi law excludes certain violent crimes and restricts access to only those with nonviolent felony or misdemeanor crimes.<sup>217</sup> This excludes countless veterans from VTC because sixty-four percent of veterans in United States prisons were sentenced for a violent offense.<sup>218</sup> There are several factors that contribute to a veteran committing a violent offense that leads to their incarceration. Combat training, for example, encourages quick-thinking skills for dangerous situations such as aggression and a readiness to fight.<sup>219</sup> This mentality does not dissipate when a servicemember returns home where many veterans experience elevated anger and hostility. In one study, sixty-seven percent of Iraq and Afghanistan War veteran respondents reported threatening someone or exhibiting aggressive behavior within the last month.<sup>220</sup>

Because Mississippi acknowledges that countless veterans are suffering from mental illness, the State should also recognize that, not only are these veterans more likely to commit violent crimes but they are also the ones who need treatment the most. If Mississippi VTCs continue to exclude violent crime perpetrators, these veterans will continue through the traditional courts which have been shown to exacerbate their PTSD or TBI symptoms.<sup>221</sup> Once they are released they are at a high risk for recidivism due to lack of treatment which

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214. Cartwright, *supra* note 15, at 302.

215. Wolf, *supra* note 183.

216. *Id.*

217. "The crime before the court is a crime of violence [or] . . . (ii) [t]he defendant does not demonstrate a willingness to participate in a treatment program.(iii) The defendant has been previously convicted of a felony crime of violence including, but not limited to: murder, rape, sexual battery, statutory rape of a child under the age of sixteen (16), armed robbery, arson, aggravated kidnapping, aggravated assault, stalking, or any offense involving the discharge of a firearm or where serious bodily injury or death resulted to any person." MISS. CODE ANN. § 9-25-1 (2014).

218. Topolski, et al., *supra* note 186, at 0.

219. *Id.* at 4.

220. *Id.*

221. *See* SEAMONE, *supra* note 5, at 15.



often leads to another arrest.<sup>222</sup> Moreover, the exclusion of violent crimes from VTC participation creates a perpetual cycle that contributes to the overpopulation of prisons.

4. An Alternative: relax the crime status limitations to include violent crimes for veterans suffering from PTSD, TBI, and substance abuse.

To make VTCs more accessible, Mississippi should adopt a similar approach to that of Texas VTCs which allow a broader range of crimes as long as the veteran suffers from a brain injury or mental illness that: (1) resulted while serving in a combat zone or other similar dangerous duty area; and (2) may be correlated with a service-related violent experience and subsequent criminal conduct.<sup>223</sup> Wendy Lindley of California's Orange County Combat Veterans Court, which also accepts violent crimes reasoned, "if our goal is to protect our communities and make them a safer place, then why wouldn't we take cases of violence?"<sup>224</sup>

The story of Marine Corps Veteran Marco Rodriguez demonstrates the effectiveness of the proposed approach. Rodriguez was charged with felony assault when he lost control for thirty seconds, a common effect of PTSD.<sup>225</sup> After being admitted to a VTC, he met with a VA family therapist who "taught [him] to recognize signals and how to de-escalate situations. [He] focused on family issues and ways to communicate . . . and talked about flashbacks and nightmares with [his] mental health provider."<sup>226</sup> Rodriguez expressed his gratitude for a second chance, stating, "My life would have been totally different were it not for this program. I wouldn't be focused on my mental health. I'd be focused on trying to pay my bills."<sup>227</sup>

5. On Jurisdiction

As aforementioned, only twelve out of eighty-two counties in Mississippi have access to a VTC.<sup>228</sup> This creates a jurisdictional limitation because veterans who are not within the jurisdiction of a VTC are ineligible to participate.<sup>229</sup> A Mississippi statewide VTC would allow all willing veterans to participate in VTC without jurisdictional limitations. This may be accomplished by designating, as Chief Veterans Judge, one of the three Circuit judges who currently oversee the VTC in their Circuit.<sup>230</sup> The Chief Judge would be

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222. Moody, et al., *supra* note 182.

223. Cartwright, *supra* note 15, at 310-11.

224. Honorable Robert T. Russell, *Veterans Treatment Courts*, 31 *TOURO L. REV.* 385, 395-96 (2015).

225. Todd Goodman, *Veterans Court changes lives by offering second chance*, *VA NEWS* (Dec. 9, 2019), <https://blogs.va.gov/VAntage/69241/veterans-court-changes-lives-offering-second-chance/>.

226. *Id.*

227. *Id.*

228. The counties with access to VTC are Forrest, Perry, Greene, George, Jackson, Alcorn, Itawamba, Lee, Monroe, Pontotoc, Prentiss, and Tishomingo. Moore, *supra* note 174; Ulmer, *supra* note 174.

229. *MISS. CODE. ANN.* § 9-25-1(3)(d) (2014).

230. The Delaware Superior Court oversees the statewide VTC in Kent County which is presided over by Superior Court Judge William L. Witham Jr. who sees veterans throughout the state.

responsible for making non-binding recommendations and advisory opinions about eligibility and case transfer.

