



# VETERANS AND MILITARY LAW SECTION

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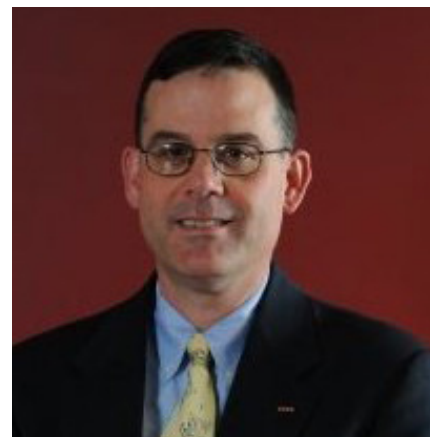
*Save the Date! 10th Annual Veterans’  
Legal Assistance Conference &  
Training*

## **MESSAGE FROM THE CHAIR: HAIL AND FAREWELL**

*by Jim Richardson, Incoming Chair and Robert J. DeSousa, Outgoing Chair*

As this issue of the newsletter reaches you, we are hopeful that two of the nominees for critical positions in the area of veterans law will be filled. The President has nominated Dr. Paul R. Lawrence to be undersecretary of the Department of Veterans Affairs to be Under Secretary for Veterans Benefits. Dr. Lawrence is a graduate of the University of Massachusetts. He earned a master’s degree and a PhD from Virginia Tech.

For the 9th and final vacant seat on the CVAC, the President has nominated Prof Joseph L Falvey Jr. Judge designate Falvey has a distinguished career as a Marine and academic. He served for a total of 30 years as an active duty reserve Marine Judge Advocate. He has served in academia as well as being an assistant United States Attorney.



The filling of these two positions is crucial to the veterans legal community.

Close to home, the section will co-host, with the Pentagon Chapter, the annual end of term luncheon for the Court of Appeals for the Armed Forces at noon on May 3 2018. In addition

*CHAIR continued on page 2*

## **Watch for Details of Upcoming Puerto Rico Conference**

The Federal Career Services Division, in conjunction with the Puerto Rico Chapter will once again hold a full Day Veterans Land Military Law CLE in San Juan this fall in either late October or Early November. The Veterans and Military Law Section along with The Immigration Law Section, The International Law Section and the Law Firm of Chisolm, Chisolm

and Kirkpatrick are Co-sponsoring. The Veteran’s Pro Bono Consortium and the Federal Career Services Division are looking at sponsor opportunities as well. The VMLS’s Alan Goldsmith will be a featured presenter. LOOK for details in the FBA E-Newsletter.”●

# A Letter to the Senate Veterans Committee

by James S. Richardson, Sr., Chair Veterans and Military Law Section

February 20, 2018

## Re: Homeless Veterans Prevention Act, S. 1072

Dear Chairman Isakson and Ranking Member Tester:

I write on behalf of the Veterans and Military Law Section of the Federal Bar Association (FBA) to endorse the Homeless Veterans Prevention Act of 2017, S.1072.<sup>1</sup>

This legislation would require the Department of Veterans Affairs to enter into partnerships with public or private entities to fund legal services (related to housing, family law, income support, and criminal defense) by authorized entities for homeless veterans and veterans at risk of homelessness.

The Veterans and Military Law Section of the Federal Bar Association cooperate frequently with law school clinics, medical-legal clinics, and other organizations assisting veterans on a wide range of matters. Our experience shows that veterans, compared to other civilians, are more likely to

experience homelessness and are at an increased risk of poor mental and physical health. Skilled legal assistance can help to resolve these challenges. A study published in Health Affairs (December 2017) concluded that homeless veterans who received legal counsel showed significant reductions in homelessness and mental health distress and substantial increases in personal income. But current funding for veteran access to legal resources is clearly inadequate and deserves improvement. The Department of Veterans Affairs recognized this in its annual survey of homeless veterans and has cited the lack of legal resources as a factor in persistent homelessness. The Homeless Veterans Prevention Act, S. 1072, would help to reverse this situation by assuring that homeless veterans receive skilled legal representation, whether through public interest law firms or other pro bono providers.

Over 150 years ago, President Lincoln reminded us of the duty “to care for him who hath born the battle, and his

orphan, and his widow.” There is no better way to carry out Lincoln’s vision than to provide access and funding to legal services for qualified veterans through legislation like S. 1072. We urge the Committee on Veterans Affairs to promptly consider and approve the Homeless Veterans Prevention Act in its stewardship and oversight of the quality of care provided to all veterans.

Thank you for your leadership and your consideration of our comments. ●

Sincerely yours,  
James S. Richardson, Sr  
Chair Veterans and Military Law Section  
Federal Bar Association

### Endnote:

<sup>1</sup>The views represented herein are exclusively those of the Veterans and Military Law Section and do not necessarily represent the views of the Federal Bar Association in its entirety.

