Supreme Court Case No. 1037368

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SEAN KUHLMEYER,
Appellant,
vs.
ISABELLE LATOUR,
Appellee

On Review from Division I of the Washington State Court of Appeals, No. 85544-1-I

Amicus Curiae Memorandum of Warrior Family Advocacy as Amicus Curiae in Support of Appellant Sean Kuhlmeyer

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III. INTEREST OF AMICUS CURIAE

Amicus Curiae, Warrior Family Advocacy, Inc. 501(c)(3) (WFA), and Attorney Lieutenant Colonel Erhan Bedestani, JD, U.S. Army, retired (ret.), a Minnesota, and North Dakota attorney[1] and Shannon Draughon, JD, as associate Washington counsel for WFA, present this motion and memorandum in support of Appellant Sean Kuhlmeyer.

WFA, headed by Mr. Bedestani, is a non-profit based in Arlington, Virginia, which advocates and educates family law practitioners, Veterans and Service Members, and legislators on the problems military members and veterans face in family court and proposes state and federal solutions.[2]

Military Service Members and Veterans suffer from bias and stigmas associated with their service, which are widely misused to characterize Veterans as unfit parents, or dangerous and violent, adversely affecting their family law cases.

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[1] Minnesota No.:0504824, North Dakota No.:10020

[2] 'Veterans' is used herein to signify both active and former service members.

Mr. Bedestani authored law review articles detailing how Veterans are discriminated against in family courts. ***Exhibit-1, Exhibit-2.*** He also wrote, in conjunction with the Office of Ohio Congressmen Michael Turner, the recent congressionally mandated direct report requirement in the 2025 National Defense Authorization Act whereby Congress directed the Department of Defense to study the issue of bias against Veterans in state courts.[3] Said report was passed by Congress, signed by the President, and will be published in the Federal Register. *Id.*

WFA and Mr. Bedestani are concerned Sean Kuhlmeyer, a disabled United States Navy Veteran, suffered from systemic bias and discrimination in the lower courts because of his status as a Veteran. WFA is concerned that such bias negatively

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[3] *Report on Child Custody Litigation Involving Servicemembers and Veterans.* Report of the Committee on Armed Services, House of Representatives, on H.R. 8070, 118th Congress, U.S. House of Representatives, 2d Session, Report 118-529, May 31, 2024. Committed to the Committee of the Whole House on the State of the Union and ordered printed, by the U.S. Gov. Publishing House, 55-767. Avail: https://www.congress.gov/congressional-report/118th-congress/house-report/529/1

affected the issuance of Domestic Violence Protection Order at issue.

WFA submits this memorandum to educate the Washington Supreme Court on these issues, particularly as they appear to intersect with the Kuhlmeyer case, and urges this court take review, and in deciding the issues, consider that the bias and discrimination Kuhlmeyer faced in the lower courts affected the outcome of those cases, including the issuance of the DVPO, and take the appropriate action.

IV. INTRODUCTION

Mr. Kuhlmeyer is a United States Navy Veteran with a Post Traumatic Stress Disorder diagnosis tracing back to his Navy career following an assault by a fellow naval recruit. He also has other mental-health issues such as Anxiety, and Depression, common amongst Veterans.

As WFA understands, Kuhlmeyer's status as a Veteran, a Veteran with PTSD, a Veteran with related mental-health

issues, and as a Veteran gun owner, despite having no history of violence or criminal convictions, that said statuses were weaponized against him in family court, and contributed to how he was perceived by various adjudicators affecting their decisions, including to issue the original restraining order, and later Hon. O'Donnell's decision to issue the subject DVPO. WFA believes Kuhlmeyer is representative of the widespread bias and prejudice Veterans experience in family courts.

WFA is particularly concerned Ms. Latour's citation to Mr. Kuhlmeyer's Navy pistol proficiencies in her Petition for a DVPO are evidence that Mr. Kuhlmeyer suffered the types of negative biases, prejudices, and discrimination, in issuance of the DVPO at issue, that Veterans commonly experience in issuance of protection orders against them.

In this memorandum, WFA will discuss how bias against Veterans typically presents itself, and how it appears these biases impacted the Kuhlmeyer cases.

V. FACTS

WFA joins in the facts as stated by Kuhlmeyer in his Petition, and the other Amicus. WFA points out several other apparently undisputed facts, relevant to the issues herein, as restated by Kuhlmeyer in his supporting declaration.

- Mr. Kuhlmeyer is a U.S. Navy Veteran honorably discharged with a service-connected disability.
- Mr. Kuhlmeyer has a Post Traumatic Stress Disorder diagnosis, and other associated mental health issues such as Anxiety, and Depression, common amongst Veterans.
- Mr. Kuhlmeyer was a gun-owner, who has never been involved in any violent incident, nor does he have any criminal convictions.
- Ms. Latour cited Mr. Kuhlmeyer's Veteran status and firearm service training in her Petition for a DVPO.
- Mr. Kuhlmeyer has described a pattern of misuse of his Veteran status, PTSD, other mental-health diagnosis, service training, and gun ownership, common among Veterans involved in state court issues.

VI. ARGUMENT AND AUTHORITIES

A. Veterans are commonly discriminated against in State Court Actions

The fact that Service Members and Veterans are a minority commonly discriminated against, is not reasonably subject to dispute, and has been an issue the U.S. Department of Justice (DOJ) has long recognized.

In 2021, the DOJ established the Servicemembers and Veterans Initiative (SVI) within the Civil Rights Division.[4] The SVI coordinated and expanded the DOJ's work to enforce statutes created to protect the legal interests and rights of servicemembers and their families.

Discrimination against Veterans primarily occurs in four ways, two appear to have affected Mr. Kuhlmeyer.

1) **Stereotype of Extremes:** Veterans and Service Members suffer stigmas stereotypes of extremes of both positive and negative stereotypes associated with military

[4] Avail: Servicemembers and Veterans Initiative

service, characterizations that are factually incorrect, but persistent in society.

2) **Adverse State Court Decisions Associated with Military Transfers:** Active Service Members suffer adverse child custody decisions because of biases associated with military relocations.

3) **False Associations regarding PTSD:** Veterans suffer biases and discrimination in family court and child custody disputes, from incorrect over-association of military service with Post Traumatic Stress Disorder (PTSD), and incorrect assumptions PTSD equates to a propensity for violence.

4) **Impacts from Military Family Advocacy Program Decisions:** Veterans suffer discrimination in state courts following adverse determinations from military Family Advocacy Program decisions about domestic-violence and child abuse, operating on reduced standards of evidence.

Two of these areas of prejudice were widespread in the underlying *Kuhlmeyer* cases. Specifically discrimination is associated with cultural beliefs about veterans' propensity to violence, and biases about PTSD.

B. Veterans suffer bias and discrimination because of their service.

From the end of WWII to now, the numbers of Service Members and Veterans in the U.S. population has plummeted from 12% to less than 1%. This dramatic change corresponds with a rise in negative stereotypes about Veterans, and resulting bias and prejudice against them, including in the courts. There is a gulf between the civilian population, and their thoughts and beliefs about Military members, and Veterans themselves, and their knowledge of military service and the legacy of serving.

There are beliefs in greater American culture, such as, that Veterans are inherently violent, and PTSD equates to violence, which are statistically and factually false, but which are widespread, and those false beliefs are harming Veterans.

For instance, one in four Americans, believe people with PTSD are violent. In fact, usually, PTSD does not manifest with violence. Veterans are no more likely to exhibit PTSD related violence than civilians. Nor is PTSD a key factor contributing to violence. Veteran PTSD is not an indicator of a tendency to use violence, but the public believes otherwise.

Other common false beliefs are Veterans are inherently violent, and 'ticking time bombs.' Both are wrong and discriminatory, but widespread and persistent. Driven by socio-cultural narratives of a 'Rambo' mal-adjusted warrior, the stereotype has little relation to what service is like for most military members, who are often doing day-to-day jobs similar to civilian jobs.

Military members are no more likely to use violence than others, but the public believes otherwise. Those wrong beliefs are affecting decisions about Veterans, including access to their children. Thus, those false beliefs are harming Veterans.

WFA believes the public and the judiciary owes Veterans

more, the least of which is to consider how deep-seated and endemic, and false and harmful, biases and prejudices about Veterans affect them, while their cases are in the courts.

C. At least one state – California, has recognized biases against Veterans.

The author of this memorandum, with assistance from Judge Eileen Moore, of the California Courts of Appeal, submitted legislation to the California Legislature recognizing bias issues against Veterans, and provided a process for California courts to provide resources to Veterans. In the words of Judge Moore:

> Left unchecked, biases against military families can lead to incorrect conclusions. Unless recognized, courts and evaluators may unwittingly base decisions on biases and not consider seriously enough the child raising abilities of the military veteran with PTSD.[5]

As a result, California amended their family code, to include a

[5] *Child custody issues when a parent is a military veteran with PTSD,* Hon. Eileen Moore, Associate Justice California Courts of Appeal, 4th Appellate District, Division 3. (Omitted because of copyright purchase issues.) Avail: https://www.dailyjournal.com/mcle/1276-child-custody-issues-when-a-parent-is-a-military-veteran-with-ptsd.

specific recognition that "Nearly 1 in 5 veterans lives with a service-connected mental health disorder or cognitive disorder." Cal. Fam. Code §1(b). And, "Service-linked mental-health issues come with their own unique barriers, stigma, and complications." Cal. Fam. Code §211.5(h).

Because of these findings, California created a process to provide additional resources for Veterans. *See generally,* Cal. Fam. Code §211.5. California now requires when a family court finds the effects of a parent's mental-health is a factor in determining the best interest of the child, it must state its reasoning clearly. *See generally,* Cal. Fam. Code §3040(d)(1)(B). These requirements ensure California courts have thought through the nature of the mental-health issue, without attaching unwanted stigma, and create a clear appeal record. *Id.*

D. Discrimination against Veterans is illegal in some situations, but not yet in State Courts.

Discrimination against Veterans is illegal under federal law in

specified circumstances, notably employment and housing.[6] But there is not yet a federal mandate forcing State courts to remedy the discrimination they engage in against Veterans.

In 2013, the Congressional Research Service documented the issues of discrimination against Active Service Members, looking principally at the concern "for state courts to use a service members previous deployments or the possibility of future deployments when making child custody decisions."[7] That paper is the best review of family law related efforts to date, and further supports there is a problem with how Veterans are treated in state courts. *See generally*, *Id.* One key point is it discusses how for those on active duty, the Servicemember

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[6] *For examples, see:*

The Uniformed Services Employment and Reemployment Rights Act prohibits civilian employers from discriminating against veterans based on present, past, and future military service. 38 U.S.C. §4301 – 4335.

The Vietnam Era Veterans' Readjustment Assistance Act prohibits federal contractors and subcontractors from discriminating in employment against protected veterans. 38 U.S.C. §4212.

The Americans with Disabilities Act makes it illegal for employers to discriminate against disabled veterans. 42 USC §12102.

[7] *Military parents and child custody: state and federal issues,* David Burrelli and Michael Miller, May 31, 2013, Congressional Research Service. Avail: Military Parents and Child Custody: State and Federal Issues.

Civil Relief Act (50 U.S.C. App. §§501 *et seq*.) protects them in *ex parte* hearings. *See generally, and Appendix-E.* Further evidence military members are at risk in state domestic actions.

Thus the thought of federal protections for child custody matters involving veterans has been happening within the federal government for over a decade.

E. Widespread anecdotal evidence supports that Veterans suffer adverse effects in family court because of their Veterans status, so Congress has directed the Department of Justice to Study the Issue.

In 2024, Congress, in a directive co-authored by the author of this memorandum, after having congressional members report that constituents had complained about the misuse of their Veteran status to obtain adverse consequences in state family court's, directed the U.S. Department of Defense to study the issue to obtain 'hard' data.

Since there is a lack of official data, the anecdotal evidence (which motivated Congress to address the issue), consistently related stories of Veterans describing how their

Veteran status, PTSD, other mental health issues, or as a gun owner, was weaponized, often to pursue protection orders and obtain 'primary' custody.

Stories with common themes, in which Veterans described that even though they had no violent history or criminal record, found themselves accused of violence in family courts, and their rights to their kids were restricted.[8] They described how former spouses would make false claims about their PTSD or mental-health, claiming it proved dangerousness and violence.[9] Veterans have been forced to turn over mental-health records, which were weaponized against them.[10]

Then, Veterans found themselves having to dispel myths

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[8] *THE WAR AT HOME: Iraq veteran says family court using PTSD treatment against him,* FOX 9 Minneapolis-St. Paul, May 10, 2017. Avail: https://www.fox9.com/news/the-war-at-home-iraq-veteran-says-family-court-using-ptsd-treatment-against-him

[9] *Iraqi war vet says judge 'punished' him in custody case for calling VA hotline,* Priscilla DeGregory, NYPost, July 8, 2021. Aval: https://nypost.com/2021/07/08/iraqi-war-vet-says-judge-punished-him-in-custody-case-for-calling-va-hotline/

[10] *Can military vet's PTSD records be used against him in child custody dispute?,* Joe Dana (KPNX), Phoenix Channell 12 news, July 25, 2017. Aval: https://www.12news.com/article/features/can-military-vets-ptsd-records-be-used-against-him-in-child-custody-dispute/75-459535150

and beliefs about Veterans with judges and other professionals. Beliefs they often could not overcome. Leaving them with decreased time with their children. And being restrained by protective orders based, in part, on false beliefs and biases of judges and professionals. End results included Veterans losing access to their children, and for some, “losing custody of your kids is often the final straw," and they commit suicide.[11]

As Mr. Kuhlmeyer has described, and as WFA is aware from his own review of documents in the Kuhlmeyer cases, Kuhlmeyer’s descriptions of what happened in the lower cases follows the pattern of what happened to other Veterans, and WFA is concerned Kuhlmeyer is a victim of the widespread bias and discrimination against Veterans permeating society including the judiciary.

Specifically, Kuhlmeyer relates that at many points,

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[11] *American veterans who commit suicide are 95% male, crisis often driven by family disputes,* Kerry J. Byrne, Fox News, May 4, 2024. Avail: https://www.foxnews.com/lifestyle/american-veterans-commit-suicide-95-percent-male-crisis-driven-family-experts

including in decisions of whether to issue protective orders, that his Veteran status, PTSD diagnosis, other mental-health issues, and gun ownership, were used to claim they were evidence of his alleged capacity for violence and justification for restricting his access to his child, which WFA notes he has not seen in nearly six (6) years.

WFA is particularly concerned that Ms. Latour's citation to Mr. Kuhlmeyer's Navy pistol proficiencies in her Petition for a DVPO are evidence Kuhlmeyer suffered discrimination in issuance of the DVPO at issue.

VII. CONCLUSION

For the foregoing reasons, *Amicus Curiae* Warrior Family Advocacy, respectfully requests this Court grant Petitioner's Petition for Review.

Respectfully submitted.

I certify that this document contains 2477 total words of a 2500 word limit in compliance with RAP 18.17(b). See below certification.

Dated: Wednesday, March 5, 2025 (3/5/2025) at Arlington, Virginia.

s/ Erhan Bedestani .
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Amicus Curiae Memorandum of Warrior Family Advocacy as Amicus Curiae in Support of Appellant Sean Kuhlmeyer

Filename: 2025.03.05 Amicus Memo Warfamadvcy 1037368 V.5

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VIII. CERTIFICATE OF SERVICE

I hereby certify that on this Wednesday, March 5, 2025 (3/5/2025), I caused a true and correct copy of this

- Amicus Curiae Memorandum of Warrior Family Advocacy as Amicus Curiae in Support of Appellant Sean Kuhlmeyer

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IX. EXHIBIT LIST

Exhibit-1: *The Negative Impact of Service Member and Veteran Post Traumatic Stress Disorder (PTSD) Rating or Specter of PTSD on Child Custody Arrangements*, Erhan Bedestani, Catholic University Journal of Law and Technology Volume 31 Issue 1 Fall 2022 Article 6, Filename: The Negative Impact of Service Member and Veteran Post Traumatic

Exhibit-2: *Got your six? Veterans and the family court system?* Hill, R., & Bedestani, E. Family Court Review, 1–15 (2025). Avail: https://doi.org/10.1111/fcre.12848. Filename: Family-Court-Review-2025-Hill-Got-you

EXHIBIT-1. The Negative Impact of Service Member and Veteran Post Traumatic Stress Disorder (PTSD) Rating or Specter of PTSD on Child Custody Arrangements, Erhan Bedestani, Catholic University Journal of Law and Technology Volume 31 Issue 1 Fall 2022 Article 6, Filename: The Negative Impact of Service Member and Veteran Post Traumatic

Exhibit-1. .

