

## Legal review on PTSD defense of adolescent patients in criminal cases

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**ABSTRACT:** Post-Traumatic Stress Disorder is nothing new for Chinese society; however, Chinese courts are hesitated to accept the PTSD as a mental defense for adolescent patients. PTSD defense might be popular in future and court shall give proper weight to relevant factors. It is a big problem that there are no procedures or instructions for the connection between diagnosis and judgment. The paper illustrates the origination of PTSD and its development in USA with some relevant cases. Even the American courts consider PTSD as a problem. And there should be detailed regulations in China to keep pace with the development of science technology.

**Keywords:** adolescent patients; Post-Traumatic Stress Disorder; mental defense; criminal cases

### 1 INTRODUCTION OF JUVENILE PATIENTS WITH POST-TRAUMATIC STRESS DISORDER

In China, there is nothing new about the phenomenon of post-traumatic stress disorder (PTSD, sometimes called “delayed psychogenic reaction”), but there have been no much development in both its diagnosis and treatment and its role in litigation. Technically, “trauma” means “wound”, and in its psychological sense, as defined in the Webster’s Second New College Dictionary, “an emotional shock that creates substantial and lasting damage to the development of the individual.” Metaphorically, trauma is suffering that strains the psyche.<sup>[1]</sup> After Wenchuan Earthquake (2008), there has occurred a watering down of the concept in Chinese society, with the result that it has been widely lampooned.<sup>[2]</sup>

In most Chinese textbooks, PTSD is an American phrase.<sup>1</sup> Despite the unique circumstances of the Vietnam conflict, post-combat reactions are not a new problem in western countries. The medical world has long recognized that combat produces dysfunctional

psychological and behavioral reactions. Between World War I and World II, the military conflicts kindled the scientific interest in the phenomenon, and there are kinds of phases referred to it, such as “shell shock”, “soldier’s heart” and “traumatic neurosis”. In 1980, with the publication of the American Psychiatric Association’s third edition of its Diagnostic and Statistical Manual of Mental Disorders (DSM-III), PTSD entered the psychiatric nomenclature as a listing under the heading of the anxiety disorders. Symptoms may include disturbing thoughts, feelings, or dreams related to the events, mental or physical distress to trauma-related cues, attempts to avoid trauma-related cues, alterations in how a person thinks and feels, and increased arousal. These symptoms last for more than a month after the event.<sup>2</sup>

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<sup>2</sup> Michael J. Davidson, Post-Traumatic Stress Disorder: A controversial defense for veterans of a controversial war, 29 *William & Mary Law Review* 415, No. 2, 1988. The original 1952 edition of the American Psychiatric Association (APA) Diagnostic and Statistical Manual of Mental Disorders (DSM I) categorized combat stress as a gross stress reaction. This categorization disappeared in the 1968 edition (DSM II). DSM II considered combat stress only under the general heading of “adjustment reactions of adult life.” This cursory treatment of a serious and widespread disorder indicates that the psychiatric community did not adequately address problems associated with post-combat stress reactions when the American military presence in Vietnam was at its peak. The medical and legal professions lacked an adequate description of PTSD symptoms that could be used to diagnose, treat, and defend veterans. As a result, psychiatrists frequently misdiagnosed the postwar reactions of many Vietnam veterans as psychotic, substance dependent, or fictional.

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<sup>1</sup>The Union Surgeon General, William Hammonds, first recognized this condition. In the first year of the war, 5213 cases of nostalgia were reported--2.34 cases per 1000 soldiers. This rate rose to 3.3 per 1000 by the second year. In addition, 20.8 per 1000 soldiers were discharged for “paralysis” and 6 per 1000 for “insanity.”

There was little history or information related to the long- or short-term effects of PTSD. Studies have shown that, after a traffic accident, whether injured or not, about 25% of children are suffering from PTSD, and minors who are lack of parental care will be more susceptible to PTSD. 10% to 55% of minors will get PTSD when they grow up, whose childhood suffered physical or sexual abuse, while 50% to 75% of children with PTSD symptoms can last well into adulthood. For juvenile offenders, PTSD prevalence is four times that of ordinary young people, where women are 2 times that of men. In children, especially very young children, the symptoms of PTSD can be different from adults and might include: fear of being separated from parent, losing previously-acquired skills (such as toilet training), sleep problems and nightmares, somber, compulsive play in which themes or aspects of the trauma are repeated, new phobias and anxieties that seem unrelated to the trauma (such as a fear of monsters), acting out the trauma through play, stories, or drawings aches and pains with no apparent cause, irritability and aggression. Young children are less likely to show distress but instead may express their memories through play. Those with PTSD are at a higher risk of suicide.<sup>[3,4]</sup> Recent years have seen an increasing acceptance of a link between PTSD and criminal behavior, both in the general populace and in the criminal justice system. However, Chinese judges hesitate to accept PTSD as a mental defense for various reasons.