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### CHAIR continued from page 1

on June 1, the section along with the Maryland Chapter of the Federal Bar Association is co-sponsoring (with several other veterans support entities) the 10th Annual Veterans Legal Assistance Conference at the University of Baltimore School of Law. The conference is free to those who agree to undertake to represent an indigent veteran either in a request for service connected disability or a discharge upgrade case. The basic training will allow attorneys to be certified a veterans claims agent to represent veterans before the Department of Veterans Affairs. A copy

of the program along with registration is appended and is on the VMLS section of the FBA.

Most importantly, the Court of Appeals for the Armed Forces will hold a special session on Wednesday September 12, 2018 in conjunction with the FBA’s national meeting. An admissions ceremony for the Court will be held in conjunction with that session. More details will be provided in the future.

For long range planning purposes the Section will hold a CLE at the University of Montana School of Law in the autumn. Additional details

will be provided as the specific topics are settled. However, the program will cover the topics required for certification as veterans claims agent, a necessary qualification to represent veterans before the Department of Veteran’s Affairs. ●

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### Jim Richardson

Chair of Veterans and Military Law Section of the Federal Bar Association  
PLEASE JOIN the Veteran’s and Military Law Section at: [www.fedbar.org/Veterans](http://www.fedbar.org/Veterans)

# Balancing A Private Practice with Reserve Obligations – One Lawyer’s View

by Terri R. Zimmermann

The eternal struggle – “work-life balance.” We all face this issue, at least those of us with at least one job and a family. When you serve as a military Reservist, this challenge becomes even more acute if you are “balancing” your military obligations with a full-time civilian career. Factor in spending time with and taking care of spouses, children, parents, and some semblance of a social life, and it may sound like an impossible undertaking. While these



concerns apply to any Reservist, they can be especially daunting to Reservists trying to maintain a private law practice.

In my experience, Reservists tend to be high achievers. They serve because they want to, not because they must. The choice to continue military service after a required period of active duty indicates, to me, a desire to do more than the minimum – to be people who give more than they take. They want to be the best. While admirable, this drive and dedication can take a toll on people physically and emotionally. What is the best way to manage all of these demands?

As a preliminary matter, we have to re-define what it means to “balance”

those two things – “work” and “life.” I heard a presentation from a very insightful psychologist a few years ago that really changed my perspective on this issue. He was speaking to a group of active duty and Reserve Marine Corps judge advocates and he started by asking, “What does that phrase even mean?” There was an image on the screen (yes, the Marine Corps PowerPoints us to death during training like the rest of you) of a see-saw with “work” on one side and “life” on the other. Of course, the bar was horizontal. He pointed out a few key things that have stuck with me ever since.

First of all, by framing the issue as a struggle between “work” and “life,” and expecting them to evenly balance on the fulcrum, we set ourselves up for failure. The opposite of “life” is “death,” not work. Especially for those of us who are passionate about practicing law, “work” IS part of “living.” And why is that bar always going straight across – who says we have to devote an equal amount of time to each of them?

Secondly, we can improve our time management and mental health by, instead of beating ourselves up for not maintaining an even balance on the see-saw, viewing our lives as a circle of priorities. The graphic below shows how I perceive my life, but everyone’s circle will be different.

To answer the question at hand in practical terms, you need to figure out how much time – per day, per week, per month, whatever works best for you – to allocate to developing and working in your civilian practice, considering

the time set aside for family, friends, hobbies, religious activities, etc. – and map out how much time you have for Reserve obligations. Consider the daily and monthly time needed for the ongoing requirements of your Reserve job, along with annual training and special training events. That will help guide you in selecting assignments that allow you to have a safe “balance” among the priorities in your life. Do you have time for a deployment? Should you seek a position with a traditional Reserve schedule of one weekend per month and two weeks in the summer, or is a more individualized billet better suited to your needs? Once you have a handle on how to juggle the various demands on your time and attention, you will be better able to come to an informed decision regarding these questions and not bite off more than you can chew.

Juggling a Reserve career with a private practice and with the rest of your life is not easy . . . but frankly, nothing worth having comes easy. “Balancing” a civilian law practice with a Reserve career – and all of your other life priorities – is not only possible, but highly rewarding. The personal gratification you will feel when your unit or organization excels because of your contribution makes it all worthwhile. Success is a lot of fun! ●

*Terri Zimmermann is a Marine Corps Reserve Colonel, Board Certified in Criminal Law and Criminal Appellate Law, Texas Board of Legal Specialization Board Certified Criminal Trial Advocate, National Board of Trial Advocacy. Terri.Zimmermann@ZLZStaw.com*

# Legislative Updates: Affecting our Veterans and Servicemembers

*by Carol Scott*

HR 1725 was signed into law. This bill is to require VA to determine whether a medical C&P exam is required for a claim. The Agency is required to start accepting clinical evidence with submitted claims in lieu of a C&P exam. They are further required to make studies of this process and report to Congress on the progress, impact on processing claims and the number of claims in which it was used. VA is also required to recommend how it can measure, track and prevent the ordering of unnecessary medical exams when a private exam has been submitted. This is a substantial departure from past practices and is indicative of Congressional determination to streamline the claims process.