Catholic University Journal of Law and Technology

Volume 31
Issue 1 *Fall 2022*

Article 6

2022

The Negative Impact of Service Member and Veteran Post Traumatic Stress Disorder (PTSD) Rating or Specter of PTSD on Child Custody Arrangements

Erhan Bedestani
Catholic University of America (Student)

THE NEGATIVE IMPACT OF SERVICE MEMBER AND VETERAN POST TRAUMATIC STRESS DISORDER (PTSD) RATING OR SPECTER OF PTSD ON CHILD CUSTODY ARRANGEMENTS

Erhan Bedestani

The following story is a composite of the unfortunate experiences veterans and service members often face in family court, specifically when navigating custody and parenting time. Mike served in the Army for ten years from 2008 to 2018, during which time he was deployed twice, once to Iraq in 2009 and once to Afghanistan in 2011.[1] Since his return from Iraq in 2011, Mike has been stationed stateside in what could be described as a nine to five position in his unit's logistics and contracting office. Mike is married to the love of his life Susan. They wed in 2008 when he first enlisted in the Army. Susan and Mike have two children, David and Sally, born in 2010 and 2014 respectively at Fort Bragg, North Carolina, when Mike was stationed with the 82nd Airborne Division. In 2020, Susan filed for divorce citing irreconcilable differences. During the divorce proceedings, Susan's attorneys call for an emergency hearing citing Mike as a risk to their children, ten and six respectively, because he likely suffers from PTSD as a result of his combat deployments in 2008 and 2010. Mike had assumed he would have 50/50 parenting time during the course of the divorce proceedings. He is an engaged father. He makes time to help with the children's school work and volunteer as a coach for their sports teams. He has a distinguished military record. Instead, his non-service member spouse is awarded custody while Mike must now prove that he does not have PTSD or, if he does, that he is not a risk to his children.

1 This is not a true story but reflects, in general, the unfortunate experiences veterans and service members often face in family court, specifically when navigating custody and parenting time.

Fast forward two years and Mike has still not seen his children now thirteen and nine with any regularity. When he is fortunate to have visitation it is under the supervision of a licensed clinical social worker. Every word and interaction with the children is reported upon. The sessions are nerve-wracking for Mike and the children. David and Sally struggle to understand why they can't see their father, who prior to divorce proceedings took great pride in their accomplishments and activities. Mike struggles to explain what is happening in a way that his children would understand. Truly speaking, he too does not understand.

Mike has lost hope he will ever re-establish the type of relationship he once had with his children. He can see them drifting away. Mike is filled with sadness, worried that by the time the children reach adulthood his opportunity to re-establish a relationship with them will be too far gone. These thoughts are also coupled with the sadness he feels from the accumulating missed moments he used to treasure, like helping them with their homework assignments at the dinner table or Friday movie and pizza nights. He is at a loss as to how his military service and the accusation that he suffers from PTSD has consumed so much of his time, energy, and resources as he seeks to re-establish his parenting privileges. Mike commits suicide in 2021, one of the nearly twenty veterans and service members to do so each day.[2]

Mike's story represents the dichotomy many service member and veteran parents face; praised as our Nation's heroes, yet feared in family court and too often type-casted as a ticking time bomb on account of their service or combat experience.[3] They are praised for their service to country and sacrifice in deployment and combat, while in family court they defend against the common misattribution of violent behavior to PTSD.[4] Veterans' and service members' parental rights are negatively impacted because courts typically conclude that PTSD diagnoses indicate a risk to their children.[5] Veterans and service members who are engaged, loving, and supportive parents are stripped of joint custody, have parenting time significantly reduced, or in worst case scenarios, lose legal and physical custody all together.[6] Even veterans and service members without

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2 U.S. DEP'T OF VETERANS AFFS., OFF. OF MENTAL HEALTH & SUICIDE PREVENTION, NATIONAL VETERAN SUICIDE PREVENTION 5 (2021) (showing that veteran suicide deaths per day rose from 16.2 in 2001 to 17.2 in 2019).

3 *See* Patricia Kime, *PTSD Myths Persist in the Military Community, New Survey Finds*, MILITARY.COM (June 17, 2021), https://www.military.com/daily-news/2021/06/17/ptsd-myths-persist-military-community-new-survey-finds.html.

4 *See id.*

5 Stephen Krasner, *A Broken System: Veteran and Service Member Mistreatment*, HUFFPOST, https://www.huffpost.com/entry/a-broken-system-veteran-and-service-member-mistreatment_b_5801a7c1e4b0f42ad3d26180 (Oct. 25, 2017).

6 *Id.*

a diagnosis must wrestle with the assertion that they have undiagnosed PTSD.[7] Where does this strong and prevailing bias come from, how is it perpetuated, and how can it be addressed? It is imperative to consider these questions so as to ensure veterans and service members' parental rights are not violated and their children unfairly stigmatized by a family court construct that paints the service member or veteran parent as a risk to them. Furthermore, it is important to note the scientific underpinning of PTSD continues to evolve and this paper will describe recent scientific advancements in the study of PTSD.

The assumptions, stigma, and bias regarding PTSD are negatively impacting service members and veterans during child custody proceedings.[8] A majority of Americans believe that most service members and veterans suffer from PTSD; they also believe that those who suffer from PTSD have a propensity for violent behavior.[9] In actuality, PTSD "is not the expected outcome from trauma exposure"[10] and one diagnosed with PTSD is not dangerous.[11]

This paper is structured into six parts. Part one will provide a high-level introduction on what PTSD is, how it is diagnosed, and how it manifests in a majority of those diagnosed with it. Part two will look at the prevailing stigma and bias service members and veterans experience based on assumptions about their mental health and suitability to parent resulting from a pervasive yet factually inaccurate narrative that one with a PTSD rating has a propensity for violence. Part three of the paper will highlight the constitutional law that establishes the fundamental right to a parent-child relationship, as well as the procedural due process arguments this issue presents.

Part four will delve into state law, specifically the "best interest of the child" standard, in order to highlight common factors states take into consideration

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7 *See generally* Press Release, Katie Sullivan, Cohen Veterans Network, From Symptoms to Treatment, New Survey Reveals Americans' Strong Misconceptions About PTSD (June 3, 2021), https://www.cohenveteransnetwork.org/wp-content/uploads/2022/11/Press-Release-Americas-Mental-Health-Pulse-Survey-PTSD-FINAL.pdf.

8 *See* 38 U.S.C. § 101 (2021) (Veteran for the purpose of this comment is defined as per 38 U.S.C. § 101).

9 Chris Haxel, *A Study Shows PTSD Carries a Stigma for Veterans – Regardless of Whether They Suffer from It*, AM. HOMEFRONT PROJECT (Sept. 23, 2021), https://americanhomefront.wunc.org/news/2021-09-23/a-study-shows-ptsd-carries-a-stigma-for-veterans-regardless-of-whether-they-suffer-from-it; *see generally* Press Release, Katie Sullivan, Cohen Veterans Network, From Symptoms to Treatment, New Survey Reveals Americans' Strong Misconceptions About PTSD (June 3, 2021), https://www.cohenveteransnetwork.org/wp-content/uploads/2021/06/Press-Release-Americas-Mental-Health-Pulse-Survey-PTSD-FINAL-1.pdf.

10 Mikel Matto et al., *A Systematic Approach to the Detection of False PTSD*, 47 J. AM. ACAD. PSYCHIATRY L. 325, 325 (2019).

11 Megan Thielking, *9 Myths About PTSD*, VOX, https://vox.com/2015/1/29/7945099/ptsd-myths-trauma (Mar. 12, 2015).

when awarding custody and how pervasive factual inaccuracies associated with veteran or service member PTSD (or the specter of PTSD) impacts application of the standard. Part five will highlight the case of a Marine Veteran David Carlson, a Minnesota resident who deployed three times to Iraq during Operation Iraqi Freedom. Following his divorce in 2012, David had enjoyed a co-parenting arrangement predicated on joint custody. In 2014 that all changed, when it was asserted that he had PTSD. The accusation was leveraged by his former spouse's legal team to paint him as a risk to the children. Mind you he had already co-parented throughout his marriage, separation and divorce, for six years and had no history of violence. The children's mother was awarded full custody in 2017, following an unwillingness by the family court judge to give weight to a psychological assessment by the Veterans of Foreign War's Surgeon General and leading PTSD expert that David was a fit parent, who suffered from mild anxiety, not PTSD, and posed no risk to his children.[12] The family court judge said to David Carlson she was "concerned whether [he has] some mental issues as a result of the traumatic stress [he] endured."[13]

Part five of the paper includes a review of a data set compiled through a survey of service members and veterans on their perceptions and experiences in family court relating to child custody arrangements. At present time, there has been no study to quantify how many veterans and service members have been negatively impacted in their child custody hearings because the court or opposing counsel have used PTSD or the specter of PTSD to paint them as unfit to parent. Therefore, in an effort to better understand the impact of the issue, a twenty-seven question survey was distributed in February 2022 to service members and veterans. While the eighteen responses to the survey do not represent a mountain of evidence, the survey serves as an example of the types of questions that could be asked by veterans groups, State courts, and Federal agencies such as the Department of Veterans Affairs (VA) and the Department of Defense (DoD) to capture data on family court custody outcomes for service members and veterans; from this data they may draw better informed conclusions. For veterans and service members, the VA, DoD, and veterans groups play an important role in advocating for the fair treatment of veterans and service members. Their advocacy comes in the form of educating the broader U.S. population on the veteran and service member experience. This helps mitigate prejudice towards veterans and service members.

Part six proposes several options to address the legal error through both legal

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12 *The War at Home: Iraq Veteran Says Family Court Using PTSD Treatment Against Him*, FOX 9 (May 10, 2017), https://www.fox9.com/news/the-war-at-home-iraq-veteran-says-family-court-using-ptsd-treatment-against-him.

13 *Id.*

and policy recommendations to reduce instances of unfair treatment of service members and veterans in family court on account of their PTSD or the specter of PTSD. It also highlights recently passed legislation in California, specifically State Senate Bill (SB) 1182.[14] SB1182 was approved on September 17, 2022, by Governor Gavin Newsom.[15] The bill was introduced by Senator Susan Eggman, of California's 5th Senate district, who is a veteran herself.[16] Senator Eggman wanted to address "a concern that family courts are improperly discriminating against parents, legal guardians, or relatives who suffer from mental illnesses when determining the best interest of the child in making a custody determination."[17] Section 3040 of Senate Bill 1182 is an effort to address the problem by better defining the parameters in which one's mental health condition can be factored when evaluating the best interest of the child, and furthermore, requiring family court judges to state on the record as to how the mental health illness factored into their ruling.[18] Ideally readers of this paper, at a minimum, will come away with an appreciation that this issue necessitates an empirical study to better develop the full scope of its impact on veterans and service members and also take note that the fact that ongoing draft amendments to California family law code reinforces the idea that this issue is both real, substantial, and requires attention.

The bottom line is that veterans and service members' parental rights are negatively impacted because courts typically conclude that their PTSD diagnosis indicates a risk that they pose to their children.[19] It is imperative veterans and service members' parental rights are not violated and their children unfairly stigmatized by a family court construct that paints the service member or veteran parent as a risk to them strictly because of a PTSD diagnosis and unfounded inferences from this diagnosis. In addition to wanting to highlight this issue this paper also proposes solutions. The first solution is decoupling fact from fiction as it related to PTSD. The second is modification to state law so as to provide

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14 This author spoke with Senator Eggman's legislative assistant during the drafting process of SB1182 in late March of 2022. Senator Eggman's office had compiled significant anecdotal evidence of veterans in the 5th California Senate District being treated unfavorably in family court on account of a mental health condition, to include PTSD, and sought recommendations for additional research materials to facilitate their drafting.

15 S.B. 1182, 2021–22, Reg. Sess. (Cal. 2022).

16 *See generally id.*

17 *Hearing on SB1182 Before the California Senate Judiciary Committee*, 2021–22, Reg. Sess. (Cal. 2022) (statement of Senator Thomas Umberg, Chairman, Senate Judiciary Comm.) (the author's comments acknowledge occasions in which parents are denied custody because of a mental health diagnosis with no examination by the court into if the diagnosis affects the parents' relationship with the child or ability to care for the child).

18 *See generally* S.B. 1182, 2021–22, Reg. Sess. (Cal. 2022) (discussing the amended language of Section 3040 of Senate Bill 1182).

19 Krasner, *supra* note 5.

procedural due process protections applied to family court proceedings so that a PTSD diagnosis alone is not enough to impact a custody determination.

I. WHAT IS PTSD?

PTSD can occur in anyone.[20] It was first added to the American Psychiatric Association Diagnostic and Statistical Manual (DSM) in 1980.[21] It is defined as, "a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event such as a natural disaster, serious accident, a terrorist act, war/combat, or rape or who have been threatened with death, sexual violence or serious injury."[22] PTSD's symptoms generally manifest in four ways: 1) re-experiencing the traumatic event through flashbacks or nightmares, 2) avoidance of events or dynamics that remind one of the traumatic event, 3) increase in negative thoughts about oneself, and/or 4) feeling on edge in what is described as irritability, being overly aware of one's surroundings, resulting in problems with sleep and concentration.[23] PTSD is diagnosed by a psychiatrist or psychologist, and an adult must exhibit the following symptoms for at least a month to be diagnosed: "[a]t least one re-experiencing symptom, at least one avoidance symptom, at least two arousal and reactivity symptoms, and at least two cognition and mood symptoms."[24] Treatment and recovery include either the use of medication in the form of antidepressants and/or talk therapy with a mental health professional.[25]

Technology has now provided an additional method by which PTSD can be identified; instead of focusing on symptomatic behavior, the technology identifies physiological changes in the brain.[26] Improved brain imaging and microscopes have been instrumental in identifying another etiology for PTSD: actual physiological change in the brain from exposure to large concussive blasts

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20 *See* Thielking, *supra* note 11.

21 Matthew J. Friedman, *PTSD History and Overview*, U.S. DEP'T OF VETERANS AFFS., https://www.ptsd.va.gov/professional/treat/essentials/history_ptsd.asp (Nov. 18, 2022) (the most recent DSM-5 was published in 2015).

22 *What is Posttraumatic Stress Disorder (PTSD)?*, AM. PSYCHIATRIC ASS'N, https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd (Nov. 18, 2022).

23 *PTSD Basics*, U.S. DEP'T OF VETERAN AFFS., https://www.ptsd.va.gov/understand/what/ptsd_basics.asp (Nov. 27, 2022).

24 *Post-Traumatic Stress Disorder*, NAT'L INST. OF MENTAL HEALTH, https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd (Nov. 27, 2022).

25 *Id.*

26 Caroline Alexander, *'Shell Shock' – The 100 Year Mystery May Now Be Solved*, NAT'L GEOGRAPHIC (June 9, 2016), https://www.nationalgeographic.com/science/article/blast-shock-tbi-ptsd-ied-shell-shock-world-war-one.

or the aggregation of repeated exposure to smaller blasts.[27] In 2016, *National Geographic* reported on the unique and distinct damage to the brains of service members from the Iraq and Afghanistan wars caused by "exposure to blast force," in what has become more commonly known as Traumatic Brain Injury (TBI).[28] The emergence of high-powered microscopes with improved resolution allows scientists to identify a distinct type of brain scarring attributed to concussive blast forces.[29] Images show that the damage impacts regions of the brain responsible for functions like attention span, emotional control, sleep regulation, and memory formation.[30] The evidence draws a clear line between concussive blast TBI and symptoms often attributed to PTSD. It also provides a scientific underpinning to what has been so often referred to as "shell shock", a term first coined during World War I, which saw significant use of large caliber artillery in combat.[31] This is different and distinct from the brain injury known as Chronic Traumatic Encephalopathy (CTE), a brain injury and disease associated with repeated concussions from blows to the head and has emerged as a focus in professional contact sports.[32] Emerging discussion on another manner in which PTSD comes to fruition is "Operator Syndrome."[33] Many of the behavioral symptoms of PTSD are also associated with Operator Syndrome.[34] Unlike PTSD, however, Operator Syndrome treats such behavioral symptoms as the "natural consequence[] of an extraordinarily high allostatic load," or rather the "accumulation of physiological, neural, and neuroendocrine responses resulting for prolonged chronic stress" and physical demands.[35] Such symptoms are notably closely correlated with a career in the military, specifically with experience in combat-oriented military units.[36] This research and emerging science enforce two key points that bear heavily on the rest of the paper. First, the study of PTSD, specifically the physiological and psychological underpinnings of a PTSD diagnosis, is very much an emerging science.[37] Second, the number of veterans and service members who are at risk of

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27 *Id*.