## 2 DIFFERENCES BETWEEN ADOLESCENT PATIENTS WITH POST-TRAUMATIC STRESS DISORDER AND NORMAL PEERS

Research on PTSD has focused primarily on victims of trauma with a small subset addressing PTSD caused by legally sanctioned killing, such as homicides resulting from police shootings or military combat.<sup>[5]</sup> There is a paucity of research analyzing juvenile perpetrators with violent and criminal acts developing PTSD as a result of the commission of those offenses.

What are the implications for the criminal justice system if juvenile perpetrators of criminal assaults and homicides have a high risk of suffering PTSD as a result of their criminal conduct? Five objectives are widely accepted for enforcement of the criminal law by punishments: retribution, deterrence, incapacitation, rehabilitation and restoration. Jurisdictions differ on the value to be placed on each. To the extent that PTSD and its effects can undermine the mental stability of a criminal defendant. Similarly, an alleged perpetrator's PTSD must be considered in evaluating his/her competence to stand trial, regardless of whether the mental condition existed before the crime occurred or because the crime occurred.

PTSD sufferers may experience diminished responsiveness to the external world, such as "psychic

numbing" or "emotional anesthesia", coupled with feelings of being detached or estranged from other people and a markedly reduced ability to feel emotions. PTSD may produce intense psychological distress or physiological reactions. A juvenile experiencing PTSD may have symptoms of anxiety or increased arousal coupled with difficulty concentrating or completing tasks. All of these symptoms of PTSD have the potential in a criminal defendant to sap the client's ability to resist law enforcement's coercive tactics or to meet the competence to stand trial criteria. However, PTSD created solely by the act of violence that is the charged offense would appear to have no direct bearing on a juvenile perpetrator's defense of mental non-responsibility, i.e., the insanity defense. Yet PTSD generated by committing the violent crime should signal the possibility that a defendant may have other mental conditions predating the violent offense. Research indicates that juvenile patients with mental health problems have a high risk of experiencing PTSD.<sup>[6]</sup> Two foreign studies examined mock juror verdicts for veterans with PTSD in criminal justice system. Mock jurors demonstrated a leniency toward treatment bias for veterans with PTSD who committed a violent crime, compared to a nonviolent crime.<sup>[7]</sup>

## 3 POST-TRAUMATIC STRESS DISORDER ABUSE FROM ADOLESCENT PATIENTS

### 3.1 *Chinese rules of juvenile patients with mental defense*

In China, mental disorder is vital in both definitions of crime and penalty. Rules of juvenile patients with mental defense exist in both material laws and procedure laws. When it comes to minor criminals, the punishments will be less than adults, and juvenile patients get more advantages in mental defense.

Take the Article 17 and 18 of Criminal Law of the People's Republic of China as examples. Article 4 of Criminal Law of the People's Republic of China emphasizes that "the law shall be equally applied to anyone who commits a crime and no one shall have the privilege of transcending the law." And Article 5 of Criminal Law of the People's Republic of China stresses "the degree of punishment shall be commensurate with the crime committed and the criminal responsibility to be borne by the offender." However, Section 1 of Article 17 sets a scope of age for criminals, "if a person who has reached the age of 16 commits a crime, he/she shall bear criminal responsibility." Moreover, from Section 2 of Article 17, "if a person who has reached the age of 14 but not the age of 16 commits intentional homicide, intentionally hurts another person so as to cause serious injury or death of the person, or commits rape, robbery, drug- trafficking, arson, explosion or poisoning, he/she shall bear criminal responsibility." Section 3 of Article 17 is well

known by the Chinese, which is “if a person who has reached the age of 14 but not the age of 18 commits a crime, he/she shall be given a lighter or mitigated punishment.” Followed by Section 4 of Article 17, “if a person is not given criminal punishment because he/she has not reached the age of 16, the head of his family or his/her guardian shall be ordered to discipline him. When necessary, he/she may be taken in by the government for rehabilitation.”

