

**'TIL DEATH DO US PART: A RECOMMENDATION  
TO MAKE DOMESTIC VIOLENCE AN ENUMERATED  
ARTICLE IN THE UCMJ**

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*Domestic violence is a pervasive problem that transcends all ethnic, racial, gender[,] and socioeconomic boundaries, and it will not be tolerated in the Department of Defense. Domestic violence destroys individuals, ruins families and weakens our communities.<sup>1</sup>*

I. Introduction

There are days when more family members are injured by a soldier at home than troops injured in war. June 25, 2013, was one of those days.<sup>2</sup>

At approximately 9:20 PM, Sarah Monroe responded to a banging on her door.<sup>3</sup> She opened it to find her neighbor, Camille Roberts, who was shaken, her face bruised, and with her husband, Specialist (SPC) Isaac Roberts, approaching fast behind her. Ms. Monroe quickly pulled Camille

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<sup>1</sup> *Domestic Violence in the Military*, NAT'L COAL. AGAINST DOM. VIOL., [www.ncadv.org](http://www.ncadv.org) (last visited July 19, 2016).

<sup>2</sup> *Honor the Fallen*, MIL. TIMES, [http://thefallen.militarytimes.com/search?year\\_month=2010-04](http://thefallen.militarytimes.com/search?year_month=2010-04) (last visited July 21, 2016). The assertions in the introduction are based on the author's recent professional experience as a special victim prosecutor at Fort Bliss from July 2012 to July 2015, as well as an actual court-martial conducted on March 4, 2014 [hereinafter Professional Experience]; see also *United States v. Roberts* (Mar. 4, 2014) (on file with author).

<sup>3</sup> Transcript of Record at 203, *United States v. Roberts* (Mar. 4, 2014) (on file with author) [hereinafter Transcript].

inside and shut and locked the door. Crying, Camille told her that SPC Roberts had punched her, strangled her in front of their children, and dragged her down the hallway.<sup>4</sup> Ms. Monroe called the military police (MP); she knew that this was not the first time that SPC Roberts had put his hands on his wife, and she feared it would not be the last.<sup>5</sup>

Specialist Roberts and Camille were high school sweethearts. They had their first child, Jason, in September 2008, and got married on January 27, 2009, when SPC Roberts was nineteen years old. Specialist Roberts joined the Army in April 2010, the same month their second child, Sean, was born. He attended basic training at Fort Knox, Kentucky, where he received the military occupational specialty of a cavalry scout.<sup>6</sup> Specialist Roberts arrived at Fort Hood, Texas, in August 2010, and was assigned to the 3d Armored Brigade Combat Team, 1st Cavalry Division.<sup>7</sup> Two months later, in October 2010, he was arrested for domestic assault against Camille.<sup>8</sup> Though this is the first documented incident of domestic violence committed by SPC Roberts, it is likely that his aggression began at least a month before, when he sought counseling at the Family Advocacy Program (FAP) for marital discord.<sup>9</sup>

As frequently happens in domestic violence cases, the charge of domestic assault was dismissed when Camille recanted. Four months later, in January 2011, SPC Roberts deployed with his unit to Tallil, Iraq, in support of Operation New Dawn.<sup>10</sup> While SPC Roberts was in Iraq, Camille gave birth to their third child, Brooke, in May 2011. Specialist Roberts redeployed in November 2011, and he and a pregnant Camille relocated to Fort Bliss, Texas, in the summer of 2012.<sup>11</sup> In October 2012, their fourth child, Claire, was born. The Roberts now had four children under the age of five.<sup>12</sup> Two months later, SPC Roberts and Camille began to argue when Camille stated that she wanted a divorce. In the presence of their baby daughter, SPC Roberts strangled his wife and punched her in

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<sup>4</sup> *Id.* at 204.

<sup>5</sup> U.S. Dep't of Army, DA Form 2823, Sworn Statements, Sarah Monroe (Dec. 2, 2012, Jun. 25, 2013) [hereinafter DA Form 2823]. Ms. Monroe told the military police (MP) that the police had been called to the Roberts' home numerous times over the past 6–8 months. *Id.*

<sup>6</sup> United States v. Roberts (Mar. 4, 2014) (on file with author).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

the face, causing her head to hit a concrete wall.<sup>13</sup> Fed up, Camille called the MPs and SPC Roberts was arrested. However, Camille later refused to cooperate with law enforcement.

On June 25, 2013, SPC Roberts was drinking at home. He and Camille were arguing after he accused her of cheating on him, a recurring theme in their disagreements.<sup>14</sup> In the presence of their children, SPC Roberts strangled Camille, punched her in the leg, and dragged her down the hallway.<sup>15</sup> Camille managed to escape and ran to her next-door neighbor's house. The neighbor, Ms. Monroe, called the MPs and SPC Roberts was ordered to stay away from his wife.<sup>16</sup> He ignored that order. Instead, on September 14, 2013, SPC Roberts called 911, admitted to hurting his wife, and asked that the police come get him. When the police arrived, they learned that SPC Roberts had again strangled his wife in the presence of their children.<sup>17</sup> Specialist Isaac Roberts was court-martialed on March 4, 2014; he was convicted of two specifications of assault consummated by a battery, two specifications of disobeying an order, and one specification of driving under the influence.<sup>18</sup> He was acquitted of two specifications of aggravated assault, and two specifications of assault consummated by a battery, because Camille refused to testify under oath that SPC Roberts had ever hit or strangled her.<sup>19</sup> As a result, SPC Roberts was sentenced to only eight months of confinement and a bad conduct discharge.<sup>20</sup>

Domestic violence is a serious scourge on society from which the military is not immune.<sup>21</sup> Though offenders are typically charged with assault, none of the offenses listed in the Uniform Code of Military Justice (UCMJ) adequately address the dangerous effects of this crime; many offenders rarely face punishment or prosecution for abusing their spouses

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<sup>13</sup> DA Form 2823, *supra* note 5, Camille Roberts (Dec. 2, 2012).

<sup>14</sup> *Id.* (statement of Camille Roberts dated Jun. 25, 2013).

<sup>15</sup> *Id.*

<sup>16</sup> Professional Experience, *supra* note 2.

<sup>17</sup> *Id.*

<sup>18</sup> Transcript, *supra* note 3, at 282.