28 *Id*.

29 *Id*.

30 *Id*.

31 *See* Edgar Jones, *Shell Shocked*, 43 AM. PSYCH. ASSOC. 18, 18 (2012), https://www.apa.org/monitor/2012/06/shell-shocked.

32 *See* Alexander, *supra* note 26.

33 *See generally* Christopher Freuh et al., *"Operator Syndrome": A Unique Constellation of Medical and Behavioral Health-Care Needs of Military Special Operation Forces*, 55 INT'L J. PSYCHIATRY MED. 281 (2020).

34 *Id*. at 287.

35 *Id*.

36 *Id*.

37 Eric B. Elbogen et al., *Violent Behaviour and Post-Traumatic Stress Disorder in US Iraq and Afghanistan Veterans*, 204 BRIT. J. PSYCHIATRY 368, 374 (2014).

stigmatization from PTSD is staggering.[38] According to the Veterans Administration, between eleven and twenty percent of veterans are diagnosed with PTSD.[39] In an estimated population of nearly twenty million veterans and service members, this means that at least four million of them suffer from PTSD. One can only assume the number is event higher, because many service members and veterans who meet the criteria have not sought or may even avoid a diagnosis. Given such a large population of those diagnosed and who potentially could be diagnosed with PTSD, coupled with the risk of continued mis-attribution by judges, lawyers, and larger society between violence and PTSD, it is easy to see why there is a high volume of anecdotal reporting that veterans and service members, with or without PTSD, are dealing with what they perceive is a strong bias against them in family court custody proceedings.[40]

II. THE FACT VERSUS FICTION OF PTSD

PTSD impacts people from all walks of life.[41] According to the American Psychiatric Association, "an estimated one in 11 people will be diagnosed with PTSD in their lifetime."[42] It is by no means unique to veterans and service members.[43] However, a recent June 2021 survey found, "[t]wo-[t]hirds (67%) of Americans believe [that most] veterans [have] PTSD, while three in four (74%) believe [that most] combat veterans [have] PTSD. One in four (26%) believe [patients] with PTSD are violent [or] dangerous."[44]

The public's connection between violent behavior and PTSD has drawn considerable attention as a result of the wars in Iraq and Afghanistan, and so studies have sought to better understand the link.[45] Leading experts from the United States and United Kingdom published a 2014 study in the British Journal of Psychiatry titled, *Violent Behaviour and Post-Traumatic Stress Disorder in*

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38 Haxel, *supra* note 9.

39 *How Common is PTSD in Veterans?*, U.S. DEP'T. OF VETERANS AFFS., https://www.ptsd.va.gov/understand/common/common_veterans.asp (last visited Nov. 20, 2022).

40 Press Release, Katie Sullivan, Cohen Veterans Network, From Symptoms to Treatment, New Survey Reveals Americans' Strong Misconceptions About PTSD (June 3, 2021), https://www.cohenveteransnetwork.org/wp-content/uploads/2021/06/Press-Release-Americas-Mental-Health-Pulse-Survey-PTSD-FINAL-1.pdf.

41 *See* S.B. 1182, 2021–22, Reg. Sess. (Cal. 2022) (discussing the amended language of Section 3040 of Senate Bill 1182).

42 *What is Posttraumatic Stress Disorder (PSTD)?*, AM. PSYCHIATRIC ASS'N, https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd (last visited Nov. 20, 2022).

43 *See* S.B. 1182, 2021–22, Reg. Sess. (Cal. 2022) (discussing the amended language of Section 3040 of Senate Bill 1182).

44 *See* Sullivan, *supra* note 7; Kime, *supra* note 3.

45 Elbogen, *supra* note 37, at 368.

US Iraq and Afghanistan Veterans, providing critical facts and factors that help decouple the simplistic connection made between PTSD and violent behavior.[46] The core finding of the study was that "veterans with PTSD and no alcohol misuse were not statistically more likely to be severely violent compared with veterans with neither PTSD nor alcohol misuse."[47] The study notes that "PTSD may play a less direct and . . . weaker role in violence by veterans than is commonly perceived . . . [and] it was the co-occurrence of PTSD and alcohol misuse that was particularly associated with dramatically increased odds of violent behavior perpetrated by veterans."[48] The study went on to highlight that their "findings also support that risk factors beyond PTSD and alcohol misuse are important in understanding violence and physical aggression in veterans. Other risk factors affecting levels of violence included younger age, combat exposure, financial insatiability and history of violence before military service . . ."[49]

The British Journal of Psychiatry study noted above significantly decouples the connection between PTSD and propensity for violence, noting the need to account for a number of other factors pre- and post-PTSD diagnosis before seeing any correlation between the diagnosis and violence.[50] The study also emphasizes that many factors which on their own without PTSD, such as alcoholism, represent a high correlation with violent behavior.[51] This is an important point because within the context of family court and how the court evaluates parent-child relationships, generalizations that PTSD alone presents a significant risk factor is very likely harmful to a veteran or service member's efforts to seek equitable parenting time or any form of visitation in the event they are not awarded joint physical custody.[52] Any assertion that one has a propensity for violence makes it easy to assume they will commit intimate partner violence/abuse (IPV/IPA).[53] IPV/IPA is a significant factor when we later look at common factors courts weigh when applying the best interest of the child standard, because one who abuses a spouse also has the potential to abuse their child or children.[54] The complex nature of relationships combined with

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46 *Id.* at 372–74.
47 *Id.* at 371.
48 *Id.* at 372–74.
49 *Id.* at 373.
50 *Id.* at 373–74.
51 *Id.* at 373.
52 *See* Haxel, *supra* note 9 (discussing a generalized misperception among Americans that overestimates the number of veterans suffering from severe PTSD); Krasner, *supra* note 5 (discussing a presumption of PTSD in veterans by family court systems).
53 *See* Jennifer L. Hardesty & Grace H. Chung, *Intimate Partner Violence, Parental Divorce, and Child Custody: Directions for Intervention and Future Research*, 55 FAM. RELS. 200, 202–03 (2006).
54 *Id.*

behavioral risk factors and a PTSD diagnosis has led researchers from the National Center for PTSD to appreciate that the link between PTSD and violence requires more close study and "consideration of co-occurring conditions, specific PTSD symptoms and severity of violence."[55] Researchers assess there is a need for "a deeper understanding about the role of PTSD in IPV not only as a risk factor for perpetration but also as a vulnerability factor for victimization."[56] An important and often cited 2015 study is one that reviewed findings from 65 veterans from the wars in Iraq and Afghanistan. The study concluded that "female partners were found to perpetrate higher levels of physical IPA than the male veterans did."[57] The study had Iraq and Afghanistan male war veterans and their female partners report physical IPA, with over 30% of partners in the study self-reporting physically abusing their veteran partner.[58] The study highlights "the finding that the female partners perpetrated more physical IPA than the male veterans indicates clinical efforts should take the time to asses IPA perpetrated by both members of the relationship rather than simply the male veteran."[59] Additionally, the study notes the need to study the IPV/IPA between female veterans and their male partners.[60] Factors seeking to account for this are illuminating, including that "veterans' PTSD symptoms may lead to emotional withdrawal behaviors, and the partners' IPV may represent an effort to elicit engagement and emotion from the veterans."[61] Another key conclusion is that, "[v]eteran combat exposure alone was not significantly correlated with physical or psychological aggression on the part of the veteran or spouse."[62]

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55 *See* Elbogen, *supra* note 37, at 372–73.

56 Gabriel Misca & Mary Ann Forgey, *The Role of PTSD in Bi-Directional Intimate Partner Violence in Military and Veteran Populations: A Research Review*, FRONTIERS PSYCH., Aug. 15, 2017, at 1, 2.

57 *Id.* at 1, 6 (explaining further that "this study is important as it brings evidence that PTSD in Iraq and Afghanistan veterans may act as a risk factor for IPV victimization adding to our understanding of the complex relationship between combat–related PTSD and IPV."); *Intimate Partner Abuse*, UNIV. COL. BOULDER, https://www.colorado.edu/ova/intimate-partner-abuse (last visited Nov. 19, 2022) (defining IPA as Intimate Partner Abuse and that it "occurs in a relationship that is or has been intimate. There is a pattern of one person inflicting emotional or physical pain on another in order to control them. Abuse can take many forms including [sic] verbal, emotional, psychological, physical, sexual, financial, and reproductive.").

58 Adam D. LaMotte et al., *Examining Intimate Partner Aggression Assessment Among Returning Veterans and Their Partners*, 26 PSYCH. ASSESSMENT 8, 9, 11 (2014).

59 *Id.* at 14.

60 *Id.*

61 Adam D. LaMotte et al., *Correlates of Intimate Partner Violence Perpetrated by Female Partners of Operation Iraqi Freedom and Operation Enduring Freedom Veterans*, PARTNER ABUSE, Apr. 2015, at 1, 3.

62 Misca & Forgey, *supra* note 56, at 5.

Clearly, there is significant evidence contrary to the commonly held view that most veterans suffer from PTSD, and those that do suffer from it are violent or have a propensity for violence. PTSD, as clarified in part one of the paper, in and of itself has no direct connection to physical violence.[63] Furthermore, PTSD, in an intimate partner setting may very well be indicative of a dynamic in which the veteran or service member is the victim of physical abuse from their partner.[64] The physiological and psychological underpinnings of the diagnosis are still emerging.[65] To draw a conclusion that one with PTSD has a proclivity to aggression is simply wrong and presents a significant risk to the veteran and service member population who find themselves before a judge in family court.[66]

III. THE PARENT CHILD RELATIONSHIP IS A FUNDAMENTAL CONSTITUTIONAL RIGHT

In the landmark case of *Stanley v. Illinois*, the Supreme Court addressed the equal protection claim of Peter Stanley, who sought custody of his three children upon the death of their mother to whom he was not wed.[67] Illinois law at the time stated, "children of unwed fathers become wards of the State upon the death of the mother."[68] Stanley appealed his case to the Illinois Supreme Court, which accepted that his "own unfitness had not been established but rejected the equal protection claim, holding that Stanley could properly be separated from his children upon proof of the single fact he and the dead mother had not been married [and his] actual fitness as a father was irrelevant."[69] Stanley then appealed to the Supreme Court, whose decision emphasized the strong private interest, "of a man in the children he has sired and raised, undeniably warrants deference and, absent powerful countervailing interest, protection."[70] The Supreme Court, in a five to two majority, reversed the Illinois Supreme Court decision, determining that unmarried fathers had a right to a parental fitness hearing, and could not be deemed unfit parents "without proof of neglect."[71]

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63 *See* Elbogen, *supra* note 37, at 372.

64 *See* Misca & Forgey, *supra* note 56.

65 *See generally Post Traumatic Stress*, COHEN VETERANS BIOSCIENCE, https://www.cohenveteransbioscience.org/post-traumatic-stress/ (last visited Nov. 30, 2022); *see* Alexander, *supra* note 26.

66 *See* Sonya Norman et al., *Research Findings on PTSD and Violence*, U.S. DEP'T OF VETERANS AFFS., https://www.ptsd.va.gov/professional/treat/cooccurring/research_violence.asp#one (last visited Nov. 30, 2022).

67 Stanley v. Illinois, 405 U.S. 645, 646 (1972).

68 *Id*.

69 *Id.* at 646–47.

70 *Id.* at 651.

71 *Id.* at 658.

Justice White also emphasized the Illinois State statute "insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than to prove."[72]

In a more recent case, *Troxel v. Granville*, the Supreme Court again solidified the parent-child relationship as a fundamental right.[73] The case dealt with third party visitation as grandparents Jennifer and Gary Troxel sought visitation rights of their two grandchildren following the death of their son Brad.[74] Brad Troxel and Tommie Granville – who were unmarried – had two daughters.[75] Brad "regularly brought his daughters to his parents' home for weekend visitation," as Brad lived with his parents rather than Ms. Granville.[76] A Washington state court, under the state's best interest of the child standard, overturned Ms. Granville's decision to deny Jennifer and Gary Troxel visitation rights following Brad's suicide in 1993.[77]

The Washington statute's test stated, "'[a]ny person may petition the court for visitation rights at any time,' and the court may grant such visitation rights whenever 'visitation may serve the best interest of the child.'"[78] Justice O'Connor, in a six to three decision, wrote that the Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," including "the fundamental right of a parent to make decisions concerning the care, custody, and control of their children."[79] The decision notes the presumption that, "fit parents act in their children's best interests . . . [and] there is normally no reason for the State to inject itself into the private realm of family to further question [a] fit parent's ability to make the best decisions regarding their children."[80] The court went on to define a fit parent as one that "adequately cares for his or her children."[81] The decision in *Troxel* also noted strict scrutiny was the appropriate standard by which to review the state statute, and that Washington lacked a "compelling [interest] in second-guessing a fit parent's decision regarding visitation with third parties."[82]

Stanley v. Illinois and *Troxel v. Granville* highlight the fundamental right a parent has to a relationship with their children and also that state child custody

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72 *Id.*
73 Troxel v. Granville, 530 U.S. 57, 72 (2000).
74 *Id.* at 61–62.
75 *Id.* at 60.
76 *Id.*
77 *Id.*
78 *Id.* at 67.
79 *Id.* at 65–66.
80 *Id.* at 58.
81 *Id.* at 68.
82 *Id.* at 80 (Thomas, J., concurring).

statutes may elicit procedural due process arguments.[83] The deprivation of a liberty interest through substantial infringement of a fundamental constitutional right necessitates application of the *Mathews v. Eldridge* three-part test. In *Mathews*, the Supreme Court heard a case regarding social security disability benefits and the extent to which a recipient of those benefits is due an in-person hearing before denial of those benefits.[84] Justice Powell, in his majority opinion, articulates the three-part test based on the context that "due process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place, and circumstances . . . [it] is flexible and calls for such procedural protections as the particular situation demands."[85] He specified that,

> due process generally requires consideration of three distinct factors: First the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[86]

The respondent in the case requested an evidentiary hearing prior to any decision to terminate his disability payments, even though such a hearing was not required by the administrative procedures prescribed.[87]

Deprivation of a liberty interest through substantial infringement of a fundamental constitutional right requires an analysis of due process requirements and specifically what level of due process one is to be afforded before such substantial infringement can occur.[88] The Fifth Amendment of the Constitution states that no person is to be "deprived of life, liberty, or property without due process of law,"[89] and the Fourteenth Amendment states, "nor shall any State deprive any person of life, liberty, or property, without due process of law."[90] Understanding the requirements of the *Matthews v. Eldridge* balancing test combined with the fundamental right that is the child-parent relationship enables us with the necessary context when evaluating if custody statutes provide a service member or veteran due process when PTSD or the specter of

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83 Stanley v. Illinois, 405 U.S. 645, 651 (1972); Troxel, 530 U.S. at 65–66 (first citing Washington v. Glucksberg, 521 U.S. 702, 719 (1997); then citing Stanley v. Illinois, 405 U.S. 645, 651 (1972)); Troxel, 530 U.S. at 68 (quoting Parhman v. J.R., 442 U.S. 584, 602 (1979)).

84 Mathews v. Eldridge, 424 U.S. 319, 334–35 (1976).

85 *Id.* at 334.

86 *Id.* at 334–35.

87 *Id.* at 325.

88 *Id.* at 333

89 U.S. CONST. amend. V.

90 U.S. CONST. amend. XIV, § 1.

PTSD is cited in their efforts for a fair custody arrangement.