VA Choice and Quality Employment Act of 2017. Passed into law and provides first for \$2,100,000,000 to be appropriated for the CHOICE program. This is a substantial step toward the privatization of VHA, to which most veterans and the VSOs are united in opposition, but which the White House, Koch brothers and “Concerned Veterans of America,” a PAC funded by Koch, are determined to accomplish. The second part of the bill sets forth *inter alia* standards for hiring

and retaining appropriate personnel, including transition of military medical personnel into VA employ, promotional opportunities for techs and competitive pay for PAs.

HR 918 has passed the House. This bill provides for emergency mental health care for all veterans, including those with OTH discharges. It is intended to reduce the number of suicides among this group of veterans by providing for intervention and treatment on an emergency basis. It recognizes combat related stress, and that veterans receiving mental health care from VA have a lower incidence of suicide.

HR 3122 Veterans Care Financial Protection Act of 2017 passed into law and requires VA to post on its web site warnings to veterans eligible for or receiving increased pensions on the basis of need for aid and attendance to beware of fraud from dishonest, predatory practices targeting this group of veterans. It also orders a GAO study and report to Congress.

S 2402 has been introduced. It requires VA to increase the number of peer to peer counselors for women veterans and specifies victims of MST and those at risk of becoming or have become homeless. VA is required to

provide outreach to women veterans, coordinating with, *inter alia* community and legal assistance organizations and state and local governments in so doing.

S. 946 Veterans Treatment Court Improvement Act of 2018 has passed the Senate. It addresses the need for and requires VA to increase the numbers of VJOs – Veterans Justice Outreach Coordinators – at least 60 to be attached to VA Medical Centers to provide increased outreach to and coordination with Veterans Treatment Courts to serve as part of the Court teams. VA shall prioritize those medical centers with established relationships with Veterans treatment Courts.

Two other bills of note have been introduced in the Senate; one to restrict the ability of the Secretary to collect on debt/overpayments and to require immediate notification of incurred overpayment. The other permits members of the Philippine Scouts and Army to be eligible to receive benefits. The first of these is long overdue and the second one is a bit like closing the barn after the horse is long gone; there are very few Philippine survivors or their widows left. ●

# C.A.A.F. Dismisses Rape Case Due to Statute of Limitations Violation, Overrules Twenty Years of Precedent

by Kirk Albertson

On February 6, 2018, the Court of Appeals for the Armed Forces (CAAF) issued its opinion in *United States v. Mangahas*,<sup>1</sup> an Air Force rape case. A unanimous court dismissed the case, holding that the Government had violated the applicable statute of limitations.

The case arose from an alleged incident that occurred in 1997, while the appellant and the alleged victim were cadets at the U.S Coast Guard Academy. The case was not fully investigated at the time and it was not until 2015, when the appellant was a lieutenant colonel in the Air Force, that charges were preferred. The case ultimately turned on what statute of limitations applied to the offense under Article 43, UCMJ. As it existed in 1997, Article 43, UCMJ, 10 U.S.C. § 843 (1994) provided in relevant part that a person charged with an offense punishable by death could be tried at any time without limitation, but that otherwise the statute of limitations was five years. In 1997, Article 120, UCMJ, 10 U.S.C. § 920, (Supp. II 1997) provided that the maximum punishment for Rape was death.

The trial judge found no statute of limitations violation but dismissed the charges finding that the appellant's Fifth Amendment speedy trial right had been violated due to the passage of time and the death of a potential defense witness. The Government appealed to the Air Force Court of Criminal Appeals (AFCCA) under Article 62, UCMJ, and AFCCA reversed the trial judge and allowed the case to proceed. CAAF then issued a stay of proceedings and granted review of the speedy trial issue. CAAF held oral argument in October 2017, but subsequently ordered the parties to brief a different issue: Whether in light of *Coker v. Georgia*,<sup>2</sup> and *United*

*States v. Hickson*,<sup>3</sup> the rape charge was actually a crime punishable by death under the applicable statute of limitations.