<sup>19</sup> Professional Experience, *supra* note 2. By the time the court-martial took place, Camille had reconciled with Specialist (SPC) Roberts and wanted nothing to do with the trial. Instead, the government relied on medical documents and photos, excited utterances, and 911 calls to prove their case. *Id.*

<sup>20</sup> Transcript, *supra* note 3, at 353.

<sup>21</sup> Peter Dutton, *Spousal Battering as Aggravated Assault: A Proposal to Modify the UCMJ*, 43 NAVAL L. REV. 111 (1996).

and those who do tend to receive relatively light punishment.<sup>22</sup> While the military has made a good-faith effort to provide programs and services to prevent domestic violence and save lives, it is not enough. The crime of domestic violence should have its own enumerated article under the UCMJ to demonstrate how seriously military and political leaders take this offense, and to more appropriately and effectively create deterrence and appropriate punishment for this crime.

## II. The Impact of Domestic Violence on Society

Domestic violence is a global epidemic;<sup>23</sup> research estimates that one in every three women will report abuse by an intimate partner in their lifetime.<sup>24</sup> The Department of Justice defines domestic violence as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.”<sup>25</sup> It crosses over every demographic boundary, affecting every race, ethnicity, religion, educational background, and socio-economic group.<sup>26</sup>

While physical violence is the most common form of domestic violence, it may also include psychological, financial, and sexual abuse, as well as attempts to isolate the victim.<sup>27</sup> In fact, domestic violence often encompasses acts that would not meet the definition of violence in the generic sense, or in a nondomestic context.<sup>28</sup> The Supreme Court acknowledged that it is “‘hard to describe . . . as ‘violence’ a squeeze of the arm [that] causes a bruise.’ But an act of this nature is easy to describe as ‘domestic violence’ when the accumulation of such acts over time can

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<sup>22</sup> *Id.* at 121 (discussing the limitations of the maximum punishment of Article 128). *See also* UCMJ art. 128 (2012).

<sup>23</sup> *Violence against women: a ‘global health problem of epidemic proportions’*, WORLD HEALTH ORG. (July 21, 2013), [http://www.who.int/mediacentre/news/releases/2013/violence\\_against\\_women\\_20130620/en/](http://www.who.int/mediacentre/news/releases/2013/violence_against_women_20130620/en/) (containing “[n]ew clinical guidance launched to guide [the] health sector response”).

<sup>24</sup> Alysha D. Jones, *Intimate Partner Violence in Military Couples: A Review of the Literature*, 17 *AGG’N & VIOL. BEHAV.* 147, 148 (2012) (internal citations omitted).

<sup>25</sup> *What is Domestic Violence?*, DEP’T OF JUSTICE (Oct. 6, 2015), <http://www.justice.gov/ovw/domestic-violence> (defining forms of domestic violence and describing the accompanying behavior).

<sup>26</sup> Dutton, *supra* note 21, at 111.

<sup>27</sup> *Tenth Annual Review of Gender and Sexuality Law: Criminal Law Chapter: Domestic Violence*, 10 *GEO. J. GENDER & L.* 369, 370 (Sarah Lorraine Solon ed., 2015).

<sup>28</sup> *United States v. Castleman*, 134 S. Ct. 1405 (2014).

subject one intimate partner to the other's control.”<sup>29</sup> Therefore, it is commonly recognized that domestic violence “is a series and pattern of behaviors and not simply a sum of discrete acts of violence.”<sup>30</sup>

In the United States, more than a million acts of domestic violence are committed each year, making it the largest cause of injury to women, and resulting in hundreds of deaths.<sup>31</sup> In fact, research shows that domestic violence accounts for more injuries to women than car accidents, rapes, and muggings combined.<sup>32</sup> In addition to the staggering statistical data, domestic violence also differs from other types of violence in that it is underreported, and has a high rate of recidivism.<sup>33</sup>

Victims of domestic violence often live in fear of repeated attacks, a fear not unfounded since they are three times more likely to experience a repeat assault within a six-month period when compared to stranger assaults.<sup>34</sup> Furthermore, recidivism is the most important predictor of future violence, because domestic violence is a pattern of abuse that escalates in frequency and severity.<sup>35</sup>

Research shows that domestic violence “exact[s] an enormous toll on its victims, other adults and children in these homes, and society more broadly.”<sup>36</sup> The close, intimate relationship between the abuser and victim leads to frequent violence that is more severe, and results in greater

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<sup>29</sup> *Id.* at 1412 (internal citations omitted).

<sup>30</sup> Emily J. Sack, *United States v. Castleman: The Meaning of Domestic Violence*, 20 ROGER WILLIAMS U. L. REV. 128, 142 (2015).

<sup>31</sup> *Castleman*, 134 S. Ct. at 1408.

<sup>32</sup> Solon, *supra* note 27, at 370. “Estimates show that between 960,000 and three million incidents of domestic violence occur each year. Every six minutes a woman is raped and battered in the United States and every fifteen seconds an intimate partner beats a woman.” *Id.*

<sup>33</sup> Jason M. Fritz, *Unintended Consequences: Why Congress Tossed the Military-Family out of the Frying Pan and into the Fire when It Enacted the Lautenberg Amendment to the Gun Control Act of 1968*, 1 WISC. L. REV. 157 (2004). “[A]pproximately one in five victims of domestic abuse report three or more similar assaults within that six-month period.” Alison J. Nathan, *At the Intersection of Domestic Violence and Guns: The Public Interest Exception and the Lautenberg Amendment*, 85 CORNELL L. REV. 822, 823 (2000).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 824. “For example, victims of domestic violence are almost twice as likely to be seriously injured and more likely to require medical care than are victims of stranger violence.” *Id.*

<sup>36</sup> Keith Klostermann et al., *Intimate Partner Violence in the Military: Treatment Considerations*, 17 AGGR’N AND VIOLENT BEHAV. 53, 54 (2012) (internal citations omitted).

physical and psychiatric illnesses than stranger assaults.<sup>37</sup> In addition to deaths and injuries, domestic violence is associated with a number of other adverse health conditions, including cardiovascular, gastrointestinal, endocrine, and immune system issues caused by chronic stress.<sup>38</sup> Domestic violence is a significant public health issue, costing the United States over four billion dollars annually in medical and mental healthcare expenses.<sup>39</sup> Furthermore, from a military perspective, domestic violence is also linked to low morale, poor job performance, and increased risk to mission safety.<sup>40</sup>