In transitioning to part four, please keep at the forefront the following three key points from part three:

> **1:** The parent-child relationship is a fundamental right.[91]
>
> **2:** Substantial infringement upon this fundamental constitutional right may be a deprivation of an individual's liberty interest.[92]
>
> **3.** How state family courts weigh PTSD in the overall best interest of the child standard is entering into the space of erroneous deprivation by over asserting that a PTSD diagnosis in and of itself presents a risk to children warranting negative impact on a veteran or service members request for custody or parenting time.[93]

IV. STATE LAW AND BEST INTEREST OF THE CHILD STANDARD

Family law resides in the domain of state courts primarily based on the Tenth Amendment, which states "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."[94] This has led to what a "domestic relations exception" which prohibits federal courts from becoming involved in family law issues that are deemed to be within the authority of the states.[95]

While state child custody statues will vary, within those statutes is the "best interests of the child" standard.[96] This standard will vary across jurisdictions, however, there are common factors that exist amongst them, as noted in section 402 of the Uniform Marriage and Divorce Act (UMDA).[97] The UMDA is a model code and serves as a guide for states from which they can formulate their own best interest of the child standard.[98] Section 402 of the UMDA states:

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91 *See* Troxel v. Granville, 530 U.S. 57, 65 (2000).

92 *Id.* at 65, 67.

93 Throughout this legal note I have identified that the parent-child relationship is a fundamental constitutional right. I pose that depriving or altering a military veteran or service member's parenting time solely on account of a false assertion one with PTSD presents a risk to their child or children can be argued as entering into the space of erroneous deprivation.

94 U.S. CONST. amend. X.

95 Emily J. Sack, *The Domestic Relation Exception, Domestic Violence, and Equal Access to Federal Courts, Partners*, 84 WASH. UNIV. L. REV. 1441, 1450 n.27 (2006).

96 Jennifer Wolf, *Child's Best Interest in Custody Cases*, VERYWELL FAM., https://www.verywellfamily.com/best-interests-of-the-child-standard-overview-2997765 (June 23, 2021).

97 Steven N. Peskind, *Determining the Undeterminable: The Best Interest of the Child Standard as an Imperfect but Necessary Guidepost to Determine Child Custody*, 25 N. ILL. L. REV. 449, 458 (2005).

98 *See* UNIF. MARRIAGE & DIVORCE ACT § 402 (1970) (amended 1973).

> The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including: (1) the wishes of the child's parent or parents as to his custody; (2) the wishes of the child as to his custodian; (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest; (4) the child's adjustment to his home, school, and community; and (5) **the mental and physical health of all individuals involved.** The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.[99]

It is often factor (5), which presents veterans and service members with PTSD or dealing with an assertion they have PTSD the most significant hurdle in seeking custody or parenting time of their children.[100] In assessing any of the best interest of the child standards, Harvard Law professor and scholar Robert Mnookin states,

> [B]ecause what is in the best interests of a particular child is indeterminate, there is good reason to be offended by the breadth of power exercised by a trial court judge in the resolution of custody disputes. But the underlying reasons for this indeterminacy—our inability to make predictions and our lack of consensus with regard to values-make the formulation of rules especially problematic.[101]

He concludes in his 1975 article, *Child Custody Adjudication: Judicial Framework in the Face of Indeterminacy*, that "what is best or least detrimental for a particular child is usually indeterminate and speculative. For most custody cases, existing psychological theories simply do not yield confidence in prediction of the effects of alternative custody dispositions."[102] Additionally, Professor Mnookin acknowledges that "while psychiatrists and psychoanalysts have at time been enthusiastic in claiming for themselves the largest possible role in custody proceedings, many have conceded that their theories provide no reliable guidance for predictions about what is likely to happen to a particular child."[103] In returning to his points four decades later, Professor Mnookin reaffirms what he posited in his earlier work that "[p]resent-day knowledge about human behavior provides no basis for the kind of individualized predictions required by the best-interests standard."[104]

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99 UNIF. MARRIAGE AND DIVORCE ACT § 402 U.L.A. (1973) (emphasis added).

100 Evan R. Seamone, *Improved Assessment of Child Custody Cases Involving Veterans with Posttraumatic Stress Disorder*, 50 FAM. CT. REV. 310, 314–15 (2012).

101 Robert H. Mnookin, *Child Custody adjudication: Judicial functions in the Face of Indeterminacy*, 39 LAW & CONTEMP. PROBS. 226, 230 (1975).

102 *Id*. at 229.

103 *Id*. at 258–59.

104 Robert H. Mnookin, *Child Custody Revisited*, 77 LAW & CONTEMP. PROBS. 249, 250 (2014).

He cites the work of colleagues Elizabeth Scott and Robert Emery, who go as far as to state, "the legal systems confidence in the best-interest standard rests on a misplaced faith in the ability of psychologists and other mental-health professionals to evaluate families and advise courts about custodial arrangements that will promote children's interests."[105] The core takeaway from these articles is that the best interest of the child standard presents the judge with a great deal of discretion, and gives the impression that there is an optimal decision with respect to child custody where there is not.[106] The best interest of the child standard, though the predominant method, is one of three theories or methods that have been used in family courts to help determine child custody arrangements.[107] The second, now defunct theory is the primary caretaker preference, which though gender neutral, created argument over who was the primary caretaker and generated more custody litigation.[108] It is mentioned here solely to provide context as to one of the methods by which custody has been determined in the past, but is not a method this paper considered in offering solutions to the issue raised by a PTSD diagnosis in family court. The third is the presumption of joint custody, which is generally the even distribution of parenting time, and based on the presumption that joint custody is in the best interest of the child.[109]

Professor Elizabeth Scott's approximation standard, adopted by the American Law Institute, seeks to award parenting upon the basis of past caretaking.[110] Ultimately, despite the significant issues presented by the best interest of the child standard, it remains the primary method by which child custody is determined.[111] Thus, child custody is "the remaining 'fault' battlefield."[112]

> The temptation for viciousness is surely increased when the odds are heightened by narrow restriction of the possible outcomes; it strains human capacities to trust a spouse accorded custody in such a context voluntarily to permit her former spouse's relationship with their child to continue. Law may not influence human behavior much; but when it places an efficient instrument for revenge at hand, it is hard to believe the instrument will not be used and feared, with unfortunately

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105 Elizabeth Scott and Robert Emery, *Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interests Standard*, 77 LAW & CONTEMP. PROBS. 69, 71 (2014).

106 *Id*.

107 *Id.* at 69, 71, 76.

108 Marygold S. Meli, *The American Law Institute Principles of Family Dissolution, the Approximation Rule and Shared Parenting*, 25 N. ILL. UNIV. REV. 347, 352 (2005).

109 *Id.* at 351–52.

110 *Id.*

111 Scott, *supra* note 105, at 69.

112 Joanna B. Strauss & Peter Strauss, *Beyond the Best Interests of the Child*, 74 COLUM. L. REV. 996, 1003–04 (1974).

predictable impact on litigation incidence and character.[113]

PTSD or the assertion that a veteran or service member has PTSD presents a fault instrument by which the best interest of the child standard calculation can be turned against the service member and can become an insurmountable barrier.[114] Not because the PTSD diagnosis presents risk to the child or is by any means a predictor of future caretaking ability of the service member or veteran parent or well-being of the child, but only for the reason that the standard allows judges a high degree of discretion.[115] This discretion operates in a context informed by misunderstandings and openly false narratives surrounding the PTSD diagnosis and its misattribution as a direct cause of violent behavior, identified, *supra*, in parts one and two of this paper.[116] The result is judicially awarded custody arrangements, which do not favor the service member or veteran with an actual, or asserted, PTSD diagnosis, nor do they necessarily represent the best interest of the child.[117] This is indicative of State intervention that is unjustified because such intervention is reserved for when a parent endangers the welfare of the child, not when the parent is diagnosed with a mental health disorder for which a diagnosis alone presents no risk of violence, especially when reviewed under the context of past behavior and care taking which has no history of abuse or violence.[118] Such intervention, as stated by Joseph Goldstein in his work *Beyond Best Interests of the Child*, results in disruption of 1) relationships and their continuity, 2) continuity of surroundings and 3) continuity of environmental influences which harms children.[119] Technological advancements in artificial intelligence have aided doctors in developing a blood test to screen for PTSD with "77 percent accuracy…in male combat veterans."[120] As discussed in part one, improving medical technology is identifying the physiological underpinnings of PTSD. Objective screenings,

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113 *Id.* at 1004.

114 Seamone, *supra* note 100, at 320.

115 *Id.*

116 Eric Elbogen et al. *Violent Behavior and Post-Traumatic Stress Disorder in US Iraq and Afghanistan Veterans*, 204 BRIT. J. OF PSYCH., 368, 373–74 (2014); COHEN VETERANS NETWORK, *Americans' Strong Misconception on PTSD Revealed*, June 3, 2021, https://www.cohenveteransnetwork.org/wp-content/uploads/2021/06/Press-Release-Americas-Mental-Health-Pulse-Survey-PTSD-FINAL-1.pdf (last visited November 21, 2022).

117 Seamone, *supra* note 100, at 311.

118 Harry Krause et al., FAMILY LAW: CASES, COMMENTS, AND QUESTIONS, 572 (8th ed. 2018).

119 *Id.* (citing to JOSEPH GOLDSTEIN ET AL. BEYOND BEST INTEREST OF THE CHILD, 31–32 (2d ed. 1979)).

120 Greg Willians, *Experimental Blood Test may accurately Screen for Post-traumatic Stress Disorder*, NYU LANGONE HEALTH NEWS HUB (Sept. 10, 2019), https://nyulangone.org/news/experimental-blood-test-may-accurately-screen-post-traumatic-stress-disorder (last visited November 21, 2022).

such as a blood test, will soon allow for a veteran or service member to determine if they do or do not have PTSD and either seek treatment in the event they do or defend against an accusation lodged in family court in the event they do not.

V. THE CASE OF MARINE VETERAN DAVID CARLSON, A FAILURE OF PROCEDURAL DUE PROCESS IN FAMILY COURT.

David Carslon is a former Marine and veteran of the Iraq war.[121] David served a total of three combat tours of duty to Iraq as a Marine Corps infantryman between 2002 and 2007.[122] Married in 2006, he and his former spouse welcomed the birth of their twin girls a year later.[123] The marriage was short lived and, following a period of separation, they divorced in Ramsey County, Minnesota in 2012.[124] Their 2012 divorce decree "provided for joint legal and physical custody of the couple's then twin five-year-old daughters, with roughly equal parenting time."[125] In 2014, David's former spouse filed for a "harassment restraining order (HRO) with the Tenth Judicial District Court for Anoka County, Minnesota."[126] Disagreements related to their co-parenting efforts became more frequent, culminating in the HRO and request by his former spouse in family court for sole custody of children.[127] The former spouse made accusations of physical and emotional abuse in support of the request for an HRO.[128] David agreed to a telephonic interview with me on January 21, 2022. In that interview, he discussed the HRO. David insisted the accusations were false and also that they were filed in a calculating manner so as to generate the HRO immediately before his former spouse petitioned for full custody of the children.[129] He assessed the HRO combined with his veteran status created a strong perception and bias that he suffered from issues with emotional regulation and was violent in nature.[130] He clarified that in fact he had, and still to this day has, no record of violence, had an impeccable military service record, had served as a substitute high school teacher, and had co-parented for over seven years at

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121 FOX 9, *Supra* note 12; I came across the story of David Carlson in the fall of 2021 when seeking stories of Veterans or Service members negatively impacted by the assertion they had PTSD on their child custody arrangement.

122 FOX 9, *Supra* note 12.

123 *Id.*

124 Carlson v. Cnty. of Ramsey, Civ. No. 16-765, 2016 WL 3352196, at *1 (D. Minn. June 15, 2016).

125 *Id.*

126 *Id.*

127 *Id.* at *1–2.

128 *Id.*

129 Telephone Interview with David Carlson (Jan. 21, 2022).

130 *Id.*

the time the HRO was granted.[131]

David, in response to the HRO, immediately filed for additional parenting time, but he and his former spouse entered into mediation and reached agreement that she would dismiss the HRO if he dismissed his request for additional parenting time.[132] Soon thereafter, in June 2015, his former spouse sought sole custody of the twins.[133] The court appointed a *guardian ad litem* (GAL) to conduct an investigation over a six-month period, which included a review of all mental health records of the parties involved.[134] The GAL presented a number of concerns in her report and asked that David's parenting time be limited to supervised visitation once a week, that he voluntarily release all of his mental health records, and submit to ninety days of additional review.[135] The GAL focused on need to obtain David's mental health records and to conduct a psychological evaluation of him.[136] In February 2016, the GAL issued a report to the trial court judge that David refused to provide his mental health records.[137] Soon after, David provided a comprehensive psychological evaluation from PTSD expert and Surgeon General for Veterans of Foreign Wars (VFW), Dr. James Tuorila.[138] Dr. Tuorila's evaluation was highly favorable to David, diagnosing him with "anxiety disorder, mild depression and residuals of multiple concussions, and opined that '[David's] parenting rights resume immediately because he is and can continue to be a good father and role model for his children.'"[139]

Dr. Tuorila's report was rebuffed by the GAL for what court records state as "perceived deficiencies," but included no details about those alleged deficiencies.[140] The judge ordered that David release all of his mental health records if he wanted to be able to see his children.[141] The judge stated she was "concerned…whether [he] [had] some mental health issues as a result of the traumatic stress [he] endured."[142] David refused to release any more records stating, "the evaluation from Dr. James Tuorila stood for itself."[143] David was

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131 *Id.*
132 *Id.*
133 Carlson v. Cnty. of Ramsey, Civ. No. 16-765, 2016 WL 3352196, at *2 (D. Minn. June 15, 2016).
134 *Id.*
135 *Id.* at *3.
136 *Id.*
137 *Id.*
138 *Id.*
139 *Id.*
140 *Id.*
141 *Id.* at *2; FOX 9, *supra* note 12.
142 FOX 9, *supra* note 12.
143 Telephone Interview with David Carlson (Jan. 21, 2022).

eventually denied all visitation in 2017.[144] During the January 22, 2022 interview, he went on to explain that after being denied visitation he eventually worked with the court, providing it all of his mental health records, and met with a court-appointed psychologist for nearly three years from 2017 through 2020.[145] David noted that the court-appointed psychologist provided the same assessment that Dr. Tuorila had back in 2016.[146] As a result, supervised visitation sessions between he and his twin daughters began in 2021 with the possibility of parenting time being re-established.[147] His former spouse then petitioned the family court to allow her to move the children with her and her new spouse to Texas.[148] According to David, the family court judge stated he found nothing that would keep David from resuming his parenting time, but deferred to the twin girls and if they wanted to move or remain in Minnesota and resume parenting time with their father.[149] By this time, David had been effectively separated from his twin daughters for nearly six years.[150]

It was not a surprise to David that his daughters chose to move with their mother and stepfather in 2021.[151] The close relationship he had with his daughters prior to the HRO was fundamentally changed as a result of the prolonged court proceedings.[152] He is convinced that the court's continued assertion that he had service-related mental health issues biased its ruling that he was unfit to parent and subjected him to significant hurdles to disprove their assertions.[153] By the time he surmounted these hurdles, it was far too late; the children had moved on.[154] In speaking with David, it was evident he fought for the chance to see his girls again, but the amount of time it took to surmount all these obstacles is something no child can really understand and this point came up often in the interview.[155] One can only imagine what a child is left to think when a parent who was always present suddenly is not. What can a parent do or say to ever explain such a drastic and immediate change? In speaking with David, one can hear the pain and sense of loss he feels as well as the hope that one day in the future he can reconnect with his daughters. It is a pain and sense of loss this author has listened to far too often from countless veterans and

144 *Id.*
145 *Id.*
146 *Id.*
147 *Id.*
148 *Id.*
149 *Id.*
150 *Id.*
151 *Id.*
152 *Id.*
153 *Id.*
154 *Id.*
155 *Id.*

service members.

Minnesota Statute 518.17 describes the state's best interests of the child standard (BIOC). Similar to Section 402 of the UMDA, it takes into consideration any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs.[156] In David Carlson's case, both the judge and the GAL prematurely asserted that his service had traumatized him, and required he be evaluated by a court-appointed psychologist and provide all his mental health records to determine his fitness to parent.[157] What is difficult to understand with respect to the family court's application of the BIOC, is that:

> 1) David Carlson received a favorable report in February 2016 from Dr. Tuorila, a leading expert in PTSD, who determined Mr. Carlson did not suffer from PTSD and whose parenting time should immediately be re-initiated.[158]
>
> 2) David Carlson did not have a record of domestic violence, drug or alcohol abuse, and at the time his parenting was restricted in 2016, he had over nine years of a successful and healthy parent-child relationship.[159]

The seeming disparity between the record and the outcome evokes part four of this paper and a remark of Dr. Mnookin, "because what is in the best interests of a particular child is indeterminate, there is good reason to be offended by the breath of power exercise by a trial court judge in the resolution of custody disputes."[160] It is clear that in this case there was a significant over-reliance on the GAL's assessment, who did not rely on facts regarding David Carlson's mental health, instead over-emphasizing the need for his entire mental health record and discounting a favorable psychological assessment from Dr. Tuorila.[161]

If we appreciate the fundamental constitutional right reflected in the parent-child relationship, it is difficult for this author to understand what more David Carslon could have done to advocate for his right to a parent-child relationship with his daughters. David Carlson's experience is likely being repeated every day by veterans and service members in each state across the United States. We know from *Mathews v. Eldridge* that first we must assess the private interest that

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156 Custody and Support of Children on Judgment, MINN. STAT. § 518.17 (2021); UNIF. MARRIAGE AND DIVORCE ACT, 42 U.S.C. § 402.