#### C. Funding a Statewide VTC While Saving Mississippi Resources

When asked what stands between Mississippi and the implementation of a Mississippi statewide VTC, Ms. Caldwell's answer was simple: funding.<sup>231</sup> The following question was obvious: how do we get more funding? Again, her answer was simple: "We're going to have to get more interest—more legislature involvement—that's what it all boils down to."<sup>232</sup>

A 2016 report from the Delaware Criminal Justice Council of the Judiciary noted that eighty to ninety percent of VA participants in VTC qualified for VA services which had little impact on state resources because of its partnership with the VA.<sup>233</sup> It is likely that a Mississippi statewide VTC will have similar results because as of 2020, over 96,000 of roughly 188,000 Mississippi Veterans were enrolled in the VA healthcare system.<sup>234</sup> Additionally, Congress passed The Veteran Treatment Court Act of 2019 to permit the DOJ to fund state, local, and tribal governments with a VTC.<sup>235</sup> In 2020, the DOJ authorized the Bureau of Justice Assistance (BJA) to grant \$94,328.00 to Jackson County, Mississippi for VTC and Adult Drug Courts.<sup>236</sup>

While many veterans will qualify for VA benefits to cover their treatment, some will not only be unable to receive VA benefits but will also be unable to pay for treatment. Because treatment is vital for recovery, Mississippi should set aside a portion of the grant received from the DOJ for these servicemembers. With the help of the VTC, these veterans will be able to integrate back into society as opposed to draining state resources while incarcerated.

#### D. How Many Moore Could We Serve?

The tragic case of Corey Patrick Moore is only one example that demonstrates how veterans often fall through the cracks of Mississippi's criminal justice system. Moore was not eligible for Mississippi VTC for two reasons: (1) his jurisdiction was Hinds County which currently has no VTC; and (2) he was convicted of burglary which is classified as a violent crime under Miss. Code § 97-3-2, and therefore excluded from participation in a Mississippi VTC which does not currently accept participants convicted of violent crimes.<sup>237</sup> As aforementioned, studies have shown that incarceration exacerbates a veteran's

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231. Interview with Kathy Caldwell, Gen. Counsel, Miss. Veterans Affs., in Jackson, Miss. (Feb. 9, 2022).

232. *Id.*

233. CRIM. JUST. COUNCIL OF THE JUDICIARY, *REPORT ON DELAWARE'S PROBLEM-SOLVING COURTS*, 24 (2016), [https://courts.delaware.gov/aoc/docs/CJCJ\\_Final\\_Report.pdf](https://courts.delaware.gov/aoc/docs/CJCJ_Final_Report.pdf).

234. *Veterans as a Percent of County Population (FY2019)*, U.S. DEP'T OF VETERANS AFFS., [https://www.va.gov/vetdata/docs/SpecialReports/State\\_Summaries\\_Mississippi.pdf](https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Mississippi.pdf) (last visited Feb. 19, 2023).

235. Harm Venhuizen, *Congress approves bill giving federal support to veterans treatment courts*, MILITARY TIMES (July 21, 2020), <https://www.militarytimes.com/news/your-military/2020/07/21/congress-approves-bill-giving-federal-support-to-veterans-treatment-courts/>.

236. *Jackson County Mississippi Veterans Treatment Court Enhancement*, DEP'T OF JUST. BUREAU OF JUST. ASSISTANCE (2020) <https://bja.ojp.gov/funding/awards/2020-vc-bx-0123> (last visited Feb. 19, 2023).

237. Moore, *supra* note 174. Mississippi Code Ann. 97-1-5 lists "burglary" as a violent crime.

PTSD symptoms,<sup>238</sup> and it is unlikely that Moore's mental illnesses are being treated because, by law, the VHA cannot provide healthcare services to veterans while they are incarcerated.<sup>239</sup>

With a Mississippi statewide VTC modeled closely to that of Delaware's VTC and implemented with the three aforementioned proposals, how many more similarly situated veterans could we rehabilitate? Under the proposed model, Moore would have been eligible for VTC for three reasons: (1) jurisdiction would present no limitation because a statewide VTC serves to include all veterans; (2) because Moore's PTSD and substance abuse correlates with his time in service, the violent crime of burglary would not have excluded him from treatment; and (3) the facts did not state Moore's discharge status, but under the proposed VTC, he would have qualified regardless of status. The proposed VTC model, therefore, serves, not as an opportunity for criminals to evade the consequences of their actions, but as an opportunity for war-torn veterans to heal and integrate back into Mississippi society.

#### V. CONCLUSION

Try as we might, we cannot prevent war's harmful effects on our soldiers. For if we could, this Article would happily serve no purpose. Many soldiers who endure the stress of combat return with PTSD, TBI, and SUDs which have been directly correlated with subsequent criminal activity.<sup>240</sup> Traditional courts are an ineffective approach for these types of justice-involved veterans because incarceration has been shown to exacerbate their symptoms.<sup>241</sup> Additionally, once they are released from custody, they are likely a threat not only to themselves but also to their communities without proper treatment.

VTCs have proven to be effective for many veterans because their aim is to treat the underlying issues that cause them to commit the crimes for which they were arrested.<sup>242</sup> While Mississippi has adopted three VTCs in its circuits, many veterans remain ineligible for treatment because of limitations concerning jurisdiction, discharge status, or crime status. Therefore, the Mississippi Judiciary should adopt a statewide VTC; and the Mississippi Legislature should Amend Mississippi Code Annotated § 9-25-1 to remove VTC participation limitations concerning jurisdiction, discharge status, and crime status.

A statewide VTC would allow all qualifying Mississippi veterans to participate in VTC. Discharge status should not inhibit a veteran from participating in VTC because studies have shown that many unfavorable discharges are for misconduct correlated with PTSD and TBI.<sup>243</sup> Additionally, violent crimes should not bar a veteran from VTC participation because if the military has and continues to foster a violent mentality in its soldiers, the government should then aid in the rehabilitation of the men and women who

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238. SEAMONE, *supra* note 5, at 15.

239. Blonigen et al., *supra* note 129, at 993.

240. *See supra* part II(C).

241. *See supra* part II(D).

242. *See supra* part III (A)(1).

243. *See supra* part IV(B)(1).

carried their violent disposition home. Until wars cease, the issues discussed here will continue to permeate the lives of many soldiers. As Americans, they deserve our respect. As Mississippians, they deserve our aid.