### III. The Impact of Domestic Violence on the Military

The military draws its members from the surrounding community and is often said to be a mirror of society.<sup>41</sup> However, domestic violence in the military community occurs at a much higher rate than in civilian communities.<sup>42</sup> Servicemembers are committing an alarming number of violent crimes, including violent offenses against intimate partners.<sup>43</sup> Analysis of this issue shows that domestic violence in the military occurs at a rate two to five times higher than that of the civilian population.<sup>44</sup> Not only is the perpetration of domestic violence more prevalent, it is also more severe in military families compared to their civilian counterparts.<sup>45</sup> Given that the Department of Defense (DoD) is the largest employer in the United States, with over 1.3 million active duty members and over 825,000

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<sup>37</sup> Kylee Trevillion et al., *A Systematic Review of Mental Disorders and Perpetration of Domestic Violence Among Military Populations*, 50 SOC. PSYCH. & PSYCH. EPID. 1329, 1330 (2015).

<sup>38</sup> *Intimate Partner Violence: Consequences*, CENT. FOR DIS. CONTROL AND PREV'N, <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html> (last visited July 21, 2016).

<sup>39</sup> Trevillion, *supra* note 37, at 1330.

<sup>40</sup> Sarah Krill Williston et al., *Military veteran perpetrators of intimate partner violence: Challenges and barriers to coordinated intervention*, 21 AGG'N & VIOL. BEHAV. 55 (2015).

<sup>41</sup> Dutton, *supra* note 21, at 114.

<sup>42</sup> Simeon Stamm, *Intimate Partner Violence in the Military: Securing our Country, Starting with the Home*, 47 FAM. CT. REV. 321, 322 (2009).

<sup>43</sup> Jerri L. Fosnaught, *Domestic Violence in the Armed Forces: Using Restorative Mediation as a Method to Resolve Disputes Between Service Members and Their Significant Others*, 19 OH. ST. J. ON DISP. RESOL. 1059 (2004).

<sup>44</sup> *Id.*

<sup>45</sup> Klostermann et al., *supra* note 36, at 54. See also, Stacy Bannerman, *High Risk of Military Domestic Violence on the Home Front*, SF GATE (Apr. 7, 2014) <http://www.sfgate.com/opinion/article/High-risk-of-militarydomestic-violence-on-the-5377562.php>.

Army Reserve and National Guard personnel, properly addressing the infection of domestic violence in the military is crucial to the long-term health of the institution.<sup>46</sup>

In addition to the impact on its members, domestic violence in the military has the potential for long-term impact on the American civilian populace as well. Every year, large numbers of military personnel return to civilian life from active military service.<sup>47</sup> While there are very few studies focused on identifying possible risk factors for domestic violence among active duty Soldiers and veterans,<sup>48</sup> researchers believe that domestic violence may occur at a higher rate in the military due to stressors and challenges that are unique to military life.<sup>49</sup>

Specifically, being a part of the armed forces “requires frequent transfers to sometimes undesired locations, separation from extended family members, uncertainty about future assignments, varying schedules, long hours, strenuous training and physically-demanding jobs, [repeated deployments,] and fears for the military member’s safety.”<sup>50</sup> These factors may influence the prevalence of domestic violence in the military, especially occupational stress, deployments, post-traumatic stress disorder (PTSD), and the presence of children in the home.

#### A. Occupational Stress

Occupational stress in the military differs greatly from occupational stress in the civilian work force.<sup>51</sup> When soldiers enter active duty, they are drilled physically and mentally to prepare them for the risks of battle.<sup>52</sup> This environment instills in soldiers “new ways of responding to perceived threats of violence and/or hostility,”<sup>53</sup> with the understanding that the use of violence is an acceptable and often-used tool to achieve military goals.<sup>54</sup>

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<sup>46</sup> *About the Department of Defense*, U.S. DEP’T OF DEF, <http://www.defense.gov/About-DoD> (last visited June 23, 2016).

<sup>47</sup> Trevillion et al., *supra* note 37, at 1330.

<sup>48</sup> Jones, *supra* note 24, at 151.

<sup>49</sup> Fritz, *supra* note 33, at 175.

<sup>50</sup> Klostermann et al., *supra* note 36, at 54.

<sup>51</sup> Williston et al., *supra* note 40, at 56.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Jones, *supra* note 24, at 153.

Many victims of domestic violence are reluctant to report assaults to law enforcement due to feelings of shame, embarrassment, and the fear that their abuser may retaliate.<sup>55</sup> In addition to these feelings, active-duty families have an additional barrier to reporting, in that any allegation of domestic violence will have an adverse effect on their abuser's career, including negative economic consequences for the entire family.<sup>56</sup>

For example, due to the consequences of reporting the abuse, a victim may lose the household's primary—and often only—source of income, along with on-base housing, military health insurance, and potential retirement benefits.<sup>57</sup> Additionally, for many soldiers, “being in the military is more than just a career; it is their identity.”<sup>58</sup> The loss of this identity through the court-martial or separation process may lead to an increase in violence because the abuser may feel as though he has nothing left to lose.<sup>59</sup>

As part of their service to their country, military families often experience frequent relocations, family separations, financial pressure, and isolation from familiar support systems.<sup>60</sup> Due to repeated transfers—quite often to economically repressed areas of the country—it is difficult for the (usually female) spouse in most military families to maintain a career, and the soldier is typically the primary breadwinner.<sup>61</sup>

Also as a result of service, most military spouses endure periods of involuntary unemployment, leaving them dependent on their spouse, which subsequently gives their abuser more power and control.<sup>62</sup> Moreover, frequent moves can lead to isolation for victims, separating them from family and other familiar support systems such as friends and

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<sup>55</sup> Stamm, *supra* note 42, at 325.

<sup>56</sup> See Bannerman, *supra* note 45.

<sup>57</sup> *Id.*

<sup>58</sup> Jones, *supra* note 24, at 148.

<sup>59</sup> *Id.*

<sup>60</sup> Fosnaught, *supra* note 43, at 1062.