157 Carlson v. Cnty. of Ramsey, Civ. No. 16-765, 2016 WL 3352196, at *3 (D. Minn. June 1, 2016).

158 *Id*.

159 Telephone Interview with David Carlson (Jan 21, 2022); Carlson v. Cnty. of Ramsey, Civ. No. 16-756, 2016 WL 3352196, at *1, *4 (D. Minn. June 15, 2016).

160 Mnookin, *supra* note 101, at 230.

161 Carlson, 2016 WL 3352196, at *3.

will be affected if there is no action, and in cases dealing with child custody, the private interest is very high.[162] Second, we assess the risk of erroneous deprivation based on the procedures currently in use.[163] In reflecting on David Carslon's experience, one can argue that additional procedures are necessary to safeguard a veteran or service member before they are required to prove their mental health fitness. This is especially true when there is only an assertion that the veteran or service member is dealing with combat-related trauma, but there is no evidence it has manifested as a risk to the individual, their children, or others. David Carlson pursued an education, parented his children for nine years, and then found himself effectively alienated from them because a court asserted his combat experience and associated trauma needed to be assessed. That arguably unnecessary assessment, which took the better part of five years, recognized he was not a risk. Unfortunately, by that point his parent-child relationship was irreversibly damaged and fundamentally ceased to exist. In the case of family court proceedings, this author assesses the first two parts of the test weigh substantially in favor of the veteran or service member parent. The third part of *Mathews v. Eldridge* due process test asks what additional cost the government would absorb if there were an additional procedural requirement and to determine if the benefit outweighs the cost.[164] It is this author's recommendation that adding an additional step within the family court process to establish set criteria for when a service member or veteran's service-related mental health diagnosis can come into the BIOC analysis would not create additional expense, but instead clarify and simplify the requirements for use of such diagnoses. This paper will further explore both legal and policy options to address this issue in part six. Here we consider the idea that a service-related mental health diagnosis only be applicable to proceedings if there is any officially confirmed and documented history of:

> 1) violence (domestic, child abuse, criminal), and/or
>
> 2) alcohol or drug abuse, and/or
>
> 3) military discharge which is specifically other than honorable, which is "the most severe type of military administrative discharge and "include[s] security violations, use of violence, [and] conviction by a civilian court . . . ."[165]

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162 Mathews v. Eldridge, 424 U.S. 319, 336 (1976).

163 *Id*.

164 *Id*.

165 G.I. JOBS, *What You Need to Know About Other-Than-Honorable Discharge*, (last visited April 2, 2021), https://www.gijobs.com/what-you-need-to-know-about-other-than-honorable-discharge/#:~:text=Other%2DThan%2DHonorable%20Conditions%20Discharge&text=In%20most%20cases%2C%20veterans%20who,through%20this%20type%20of%20discharge.

These represent the key corollary factors discussed in part two that contribute to violent behavior when coupled with a PTSD diagnosis.[166] Absent these facts, there is a "less direct and somewhat weaker role in violence by veterans than is commonly perceived."[167] These corollary factors in conjunction with a service-related mental health diagnosis raise the risk factor, specifically if the veteran or service member is suffering from PTSD.[168] This would then meet the requirement for the diagnosis to be considered when evaluating BIOC.

VI. DATA SURVEY METHODOLOGY AND RESULTS

This paper presents a methodology to both define the problem veterans and service members are experiencing in family court on account of their service as well as quantify the problem. The assertion made in family court that a veteran or service member's PTSD diagnosis presents a risk to their children, negatively impacts child custody and parenting time determinations.[169] In an effort to develop a small data set, a survey of twenty-seven questions was distributed through the website "warriorfamiliyadvocacy.com" with the intent to gather responses from veterans or service members on their experience with the family court system.[170] The questionnaire may be submitted anonymously or respondents can provide contact information if they are open to further inquiry. The questions are focused on identifying if PTSD was used in family court proceedings and the impact of the diagnosis, or the assertion of a diagnosis, on the custody arrangement. The questions are as follows:

> **Q1:** Prefer to Remain Anonymous? Yes or No
>
> **Q2:** If you answered No to Question 1, please provide preferred method of contact: email address or phone number and please provide the specific email address or phone number
>
> **Q3:** Have you had a child custody case while in the Military Service or since leaving the Service. Yes or No
>
> **Q4:** Do you feel your military service history was used against you in your child custody case? Yes or No
>
> **Q5:** If you answered yes to Q4, please select from one of the following options:
>
> Option 1 Denial of parenting time

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166 Eric B. Elbogen et al., *Violent Behavior and Post-Traumatic Stress Disorder in US Iraq and Afghanistan Veterans*, BRIT J. OF PYSHC. 368, 373 (2014).

167 *Id*. at 372.

168 *Id*. at 373.

169 Seamone, *supra* note 100, at 317.

170 Erhan Bedestani, *Warrior Family Advocacy Survey*, https://www.warriorfamilyadvocacy.com/questionnaire (Jan. 18, 2022).

Option 2 Reduction of requested parenting time

Option 3 Denial of Full Custody

Option 4 Denial of Joint Custody

Option 5 Other

Q6: If selected Option 5 "Other" in Q5, please explain:

Q7: Was a protection order ever issued against you? Examples are Temporary Restraining Order, Harassment Order, No Contact Order? Yes or No

Q8: If you answered Yes to Q7, please feel free to explain details regarding the order and circumstances that led to it.

Q9: Was your Military Service or Veteran Status introduced to impact your effort for child custody? Yes or No

Q10: If Yes to Q9, please explain how.

Q11: Was PTSD and or Service Related Trauma cited in your child custody case in a manner that negatively impacted your child custody case? Yes or No

Q12: If Yes to Q11, please explain how:

Q13: Q13: Are you receiving compensation from the VA for PTSD? Yes or No

Q14: Did you suffer financial hardship or homelessness as a result of your child custody legal battle? Yes or No

Q15: If Yes to Q14, please explain.

Q16: Do you feel that your parenting time has been unfairly limited as a result of your military service or PTSD diagnosis?

Q17: If Yes to Q16, please explain

Q18: Have you been alienated from your child as a result of child custody legal battle in which your Military Service or PTSD diagnosis was used against you? Yes or No

Q19: If Yes to Q18, please explain

Q20: Has you mental health been impacted by your custody battle?

Q21: If Yes, please explain:

Q22: Has your physical health been impacted? Yes or No

Q23: If Yes, please explain:

Q24: Do you know a Veteran or Service member who has contemplated suicide because of losing custody of their children on account of their Service or PTSD?

Q25: If Yes to Q24 please explain:

Q26: Are you willing to share more about your specific case? Yes or No

Q27: If Yes, please provide best email or phone number to contact you.

In total, 18 service members and veterans responded to the survey including this author. Key insights from the questionnaire are that over half the responses to question nine were "yes."[171] In question ten, responses ranged from the service members and veterans saying their parenting was called into question because of deployments to PTSD being cited as a reason to deny both custody and visitation.[172] Nearly half of the respondents answered "yes" to question eleven and their responses ranged from describing how opposing counsel created a perception that they were dangerous because they had been in combat to specific use of their PTSD diagnosis to argue denial of their parenting time.[173] Only six of the 18 respondents receive compensation from the Veterans Administration for PTSD.[174] Ten of the respondents said they felt their parenting time has been unfairly limited as a result of their military service or PTSD diagnosis.[175] Six of the 18 answered "yes" to question eighteen and over half said their physical and mental health has been impacted by their custody battle.[176] Most distressing was that nearly half said they know a veteran or service member who has contemplated suicide because of losing custody of their children on account of their Service or PTSD.[177] One respondent noted they had lost five friends to suicide because of this issue.[178]

VII. POLICY AND LAW RECOMMENDATIONS TO ADDRESS THE ISSUE

Through Sections One to Five above, I have sought to define problems veterans face in family court and provide, through the case of David Carlson, a specific vignette of how assertion of PTSD may impact child custody and parenting-time determinations.[179] This section seeks to provide recommendations to address legal and policy issues contributing to victimization of veterans and service members in family court child custody and parenting time proceedings.

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171 *Id.*
172 *Id.*
173 *Id.*
174 *Id.*
175 *Id.*
176 *Id.*
177 *Id.*
178 *Id.*
179 FOX 9, *supra* note 12.

A. Recommendation to Address Legal Error

The assertion of PTSD or proof of PTSD without other factors present should not be considered as part of the overall best interest of child standard analysis. Relying on the research noted in Section Two of the paper, a recommendation is that only when the service member or veteran has 1) a previous domestic violence charge for physical abuse or 2) documented abuse of drugs or alcohol with no current treatment on file, or 3) a statement from service member or veteran's medical care provider that they are specifically unfit to parent**,** or 4) an other than honorable discharge, or 5) existing criminal record for violent offense should the judge take into consideration a PTSD diagnosis. If a veteran or service member is diagnosed with PTSD and also exhibits one or more of the five attributes listed (a PTSD Plus requirement) is the court to take into consideration a PTSD diagnosis in evaluating the service member or veterans fitness to parent. Shy of this, PTSD or the assertion of PTSD is not be considered in BIOC analysis.

At the time this note was being drafted in Spring 2022, California State Senator Susan Eggman of the 5th Senate District introduced a draft amendment in the form of Senate Bill 1182, which requires California courts to "state its reasons for the finding and the evidence relied upon in writing or on the record," if mental health illness of a parent is a factor when determining the best interest of the child.[180] SB 1182 was signed in to California state law by Governor Gavin Newsom on September 17, 2022. Below is the amended version of Senate Bill 1182 from April 18, 2022. This version identifies added and deleted language during the drafting process. Light blue text reflects additions and lined out red text reflect deletions. The light blue text became part of the final approved bill, while the red text was omitted. SB 1182 was first introduced on February 17, 2022 and evolved in drafting from explicitly stating a court "shall not consider a history of or current mental illness of a parent, legal guardian, or relative in determining the best interest of the child under subdivision (a) absent a finding by the court that the….history of mental illness would make them unsuitable and unable to provide adequate and proper care and guidance for the child."[181] It now reads that "if a court finds that the effects of a parent's, legal guardian's, or relative's history of or current mental illness are a factor in determining the best interest of the child under subdivision (a), the court shall do both of the following: (A) Provide the parent, legal guardian, or relative with a list of local

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180 Act of Sept. 17, 2022, ch. 385, §3(d)(1)(B), 2021-22 Cal. Stat. 93 (Cal. 2022) (amending family law statute: section 3040 to the Family Code).

181 Act of Sept. 17, 2022, ch. 385, §3(d)(1), 2021-22 Cal. Stat 93 (Cal. 2022) (history of parental, mental illness in child-custody decisions).

resources for mental health treatment…[and] (B) State its reasons for the finding and the evidence relied upon in writing or on the record."[182]

SEC. 3. Section 3040 of the Family Code is amended to read:

3040.

(a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Sections 3011 and 3020. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody under subdivision (a).

(c) The court shall not consider the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative in determining the best interest of the child under subdivision (a).

(d)~~(1)Commencing January 1, 2024, the court shall not consider a history of or current mental illness of a parent, legal guardian, or relative in determining the best interest of the child under subdivision (a) absent a finding by the court that the parent, legal guardian, or relative's history of mental illness would make them unsuitable and unable to provide adequate and proper care and guidance for the child.~~

(2)~~A court that makes a finding described in paragraph (1) shall do both of the following:~~

(d) (1) Commencing January 1, 2024, if a court finds that the effects of a parent's, legal guardian's, or relative's history of or current mental illness are a factor in determining the best interest of the child

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182 Act of Sept. 17, 2022, ch. 385, §3(d)(1)(B), 2021–22 Cal. Stat 93 (Cal. 2022) (updated verbiage of family law statute: section 3040 to the Family Code).

under subdivision (a), the court shall do both of the following:

(A) Provide the parent, legal guardian, or relative with a list of local resources for mental health treatment.

(B)~~Make a written statement on the record how the person's mental illness factored into the judge's ruling.~~

(3)

(B) State its reasons for the finding and the evidence relied upon in writing or on the record.

(2) Nothing in this subdivision prohibits a court from considering ~~violence, even violence~~ *violence or abuse, even violence or abuse* as a result of mental illness, from determining the best interest of the child.

(3) For purposes of this subdivision "mental illness" means a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the state.

(e) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child, consistent with this section.

(f) In cases where a child has more than two parents, the court shall allocate custody and visitation among the parents based on the best interest of the child, including, but not limited to, addressing the child's need for continuity and stability by preserving established patterns of care and emotional bonds. The court may order that not all parents share legal or physical custody of the child if the court finds that it would not be in the best interest of the child as provided in Sections 3011 and 3020.[183]

Senator Eggman's state legislation highlights California's effort to balance how mental health illness is addressed in family court proceedings and requires judges to go on the record and state with a degree of specificity the reasons why a parent's mental health is, or was, a factor in determining best interest of the child.[184] Although Section 3 is not specific to veterans or service members, Section 1 of the SB 1182 notes the specific risk in the form of bias and stigma veterans with mental health illness face.[185] SB 1182, in this author's opinion,

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183 Act of Sept. 17, 2022, ch. 385, §3(a–f), 2021–22 Cal. Stat 93 (Cal. 2022).

184 *See* Act of Sept. 17, 2022, ch. 385, §3(d)(1), 2021–22 Cal. Stat 93 (Cal. 2022) (amending family law statute: section 3040 to the Family Code).

185 Cal. S. Bill 1182, 2021-2022 LEGISLATIVE COUNSEL'S DIGEST, ch. 385, §

provides an example of how states can amend existing family law statutes to improve procedural due process. A version of SB1182 adopted by Minnesota could have made a difference in David Carlson's case, because the judge would have had to write on the record the specific facts and evidence used to determine why David Carlson's mental health was a key factor in the custody determination. This would present a body of evidence that appellate court judges could review under the clearly erroneous standard, as opposed to relying on the discretion of the judge in case.[186] Section 1 of SB 1182 also deserves attention for the notable legislative findings which serve as the underpinning for the law. Section 1 explicitly states, "having a mental health disorder, including a service-linked disorder, does not inherently make you more violent…[and] a mental health disorder should not be used as a sole predictor of future violence."[187]

Another recommendation is that if PTSD is noted as an issue requiring additional court review, that the court place children under care of selected third party so as to ensure that the child or children are safe and that neither parent is accruing parenting time as the court appointed GAL conducts review and provides a recommendation to the court. This recommendation will better ensure that the process to evaluate all parties is done expeditiously. More expeditious review is important to a serving service member because those on active duty are routinely reassigned every three years to another stateside or overseas assignment, and the military does not have a specific provision to allow the service member to remain on location until the custody determination is rendered.[188] Current anecdotal evidence notes a propensity for family courts to immediately reduce or enjoin a Service member or veterans time when PTSD is asserted by opposing party or the court.[189] This has the potential to, and likely does, condition children of veterans and service members to think their military parent is dangerous after what were many years of healthy parenting.[190] Without the benefits of state legislation like SB 1182, one can argue fewer veterans and

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3040(d)(1)(B), at 3.

186 Unites States v. U.S. Gypsum Co., 33 U.S. 364, 394–95 (1948).

187 *See* Act of Sept. 17, 2022, ch. 385, §1(d)–(e)(1), 2021–22 Cal. Stat 93 (Cal. 2022) (legislative findings described in advance of amended family law statute: section 3040 to the Family Code); *See* Act of Sept. 17, 2022, ch. 385, §1, 2021–22 Cal. Stat 93 (Cal. 2022) (SB 1182 section 1 serves as a listing of key facts which seek to decouple mental health fact from fiction and though not explicitly stating PTSD, acknowledges the issues Veterans and service members are facing in family court from the stigma that comes with mental health disorders in family court.).