The maximum punishment language of Article 120 notwithstanding, the U.S. Supreme Court held in *Coker* (1977) that death was an unconstitutional punishment for the offense of rape of an adult woman. The Court Military Appeals acknowledged this limitation in *Hickson* (1986), finding that in the absence of aggravating circumstances, a death sentence could not be constitutionally inflicted for rape of an adult. Regarding the statute of limitations, however, CAAF held in *Willenbring v. Neurauter* (1998), that rape was an offense punishable by death for purposes of exempting it from the five-year statute of limitations.<sup>4</sup> In *Mangahas*, CAAF explicitly reversed *Willenbring*, holding that the death penalty was not available for the charged offense and that “where death could never be imposed for the offense charged, the offense is not punishable by death for the purpose of Article 43, UCMJ.”<sup>5</sup>

The application of *Mangahas* is unclear at this point. Article 43, UCMJ, has been amended several times since 1997 and in its current form it specifically provides that there is no statute of limitations for the offenses of rape or sexual assault. CAAF did not address the possible retroactive application of its decision in *Mangahas*. That question was left for another day. ●

*Kirk Albertson, a vice chair of the Military Justice Committee, is a Judge Advocate in the Air Force Reserve assigned to the Air Force Appellate Defense Division. He is also an Assistant United States Attorney for the District of South Dakota.*

## Endnotes:

<sup>1</sup>77 M.J. 220, No. 17-0434/AF (C.A.A.F. February 6, 2018).

<sup>2</sup>433 U.S. 584, 598 (1997)

<sup>3</sup>22 M.J. 146, 154 n.10 (C.M.A. 1986)

<sup>4</sup>48 M.J. 152, 180 (C.A.A.F. 1998)

<sup>5</sup>*Mangahas*, 77 M.J. at 224-25.

# AGENT ORANGE AND VIETNAM VETERANS

by Eric A. Gang

It has been 43 years since the Vietnam War ended. But its legacy lives on in the lives of thousands of U.S. veterans who served in the Republic of Vietnam. The signature feature of this legacy for most of these veterans is the lingering effects of Agent Orange exposure. Indeed, the Agent Orange diseases have become known as the signature issue for veterans of the Vietnam War. Veterans exposed to Agent Orange in Vietnam have put up a long hard fight trying to get the VA disability benefits they deserve.

An estimated 2.4 million U.S. service members were exposed to some level of Agent Orange in Vietnam between 1962 and 1971. The U.S. Department of Veterans Affairs (VA) backlog of Agent Orange disability cases is currently estimated to be at around 500,000.

With the number of VA claims increasing every year for diseases associated with Agent Orange exposure, competition is tough. It is important that American veterans understand how to win these disability compensation claims for Agent Orange exposure.

Even if your disease is not on the VAs list of presumptive diseases caused by Agent Orange exposure, you can win your VA claim for benefits. Here's how step by step.

## How Does Agent Orange Cause Disease?

Most veterans who served during the Vietnam War are familiar with the toxic herbicide, Agent Orange. Between 1962 and 1971, the U.S. Military sprayed 12,000 square miles of Vietnam forests with over 20 million U.S. gallons of defoliant in an herbicidal warfare effort, resulting in major – often deadly – consequences for over 1 million Vietnam vets.

Because the VA bases most of their decisions around claims on medical and scientific evidence of Agent Orange causality, a brief understanding of how Agent Orange affects the human body is

important.

Agent Orange contains a toxic contaminant known as TCDD, classified by the U.S. Environmental Protection Agency (EPA) as a human carcinogen (causes cancer). TCDD is a dioxin that easily enters the body through touch or ingestion. In the body, TCDD travels to the cell nucleus where it damages genetic material.

This genetic damage leads to a variety of cancers and other illnesses, symptoms of which may not show up for 50 years or more. Researchers also suggest TCDD causes birth defects in the children of those exposed to Agent Orange.

## Was a Veteran Exposed to Agent Orange During Vietnam Service?

Reviewing a brief history of the use of Agent Orange can help determine whether veterans were at high risk of exposure during service.

Agent Orange development started back during World War II. In 1943, the U.S. Department of the Army hired Arthur Galston, a graduate student in the University of Illinois at Champaign-Urbana's botany department to study the effects of Agent Orange chemicals on grain crops.

The idea was to eventually find an herbicide to use in destroying enemy food supplies and removing vegetative cover.

Britain was the first to use Agent Orange in herbicidal warfare during the Malayan Emergency of the 1950's. Using Britain's actions as precedent, the U.S. decided that the process of spraying large enemy areas with defoliant should be a legal strategy in war. In November 1961, President John F. Kennedy authorized a U.S. Air Force herbicide program in Vietnam – codename Operation Ranch Hand.

The U.S. military produced millions of gallons of the herbicide, labelling the barrels with a large orange stripe – hence

the name.