<sup>61</sup> Jones, *supra* note 24, at 151. There has been some effort made by state governments to assist military spouses; however, these efforts are geared toward those with professional licenses. EXECUTIVE ORDER—ESTABLISHING PRINCIPLES OF EXCELLENCE FOR EDUCATIONAL INSTITUTIONS SERVING SERVICE MEMBERS, VETERANS, SPOUSES, AND OTHER FAMILY MEMBERS (April 27, 2012), <https://www.whitehouse.gov/the-press-office/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti>. “All fifty states have now acted to streamline professional licensing for military spouses so that if their families are transferred across state lines, they can continue to do the work they love.” WHITE HOUSE (July 2, 2016), <https://www.facebook.com/WhiteHouse/?pnref=story>.

<sup>62</sup> Jones, *supra* note 24, at 151.



community. In turn, this forces them to be dependent on the batterer, which may ultimately prevent the victim from ever being able to leave the abusive relationship.<sup>63</sup>

## B. Deployments

The U.S. military has been at war for over a decade since the attacks of September 11, 2001,<sup>64</sup> the longest period of sustained conflict in U.S. history.<sup>65</sup> Over 2.5 million people have deployed in support of combat operations in Iraq and Afghanistan, many deploying in unprecedented frequencies and duration.<sup>66</sup> This sustained international conflict has placed a high burden on our military, not only for soldiers who have deployed to combat zones, but also for the soldiers and family members who do not deploy, but take up additional duties at home.<sup>67</sup>

Multiple deployments and reunifications can create unique stress for the soldier, as well as for the spouse left behind, especially if there are children present in the home.<sup>68</sup> Many factors of deployment can contribute to spousal abuse, including separation, isolation, length of deployment, and uncertainty of faithfulness.<sup>69</sup> While the deployment itself may seem to create the most tension, reintegration of the soldier into family life can also be a difficult time. In addition to the issues regarding the division of household roles, the adjustment period may be further complicated by a combat injury, anxiety, or symptoms of PTSD.<sup>70</sup>

Though many families report an increase in stress due to deployment, the relationship between deployment and domestic violence has rarely been scientifically examined, and is therefore largely unknown.<sup>71</sup> What is

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<sup>63</sup> *Id.* at 153.

<sup>64</sup> Williston et al., *supra* note 40, at 55.

<sup>65</sup> *The Military-Civilian Gap: Fewer Family Connections*, PEW RESEARCH CENTER (Nov. 23, 2011), <http://www.pewsocialtrends.org/2011/11/23/the-military-civilian-gap-fewer-family-connections/> [hereinafter Survey].

<sup>66</sup> Glenna Tinney & April A. Gerlock, *Intimate Partner Violence, Military Personnel, Veterans, and Their Families*, 52 FAM. CT. REV. 400 (July 2014).

<sup>67</sup> Lizette Alvarez & Deborah Sontag, *When Strains on Military Families Turn Deadly*, N.Y. TIMES (Feb. 15, 2008), [http://www.nytimes.com/2008/02/15/us/15vets.html?\\_r=0&pagewanted=print](http://www.nytimes.com/2008/02/15/us/15vets.html?_r=0&pagewanted=print).

<sup>68</sup> Jones, *supra* note 24, at 153.

<sup>69</sup> *Id.*

<sup>70</sup> Tinney & Gerlock, *supra* note 66, at 403.

<sup>71</sup> Jones, *supra* note 24, at 153.

known, however, is that the risk of post-deployment domestic violence is four to five times greater when there is a history of domestic violence prior to deployment.<sup>72</sup> This is evident in the case of SPC Roberts, whose first documented act of domestic violence occurred prior to his deployment to Iraq, who then assaulted his wife on three additional subsequent occasions after he returned home.<sup>73</sup>

### C. Post-traumatic Stress Disorder

With the extended conflict in the Middle East, there is a growing number of servicemembers returning home from war with symptoms of mental health difficulties, such as post-traumatic stress disorder (PTSD).<sup>74</sup> Post-traumatic stress disorder is a “mental health condition that [is] triggered by a terrifying event—either experiencing it or witnessing it. Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event.”<sup>75</sup> Some common risk factors for the development of PTSD include: childhood abuse, physical or sexual assault, and combat exposure.<sup>76</sup> This is relevant because researchers discovered that soldiers diagnosed with PTSD are “significantly more likely to perpetrate violence towards their partners,” with over eighty percent committing at least one act of violence in the previous year.<sup>77</sup> That percentage is more than fourteen times higher than in the general civilian population.<sup>78</sup>

While the majority of soldiers who deploy to a combat zone will not develop PTSD,<sup>79</sup> the health implications of those who do cannot be ignored. A large percentage of soldiers returning from Iraq and Afghanistan met criteria for diagnosis of PTSD upon redeployment.<sup>80</sup> These numbers are concerning in view of the fact that studies show a

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<sup>72</sup> *Id.*

<sup>73</sup> Professional Experience, *supra* note 2.

<sup>74</sup> Jones, *supra* note 24, at 155.

<sup>75</sup> *Post-traumatic Stress Disorder (PTSD): Definition*, MAYO CLINIC, <http://www.mayoclinic.org/diseases-conditions/post-traumatic-stressdisorder/basics/definition/CON-20022540> (last visited June 23, 2016).

<sup>76</sup> *Id.*

<sup>77</sup> See Bannerman, *supra* note 45.

<sup>78</sup> *Id.*

<sup>79</sup> Tinney & Gerlock, *supra* note 66, at 403.

<sup>80</sup> Klostermann et al., *supra* note 36, at 55. “Specifically, 6% to 10% of soldiers returning from Operation Enduring Freedom and 10% to 13% of Operation Iraqi Freedom veterans met criteria for PTSD upon return from deployment.” *Id.* (internal citations omitted).

strong connection between veterans who have developed PTSD and domestic violence, finding that those veterans are responsible for almost twenty-one percent of domestic violence nationwide.<sup>81</sup>

#### D. Family Impact

Studies agree that children who witness domestic violence experience a negative impact on their health and development.<sup>82</sup> This is critical because statistics show that children are eyewitnesses to approximately eighty to ninety-five percent of domestic violence incidents that occur in the home.<sup>83</sup> On a yearly basis, more than one in fifteen American children witness domestic violence, and more than 275 million children are exposed to domestic violence worldwide.<sup>84</sup> Experts believe that a child's exposure to domestic violence may be particularly damaging to their development, because the altercation typically involves an abuser and victim who are both known to, and loved by, the child.<sup>85</sup>

Witnessing domestic violence negatively affects a child's functioning, including the development of behavioral and emotional problems.<sup>86</sup> Some examples include acting out at school or in social situations, aggression, hostility, symptoms of PTSD and depression, and low academic performance, which may lead to difficulties obtaining an advanced education and successful employment.<sup>87</sup> While children of both genders are affected by the exposure to domestic violence, research shows that boys who witness domestic violence are more likely to become perpetrators of domestic violence as adults, thus continuing the cycle of violence.<sup>88</sup> Regardless of gender, children who witness domestic violence

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<sup>81</sup> *Id.* See also, Tinney & Gerlock, *supra* note 66, at 402; Williston et al., *supra* note 40, at 56.