188 Patricia Tong et al., *Enhancing Family Stability During a Permanent Change of Station: A Review of Disruptions and Policies*, 1 RAND CORP., 1 (2018).

189 *See* FOX 9, *supra* note 12.

190 Katrin Schuy et al., *Stigma and its Impact on the Families of Former Soldiers of the German Armed Forces: An Exploratory Study*, MIL. MED. RSCH., Nov. 29, 2018, at 2.

service members to seek behavioral health treatment.[191]

B. Policy Recommendation to Assess Bias

With respect to a potential equal protection violation, a recommendation is for states to maintain records for every veteran or service member who is in family court and PTSD is asserted as a criteria for reducing or denying parenting time and or custody. States can compare results of veteran and service member custody proceedings with those of non-military in which mental health concerns are raised. This comparison will help to determine if there is an unfair treatment of veterans and service members. One can determine if the veteran and service member population is experiencing a greater reduction in parenting time and more frequently than a non-military population that also has mental health issues cited in their cases.

The Department of Defense and Veterans Administration must play a substantive role in engaging with state family courts to provide education on PTSD and how it impacts veterans and service members. Education in this form can only help to reduce the stigma associated with the diagnosis to include the notion that the diagnosis means one has a propensity for violence.[192] The Department of Defense and Veterans Administration should consider developing a legal fund to supplement or fully cover legal expenses of service members and veterans who are engaged in family court and their service record and specifically PTSD rating is under review. This fund can be something service members opt into when entering service, similar to how service members pay into life insurance. This fund would help alleviate a portion of the significant resource burden imposed on service members seeking to defend their parent-child relationship when their military service or mental health is questioned.

The military services have Judge Advocate General (JAG) attorneys to call on as a resource. JAGs are not necessarily licensed in the state in which they serve. They could serve in a "Soldier Family Advocate" role where a JAG attorney or some other trained DoD professional could be called as a witness in family court proceedings to provide testimony regarding the service member's disciplinary record, reputation in the service, and other questions that the court may have. In essence, they would serve as an expert witness informed by the service member's complete record of service in order to counter an inference that they exhibit attributes that are predisposed to domestic violence or child abuse. Additionally, the Department of Defense could allow behavioral health

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191 *Why Veterans May be Resistant to Seeking Help*, VETERANS FAM. UNITED, https://veteransfamiliesunited.org/consequences-of-facing-war-related-illness/.

192 *See* Thielking, *supra* note 11.

professionals to testify at hearings.

The Department of Defense can benefit from the better use of discretion to stabilize a service member who is undergoing a family court proceeding. This will allow the service member the time to properly advocate for their position, unencumbered by stress of new assignment or allow for the opposing party to use this fact to their advantage by seeking to prolong the process. Given the length of time needed for child custody proceedings, especially when a review one's mental health and overall fitness as a parent is required, the pending reassignment of a service member becomes a primary contributor to the service member acquiescing a viable legal position to retain employment, remain in service, and render continued financial support to their child/children.

VIII. CONCLUSION

The law establishes the fundamental right of parent and child.[193] States should seek to intervene only in the most exigent circumstances. A service member or veteran's PTSD rating alone should not meet the exigent circumstance requirement if unsupported by anything other than the assumption they pose a risk based on their diagnosis. Development of criteria to safeguard against the exploitation of the PTSD rating is critical, and state statutes related to best interest of the child must be modified to reduce this exploitation. Department of Defense, Veteran's Administration, and State Courts through education initiatives must dispel the PTSD myths. They should develop a legal assistance fund and active engagement by JAGs, military behavioral specialists, and other advocates that can speak to a service member or veteran's service, medical and mental health record. The current dynamic in family courts throughout our country strongly contributes to service members' and veterans' feelings of hopelessness, contributing to suicide amongst these groups.[194] Veterans and service members are highly resilient and exhibit growth through challenge. However state family courts, in severing the parent-child relationship of this group are damaging them in a way war never could and generating hopelessness from which few can recover. Implementing any one of these suggestions would help increase veterans' and service members' quality of life, and reduce the risk of erroneous deprivation of the fundamental constitutional right that is the parent-child relationship, with minimal to no extra cost to states or the Federal government. No child should suffer from losing connection to their veteran or

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193 *See* Troxel v. Granville, 530 U.S. 57, 72–73 (2000) (first citing Washington v. Glucksberg, 521 U.S. 702, 720 (1997); then citing Stanley v. Illinois, 405 U.S. 645, 651 (1972)).

194 Stephen Krasner, *Family Law Attacks Veterans*, MEDIUM (June 28, 2019), https://medium.com/light-it-up/family-law-attacks-veterans-a6b36b1addce.

service member parent on account of a family court decision based solely on the parents PTSD diagnosis or assertion the parent has PTSD.

EXHIBIT-2. Got your six? Veterans and the family court system? Hill, R., & Bedestani, E. Family Court Review, 1–15 (2025). Avail: https://doi.org/10.1111/fcre.12848. Filename: Family-Court-Review-2025-Hill-Got-you

Exhibit-2. .

DOI: 10.1111/fcre.12848

REVIEW ARTICLE

Got your six? Veterans and the family court system

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Abstract

Status as a Veteran or military Servicemember (SM) can negatively impact custody determination in family court. Veterans and Servicemembers (SMs) must contend with unique barriers. The first barrier is a dueling media narrative of extremes, in which they are both idolized and demonized, extremes that shape the view that much of American society takes with respect to Veterans and SMs. The second barrier is the Permanent Change of Station (PCS) system. PCS forces SMs to move frequently and they have no formal mechanism to decline a PCS in order to maintain an existing child custody arrangement. The third barrier is an alarmingly high and incorrect over-association of military service and Post Traumatic Stress Disorder (PTSD) coupled with the incorrect assertion that PTSD manifests itself primarily in a violent manner. The fourth barrier is a unique administrative hearing process within each of the military services known as the Family Advocacy Program (FAP) Incident Determination Committee (IDC) / Case Review Committee (CRC) which reviews claims of spousal or child abuse and is empowered to substantiate abuse claims without affording procedural due process protections. This paper is important because informing the body of professionals who comprise family court matters about these barriers will ideally lead to improved child custody outcomes for Veterans and SMs as well as push for additional research into the subject to understand how and in what

manner SMs and Veterans are negatively impacted in custody determinations.

KEYWORDS
child custody, military, separation and divorce, veteran

Key points for the family court community

- Veterans and SMs must contend with unique barriers which place them at a disadvantage from the outset of a custody matter when seeking what they deem is an equitable child custody or visitation arrangement.
- We offer recommendations to reduce the barriers Veterans and SMs must contend with based on success States have had with specialty courts as well recent legislation passed in California.
- State and Federal agencies must collect and analyze data to understand Veterans and SMs perceptions and the specific manner their status impacted or is impacting their child custody.

Veterans and Servicemembers (hereinafter "SMs") perceive that they are a discriminated minority in family court. Practitioners of family law, including judges, attorneys, legal educators, and law students will benefit from appreciating the barriers Veterans and SMs face in family court and the unique issues that military service presents Veterans and SMs when seeking child custody. To be clear, the data to support this Veteran and SM perception is anecdotal. The House Armed Services Committee (hereinafter "HASC") in 2010, during the height of the Global War on Terrorism, called for the Department of Defense (hereinafter "DoD") to assess how a SMs or Veterans service affiliation plays a contributing role in the final decision as to best interest of the child, but as of today no such analytical report has been provided, thus making it difficult to provide anything other than anecdotal evidence (Burrelli, 2013). The HASC report request was revitalized, and its scope widened with an amendment to the 2025 National Defense Authorization Act, championed by the office of Ohio Congressman Michael Turner and authored in large part by this manuscript's authors (H.R. 8070, 2024). State and Federal agencies best positioned to collect and analyze this data have yet to do so, but hopefully demand and advocacy from the community of family law practitioners reading this article will provide more impetus for action.

In 2023, the active duty military was 1.2 million servicemembers of which nearly fifty percent are married and thirty five percent have children (Dep't of Def. Demopraphics, 2023) This means there are 420,000 servicemembers divorced or single with children. The annual divorce rate in 2023 was a little over two and a half percent, so a total of 30,000 a year (Dep't of Def. Demographics, 2023). For context the annual U.S. divorce rate is two and a half percent (Bieber, 2024).

It is this paper's premise that SMs and Veterans are a discriminated minority, and that this discrimination impacts SMs and Veterans in the form of court-ordered custody arrangements, which significantly limit or deny physical and legal custody or visitation for no reason other than a prevailing bias against SMs and Veterans in family court. This bias coupled with issues unique to military service, SMs or Veterans must contend with, place them at

distinct disadvantage when the best interest of the child (hereinafter "BIOC") standard is applied to a cusotdy matter in which they are a principal party seeking legal or physcial cusotdy or visitation. For reference, this paper defines SM according to 10 U.S.C. Section 101, which is one who conducts active service in th Army, Navy, Air Force, Marine Corps, and Space Force), while a Veteran is anyone who has served in these military branches as per 38 U.S.C. Section 101.

As a legal community and a society, we have a duty to ensure SM and Veteran parents are not discriminated against in family court on account of a persistent negative stereotype amplified in our ever increasing military and civilian divide. After all, SMs and Veterans have taken an oath to defend and at times have laid down their lives to ensure the constitutional rights of all U.S. citizens to include those traversing the family court system.

FIRST BARRIER: A STEREOTYPE OF EXTREMES

The SMs and Veterans of 2024 suffer from a dueling media narrative of extremes. At the end of World War II, almost eighty (80) years ago, nearly twelve percent (approximately 17 million people) of the United States population served in the military (Crigger and Santhanam, 2015). Today the toal military force, which includes the reserves and national guard in addition to active duty, is approximately 2 million personnel (Dep't of Def. Demographics, 2023), which is less than one percent of the current 330 million U.S. population (U.S. Census Bureau, 2025). This is a massive drop and has resulted in a larger gap between the size of the SM/Veteran population and non-SM/Non-Veteran population, including those who are service-connected by family. This significant gap has caused many military leaders and Veterans to express alarm, because this gap "nurtures misunderstanding among the civilian population" concerning the military, SMs and Veterans (Garamore, 2019). The issue is that those with no service background or connection may find it increasingly difficult to identify with those who serve. Any understanding they have will be filled by the media and its propensity to accentuate a stereotype of extremes. As a society we appreciate that steroetypes perpetuate discrimination. In a 2012 Center for New American Security (hereinafter "CNAS") study, negative stereotypes included employers reporting "concerns about the effects of combat stress, including post-traumatic stress issues, anger management and tendencies towards violence" (Harrell &. Berglass, 2012).

Over a decade later, the broken or ticking-time bomb Veteran/SM stereotype remains well intact. The Cohen Veterans Network identified in their June 2021 study, that on a broader level, "two thirds of Americans believe that a majority of Veterans experience PTSD…[and] one in four of Americans believe a majority of people with PTSD are violent/dangerous…" (PR Newswire, June 3, 2021) Despite this view being false and discriminatory, it unfortunately remains a persistent stereotype for SMs and Veterans (Haxel, 2021).

How those with no connection to the military are conditioned to view, perceive, or judge SMs and Veterans is determined in large part by the type of exposure they have had in the media or by a previous experience with a SM or Veteran (Parrott et. al, 2021). The 2021 Parrott et al. study, presented study participants with either stereotype-affirming or stereotype-challenging news articles associated with Veterans to determine how this type of conditioning upfront influences their subsequent views of Veterans. Results from the study suggest that when a reader or audience is exposed to a story of a Veteran or SM associated with mental trauma or other types of negative outcomes, their subsequent views of Veterans or SMs are negative, while the opposite is true when the reader or audience is exposed first to a story in which a Veteran or SM challenges a negative Veteran or SM stereotype.

Phillips and Lincoln (2017) in their article in the *International Journal of Qualitative Studies in Education*, defined the term Veteran Critical Theory (hereinafter "VCT"). Most notable among the VCTs tenants are: (1) Structures, policies and processes privilege civilians over veterans and (2) Veterans experience various forms of oppression and marginalization, including microaggressions. The theory, which is based on other critical theories, identifies that our society is primarily composed of civilians and there is an "innate privilege" associated with being part of the dominant group and how this works against a marginalized group, in this case Veterans. The study goes on to recognize that "the most detrimental microaggressions are usually delivered by well-intentioned individuals who are unaware

they have engaged in harmful conduct to the socially devalued group." VCT is helpful because it provides a framework to better determine if policies, laws, and practices are actually benefiting Veterans and SMs or are formed by deficient tenets and beliefs surrounding Veterans and SMs, thereby harming them. VCT represents an effort by SMs and Veterans to reclaim their narrative and ideally shape a fuller and more nuanced understanding of who they are.

Veterans and SMs are a diverse group, who are limited by a stereotype that portrays them as failing to adapt to a non-military setting and representing an emotionally or physically damaged group whose behavior is unpredictable and likely aggressive. Far too often stories about psychologically and or physically injured military members are reported, because those stories sell. Stories about SMs and Veterans that have successfully reintegrated themselves into society – for example a Veteran from "Davenport who went to Afghanistan three times, got out of the military, went to college, and now works as an account manager for American Eagle" – don't usually get printed (Schmidt, 2019). Such stories, although much more representative of reality, are not shocking enough to report on.

SECOND BARRIER: THE PERMANENT CHANGE OF STATION (PCS)

SMs are forced to move far too often and have no means to decline a PCS if it impacts an existing child custody arrangement or child custody hearing

During a PCS, an active-duty SM is reassigned to another installation within the United States or abroad. According to the Pew Research Center, the largest overseas postings for the active-duty SM are Japan (38,818), Germany (34,602), South Korea (24,189), and Italy (12,088) (Bialik, 2017). Internal to the United States, there are upwards of 500 military bases (Mathieson, 2021). According to the DoD, one-third of the active-duty military population experiences a PCS each year and it is a critical feature of the military's manning process (Tong et. al., 2018). The Government Accountability Office determined that 650,000 SMs PCS annually, at a cost of $4.3 Billion (Government Accountability Office, 2015). Each move is for either a two or three-year assignment to a new posting at another base within the United States or abroad. Both the mandate to physically change duty stations and the required frequency work against a SM's prospects for maintaining access to their children in today's family courts. The DoD does not consider how frequent PCS impacts a child custody arrangement or custody merits hearing in which a SM is involved. This is a big problem.

During the Global War on Terrorism (hereinafter "GWOT"), which began immediately following the September 11, 2001 terrorist attacks and ended with the U.S. withdrawal from Afghanistan in August 2021, the DoD ramped up its efforts to support its military families through repeated and extended deployments leveraging an initiative now called the Military Family Readiness System (hereinafter "MFRS"), which "promotes positive outcomes for service members and their families across the domains of military family readiness, including career, social, financial, health and community engagement" (Mil. One Source, 2025).

A quick study of the MFRS model reveals that the DoD is primarily focused on supporting families unaffected by divorce – though according to the DoD 2022 demographics survey, over 50,000 of DoD's SMs are divorced or single with children. The DoD has played a role in fostering the dynamics like frequent and extended deployments, which led to a spike in divorce among SMs, especially during the GWOT (RAND, 2013). Unfortunately, the DoD has no plans or policies of substance for supporting the family dynamics borne out of the divorces that occurred during, after, and due to the effects of the GWOT. These divorces are forcing to the forefront the issue of a SM's PCS and its impact on child custody matters. This issue is being left to family courts to decide, while the DoD remains silent on an issue for which they undoubtedly played a role. In the absence of a proactive DoD demonstrating its support for SMs retaining time with their children, the reality and frequency of the military PCS has been allowed to become a perception problem for those SMs seeking child custody while in uniform. The perception in family courts is that children of SMs are viewed to be disadvantaged by frequent military moves.

