



# Vietnam Veterans In Canada General Meeting (2007-12)

## Agenda 525

**07 June 2007**

*British Columbia Regiment (DCO), Vancouver, B.C.*



**VVIC 1<sup>st</sup> VP G. Flowers, Army LRRP D. Drysdale, Army Medic J. Clarke**  
Photo by G. Flowers, May 2007 (VetPress)

## Moment of Silence

### United States Military Casualty Reports Received since 22 May 2007

**Lance Cpl. Benjamin D. Desilets, 21, of Elmwood, Ill.** Desilets died May 22 while conducting combat operations in Al Anbar province, Iraq. He was assigned to 3rd Battalion, 10th Marine Regiment, 2nd Marine Division, II Marine Expeditionary Force, Camp Lejeune, N.C.

**Cpl. Julian M. Woodall, 21, of Tallahassee, Fla.** Woodall died May 22 while conducting combat operations in Al Anbar province, Iraq. He was assigned to 3rd Battalion, 10th Marine Regiment, 2nd Marine Division, II Marine Expeditionary Force, Camp Lejeune, N.C.

**Pvt. Oscar Saucedo Jr., 21, of Del Rio, Texas,** died May 22, in Baghdad, Iraq, of wounds suffered when his unit came in contact with enemy forces using small arms fire. He was assigned to the 1st Battalion, 28th Infantry Regiment, 4th Infantry Brigade Combat Team, 1st Infantry Division, Fort Riley, Kansas.

**Sgt. Robert J. Montgomery Jr., 29, of Scottsburg, Ind.,** died May 22, in Al Jabour, Iraq, of wounds suffered when an improvised explosive device detonated near his unit. He was assigned to the 1st Squadron, 40th Cavalry Regiment, 4th Brigade Combat Team (Airborne), 25th Infantry Division, Fort Richardson, Alaska.

**Staff Sgt. Shannon V. Weaver, 28, Urich, Mo.** Weaver died May 21 in Baghdad, Iraq, of wounds suffered when multiple improvised explosive devices detonated near his vehicle. He was assigned to the 425th Brigade Special Troops Battalion, 4th Brigade Combat Team (Airborne), 25th Infantry Division, Fort Richardson, Alaska.

**Sgt. Brian D. Ardron, 32, of Acworth, Ga.** Ardron died May 21 in Baghdad, Iraq, of wounds suffered when multiple improvised explosive devices detonated near his vehicle. He was assigned to the 425th Brigade Special Troops Battalion, 4th Brigade Combat Team (Airborne), 25th Infantry Division, Fort Richardson, Alaska.

**Spc. Michael W. Davis, 22, of San Marcos, Texas.** Davis died May 21 in Baghdad, Iraq, of wounds suffered when multiple improvised explosive devices detonated near his vehicle. He was assigned to the 425th Brigade Special Troops Battalion, 4th Brigade Combat Team (Airborne), 25th Infantry Division, Fort Richardson, Alaska.

**Staff Sgt. David C. Kuehl, 27, of Wahpeton, N.D.,** died May 22 in Taji, Iraq, of wounds suffered when an improvised explosive device detonated near his unit. He was assigned to the 4th Battalion, 9th Infantry Regiment, 4th Brigade, 2nd Infantry Division (Stryker Brigade Combat Team), Fort Lewis, Wash.

**Staff Sgt. Kristopher A. Higdon, 25, of Odessa, Texas.** Higdon died May 22 in Taji, Iraq, of wounds suffered when an improvised explosive device detonated near his unit. He was assigned to the 4th Battalion, 9th Infantry Regiment, 4th Brigade, 2nd Infantry Division (Stryker Brigade Combat Team), Fort Lewis, Wash.

**Pfc. Robert A. Worthington, 19, of Jackson, Ga.** Worthington died May 22 in Taji, Iraq, of wounds suffered when an improvised explosive device detonated near his unit. He was assigned to the 4th Battalion, 9th Infantry Regiment, 4th Brigade, 2nd Infantry Division (Stryker Brigade Combat Team), Fort Lewis, Wash.