<sup>82</sup> James C. Spilsbury et al., *Clinically Significant Trauma Symptoms and Behavioral Problems in a Community-based Sample of Children Exposed to Domestic Violence*, 22 J. FAM. VIOL. 487 (2007).

<sup>83</sup> Kathryn H. Howell et al., *Developmental variations in the impact of intimate partner violence exposure during childhood*, 8 J. INJ. VIOL. RES. 43 (2016).

<sup>84</sup> *Id.*

<sup>85</sup> Spilsbury et al., *supra* note 82, at 487–88.

<sup>86</sup> Dawnovise N. Fowler & Amy Chanmugam, *A Critical Review of Quantitative Analyses of Children Exposed to Domestic Violence: Lessons for Practice and Research*, 7 BRIEF TREATMENT AND CRISIS INTERVENTION 322 (2007).

<sup>87</sup> Howell et al., *supra* note 83, at 51.

<sup>88</sup> Blair et al., *Child Witness to Domestic Abuse: Baseline Data Analysis for a Seven-Year Prospective Study*, 41 PEDIATRIC NURSING 23 (Jan–Feb 2015) (internal citations omitted).

experience a significant psychological burden.<sup>89</sup> With more mental, emotional, and interpersonal difficulties, “these children may not progress optimally into adulthood.”<sup>90</sup>

This is a serious problem for the U.S. Army given that approximately 200,000 young adults join the military every year.<sup>91</sup> That statistic makes the armed forces one of the larger employers for youth between the ages of seventeen and twenty-four.<sup>92</sup> Furthermore, research shows that parents are a stronger influence on youth career decisions than school or peers.<sup>93</sup> As a result, many children with parents in the military make the decision to join the military themselves. A 2011 survey showed that veterans are more than twice as likely as the general public to have a child serving in the military.<sup>94</sup> If these same children have also witnessed domestic violence in the home, then the cycle of violence could be perpetuated throughout the armed forces for years to come.

#### IV. Military Response to Domestic Violence

Given the consequences discussed above, the DoD can no longer afford to turn a blind eye to the epidemic of Soldiers perpetrating domestic violence. Military-related calls into the National Domestic Violence hotline almost tripled from 437 in 2006 to over 1100 in 2010, with sixty-one percent of these calls reporting physical abuse.<sup>95</sup> The U.S. Army has the highest rates of domestic violence of all the services, which suggests that domestic violence may be worsening in that population.<sup>96</sup>

Congress has mandated studies regarding domestic violence in the military since 1989.<sup>97</sup> However, it was a *60 Minutes* exposé in 1999, entitled *The War at Home*, which highlighted the problem of domestic

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<sup>89</sup> Howell et al., *supra* note 83, at 51.

<sup>90</sup> *Id.*

<sup>91</sup> Jennifer Lee Gibson et al., *Parental influence on youth propensity to join the military*, 70 J. OF VOC'L BEHAV. 525 (2007).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See Survey, *supra* note 65. Furthermore, 75% of veterans would recommend a career in the military. *Id.*

<sup>95</sup> Williston et al., *supra* note 40, at 55.

<sup>96</sup> Stamm, *supra* note 42, at 322.

<sup>97</sup> Maureen Orth, *Fort Bragg's Deadly Summer*, VANITY FAIR (Dec. 2002), <http://www.vanityfair.com/news/2002/12/fortbragg200212>.

violence in the military and galvanized a public outcry.<sup>98</sup> Ed Bradley, the reporter for *60 Minutes*, analyzed Pentagon records from 1992 through 1996 that showed the rate of domestic violence in the military was five times higher than that of the civilian population.<sup>99</sup> The report also indicated that the military was ignoring the problem, and very few abusers were being held accountable.<sup>100</sup>

In response, Congress established the Defense Task Force on Domestic Violence (DTFDV) to study the issue of domestic violence in the military.<sup>101</sup> The task force, comprised of twenty-four military and civilian experts, was directed to make recommendations on how the DoD could improve victim safety, offender accountability, and the general climate surrounding domestic violence.<sup>102</sup> They were required to meet regularly for three years and to provide Congress with reports of their findings.<sup>103</sup>

The DTFDV's first report, released on February 28, 2001, listed more than seventy-five recommendations and focused on four main categories: military collaboration with the local community, domestic violence education and training, offender accountability, and victim safety.<sup>104</sup> The second report, released on February 25, 2002, was similar to the first report in that it focused on the same four initial categories, but also added a fifth category: program management.<sup>105</sup> Through their analysis of records from each service, the task force discovered that soldiers who perpetrated acts of domestic violence rarely faced punishment or prosecution.<sup>106</sup> Therefore, both reports called for sweeping changes in the way the military handles domestic violence cases, including tracking servicemembers who

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<sup>98</sup> See Alvarez & Sontag, *supra* note 67.

<sup>99</sup> Stamm, *supra* note 42, at 326.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> See Alvarez & Sontag, *supra* note 67.

<sup>104</sup> Stamm, *supra* note 42, at 326. For example, the task force recommended an increase in victim advocates and domestic violence training for commanding officers. See Alvarez & Sontag, *supra* note 67.

<sup>105</sup> Stamm, *supra* note 42, at 326. "The Program Management Category is responsible for addressing the more global, system-wide issues that cut across all of the other categories." *Id.* at 337.