In the view of punishment, under Section 3 of Article 18 of Criminal Law of the People’s Republic of China, “if a mental patient who has not completely lost the ability of recognizing or controlling his own conduct commits a crime, he/she shall bear criminal responsibility; however, he/she may be given a lighter or mitigated punishment.” This section is also fit for adolescent patients.

From the point of view of procedure law, juvenile patients are different from adults on mental defense. On the one hand, minors can get more legal aid from the government. Under Section 2 of Article 34 of Criminal Procedure Law of the People’s Republic of China, “if the defendant is a minor, and thus has not entrusted anyone to be his/her defender, the People’s Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender.” After convicted, minors are isolated from the adult prisoners for a better environment. Under Section 5 of Article 253 of Criminal Procedure Law of the People’s Republic of China, it is stated that “as to a juvenile delinquent, his/her criminal punishment shall be executed in a reformatory for juvenile delinquents.”

### 3.2 *Problems for Chinese rules of juvenile patients with mental defense*

From 2015, people can get the judgments from Chinese official website (<http://wenshu.court.gov.cn>). After searching the website, it is a tricky phenomenon that Chinese judges can take PTSD as a mental defense or reason in civil cases, though Chinese judges rarely take PTSD as a mental defense in criminal cases. PTSD claims in the penalty phase, along with other claims of mental disorder, were given short shrift by the courts, which is largely because of concerns that the claims were fraudulent, potentially ubiquitous, or unconnected to the commission of the crime. In fact, there is no criminal case of minor(s) (Judged in 2015) in Mainland, in which the judge(s) take PTSD as a mental defense.

Cases of adult patients are also few. In 2008, a special criminal case was reviewed by the Intermediate People’s Court of Chifeng City that is located in north China.<sup>3</sup> 42-year-old woman Ma Yu-xia testified to an

unhappy married life, and to frequent incidents where her husband Mr. Yuan beaten or choked her and humiliated her in various ways. They divorced in 2003, then remarried and lived together after family members persuading them. One day, before Yuan lying on bed, they had a terrible quarrel. Afterwards, Ma could not sleep and used an ax to attack and smashed Yuan on October 2nd, 2007. Court of Chifeng City delivered the opinion that her committing is because of long-term state of physical and psychological hurt which caused PTSD. Meanwhile, the court considered the killer was diminished criminal responsibility and got a 12-year imprisonment.<sup>[8]</sup> Leave a glance at Article 232 of Criminal Law of the People’s Republic of China, in Mainland whoever intentionally commits homicide shall be sentenced to death penalty, life imprisonment or fixed-term imprisonment of not less than 10 years; if the circumstances are relatively minor, he (or she) shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years. Compared with 12 years, the PTSD was not calculated as a great cause for decreasing whole responsibility of Ma. Clearly, court accepted Ma as a quasi-mental patient for suffering PTSD while not considering as a whole patient.

In the front of mental defense, Chinese courts determine the criminal responsibility via the two-tiered approach: judges review the mental disabilities’ criminal responsibility on the basis of medical evaluation. PTSD is new in Chinese criminal case and judges hesitate to receive PTSD as a defense, though more and more PTSD reports appear in civil cases.<sup>[9]</sup>

The articles from 144 to 147 of Criminal Procedure Law of the People’s Republic of China are very important for diagnosis of juvenile patients. According to Article 144, “when certain special problems relating to a case need to be solved in order to clarify the circumstances of the case, experts shall be assigned or invited to give their evaluations.” Under Section 1 of Article 145, it is stated that “after evaluating a matter, the experts shall write a conclusion of expert evaluation and affix his signature to it”. Under Section 2 of Article 145, “if an expert intentionally makes a false verification, he/she shall assume legal responsibility”. In the history of USA, it has been difficult to advance PTSD as either a defense or as a mitigating factor linked to the commission of a criminal for different reasons. Initially, people doubted about the validity of PTSD in general, but it has now gained more recognition in science as well as among the general populace in USA and China. More problematic is assessing the validity of a PTSD diagnosis in a particular context. Most of the evidence for the diagnosis comes from interviews with the defendant, which leads to concerns

<sup>3</sup> There is a hierarchy within the Chinese court structure from the top to down: The Supreme People’s Courts, the Higher People’s Courts, the Intermediate People’s Courts, and the Basic People’s Courts, which are four kinds of courts in mainland. The Basic People’s Courts are comprised of approximate 3,000 courts

at county level, which are further subdivided into about 20,000 smaller units referred to as people’s tribunals located in towns and villages. There are more than 350 Intermediate People’s Courts and 31 Higher People’s Courts located in the provinces each.