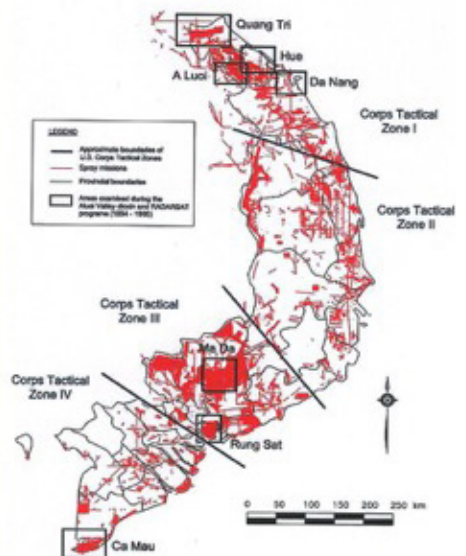
Beginning in January 1962, U.S. helicopters, boats, trucks and C-123 transport planes sprayed nearly 18% of South Vietnam's forests, plus parts of Cambodia and Laos, with various herbicides, with peak sprays between 1967 and 1969.

And the military didn't tread lightly.

Spray mixtures held over 13 times the concentration of defoliant recommended by the UDVA for domestic use. In some areas, TCDD soil concentrations were 180 million times higher than levels considered safe by the EPA.

Concerned about the serious health and environmental effects, Arthur Galston himself and other dioxin toxicity experts opposed Operation Ranch Hand.

In 1966, United Nations resolutions suggested the U.S. was violating the 1925 Geneva Protocol by carelessly spraying the toxin over wide areas of land. The U.S. argued that, since Agent Orange was merely a herbicide and defoliant, it should not be considered a chemical or a biological weapon.



The argument worked and the U.S. continued spraying Agent Orange.

It was not until 1971, after scientists began protesting the use of Agent Orange using evidence of cancers and birth defects in laboratory animals, that the spraying stopped.

Blood tests done in the 1970s confirmed toxic levels of TCDD in U.S. military members who served in Vietnam. Studies found the highest levels of TCDD exposure in those living and working around the Vietnam - Cambodia border and the Long Mountains near Truong Son.

**The VA presumes that any veteran who served in Vietnam between January 9, 1962 and May 7, 1975 was exposed to Agent Orange. But Vietnam veterans aren't the only ones who can file a claim for disability benefits due to Agent Orange exposure.**

When Operation Ranch Hand ended in 1971 and the spraying of Agent Orange stopped, the military reassigned C-123 planes used for spraying to East Coast USAF Reserve squadrons for use in routine airlift missions. But these planes were still heavily contaminated with Agent Orange.

Because of this, non-Vietnam veterans working in and around these planes in the U.S. between 1972 and 1982 are also eligible for compensation due to Agent Orange exposure.

In addition, veterans stationed at the Navy's Camp Garcia bioweapons site in Vieques, Puerto Rico during the 1970's may also have been exposed to Agent Orange.

I recently helped client and friend, Marine Sergeant Hermogenes Marrero, win his appeal for benefits due to Agent Orange exposure after working in this location in hazardous airborne chemicals testing between 1970 and 1972.

The likelihood of exposure to Agent Orange is highest for veterans who were:

- Stationed at bases that stored Agent Orange
- Stationed at bases that tested or prepared Agent Orange
- Serving as flight crew of C-123 transport planes
- Serving as aircraft mechanics for C-123 transport planes
- Working on helicopters, trucks or boats

that sprayed Agent Orange

- Working as medical evacuation crews on C-123 transport planes
- Non-Vietnam veterans working on C-123 aircraft in the U.S. between 1972 – 1982
- Non-Vietnam veterans stationed at the Navy's Camp Garcia in Vieques, Puerto Rico

### **VA Starts Granting Benefits for Diseases Caused by Agent Orange Exposure**

In 1980, the New Jersey Agent Orange Commission and Rutgers University organized The Pointman Project, a research project to study the health effects of Agent Orange. Scientists found that blood and adipose TCDD levels were higher in Vietnam veterans, including Marines, Army and Navy members, than individuals not exposed to Agent Orange.

As early as 1977, Veterans began to file claims for disability payments to the Department of Veterans Affairs (VA) with the belief that Agent Orange exposure caused their health problems. If the veterans couldn't prove their problems began during service or within one year of discharge, the VA denied their claims.

In 1991, after scientific evidence showing that symptoms of Agent Orange toxicity can take decades to appear, Congress enacted the Agent Orange Act. Under the Act, the VA declared a specified list of health conditions as 'presumptive' to Agent Orange exposure and could grant treatment and compensation to Vietnam veterans with these health conditions.

But the list of presumptive conditions was small. By 1993, the VA had received over 39,400 claims from soldiers exposed to Agent Orange, and granted compensation to only 486.

### **Diseases and Health Problems Associated with Agent Orange Exposure – List**

During the Vietnam War, the government ignored warnings from researchers and told our soldiers that the herbicide being sprayed all around them was harmless.