**Pfc. Joseph J. Anzack Jr., 20, of Torrance, Calif.,** was captured May 12 by enemy forces in Al Taqa, Iraq, when his unit was attacked by insurgents using automatic fire and explosives. Anzack was assigned to the 4th Battalion, 31st Infantry Regiment, 2nd Brigade Combat Team, 10th Mountain Division, Fort Drum, N.Y. His body was recently recovered in Iraq. The circumstances surrounding his capture and death remain under investigation. He was previously listed as DUSTWIN (Duty Status Whereabouts Unknown) and included in the count two weeks ago.

**Spc. Benjamin J. Ashley, 22, of Independence, Mo.,** died May 24 in Balad, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. Ashley was assigned to the 1st Battalion, 5th Field Artillery Regiment, 1st Brigade, 1st Infantry Division, Fort Riley, Kan.

**Staff Sgt. Steve Butcher Jr., 27, of Penfield, N.Y.** Butcher died May 23 of wounds suffered when an improvised explosive device detonated near his unit in Ramadi, Iraq. He was assigned to the 3rd Battalion, 69th Armor Regiment, 1st Brigade Combat Team, 3rd Infantry Division, Fort Stewart, Ga.

**Pfc. Daniel P. Cagle, 22, of Carson, Calif.** He died in Balad, Iraq. Cagle died May 23 of wounds suffered when an improvised explosive device detonated near his unit in Ramadi, Iraq. He was assigned to the 3rd Battalion, 69th Armor Regiment, 1st Brigade Combat Team, 3rd Infantry Division, Fort Stewart, Ga.

**Pfc. Robert H. Dembowski, 20, of Ivyland, Pa.,** died May 24 in Baghdad, Iraq, of wounds suffered when his unit came in contact with enemy forces using small arms fire. He was assigned to the 1st Battalion, 504th Parachute Infantry Regiment, 1st Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

**Sgt. Iosiwo Uruo, 27, of Agana Heights, Guam,** died May 24, in Buhriz, Iraq, of wounds suffered when his unit came in contact with enemy forces using small arms fire. He was assigned to the 1st Squadron, 14th Cavalry Regiment, 3rd Brigade, 2nd Infantry Division (Stryker Brigade Combat Team), Fort Lewis, Wash.

**Pfc. Casey P. Zylman, 22, of Coleman, Mich.,** died May 25 in Mosul, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle May 24 in Tallafar, Iraq. He was assigned to the 3rd Squadron, 4th Cavalry Regiment, 3rd Brigade Combat Team, 25th Infantry Division, Schofield Barracks, Hawaii.

**Cpl. Victor H. Toledo Pulido, 22, of Hanford, Calif.** Pulido died May 23 in Al Nahrawan, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to 3d Squadron, 1st Cavalry Regiment, 3rd Brigade Combat Team, 3rd Infantry Division (Mechanized), Fort Benning, Ga.

**Cpl. Jonathan D. Winterbottom, 21, of Falls Church, Va.** Winterbottom died May 23 in Al Nahrawan, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to 3d Squadron, 1st Cavalry Regiment, 3rd Brigade Combat Team, 3rd Infantry Division (Mechanized), Fort Benning, Ga.

**Sgt. 1st Class Robert E. Dunham, 36, of Baltimore, Md.** Dunham died May 24 in Baghdad, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to 1st Brigade Transition Team, and attached to the 4th Infantry Brigade Combat Team, 1st Infantry Division, Fort Riley, Kansas.

**Staff Sgt. Russell K. Shoemaker, 31, of Sweet Springs, Mo.** Shoemaker died May 24 in Baghdad, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to 1st Brigade Transition Team, and attached to the 4th Infantry Brigade Combat Team, 1st Infantry Division, Fort Riley, Kansas.

**Spc. Mathew P. LaForest, 21, of Austin, Texas.** LaForest died May 25 in Taji, Iraq, of injuries suffered when his unit came in contact with enemy forces using small arms fire during combat operations. He was assigned to 4th Battalion, 9th Infantry Regiment, 4th Stryker Brigade Combat Team, 2nd Infantry Division, Fort Lewis, Wash.

**Spc. Alexander Rosa Jr., 22, of Orlando, Fla.,** died May 25 in Muqdadiyah, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to the 89th Military Police Brigade, Fort Hood, Texas.

**Pvt. William L. Bailey III, 29, of Bellevue, Neb.,** died May 25, in Taji, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. Bailey was assigned to the 755th Chemical Reconnaissance/Decontamination Company, Nebraska Army National Guard, O'Neill, Neb.