<sup>106</sup> See Alvarez & Sontag, *supra* note 67.

were under restraining orders for domestic violence, or who were convicted of a domestic violence offense.<sup>107</sup>

Unfortunately, prior to the implementation of any changes, the issue came to a head in the summer of 2002, when four soldiers murdered their wives in unrelated events within a six-week period at Fort Bragg, North Carolina.<sup>108</sup> Three of the four soldiers were members of the Special Forces who had recently returned from Afghanistan; the fourth was an Army cook.<sup>109</sup> Of the four offenders, two immediately turned their guns on themselves and one hanged himself in a jail cell.<sup>110</sup>

These murders reinforced public concerns about military domestic violence that had led to the formation of the task force two years earlier.<sup>111</sup> However, when the moment arrived for the task force to provide their third and final report to Congress, the timing could not have been worse.<sup>112</sup> The leaders of the DTFDV, Deborah Tucker and Lieutenant General Garry Parks, presented their findings and recommendations to the House Armed Services Committee on March 20, 2003, the very day that the Iraq war began, effectively destroying any interest in the DTFDV program.<sup>113</sup> Ms. Tucker described it as, “one of the more surreal experiences of my life.”<sup>114</sup>

Pentagon officials claim that overseas operations did not derail their efforts to improve the way the military handles domestic violence; however, the task force was disbanded and their request to reconvene in 2005 to evaluate progress was denied.<sup>115</sup> Furthermore, the rate of domestic violence in the United States decreased after the attacks of September 11, 2001, but the rate of domestic violence within the military continued to explode, with assaults tripling between 2006 and 2011.<sup>116</sup> While the DTFDV provided 200 proposals for change, it had one overarching recommendation: the DoD must “establish a military culture that does not tolerate domestic violence, holds batterers accountable for

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<sup>107</sup> Fox Butterfield, *Wife Killings at Fort Reflect Growing Problem in Military*, N.Y. TIMES (July 29, 2002), <http://www.nytimes.com/2002/07/29/us/wife-killings-at-fort-reflect-growing-problem-in-military>.

<sup>108</sup> See Alvarez & Sontag, *supra* note 67.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> See Bannerman, *supra* note 45.

their actions, and provides victims of abuse with the services they need.”<sup>117</sup>

One of the most significant changes to the military’s response to domestic violence was the implementation of the Family Advocacy Program (FAP), established under Army Regulation 608-18.<sup>118</sup> The FAP was created to execute the military’s policy on the prevention, identification, reporting, investigation, and treatment of spousal and child abuse.<sup>119</sup> It is responsible for ensuring victim safety, access to support and advocacy services, and intervention services for abusers.<sup>120</sup> The FAP also tracks incidents of domestic violence for the DoD, in an effort to identify trends and predictive behaviors to help combat the growing rate of intimate partner violence.<sup>121</sup>

Unfortunately, after all the years of research, even the DoD does not have a good grasp on the extent of domestic violence in the military. The data provided by the FAP only reflects child abuse and domestic abuse that has been reported to their program, leaving one to question the number of actual cases—reported and unreported.<sup>122</sup> Furthermore, this data only includes married couples in incidents of domestic violence, not former spouses or dating partners.<sup>123</sup> This lack of information makes the official rate of domestic violence in the military difficult to calculate, but what experts do agree on is that the number is significantly higher than that of their civilian counterparts.<sup>124</sup>

In August 2013, the issue of domestic violence in the military was addressed anew, this time by the Military Justice Review Group (MJRG).<sup>125</sup> General Martin Dempsey, the then-Chairman of the Joint Chiefs of Staff, recommended a complete review of the UCMJ to “ensure

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<sup>117</sup> Stamm, *supra* note 42, at 326.

<sup>118</sup> *Id.* at 328. See also U.S. DEP’T OF ARMY, REG. 608-18, ARMY FAMILY ADVOCACY PROGRAM (13 Sept. 2011) [hereinafter AR 608-18].

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> See Bannerman, *supra* note 45.

<sup>123</sup> See Butterfield, *supra* note 107.

<sup>124</sup> *Id.* Experts include Deborah Tucker, co-chairwoman of the Defense Department’s Task Force on Domestic Violence, Christine Hansen, executive director of the Miles Foundation, and Dr. Angela Browne, associate director of the Injury Control Research Center at Harvard. *Id.*

<sup>125</sup> *Report of the Military Justice Review Group Part 1: UCMJ Recommendations*, MILITARY JUSTICE REVIEW GROUP (Dec. 22, 2015), [http://www.dod.gov/dodgc/images/report\\_part1.pdf](http://www.dod.gov/dodgc/images/report_part1.pdf) [hereinafter MJRG].

that it effectively and efficiently achieves justice consistent with due process and good order and discipline.”<sup>126</sup> This review was conducted by military justice experts from all of the military services whose goal was to analyze “each UCMJ article, including its historical background, current practice, and comparison to federal civilian law[,]” and to propose changes.<sup>127</sup> As part of their 1300 pages of recommendations, the MJRG proposed “aligning the definition of assault with federal civilian law, which would permit greater flexibility to address assaults involving domestic violence as an aggravating factor.”<sup>128</sup>

This proposal, while laudable, is not enough to counteract the problem of domestic violence in the armed forces. Only by making domestic violence an independent criminal offense—separate from every other—will a message be sent that domestic violence is not tolerated in the military. Furthermore, it will counteract years of failure by senior leaders to treat this crime as seriously as it deserves.

#### V. Domestic Violence Needs to Be an Enumerated Article in the UCMJ

Given the serious nature of domestic violence, and its prevalence in the military, it is important that Congress and the DoD take every step necessary to eradicate it from our ranks. However, this will only be possible if the military has a criminal offense that clearly accounts for the dynamics and consequences of intimate partner violence.<sup>129</sup> Many states recognize that domestic violence is a wrong that violates community safety and trust, and have taken extra measures to counteract its deleterious effects. Currently, forty-five states and the territory of Guam have enacted specific statutes for domestic violence, with varying sentences.<sup>130</sup> The

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Dutton, *supra* note 21, at 121.