about the trustworthiness of a particular diagnosis. Put simply, there are concerns that an individual who raise a claim of PTSD after committing a crime might fake symptoms in order to avoid criminal punishment.<sup>[10]</sup> Article 146 agrees and states that “A supplementary expert verification or another expert verification may be conducted upon application submitted by the criminal suspect or the victim.” Article 147 supplements that “the period during which the mental illness of a criminal suspect is under verification shall not be included in the period of time for handling the case.” In practice, there are no details for the “legal responsibility” and scope of “supplementary expert verification”, which have brought in many questions in other cases since there are no punishments to the fake expert verification, for example, there is no authority for the expert report since no rules have been settled for the exact number of times for diagnosis.

Section 3 of Criminal Procedure Law of the People’s Republic of China is also vital for the diagnosis, “if the public prosecutor, the party or the defender or the agent has an objection to the expert opinion, the People’s Court shall consider the expert witnesses to appear in court. After noticed by the People’s Court, if the expert refuses to testify in court, the expert opinion shall not be used as a basis.” This article brings in a problem that PTSD symptoms might be found in a year or more, and the judgment would be waited for a longer time.

Unlike adults, adolescent patients are likely to be accepted as mental victims, which would be a question for Chinese society that should social disapproval of these stressors (i.e., causes of PTSD) allow the criminal justice system to withhold sentencing mitigation of these defendants even though they too suffer from PTSD? So, if PTSD was recognized as a useful defense in Chinese criminal cases, it is a doubt that both plaintiff and defendant might use it in every case, which has altered in US. The problem with using PTSD as a cause of issue is not just with the legal system. The problem is also with the current cultural state of USA. PTSD has become a widely publicized issue in American culture, beginning with its declaration as an official disorder in 1980.<sup>[11]</sup> “It has [even] been quipped that if PTSD were listed on the New York Stock Exchange, it would be a growth stock worth watching.”<sup>[12]</sup> And this is just the beginning.

As 9/11 was a severely traumatic event, it can be classified as a stressor under the APA guidelines for PTSD.<sup>[13]</sup> The thousands who were involved in the tragedy and the millions more who viewed or read about the events now potentially are classified as PTSD sufferers. Because of the impact this tragedy had on the most United States citizens, research and fascination with PTSD has accelerated.<sup>[14]</sup> Not only are syndromes of PTSD proliferating, so are its symptoms and society’s knowledge of its symptoms.

After the great earthquake of Sichuan province in 2008, there are more and more PTSD patients from

the survivors in the next decade.<sup>[15]</sup> Survivors are all races, all classes, all sizes, all sexual orientations, all religions, and all nationalities. All though the case above is female, many men and boys are survivors of childhood and trauma. Under-recognition of male survivors, combined with cultural gender bias has made it especially difficult for these men to get help. I do not doubt judges will give weight to PTSD patients when the defendants from the area confront charges. But it’s a doubt that what the boundary between the reasonable use and abuse is. In my opinion, the critical issue is which kind of evidence can be taken before the judges when they meet more and more PTSD cases from minor criminals.

#### 4 US EXPERIENCE FOR PTSD CASES OF ADOLESCENT PATIENTS

##### 4.1 US cases for PTSD defense

According to official date (based on the U.S. population), about 7 or 8 out of every 100 people (or 7-8% of the population) will have PTSD at some point in their lives; about 8 million adults have PTSD during a given year. This is only a small portion of those who have gone through a trauma; about 10 of every 100 (or 10%) of women develop PTSD sometime in their lives compared with about 4 of every 100 (or 4%) of men.<sup>[16]</sup>

Prior to 1980, Vietnam War veterans involved in criminal prosecutions attempted, without much success, to introduce their war experience as a causative factor of their criminal behavior. In the first trial, in 1978, the jury rejected the plea of insanity. In effect, the jury accepted the prosecution's characterization of the shooting as domestic violence. The defendant Heads was sentenced to imprisonment for life, but he won a new trial when the U.S. Supreme Court ruled that the trial judge had made an error in instructing the jury. In the second trial, in 1981, the jury found him not guilty of murder because of temporary insanity stemming from his war experiences—the first time PTSD had been used successfully in a capital case. His second trial brought testimony from several veterans about stress born of war. After reading in 1980 that the American Psychiatric Association had classified the phenomena such as presented by Charles Heads as a mental disorder, the lawyer began pursuing it as a basis for the application of the insanity defense. The case illustrated that the DSM influences (but does not control) the definition in law of mental disorder in the test of criminal responsibility.<sup>[17]</sup> The jury, persuaded that the accused was suffering from post-traumatic stress, concluded that he was not guilty by reason of insanity. The jury was apparently convinced that Heads' reversion to combat-like behavior was caused by a combat flashback that made it impossible for him to distinguish right from wrong (Louis-