Now, our veterans are experiencing the tragic, disabling effects of the toxin. Ongoing research by the National

Academy of Sciences and further scientific evidence is associating more and more diseases with Agent Orange exposure.

Currently, the VA lists the following presumptive diseases and conditions as eligible for compensation and disability benefits due to Agent Orange exposure:

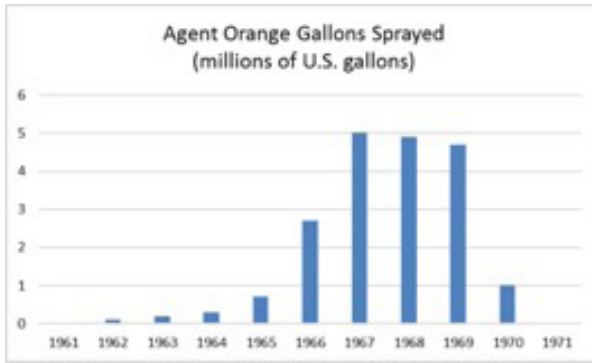
- AL amyloidosis
- Chronic B cell leukemias (including hairy-cell leukemia and chronic lymphocytic leukemia)
- Chloracne (and skin disorders like chloracne)
- Hodgkin's disease
- Ischemic heart disease
- Multiple myeloma
- Non-Hodgkin's lymphoma
- Parkinson's disease
- Peripheral neuropathy (acute and subacute)
- Porphyria cutanea tarda
- Prostate cancer
- Respiratory cancers (throat and lung)
- Soft tissue sarcoma (excluding chondrosarcoma, Kaposi's sarcoma, mesothelioma and osteosarcoma)
- Type II diabetes mellitus
- And if these conditions are service-connected and productive of total disability, then a veteran can file for TDIU or individual unemployability if his service connected conditions prevent him from working.

Diseases like these may be more aggressive in individuals exposed to Agent Orange than in unexposed patients. Recent research suggests that prostate cancer is twice as aggressive in veterans exposed to Agent Orange.

### **Birth Defects in Children of Veterans Exposed to Agent Orange**

In addition, because of the genetic impact of Agent Orange exposure, many children of Vietnam veterans are inheriting the toxic effects.

Research with the Hu College of Medicine in Vietnam suggests that children of military personnel who served in Agent Orange affected areas are at higher risk of being born with mental disabilities, cleft palates, hernias and polydactyly, among other health issues. The VA already grants benefits for children born with spina bifida if a parent was exposed to Agent Orange



during service.

### Diseases Associated with Agent Orange Not Included on VA Presumptive List

Many other cancers and illnesses that the VA doesn't include on its list of presumptive conditions may still be linked to Agent Orange exposure.

With solid scientific evidence and medical expert opinion, any veteran with these conditions may be eligible for VA benefits due to exposure to Agent Orange during service.

These health conditions include (but are not limited to):

- Myoproliferative neoplasms (myelofibrosis, essential thrombocytopenia, polycythemia vera)
- Hypertension
- COPD and other respiratory disorders
- Parkinsonism (Parkinson's-like symptoms)
- Bladder cancer
- Hypothyroidism
- Pancreatic cancer (especially if secondary to type 2 diabetes)
- Organic Brain Syndrome
- Neurological Disorders
- Glioblastoma and other brain cancers

### Myoproliferative Neoplasms

Currently, myoproliferative neoplasms (MPNs) like myelofibrosis, essential thrombocytopenia and polycythemia vera are not on the VA's presumptive list. Yet more and more veterans are developing MPNs according to MPN Advocacy and Education International. Hematologic oncologists with Memorial Sloan Kettering Cancer Center are now studying the association between MPNs and Agent Orange.

### Hypertension

According to the VA, over 300,000 Vietnam veterans suffer from hypertension. In 2006, a study published by VA researchers in the Journal of Occupational and Environmental Medicine found that U.S. Army Chemical Corps veterans exposed to Agent Orange were at higher risk for developing hypertension.

The addition of hypertension as a disease associated with Agent Orange exposure could mean secondary service connection for kidney failure, stroke and other problems associated with hypertension. While the VA has not yet added hypertension to the list of diseases associated with Agent Orange exposure, scientific evidence may be strong enough to win a claim for benefits for this health condition.

### COPD and other Respiratory Disorders

The CDC and VA are now examining whether an association exists between Agent Orange and chronic pulmonary obstruction disorder (COPD), along with other respiratory disorders.

Recently helped a widow win retroactive pay of nearly \$100,000 after the death of her ex-husband, a veteran who died of lung cancer from Agent Orange exposure during service.