<sup>130</sup> *State Statutes: Misdemeanor Crimes of Domestic Violence*, BATTERED WOMEN’S JUSTICE PROJECT—NATIONAL CENTER ON FULL FAITH AND CREDIT (2015), <http://www.bwjp.org/assets/documents/pdfs/ncpoffc-state-statutes-misdemeanor-crimes-of-domesti.pdf> (containing hyperlinked lists of all state statutes organized alphabetically). (The following states have yet to enact a specific domestic violence statute: Florida, New Jersey, New York, Utah, and Wisconsin). *Id.* Massachusetts enacted a specific domestic violence statute (GL c. 265 § 13M) on August 8, 2014, which added the offense of Domestic Assault or Domestic Assault and Battery. *General Laws, THE 189TH GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS*, <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13m>.



military has yet to follow suit. As of June 2016, there is no charge under the UCMJ that sufficiently addresses the serious nature of domestic violence.<sup>131</sup>

#### A. Article 128 is Inadequate

Article 128 of the UCMJ<sup>132</sup> is an ineffective charge to address the serious consequences of domestic battering. First, it fails to account for the aggravating factors that are present in most domestic violence cases, as well as the long-term harmful effects on the victim.<sup>133</sup> Second, Article 128 fails to sufficiently distinguish between the different types of assaults and the gravity of the harm that can be achieved.<sup>134</sup>

A typical military domestic violence case may come to the attention of a trial counsel after a reported assault, preceded by years of physical abuse.<sup>135</sup> Often, there may be only one or two instances of physical violence in the relationship that the trial counsel can confidently put on the charge sheet based on the evidence provided. Unfortunately, in most cases the acts of abuse occurred months or years before the report, the victim has forgotten many critical facts, and any corroborating facts and records are unavailable.<sup>136</sup> This limits a trial counsel's ability to adequately express to the fact-finder the serious and continuous nature of this crime, because they are often left with a single specification of assault consummated by a battery. The maximum punishment an accused may receive if convicted of that charge is six months confinement.<sup>137</sup> If the accused is an officer, then the trial counsel may have the option of charging conduct unbecoming an officer and a gentleman under Article 133,<sup>138</sup> which adds the possibility of another six months confinement.<sup>139</sup>

In rare instances where an accused assaults his victim with a weapon, inflicts grievous bodily harm, or uses force likely to produce death or

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<sup>131</sup> Dutton, *supra* note 21, at 121.

<sup>132</sup> UCMJ art. 128 (2012).

<sup>133</sup> Dutton, *supra* note 21, at 121.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 119.

<sup>136</sup> *Id.*

<sup>137</sup> MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 54b (2012) [hereinafter MCM].

<sup>138</sup> UCMJ art. 133 (2012).

<sup>139</sup> MCM at ¶ 59c

grievous bodily harm, then he may be charged with aggravated assault under Article 128.<sup>140</sup> In those situations, an accused convicted of aggravated assault could receive a maximum confinement of three to ten years.<sup>141</sup>

Article 128 fails to sufficiently distinguish between the different types of assaults and the gravity of the harm that can be achieved.<sup>142</sup> If an attack does not meet the criteria for an aggravated assault, then a trial counsel is left with charging assault consummated by a battery. Therefore, under the current law, a bar-room brawl must be charged in the same manner as an attack by a soldier on a loved one in the presence of their children.<sup>143</sup>

The assumption that one assault is the same as any other fails to take into account the unique dynamics of domestic violence. “[W]hereas the word ‘violent’ or ‘violence’ standing alone ‘connotes a substantial degree of force,’ that is not true of ‘domestic violence.’ ‘Domestic violence’ is not merely a type of ‘violence’; it is a term of art encompassing acts that one might not characterize as ‘violent’ in a nondomestic context.”<sup>144</sup>

If the prosecution is limited to a charge of assault consummated by a battery, then the maximum confinement available is six months; a rather insignificant punishment to address a “crime that may be the culmination of years of physical, emotional, and psychological abuse, and which left the victim emotionally and financially isolated, psychologically paralyzed, and living with the day-to-day uncertainty whether she will be brutalized or even killed.”<sup>145</sup> As previously noted by the U.S. Supreme Court, there is more to the crime of domestic violence than a few isolated blows and bruises, and the current charge of assault consummated by a battery is utterly inadequate to describe that pattern of behavior.<sup>146</sup>

Furthermore, the recommendation that domestic violence be added as an aggravating factor to the existing assault statute is also inadequate. Domestic violence is a multidimensional concept that involves a range of behaviors.<sup>147</sup> It is not “merely generic violence exhibited in a particular

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<sup>140</sup> *Id.* ¶ 54b

<sup>141</sup> *Id.*; *see also* UCMJ art. 128 (2012).

<sup>142</sup> Dutton, *supra* note 21, at 121.

<sup>143</sup> *Id.*

<sup>144</sup> Castleman, 134 S. Ct. 1405 (2014) (internal citations omitted).

<sup>145</sup> Dutton, *supra* note 21, at 121.

<sup>146</sup> Sack, *supra* note 30, at 142. *Id.*

<sup>147</sup> Spilsbury et al., *supra* note 82, at 487.

locale or by a perpetrator with a particular relationship to his victim. It is this pattern of domination, and not a particular level of violent force, that is central to the concept of domestic violence.”<sup>148</sup> While this article does not include recommended text for the enumerated article, it is important to note that the “principles of ensuring victim safety and batterer accountability must guide the drafting process of any new law.”<sup>149</sup> Enacting a domestic violence article would show that one assault is not the same as another and would not only demonstrate that the government takes this type of crime seriously, but would also better serve the needs of the military community.

#### B. An Enumerated Domestic Violence Article Would Have Ancillary Benefits

Creating an enumerated article of domestic violence in the UCMJ would also have ancillary benefits, such as allowing the command to recognize abusers at an earlier stage, potentially increasing the odds that perpetrators will be identified and receive necessary counseling, and easing the burden for victims to demonstrate their eligibility for government benefits.<sup>150</sup>

##### *1. Making Employers Aware of Abusers*

First, enacting a domestic violence article would increase the odds that commanders would recognize members of their unit who have a tendency to commit intimate partner violence prior to an egregious assault being carried out. For example, a soldier might be committing domestic violence against their spouse that does not rise to the level of physical violence, e.g. financial control or emotional abuse such as name-calling. By counseling this soldier about their violation of the domestic violence article, the commander not only puts the soldier on notice, potentially reducing their risk of reoffending, but the commander also has documentation to show future commanders that there may be an issue with this particular soldier that they need to monitor.

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<sup>148</sup> Sack, *supra* note 30, at 142.

<sup>149</sup> *Sample National Domestic Violence Laws*, STOP VIOLENCE AGAINST WOMEN, <http://hrlibrary.umn.edu/svaw/domestic/laws/samplelaws.htm> (last visited July 15, 2016).