ana has the M’Naghten test of criminal responsibility).<sup>4</sup>

With veterans returning from the wars in Iraq and Afghanistan, the United States is seeing another surge in individuals suffering from PTSD, although the exact number is hard to determine because PTSD is frequently not reported. Estimates of the number of soldiers returning from these wars who will suffer from PTSD hover around 20 percent. In USA, defendants have raised PTSD both as a defense to criminal charges at trial and as a mitigating factor at sentencing. There are three common PTSD claims in the criminal justice system: (1) dissociative reaction; (2) sensation-seeking syndrome; and (3) depression-suicide syndrome.<sup>37</sup> Individuals experiencing dissociation can believe they are in another setting, misconstrue what is occurring around them, or lose consciousness of their behavior or actions.<sup>18</sup>

#### 4.2 *US diagnosis and test for PTSD cases of adolescent patients*

The most common defense argued by defendants with PTSD is not guilty by reason of insanity. Though, in US, there are several variations of the legal test for insanity, the crux of such a defense is that the actor should not be held criminally responsible for his or her actions because of a mental disorder. The likelihood of success of such a defense will vary greatly depending on the strictness of the test and the nature of the defendant’s presentation of his mental disorder.<sup>19</sup>

Currently, about half of the states in America utilize the M’Naghten Test to assess the sanity of a defendant, though other insanity test formulations do exist. For example, under the “Product Test,” no one shall be held criminally accountable for an act that was the “offspring and product of mental disease.” Alternatively, under the American Law Institute (ALI) “Control Test,” a defendant may be exculpated if the defendant was unable to control his or her behavior as the result of a mental disorder, even if the defendant was aware of the nature of his or her act and that such an act was wrong. The “Control Test” is also called the “Irresistible Impulse Test” in some jurisdictions.

The M’Naghten test takes its name from the famous English case of the same name. That case involved the trial of Daniel M’Naghten, who attempted to murder the Prime Minister but mistakenly shot his secretary instead. To the dismay of many in England, M’Naghten was acquitted under an insanity defense. In response, the House of Lords was asked to articu-

late the controlling rule for the insanity test. This test requires that: to establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong. The fundamental question under the M’Naghten test was whether at the time of the offense the defendant was capable of distinguishing right from wrong. This test is widely employed in the United States today.<sup>20</sup>

While a majority of jurisdictions use the M’Naghten test for insanity, a substantial minority use the test put forth by the ALI in the Model Penal Code. This test incorporates both the M’Naghten rightfulness/wrongfulness distinction and an additional volitional component. Under this test, “a person is not responsible for criminal conduct if at the time of such conduct is a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.”

The ALI test provides two opportunities for a PTSD defendant to assert a plea of not guilty by reason of insanity. The first section of the test dealing with the defendant’s ability to appreciate the criminality of his or her conduct is merely a codification of the M’Naghten rule, and is resolved as discussed above. However, the ALI test also involves a volitional component--where the defendant may assert a plea of not guilty by showing that he or she lacked substantial capacity to conform his or her conduct to the requirements of the law. Under this test, a defendant who understands the criminality of his conduct may still be able to prevail in an insanity defense if the defendant can show that he or she was unable to control his actions as a result of PTSD.<sup>21</sup>

## 5 SUGGESTIONS FOR CHINA

Government and people fight for crimes via law and one core of criminal rules is treating criminals fairly. It is well known that the same situation will result in the same outcome while different situations will result in different outcomes. In practice, when it comes to penalty for adolescent patients with PTSD, the majority would retain the “ordinary constituted man” or the “reasonable man” test of provocation, which is the core of my disagreement with the majority, which might bring in some unfair treatments from the court. The objective, “ordinary constituted man” or “reasonable man” test leads courts into inquiries which is morally blameworthy to some degree.<sup>22</sup> This definition of trauma is fairly broad. It includes responses to powerful one-time incidents like accidents, natural disasters, crimes, surgeries, deaths, and other violent event. It also includes responses to chronic or repeti-