### Parkinsonism, Bladder Cancer and Hypothyroidism

In March 2016, the National Academy of Sciences' Institute of Medicine (IOM) released a review of health problems linked to herbicide exposure. Of 1 million Vietnam veterans, doctors diagnosed 1,833 with Parkinsonism, 5,484 with bladder cancer and 15,983 with hypothyroidism.

Parkinsonism, not to be confused with Parkinson's disease, shows symptoms similar to Parkinson's symptoms – including rigidity, tremors, postural instability and bradykinesia. Currently, a diagnosis of Parkinson's disease creates eligibility for presumptive service connection.

Not so with Parkinsonism. The IOM review concluded that there is no rational

basis for excluding Parkinsonism from the presumptive list. With this evidence, veterans with Parkinson's-like symptoms should be able to collect VA benefits associated with Agent Orange exposure.

### Pancreatic Cancer

I'm a strong advocate for adding pancreatic cancer to the presumptive list after seeing many Vietnam veterans lose their lives to pancreatic cancer - veterans who have no risk factors for developing pancreatic cancer other than Agent Orange exposure.

**While pancreatic cancer is not on the VAs list**, our veterans benefits law firm has been able to win service connection for a veteran diagnosed with pancreatic cancer associated with Agent Orange exposure using strong medical and scientific evidence.

The most reliable method of proving service connection for pancreatic cancer is based on a secondary relationship between existing service-connected type 2 diabetes. Usually, a long-standing type 2 diabetic condition that pre-dates the pancreatic cancer diagnosis is the strongest basis for a claim.

In the case referenced above, the veteran died within 26 days of diagnosis. His widow filed a claim for service connection for the pancreatic cancer, arguing that diabetes from Agent Orange exposure caused the cancer.

The VA denied her claim. She appealed for 14 years, until calling us. With the help of our medical experts and extensive review of scientific research, we helped her win the claim for service connection and VA compensation.

### Neurological Disorders, Organic Brain Syndrome and Brain Damage

We have met with many Vietnam veterans who suffer from a variety of neurological conditions, organic brain syndrome and brain damage because of exposure to toxins. Scientific evidence shows that serious neurological issues can result from exposure to Agent Orange.

**Even though these conditions are not on the list of Agent Orange related diseases, we have helped countless Veterans obtain service connection for conditions involving neurological and brain disorders.**



## **Glioblastoma and other Brain Cancers**

Doctors are diagnosing more and more Vietnam veterans exposed to Agent Orange with glioblastoma multiforme and other brain cancers. Data from the VA shows that more than 500 Vietnam veterans have been diagnosed with glioblastoma at VA hospitals since 2000 (this number doesn't include the unknown number of Vietnam veterans diagnosed at private hospitals).

From 2000 to 2007, VA doctors diagnosed between 22 and 31 Vietnam veterans with glioblastoma each year. From 2008 to 2013, the numbers doubled to 45 to 61 veterans diagnosed annually (while non-Vietnam veterans' diagnoses showed no change). This jump could be due to the incubation time needed for glioblastoma to develop, or to the increase in Agent Orange sprays seen between 1967 and 1969.

With strong medical and scientific evidence backing them up, Vietnam veterans and their widows who can show that the brain cancer was caused by Agent Orange exposure during service could be eligible for tens of thousands of dollars in retroactive compensation.

Since 2009, wives of deceased husbands have won around 24 brain cancer VA cases out of 100, even though brain cancer isn't on the list.

Veterans must remember two things:

1. Never assume that you can't win service connection for Agent Orange exposure because your illness is not on the presumptive list, and

2. Never give up on your claims or appeals. Scientists release new evidence daily regarding the association between Agent Orange and diseases not on the list. And you can use that evidence to support your claim.

## **How to Win VA Benefits for Agent Orange Exposure**

Between 2002 and 2015, the VA awarded benefits for Agent Orange exposure to over 650,000 veterans.

Not surprisingly, this number is growing fast. An estimated 2.4 million U.S. military members were exposed to some level of Agent Orange in Vietnam.

In 2015, the VA released data showing

the projected increase in demand for VA benefits, noting that 40 years after the end of the Vietnam War, veterans receiving disability compensation has not yet peaked. For the past 40 years the percentage of veterans receiving benefits has held at a consistent 8.5%. But over the past 15 years, percentages have risen to 19%.

Many Vietnam veterans are now reaching the age where Agent Orange exposure is causing ischemic heart disease, prostate cancer and type II diabetes. Because of this expectation, the VA is planning for an increasing volume of claims.