<sup>150</sup> Tom Lininger, *An Ethical Duty to Charge Batterers Appropriately*, 22 DUKE J. GENDER L. & POL’Y 173, 175 (2014).

Furthermore, charging abusers under a domestic violence article would promote consistency in the treatment of these types of cases, and serve as a deterrent to other prospective offenders.<sup>151</sup> A separation or conviction under the domestic violence article would provide future employers critical information about the applicant that would otherwise not be found in a background check.<sup>152</sup> This is especially important for employers who are looking for candidates for jobs in sensitive settings.<sup>153</sup> Having a charge that correctly identifies the crime would help to accomplish that goal.

## 2. Lautenberg Amendment

Limiting the prosecution's charging decision to assault consummated by a battery also hinders the enforcement of the Lautenberg Amendment.<sup>154</sup> The Lautenberg Amendment, which amends the federal Gun Control Act of 1968, prohibits anyone convicted of a misdemeanor crime of domestic violence from possessing a firearm.<sup>155</sup> Congress felt that this amendment was necessary because domestic violence offenses were often undercharged or pleaded down to a lesser offense than the behavior demanded.<sup>156</sup> Furthermore, unlike the Gun Control Act, there is no exemption for police and military personnel under the Lautenberg Amendment.<sup>157</sup> This is important given that, as stated above, research shows that the rate of domestic violence is higher in the armed forces than in the general population.

Moreover, the most accurate predictor of a domestic assault involving a weapon is a history of domestic violence.<sup>158</sup> Therefore, there may be many misdemeanor convictions that could qualify under the Lautenberg Amendment, but are often difficult to recognize given the limited charging options provided to prosecutors.<sup>159</sup>

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> 18 USC s 922(g)(9). *See also* Sack, *supra* note 30, at 130

<sup>156</sup> *Id.*

<sup>157</sup> *Domestic Violence*, *supra* note 27, at 388.

<sup>158</sup> Nathan, *supra* note 33, at 854.

<sup>159</sup> Lininger, *supra* note 150, at 191.

When an assault conviction is entered into the National Crime Information Center (NCIC), it is usually not clear that it meets the requirement for the Lautenberg Amendment, because most assault charges do not explicitly state that they resulted from domestic abuse.<sup>160</sup> Having an enumerated domestic violence article would make such convictions more easily recognizable in NCIC and other law enforcement databases, leading to greater accuracy in background checks, and making Lautenberg violators more recognizable to law enforcement.<sup>161</sup> The best way to ensure that domestic batterers do not thwart the intent of Congress by possessing a firearm is to have an enumerated domestic violence charge.

### 3. *Victim Benefits*

A potential criticism of this article's proposal is that it might have a chilling effect on victims of domestic violence, leading to a fear of reporting. On the contrary, much like sexual assault in the military, if Congress enacted an enumerated article of domestic violence it would demonstrate how seriously they take this crime. Due to the attention Congress gave sexual assault in the military, victim reporting has increased because they now trust the system.<sup>162</sup> Additionally, the number of sexual assaults committed in the military has sharply declined within the past two years.<sup>163</sup> Creating a domestic violence article would likely have a similar effect because it sends the message that domestic violence will not be tolerated in the military. Furthermore, such an article would assist leaders in monitoring and maintaining a culture and climate where incidents of domestic violence become rare, but when they do occur, victims are confident in coming forward, because they know that the command will take appropriate action.

In addition, a domestic violence article would lead to greater precision and clarity in court and military records. When domestic violence is explicitly labeled as such, it is likely that victims will have an easier time demonstrating why their abuser should not have physical custody of the

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<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Helene Cooper, *Reports of Sexual Assault in Military on Rise*, N.Y. TIMES (Dec. 3, 2014), <http://www.nytimes.com/2014/12/04/us/reports-of-sexual-assaults-in-military-on-rise.html>.

<sup>163</sup> Steven A. Holmes, *Sharp decrease of sexual assault in military, study finds*, CNN POLITICS (May 1, 2015), <http://www.cnn.com/2015/05/01/politics/military-sexual-assault-report/>

children, why they are entitled to support, and why they qualify for government benefits such as transitional compensation. The goal of the military transitional compensation program is to help alleviate the financial hardship a victim may face when they decide to leave an abusive relationship.<sup>164</sup> To qualify, the victim must have been living in the home of, and married to, the servicemember.<sup>165</sup> Additionally, the servicemember must have been convicted of a domestic violence offense (of a dependent) and either separated as part of a court-martial sentence, ordered to forfeit all pay and allowances as part of a court-martial sentence for a domestic violence offense, or administratively separated, at least in part, for a domestic violence offense.<sup>166</sup>

Having an enumerated offense of domestic violence in the UCMJ would make this process infinitely easier, instead of requiring victims to re-litigate the issue, or search various court documents for proof that the proper relationship existed to qualify for this often much-needed service. Such an article would ensure that victims receive the fair treatment by the legal system that they are entitled to.

## VII. Conclusion

Domestic violence exacts a serious toll on its victims, the children who witness these assaults, and society. It represents actions on a continuum, with behavior ranging from emotional abuse to potentially deadly assaults. Despite various charges, the military currently has no effective means to combat this serious and pervasive crime, as existing UCMJ articles are inadequate. There is no better example than the case of SPC Roberts and his family to underscore the importance of having a punitive article that sends a message that this conduct will not be tolerated in the armed forces. Specialist Roberts had four young children who were present when he repeatedly struck and strangled his wife. Children who grow up in a violent home not only have emotional and psychological damage, they are more likely to commit domestic assaults themselves and perpetuate the cycle of violence. By enacting an enumerated article of domestic violence in the UCMJ, military leaders can foster and maintain a culture and climate where incidents of domestic violence become rare. Had such a tool existed

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<sup>164</sup> *Transitional Compensation: Help for Victims of Abuse*, MILITARY ONE SOURCE, [http://www.militaryonesource.mil/abuse?content\\_id=266715](http://www.militaryonesource.mil/abuse?content_id=266715) (last visited July 21, 2016).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

for SPC Roberts' command, they might have been able to take a proactive response to his violence, as opposed to a reactive approach after the physical, emotional, and psychological damage had already been done.