An active-duty SM, for the duration of their service contract, must PCS when the military tells them to. SMs are disadvantaged in child custody hearings by PCS, because family law courts place strong emphasis on both a parent's presence in a child's day to day life as well as the child's stability with respect to specific location. Civilian employers cannot force an employee to move, but the military can and does force SMs to move. As a civilian, if one is reassigned to another location, they can simply decline to move or quit their employment. A SM cannot do this. As a result, many SMs unfortunately become Veterans with fractured child–parent relationships as a result of the PCS construct. Family courts like to see stability in a location. Given the general lack of understanding associated with PCS, courts unfortunately and incorrectly attribute PCS as something left to the discretion of the SM. A SM has no formal mechanism by which to avoid a PCS move if dealing with a custody matter, though the Air Force in 2020 initiated a program in which, "when possible, it will station airmen and space professionals with court-ordered child custody decrees near their children" (Losey, 2020)

Frequent PCS presents challenges for the military families that remain intact, but it is unforgiving for divorced and single SMs seeking child custody

Active-duty military families including the SM, the spouse, and the children, are negatively impacted by the PCS process. In 2018, a RAND study described what it termed as first and second order disruptions to a military family as a result of a PCS (Tong, et al., 2018). Disruptions associated with each PCS include first-order effects like finding new housing, enrolling children in new schools, and finding similar activities to include sports and other extracurriculars, which replicate what was present for the family in the previously stationed location (Tong et al., 2018). Second-order disruptions are those that follow on from the first-order effects (Tong et al., 2018). These second-order disruptions may manifest as psychosocial outcomes within the family including, but not limited to, mental health difficulties, substance abuse, and troubles with social integration in the new locality in which the SM and their family find themselves (Tong et al., 2018). Whether a family remains intact or deals with divorce, the frequency of the DoD PCS cycle takes a serious toll on all involved.

Divorcing SMs must make the heart-wrenching choice of either continuing to serve in the military thereby paying the "PCS Penalty" and risking connection to their children, or leaving the military to try and maintain a relationship with their children following a divorce (Kearney, 2021). Single SMs with children must also contend with many of the same issues associated with a PCS as divorcing SM. A move to another jurisdiction, state, or country significantly alters their visitation schedule. Many times, a divorced or single SM may want to return immediately back to the same location where their children reside, but the military services have no formal personnel policy that mandates this type of relocation or stationing. Even if a move back is possible, there is a good chance their child or children have moved to a different location with the custodial parent and to a place where there is no nearby assignable military installation.

SMs love their children, but also realize that their employment in the military often comprises the majority of the income that supports the entire family, especially during and following a divorce. Transitioning out of military service, while at the same time undergoing a divorce, is often a financial risk and jeopardizes the financial well-being of the children. A decision by a SM to voluntarily leave service, amidst divorce and/or custody proceedings may even be viewed by a court as voluntary impoverishment and thus work negatively against the SM when determining custody (Parvis, 2017). It is well known that a SM transitioning from active -duty service to a civilian profession requires anywhere from six to twelve months to find suitable employment (Eckhart, 2023). SMs are well aware of the risk calculus of how long they may have to go without income during a transition to a civilian career. Often the SM decides to remain in uniform, not because they do not love their children and are okay with being separated from them, but because they truly live for their children and the thought of not being able to provide for them is more painful than having to leave them when they must PCS. It is essential that the DoD make significant changes to its PCS cycle, for example reducing their frequency by lengthening assignments from the average 24–36 months to 60–72 months.

This would halve the number of moves in a twenty-year career from 6 to 3, and also reduce the financial burden on the DoD and the American taxpayer.

Currently there is no program focused on divorced military families or, more specifically, stabilizing the divorcing or divorced SM at their request, so as to enable the final resolution of a divorce and specifically better enable child custody. Equally impacted are single SMs, the unwed, who are in a co-parenting agreement and forced to leave due to a PCS. This is an area that the DoD or our legislators can focus on and is an important point for those involved with family law practice to take into consideration.

PCS, if better understood by practitioners of family law, including judges, attorneys, legal educators, and law students, also presents positive life enriching experiences that align well with the best interest of a child

The discussion surrounding the PCS is not solely negative. Military families note positive aspects such as, "increasing family member resilience" (Tong et al., 2018). Subject matter experts also mention, "increased readiness and resilience, particularly among children" (Tong et al., 2018). Internet blogs are filled with testimonials of military families, who, on account of military moves with their military member, highlight their unique experience, especially cultural and travel experiences garnered during overseas assignments (McDonald, 2022). Military children in their own voice testify to the "bright side" of moving as a military child, specifically that the difficulties faced during frequent military moves, promotes resilience as they get older, in addition to exposure to and respect of different cultures (Teichert, 2018). Research suggests military kids are adaptable, foster quick connections, learn positive coping strategies to deal with change or hardship, and develop strong social awareness based on meeting children from diverse backgrounds (Military Child Education Coalition, 2022).

Given that a SM is PCSing every two to three years, this factor presents a significant challenge when a SM makes a case that it is in the best interest of the child that they are awarded primary physical custody of their child. Family courts look at the stability of the home, school, and overall connection the child has to the community. Depending on the child's age and involvement in school and extracurricular activities, it is easy to see that a family court judge or custody evaluator will look more favorably upon the parent who is not subject to moving out of the jurisdiction in which the child currently resides. A family court judge determining custody may even look unfavorably at the SM for the fact that they will move, not realizing the SM is beholden to the PCS construct. In cases where both parents, military and non-military, do plan to move to a new location, again it is likely that the non-military parent will be perceived as the one who can generate better adjustment to a home, school, and community through increased stability. The unfortunate part of this deference to a non-military parent is that it negates the fact a military member, if awarded primary physical custody, can also generate strong attachment to home, school, and community.

Children in military families have their own unique culture and community and can draw on this to generate a great deal of stability. There are significant resources on military installations ranging from schools, pre- and after-school care, as well as sports, arts, and extracurricular activities to ensure a child is connected to their military community. Moving from installation to installation introduces the child to a community of like-situated children and families, and from this comes a great deal of support and stability. Across the military, there are 1,602,261 military children, both youth and teens, alongside their SM parents (Dep. of Def., Month of Military Child, 2023). Military affiliated children have consistently outperformed the national average in all tested grades and subjects, as well as high school graduation rates and college attendance rates surpassing the national average (Hansen, 2016). It is in many ways an antiquated model to think that adjustment to home, school, and community comes significantly from time associated in a specific area. The Brookings Institution admitted it is "not clear exactly why military students are doing as well as they are, in spite of the unique challenges military life gives them (Hansen, 2016). This counter-intuitive fact has caused some to speculate about the secret sauce in military communities," including

ingredients like military culture of discipline and hard work, a strong sense of community that develops based on the hardship associated with SM deployments, and significant resources the DoD is able to provide families and students (Hansen, 2016). Even as recent as 2022, DoD run schools "led the country…with reading and math scores ranging anywhere from 15 to 23 points higher than corresponding national average scores" (Will, 2022). Yes, persistent PCS has significant drawbacks which have been discussed, and those drawbacks should serve as motivation for the DoD to revamp how often a SM must PCS or stabilize a SM in the midst of a custody matter and for a period following the determination of custody. There are, however, situations in which it is in the best interest of the child to PCS with their military parent. By making the extra effort to allow for a more detailed line of questioning of and by the SM we increase the potential for that SM (and their front-line managers) to articulate to the court what is or is not possible with regards to the unit's work/deployment schedule. Though counterintuitive to many civilians, it is very possible that the SM's access to the amenities and services associated with a military installation may in fact exceed the options otherwise available to the child. Below are a series of questions with supporting *context* that a family court judge may consider to better evaluate awarding child custody to a SM where a PCS is pending:

1. Has the child/ren already experienced a PCS? Is the child/ren of school age, and if so, have they moved schools previously as a result of PCS? How was their academic performance from school to school? Will pursuit of specific academic pursuits be impacted negatively or positively as a result of the PCS?
   - *\If YES to any part of questions (1) and/or (2) then benefits of being a part of the military community and culture may already be a part of the child/ren's ongoing success or potential for future success*.
2. Is the child/ren involved in extracurricular activities? What are the activities, and will they continue at the next PCS location?
   - *Military bases are known for providing a wide-ranging number of extracurricular and recreational opportunities/activities to its communities even when the surrounding nonmilitary communities do not (Mil. One Source, Youth and Teens, 2024)*.
3. Does the child/ren have unique medical or educational requirements? If so, can these requirements be met at the PCS location?
   - *Military bases are known for providing well in these two areas. Children of DoD schools consistently score above the national averages, and the military is well known for making unique accommodations for families of dependents (to include children) with unique medical needs* (Mil. One Source, EFMP, 2025).
4. Has the child expressed a preference to remain with their SM parent over the non-SM parent.
   - *Many children actually excel in a military community. The sense of pride that comes with being a part of a community with a national level purpose is undoubtedly an attractive and unique aspect of the military – even for children* (Mil. One Source, Youth and Teens, 2024).
5. What is the anticipated work schedule for the SM at the next PCS location? What is the SM's child care plan for the child while the SM is at work during the military workday at the next PCS location? Who will take the child to school or daycare, pick up the child from school or daycare at the next PCS location?
   - *This may be the biggest concern by those who are not versed in the nuanced realities of military life. Even when a military unit is scheduled to participate in a deployment rotation, such deployments are typically known about and published years and months in advance. The DoD's management of military unit deployment cycles was greatly refined over the course of the twenty plus year GWOT*.
   - *It would be rare for a unit to deploy with little to no notice. If a SM is in a unit that operates in a short to no notice capacity, then it would also be typical that those rotations would be shorter in duration, and a specific child care plan could be drawn up and executed based on what a deployment cycle could be*.
   - *A childcare plan could be developed that takes the potential for deployments into consideration, and the court could assign simple event-based triggers for when a SM must initiate a discussion and/or review of their existing child custody/parenting plan for possible revision or forenaction of previously agreed upon event based child care plans*.

- *These event-based child care plans could easily be written into a custody agreement and parenting plan and made ready. The following questions 6 through 10 below and other similar questions could be useful in such a discussion.*

6. Does the SM anticipate a scheduled deployment or training event over 30 days while at the next PCS location? If so, when? Does the SM's management team confirm this schedule?
7. What is the SM's childcare plan in the event the SM is deployed while at the next PCS location (for training or a real-world mission) requiring they be away from home for an overnight, a deployment between 1 and 30 days, and anything over 30 days?
8. Has the SM cared for the child during a period of work-related separation from their child/ren before? If so, please describe that experience.
9. How quickly would (max number of days) a SM have to disclose an update or change to their deployment schedule?
10. How quickly would (max number of days) a SM have to schedule a custody Hearing (with the court or an assigned mediator) to address a needed change to their schedule if not currently accounted for in their current child custody/parenting plan?

THIRD BARRIER: AN ALARMINGLY HIGH AND INCORRECT OVER-ASSOCIATION OF MILITARY SERVICE WITH POST TRAUMATIC STRESS DISORDER (HEREINAFTER "PTSD") AND THE INCORRECT ASSUMPTION THAT PTSD EQUATES TO A PROPENSITY FOR VIOLENT BEHAVIOR

The American Psychiatric Association estimates that "one in 11 people will be diagnosed in their lifetime" with PTSD (Am. Psychiatric Ass'n, 2022). The National Center for PTSD estimates that "at some point in their life, seven out of every hundred Veterans (or seven percent) will have PTSD, while in the general population, six out of every hundred adults (or six percent) will have PTSD in their lifetime" (Dep. of Veterans Aff., 2025) The numbers between the Veteran and non-Veteran communities are nearly the same. However, a 2021 survey conducted by a leading Veteran mental health provider, the Cohen Veterans Network, highlights that two-thirds of the non-veteran population believe that most veterans suffer from PTSD (Sullivan, 2021). From this data, it is clear there is a significantly high misattribution between military service and PTSD drawn by the non-military or non-veteran population. Ultimately, what is of specific concern is not the diagnosis itself, but the nexus between any mental health concern and how it impacts the parent–child relationship as well as the co-parenting relationship. The family court is concerned about this and should not be swayed by the presentation of a SM or Veteran PTSD diagnosis alone as impacting the best interest of the child standard at all.

It is PTSD within the civilian population, not the SM or Veteran population, that accounts for over eighty percent of the economic burden and societal impact associated with the diagnosis. Studies are now shifting from focusing solely on the military population because it is becoming better understood that PTSD remains underdiagnosed and treated in the civilian population (Davis et al., 2022). The benefit of this shifting focus is to appreciate that PTSD is far more common among all segments of society and by no means an issue specific to SMs and Veterans. Recently in the Journal of Clinical Psychology, authors highlighted the following:

> *Much of the research and legislative purpose on PTSD has focused on combat-exposed populations due to the high prevalence of the condition among the military population. However, the military population composed a small proportion of the overall U.S. population with PTSD (14%), leaving 86% of the PTSD population within civilian groups. With the increasing occurrence of natural and societal traumatic events around the world, including COVID-19, civil unrest, and climate change, there is mounting concern of an increase in PTSD and burden in the civilian population. As such, the current cost estimate is likely an underestimation given these recent global traumas.…Therefore, further research on PTSD among the civilian population is instrumental to address this rapidly accumulating societal burden* (Davis et al., 2022).

Veterans and SMs with PTSD, or dealing with an accusation in family court that they have PTSD, have the most significant barrier in seeking custody or parenting time of their children (Seamone, 2012). A judge or custody evaluator, uninformed about PTSD, will view any association of the Veteran or SM with PTSD as a risk, which they must factor into their best interest of the child's analysis. In assessing any of the BIOC standards, the premier Harvard law professor and scholar Robert Mnookin, acknowledges issues and limitations of the BIOC standard, but it remains the primary method by which child custody is determined (Scott & Emory, 2014). Child custody is "the remaining 'fault' battlefield" (Strauss et al., 1974) This "fault" battlefield now seeks the routine employment of a tactic in which a Veteran or SM is forced to defend their fitness to parent because it is asserted that they, by virtue of their service, likely suffer from PTSD, and this means that they present a risk to their children (Dana, 2017).

PTSD or the assertion that a Veteran or SM has PTSD presents a type of fault instrument by which the BIOC calculation can be turned against the SM or Veteran and can become an insurmountable barrier (Davis et al., 2022). There is an unfortunate leap being made that a SM or Veteran with a PTSD diagnosis presents risk to their child or is somehow a predictor that the SM or Veteran will likely engage in future violent behavior against their child, though there is no history of such behavior. These falsehoods remain unchecked and perpetuated by a predominantly non-veteran majority. Custody evaluators and judges, who are informed by custody evaluations, use their discretion in a manner where they view a Veteran or SM with PTSD as a risk to their child, while no evidence supports such a finding (Moore, 2023). PTSD is not a key factor that contributes to violent behavior (Bedestani, 2022). A predictor of violent behavior in a SM is a history of violence (domestic, child abuse, criminal), an alcohol or drug abuse disorder, and/or anything other than honorable discharge, which is the most severe type of military discharge (Bedestani, 2022).

Judge Eileen Moore, a Vietnam Veteran Nurse, who is an Associate Justice on the California Courts of Appeal, described the military bias in family courts, highlighting "'service-linked mental health issues come with their own unique barriers, stigma, and complications. Left unchecked, biases against military families can lead to incorrect conclusions. Unless recognized, courts, and evaluators may unwittingly base decisions on biases and not consider seriously enough the child-raising abilities of the military veteran with PTSD" (Moore, 2023) Below are a series of questions a family court judge and/or custody evaluator may consider to better evaluate the risk, if any.

1. Does the SM or Veteran have a diagnosis of PTSD? Does the diagnosis speak to the SM or Veterans ability to effectively parent? Does the diagnosis identify the SM or Veteran as being at risk for abuse by others? Does the diagnosis report that the SM or Veteran poses a risk to themselves or others?
2. How many years has the SM and Veteran parented and/or co-parented while diagnosed with PTSD?
3. Is there a history of illegal or controlled substance abuse by the SM or Veteran parent? If so, has the SM or Veteran parent completed treatment programs? Is the Veteran or SM currently sober and if so for how long? What controls are in place to maintain that sobriety?
4. Is there any history of physical abuse by the SM or Veteran parent towards another adult or child? If so, when? Was there treatment or services completed by the SM or Veteran parent?
5. Is there currently a protective order in place against the SM or Veteran Parent with respect to the child or other parent? If so, with whom specifically and is the protective order a temporary or final order?
6. What is the nature of the SM or Veterans service record? What were their service performance evaluations like? Any indications in these reports that present risk with regards to parenting ability?
7. What is the type of military service they rendered? What is their educational background both from military and non-military schooling?
8. Does the SM or Veteran currently have physical and/or legal custody of any other children not associated with the custody merits hearing at hand. What is the nature of that custody arrangement? Are any of the same issues present in that custody arrangement?