<sup>4</sup> Following the first trial, the Louisiana Supreme Court, 370 So.2d 564 (1979), affirmed the conviction, but the U.S. Supreme Court, 444 U.S. 1008 (1980), vacated the judgment and remanded the case for further consideration. On remand, the Louisiana Supreme Court, 385 So.2d 230 (1980), remanded the case to the trial court in regard to the instruction given to the jury. He was found not guilty by reason of insanity. *State v. Heads*, No. 106, 126 (1st Jud. Dist. Ct., Caddo Parish, Oct. 10, 1981).

tive experiences such as child abuse, neglect, combat, urban violence, concentration camps, battering relationships, and enduring deprivation. This definition intentionally does not allow us to determine whether a particular event is traumatic, which is up to each survivor. This definition provides a guideline for our understanding of a survivor's experience of the events and conditions of his or her life. The traumatic event is over, but the person's reaction to it is not. In a criminal case of adolescent patient(s), the basic question is whether the minor is as culpable as an adult who hurts or kills solely for self-aggrandizement or out of sheer malevolence when more and more mental disabilities are in the world. To answer this question, and in order to get a fair result for the juvenile citizens, judges must place ourselves empathetically in the actual situation in which the defendant was placed, a situation where may be relatively unique. Not only one article of the criminal laws or procedure rules should bind a court, but also the whole situation should be looked upon generally. An inquiry into what most people would do, that is, what "ordinarily constituted" or "reasonable" people would do in such circumstances, cannot be completely determinative of some issues. The test cannot be wholly objective or wholly subjective. That the minor defendant may have been less angry with the victim at the moment of murder than at some time in the past (when he/she checked the impulse to hurt or kill) is irrelevant, if the trier of fact can conclude that, given the total experience of the defendant with the victim, the act of violence can be understood in terms which lessen the defendant's blameworthiness.

The prerequisites for the use of expert testimony vary with each jurisdiction, but generally the subject matter of the expert's testimony must be so distinctly related to a scientific or professional area or occupation that knowledge of it is beyond the ken of laymen. In China, the court may allow expert testimony even if the judges or jurors have some generalized knowledge of the subject, provided, however, such testimony would be useful. The expert testimony need only be relevant, probative, and helpful to the trier of fact. Additionally, the witness must demonstrate the requisite skills, knowledge, or experience to qualify as an expert. Chinese courts increasingly have been called on to determine the proper qualifications for experts offering testimony concerning PTSD. Like the Insanity Defense Reform Act of 1984 of United States,<sup>[23]</sup> Chinese legislation should change some rules for the expert testimony in a PTSD case, concerning admissibility of expert testimony. The new rule should prohibit expert(s) witness from expressing an opinion or making an inference as to whether a defendant possessed a certain mental state. This rule, which would restrict expert testimony to the presentation and explanation of diagnoses -- for example, a description of the characteristics and severity of a mental disease or

defect -- was designed to eliminate the confusion created by conflicting expert testimony in the ultimate issue of insanity to be decided by the trier of fact. The limitation would apply not just to the insanity plea but to any ultimate determination of mental state that is relevant to the legal issue to be proved. A jury, however, might specifically find a defendant "not guilty only by reason of insanity."

Meanwhile, it is time for Chinese court to learn from the American Bar Association and accept a three-part analysis for forensic consideration of PTSD since there are no procedures or standard guidelines for the connection between diagnosis and judgment. Confronted with a claim of PTSD, the nature of fact should answer three questions: Firstly, was the underlying incident a "trauma" within the meaning of the scientific standard (that is, was it an event that reasonably could be found to have produced the symptoms); Secondly, did the trauma produce the present symptoms or are they the result of other factors; Last but not the least, are the symptoms real or feigned? Although the courts have not explicitly recognized these central issues in forensic evaluation of PTSD, this format would permit the courts systematically to address the validity of claims of PTSD. Moreover, this formulation accords closely with recent scientific developments that are changing the conceptual and clinical understanding of PTSD. It is more than half a century between the first definition of PTSD and recent use and Chinese lawyer can get resource to make good defense for the defendants.

## 6 CONCLUSIONS

If disability rights advocates and survivors develop a greater appreciation of each other's past contributions and present strengths, they may form a coalition that moves us all closer to realizing the American Dental Association (ADA)'s promises: the right to take part in all aspects of modern American life and the unfettered freedom "to pursue those opportunities for which our free society is justifiably famous." We need not to celebrate recovering from earthquake or other disasters by human or nature, however, to advocate equality of opportunity for people disabled by the tragedy, and indeed for all Chinese disabled by any cause.

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