## **For Veterans Whose Disability Is on The Agent Orange List:**

To prove service connection and get disability benefits for any of the diseases on the VA's presumptive list, you need to show:

1. Medical diagnosis of a disease the VA lists is a result of Agent Orange exposure
2. Proof of service in Vietnam or Agent Orange exposure from another area, and
3. Medical evidence that the disease started within the specified deadline

While the above makes getting your claim approved sound easy, the VA continues to deny these types of Agent Orange claims for several reasons, including:

- Deadline has elapsed since discharge and the first documentation of a claimed disability.
- Veteran is not a doctor and therefore not competent to offer opinions of medical causation or diagnosis.
- Medical condition did not appear during service or for many years after.
- Veterans' separation physical exam showed normal findings on clinical examination.
- Doctor did not review the claims file and thus his report is less probative.

## **For Veterans Whose Disability Is Not on the Agent Orange List:**

For many disabled veterans exposed to Agent Orange, winning service connection for a disease not on the VA's list can seem impossible. Yet, many of these cases can be won.

The key to a successful claim for VA benefits covering a disability associated with Agent Orange exposure is to carefully-craft the legal and medical strategy using

top notch experts. Strong medical and scientific evidence is indispensable in winning service connection due to Agent Orange exposure for a disease not on the Agent Orange list.

You must be able to show that the unique features of your disease and how it manifests and compels the conclusion that your disease could only have resulted from exposure to a toxin like Agent Orange.

Normally, the scientific research requires a higher degree of proof than that needed to prove service connection. For example, medical science may not recognize causation unless researchers find a high degree of certainty.

But for VA purposes, we just have to show that the service-related cause is 50% probable.

Understanding this difference - and educating the medical experts on this distinction - is vital to success in these cases.

## **How to Find Medical and Scientific Research Experts to Support Your Claim**

Most of us aren't medical experts or research scientists, but it is our job as advocates for veterans to find someone who is. It takes strong and indefatigable advocacy to win Agent Orange cases that are not on the presumptive list. But our aging and disabled Vietnam veterans deserve our best efforts. This is why as attorneys it is incumbent upon us to develop these cases to the maximum and search out the best experts and build a solid case. ●

*Eric has been in the private practice of law since 1998. He is the founding member of Gang & Associates, LLC, Veterans Disability Lawyers, a law firm that represents veterans worldwide in their appeals for VA disability benefits. He maintains offices in New York City and New Jersey. Eric graduated from Seton Hall University School of Law (Newark, New Jersey). Eric also serves as the executive director of the Disabled Veterans Resource Center, Inc., a nonprofit veterans' advocacy group. Contact: eric@veteransdisabilityinfo.com*

# Save the Date!

## 10th Annual Veterans' Legal Assistance Conference & Training

*Friday, June 1, 2018, from 8:00 AM to 5:00 PM in Baltimore, MD.*

Designed for lawyers, law students, veterans, policymakers, and other service professionals, the conference will provide a forum for training volunteers and discussing critical legal issues facing veterans.

### *Conference Organizers Include:*

Homeless Persons Representation Project  
Maryland Chapter of the Federal Bar Association  
Pro Bono Resource Center of Maryland  
University of Baltimore School of Law  
The Bob Parsons Veterans Advocacy Clinic  
at the University of Baltimore  
Veterans and Military Law Section of the  
Federal Bar Association  
Veterans' Affairs and Military Law Section of  
the Maryland State Bar Association

### *Online Registration Coming Soon!*

Please email [kpierre@probonomd.org](mailto:kpierre@probonomd.org) to be notified when registration opens.

8:00 – 8:45 AM

#### **Registration & Breakfast**

8:45 – 9:00 AM

#### **Welcome & Opening Remarks**

9:00 AM – 12:00 PM

#### **Concurrent Morning Trainings**

9:00 AM – 12:00 PM

##### **Track for Volunteers:**

Veterans Benefits 101 (pro bono commitment required)

9:00 AM – 10:45 PM

##### **Track for Veterans & Other Advocates**

Mentor Training 101: Veterans Mentoring  
Veterans in Veterans Treatment Court

11:00 AM – 12:00 PM

Know Your Rights: Veterans Benefits

12:15 – 1:45 PM

#### **Lunch & Keynote Speaker Franklin C. Blackmon**

Deputy Assistant Secretary of the Army (Review Boards) and Director  
of the Army Review Boards Agency (ARBA)

2:00 – 5:00 PM

#### **Concurrent Afternoon Panels**

2:00 – 3:25 PM

Discharge Advocacy  
Veterans Family Law Issues

3:35 – 5:00 PM

Best Practices Before Discharge Boards  
Resources for Servicemembers



# FBA Annual Meeting and Convention

N Y C 2 0 1 8

September 13–15, 2018



**Federal Bar  
Association**

**Veterans and Military Law Section**  
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The views expressed herein do not necessarily represent those of the FBA. Send all articles or other contributions to Raymond J. Toney at [rjtoncy@militarylawpro.com](mailto:rjtoncy@militarylawpro.com). Yanissa Pérez de León, managing editor.

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