FOURTH BARRIER: THE DEPARTMENT OF DEFENSE SHADOW FAMILY COURT

Each of the military branches has its own version of a Family Advocacy Program (FAP) (Mil. One Source, Family Advocacy Program, 2024). The FAP, run by each of the military branches, helps with treating the trauma SMs, along with spouses and children of SMs who may suffer in the form of emotional and/or physical abuse within a family or intimate partner dynamic. FAP was designed to reduce incidences of child abuse and domestic violence in military families (Curto, 2010). A specific component of FAP is the Case Review Committee (CRC), which has recently been redesignated the Incident Determination Committee (IDC). The CRC or IDC is an administrative hearing that makes a determination as to whether or not there has been an incident of emotional or physical abuse in a martial or interpersonal relationship involving a SM (Dep. of the Army, Reg. 608-18, 2011). The FAP CRC/IDC exposes SMs to a unique and distinct set of issues in that allegations of abuse can be substantiated through an administrative hearing, a hearing which exhibits no due process protections and little scrutiny of the allegation. There is no equivalent to this in the civilian sector. Very little is known about the CRC/IDC process outside of the military services, but there are accounts of SMs who insist that they are innocent of any wrongdoing and have fallen victim to false accusations of child abuse or domestic violence lodged through FAP, and then these substantiated accusations are then factored into child custody determinations by family courts during custody merits hearings (King Military Law, 2024). For all the good that the DoD FAP program does, there are significant numbers of SMs who have been negatively impacted by the FAP CRC/IDC decisions, decisions whose valdiity are quesionable because of lacking procedural due process protections. There is no analysis of how often the CDC/IDC comes to an incorrect determination, and such an analysis would be difficult to make. A key aspect of procedural due process protections is to minimize the risk of an incorrect determination, and so the absence of due process leads one to assume that there is a higher risk for an errant ruling. What we do know about the CDC/IDC and valid assumptions which can be made is this: as erroneous FAP decisions are occurring and these decisions make their way into family court they are impacting parenting plans and custody determinations.

A specific Department of Defense Task Force on Domestic Violence (DTFDV), which met between 2001 and 2003, focused on making a number of recommendations to the FAP CRC/IDC because, The Task Force concluded, the "lines between clinical intervention and command judicial action" were blurred…and the role of the CRC "as a strictly clinical body has been comprimised (Second Ann. Rep., Dep. of Def. Task Force on Domestic Violence, 2002)"

Key procedural due process issues present in the CRC and now rebrandedIDC are summarized below from a review of the key regulations regarding how the program isrun in the Army, which is similar to how it is run in each of the military branches (Dep. of Army Dir. 2021-26; Dep. of Army Reg. 608-18, 2011).

- Lack of Neutrality: A single case manager gathers information. This same case manager meets with the alleged victim and alleged offender, then presents their findings to IDC panel members.
- Preponderance of Information Standard: This is similar to a preponderance of the evidence standard, which is a low burden of proof.
- Key parties prohibited from attending: The alleged victim and alleged offender are prohibited from attending the CRC.
- Counsel prohibited from attending: Counsel for the alleged victim and/or alleged offender are prohibited from attending the CRC/IDC. Even the most skilled attorney will find it difficult to impossible to work with the CRC/IDC in a manner consistent with standard American jurisprudence.
- No cross examination: Counsel is prohibited from attending. The alleged victim and alleged offender are prohibited from attending. There is no opportunity for any cross examination of the parties.
- Lack of Transparency: The proceedings are not public, and only limited meeting notes were created to account for basic administrative data and the final CRC/IDC determination. No full record/transcript of the committee meeting is created or provided.

- Majority vote required: A substantiated finding requires a majority vote as opposed to unanimous or two thirds of the seven voting members.
- No rules of evidence: The 2001 DTFDV stated, "the current (CRC) system does not insist on evidence" when determining if there was an act of abuse or not (Second Ann. Rep., Dep. of Def. Task Force on Domestic Violence, 2002).

SMs and law firms report that false claims of emotional and/or physical abuse made to FAP are substantiated during a CRC/IDC as a result of its failure to provide due process. Due process rights, which had they been afforded, would have absolved the alleged offenders. Any legal practitioner can easily see the risk a false FAP claim, substantiated or even unsubstantiated, poses for a Veteran or SM who is party to a custody matter. Equally as dangerous is when the CDC/IDC fails to substantiate a valid FAP claim, a failure which could have been alleviated with increased procedural due process. Though a CRC/IDC finding is supposed to be a clinical finding and not to be permitted for use outside of the military, anecdotal evidence suggests CRC/IDC findings and their precursor FAP accusations routinely make their way into custody merits hearings in jurisdictions across the United States.

FUTURE DIRECTION

Based on the success states have had with specialty courts, such as drug courts and the sub-specialty of Veterans drug courts, it makes sense to recommend circuit courts develop, at minimum, a docket focused on SM and/or Veteran child custody cases (Dep. of Justice, Veterans Treatment Court Program, 2021). The specialty docket could take the form of one day a week where custody merits hearings are heard in which a SM or Veteran is a participant. If the custody merits are part of a divorce matter, the specialty docket would also include a divorce merits hearing. This would develop familiarity and eventually expertise among the attorneys, custody evaluators, and judges with the service specific issues presented earlier in this paper.

A recent successful legislative effort in California, Senate Bill 1182, is a model for States in taking a more holistic view of Veterans and SM when determining their child custody (SB 1182 Exectuive Summary, 2022). The bill was a focused legislative effort to get at the issue of how PTSD is evaluated in a custody determination and requires that a family court judge provide a fulsome analysis when a mental health diagnosis is the reason for limiting the child custody of a Veteran or SM (SB 1182, 2022). California State Senator Susan Eggman, of the 5th Senate District, introduced the bill in Spring 2022. The bill requires California courts to state reasons for their finding and the evidence relied upon in writing or on the record if mental health illness of a parent is a factor when determining the best interest of the child. Senator Eggman, a veteran herself, wanted to address "a concern that family courts are improperly discriminating against parents, legal guardians, or relatives who suffer from mental illnesses when determining the best interest of the child in making a custody determination" (SB 1182, 2022). SB 1182 was signed in to California state law by Governor Gavin Newsom on September 17, 2022 (SB 1182, 2022). Section 3040 of Senate Bill 1182 is an effort to address the problem by better defining the parameters in which one's mental health condition can be factored when evaluating the best interest of the child, and furthermore, requiring family court judges to state on the record as to how the mental health illness factored into their ruling.

LIMITATIONS

One of the limitations in advocating for change regarding the issue of Veteran and SM discrimination in family court is that the evidence is anecdotal. Without substantive data in a quantitative form, it is difficult for Veterans and SM advocates to push for change. It is essential to determine the size of the problem. Circuit courts, for instance, keep data regarding criminal cases, where sentences handed down by judges are collected and analyzed to determine to

what extent race influences sentences (Maryland State Comission on Criminal Sentencing Policy, 2023). Systems like this ensure trust in the judiciary and allow for the court to review differences in outcomes, better address what drives different outcomes, and implement necessary training such as implicit bias courses for all judiciary employees and attorneys (Maryland State Commission on Criminal Sentencing Policy, 2023). Such a system could be as simple as assessing what the Veteran and/or SM requested for legal (joint or sole) and percentage of physical custody [((number of overnights) divided by (365 days)) × 100] and compare it to the court's final decision.

Veterans Administrations (VA), both at the state and federal level, play an important role in collecting data on their Veteran communities. They are well positioned to gather information from Veterans, who interact with a variety of VA resources. They provide a robust set of services, including medical and health services, employment and job training, as well as legal services. The legal support that exists for Veterans, the Veterans Justice Outreach Program (VJOP), supports Veterans already incarcerated through the criminal justice system or involved in Veteran Drug Treatment Court, not those seeking assistance with civil matters (Dep. of Veterans Aff., Veterans Jutice Outreach Program Fact Sheet, 2022). When a Veteran enters the VA system, this is an ideal time to query if the Veteran is dealing or has dealt with a child custody matter and if they perceive that their military service is factoring or factored to their detriment in the custody determination. This will help drive focused legal support for Veterans and SMs at the state level for civil matters, specifically child custody, as well as visitation and access, for which there is a dearth. This type of Veteran legal support remains a black hole, so ideally when VAs, state and federal, recognize the scale of the problem, they will be willing to act in the form of funding legal support.

CONCLUSION

Veterans and SMs are a discriminated minority in family court, facing four barriers which present an insurmountable obstacle when they are seeking equitable legal and physical child custody determinations or visitation. In short, solutions are present. First, Education is the best way to overcome the misinformation bias of our Veterans, a bias which has led Veterans and SMs to feel marginalized in child custody matters. Second, PCS is a necessary evil in the current military construct, however the frequency of PCS could be reduced. This is a policy decision for DoD to make and for family law professionals to advocate that DoD make. Third, PTSD should not be used to turn a SM or Veteran into the boogeyman. PTSD is leveraged against them, but by educating courts and motivating courts to ask the extra questions or follow California's legislative lead, our legal community can help limit the extent to which Veterans and SMs are exploited by unknowing and knowing family court stakeholders. Finally, the military service FAP programs should implement improved procedural due process protections at the CDC/IDC, or as recommended two decades ago, divest from the CDC/IDC.

As a legal community we can and must do better by first framing the problem, creating a system to collect data on the scale of the problem, and properly aligning resources and training to combat the discrimination SM and Veterans face in family court as well as orienting legal support towards family court matters, specifically child custody determinations. The stakes are high, because Veterans and SMs are paying a terrible price for their Service in the form of child custody arrangements, visitation, and access shaped by discrimination and bias. The question is, are we as a legal community brave enough to admit this and begin collectively to address it.

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AUTHOR BIOGRAPHIES

Roger Hill is a fourth-generation wartime Veteran and has served in multiple conflicts and locations including Afghanistan, Iraq, and Korea. In 2018 Roger published a highly acclaimed war memoir detailing challenges faced by ground units leading up to the surge in Afghanistan. Roger's book is titled *Dog Company, A True Story of American Soldiers Abandoned By Their High Command* - foreword by Sean Hannity. Roger continues to advocate on behalf of Veterans in a variety of areas. As an advisor to and volunteer for the national nonprofit *Warriors Set Free* Roger works directly with Veterans left picking up the pieces after America's twenty-year conflict in the Middle East. Near and dear to his heart are those Veterans who because of their military service face a growing trend of targeted legal harassment, systemic discrimination, and abuse in America's family court system(s). Roger has engaged and served many military Veteran parents who lost access to their children and faced financial ruin due to the deeply rooted biases the family court system carries against our military Veterans.

Erhan Bedestani retired from the Active Duty Army in 2023 after 21 years of service. Erhan earned his law degree from the Columbus School of Law, Catholic University of America in May 2023. Erhan is the Executive Director of Warrior Family Advocacy (WFA), a non-profit he started in 2022 to conceptualize, define, and generate solutions to the problems Veteran and Servicemember parents face in family court with regards to custody arrangements. While in service and since retiring, Erhan continues to be motivated to help ease the pain and suffering so many Veterans and Servicemembers have faced at the hands of a family court system they feel is predisposed to view them as unfit parents for no reason other than their service affiliation. Erhan's passion project is to research and publish on this issue in an effort to create increased awareness and education on the topic. Erhan is above all else, the proud father to a fifteen-year-old son, with whom he moved a total of 4 times while in the Army, before settling down and retiring from active-duty service to Arlington, Virginia.

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EXHIBIT-2. Declaration of Sean Kuhlmeyer regarding Amicus Curiae Warrior Family Advocacy Motion to File a Memorandum in this Case, 3/4/2025.

Filename: 2025.03.04 WSCT 1037368 DecS.Kuhlmeyer re Amicus WSA v.2

Sean Kuhlmeyer Declaration re WFA Brief

Exhibit-2.

IN THE SUPREME COURT OF THE

STATE OF WASHINGTON

SEAN KUHLMEYER, Appellant, vs. ISABELLE LATOUR, Appellee	Supreme Court Case No.: 1037368 **Declaration of Sean Kuhlmeyer regarding *Amicus Curiae* Warrior Family Advocacy Motion to File a Memorandum in this Case**

I, Sean Kuhlmeyer, solemnly affirm under penalty of perjury of the laws of Washington the following statements are true and correct.

1. I am over 18 years of age and am competent to testify. All statements herein are based upon my personal knowledge. I am the Appellant and Respondent in the family law action below, and Appellee, Isabelle Latour, is my former spouse. We share one child together – CMK.

2. Per RAP 10.6(a) I write this declaration regarding *Amicus Curiae* Warrior Family Advocacy, and Attorney Lieutenant Colonel Erhan Bedestani, JD, U.S. Army (ret.), motion to file a memorandum in this case.

3. I have read WFA's memorandum, and offer this declaration to attest to certain relevant facts implicated by WFA's argument. All facts cited herein already exist in the trial court's record, and most, if not all, are also in the record before Division-I and this court.

4. I have known Attorney Lieutenant Colonel Bedestani since 2021, when he consulted with me about creating Warrior Family

Advocacy, and interviewed me about my experiences in family court.

5. I am a United States Navy Disabled Veteran. My rank is Petty Officer Third Class (PN3 (E-4). I was involuntarily honorably discharged for medical reasons (a 'medical discharge').

6. I have service-connected PTSD, Anxiety, and Depression. My PTSD stems from being assaulted in the Navy. It manifests as nightmares about my traumatic experiences. My PTSD does not manifest with violence or suicidal ideation. Ms. Latour has known this for 28 years.

7. Upon reading WFA's memo and the associated articles, I discovered that Ms. Latour weaponized my Veteran status against me, including in her Petition for a DVPO, including with a baseless claim I threatened a door-to-door salesman, which she tied to my Veteran status.

> He also told me that he was an excellent marksman in the Navy many times. I recall one incident where Sean threatened a solicitor at our door saying, "I have a gun, I don't want to use it." He then shut the door and then took out the gun. *See* Latour Petition for DVPO.[A]

Conduct which never happened. I repeat that the incident Ms. Latour describes above never happened, and I denied it in 2017 the first time she made that claim, to which the Arbitrator did not find this alleged event happened, and I have denied it every time she has raised it afterwards. Ms. Latour's pattern of making false accusations tied to my Veteran status to

[A] I apologize I do not have the citation to the record before Division-1 at this time.

create the illusion I was dangerous, occurred throughout the case, and she advanced several in her DVPO petition and supporting arguments; "He also told me that he was an excellent marksman in the Navy many times." See, Latour DVPO Petition.[B]

8. I am concerned about Ms. Latour's use of the negative stereotypes associated with military service in her request for a DVPO, by citing to that I have a marksmanship medal from the Navy, and the implications that it proves I was discriminated against by Hon. O'Donnell in issuing the DVPO.

9. All naval recruits are trained on pistols, and learn safe handling and storage. I was no different. The day I took the proficiency course in boot-camp, my target scores were enough to qualify for the basic marksmanship medal.

10. By referencing the fact that I had Navy basic pistol skills, Ms. Latour used the deep-seated negative biases and prejudices WFA explained in its memo, to bias and prejudice the trial court against me, and contribute to its decision to issue a DVPO.

11. The issues WFA raises in the Amicus Memorandum, are important issues I believe the Washington Supreme Court should consider when they both decide to take review of my case and examine the appealed

[B] I apologize I do not have the citation to the record before Division-1 at this time.

issues, as they touch on issues thousands of similarly situated veterans face.

12. Per RAP 10.6(d) I do not object to Amicus Curiae Warrior Family Advocacy, and Attorney Lieutenant Colonel Erhan Bedestani's, motion to file a memorandum in this case.

13. Given that presentment of this motion and memorandum is late, I also do not object if Ms. Latour requests a short and commensurate extension of time, providing that such extension is for a specific reason. Given the age of our son (16½), I **DO** object to Ms. Latour requesting a delay if she does not have a specific reason for doing so, as I believe these issues need to be resolved quickly.

I declare under penalty of perjury under the laws of the State of Washington, that all statements, observations, and facts, are true and correct, to the best of my knowledge.

Signed at Seattle, King County, Washington, on Wednesday, Mar. 5, 2025.

s/ Sean Kuhlmeyer, PN3, United States Navy Veteran (Hon.)

CARNATION LEGAL SERVICES LLC

March 07, 2025 - 2:09 PM

Transmittal Information

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Appellate Court Case Title:	In the Matter of the Marriage of: Isabelle Latour v. Sean Kuhlmeyer

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