**Spc. Erich S. Smallwood, 23, of Trumann, Ark.,** died May 26, near Balad, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to A Company, 875th Engineer Battalion of the Arkansas Army National Guard in Marked Tree, Ark.

**Sgt. Clayton G. Dunn II, 22, of Moreno Valley, Calif.** Dunn died May 26 in Salah Ad Din Province, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to 2nd Battalion, 505th Parachute Infantry Regiment, 3rd Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

**Spc. Michael J. Jaurigue, 20, of Texas City, Texas,** Jaurigue died May 26 in Salah Ad Din Province, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to 2nd Battalion, 505th Parachute Infantry Regiment, 3rd Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

**Spc. Gregory N. Millard, 22, of San Diego, Calif.** Millard died May 26 in Salah Ad Din Province, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to 2nd Battalion, 505th Parachute Infantry Regiment, 3rd Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

**Sgt. Nicholas R. Walsh, 27, of Millstadt, Ill.,** died May 26 from wounds suffered while conducting combat operations in Al Anbar province, Iraq. He was assigned to the 1st Reconnaissance Battalion, 1st Marine Division, I Marine Expeditionary Force, Camp Pendleton, Calif.

**Lance Cpl. David P. Lindsey, 20, of Spartanburg, S.C.,** died May 25 from a non-hostile incident in Al Anbar province, Iraq. His death is under investigation. Lindsey was assigned to the 3rd Battalion, 6th Marine Regiment, 2nd Marine Division, II Marine Expeditionary Force, Camp Lejeune, N.C. The incident is currently under investigation.

**Spc. Francis M. Trussel Jr., 21, of Lincoln, Ill.,** died May 26 in Tahrir, Iraq, of wounds suffered when an improvised explosive device detonated near his position. He was assigned to the 1st Battalion, 12th Cavalry Regiment, 3rd Brigade Combat Team, 1st Cavalry Division, Fort Hood, Texas.

**Spc. Mark R. C. Caguioa, 21, of Stockton, Calif.,** died May 24 at the National Naval Medical Center, Bethesda, Md., of wounds suffered on May 4 in Baghdad, Iraq, when the vehicle he was in struck an improvised explosive device. He was assigned to the 1st Battalion, 5th Cavalry Regiment, 2nd Brigade Combat Team, 1st Cavalry Division, Fort Hood, Texas.

**Lance Cpl. Emmanuel Villarreal, 21, of Eagle Pass, Texas,** died May 27 from a non-hostile vehicle accident at Kuwait Naval Base, Kuwait. He was assigned to Battalion Landing Team 1st Battalion, 11th Marine Regiment, 13th Marine Expeditionary Unit, I Marine Expeditionary Force, Camp Pendleton, Calif.

**Spc. Clinton C. Blodgett, 19, of Pekin, Ind.,** died May 26 in Baghdad, Iraq, when the vehicle he was in struck an improvised explosive device. He was assigned to the 1st Battalion, 18th Infantry Regiment, 2nd Brigade Combat Team, 1st Infantry Division, Schweinfurt, Germany.

**Staff Sgt. Thomas M. McFall, 36, of Glendora, Calif.** McFall died May 28 in Baghdad, Iraq, of wounds suffered when an improvised explosive device detonated near his position during a dismounted patrol. He was assigned to the 1st Battalion, 38th Infantry Regiment, 4th Brigade, 2nd Infantry Division (Stryker Brigade Combat Team), Fort Lewis, Wash.

**Pfc. Junior Cedeno Sanchez, 20, of Miami, Fla.** Sanchez died May 28 in Baghdad, Iraq, of wounds suffered when an improvised explosive device detonated near his position during a dismounted patrol. He was assigned to the 1st Battalion, 38th Infantry Regiment, 4th Brigade, 2nd Infantry Division (Stryker Brigade Combat Team), Fort Lewis, Wash.

**Pfc. Charles B. Hester, 23, of Cataldo, Idaho,** died May 26 in Baghdad, Iraq, of wounds suffered when the vehicle he was in struck an improvised explosive device. He was assigned to the 2nd Battalion, 3rd Infantry Regiment, 3rd Brigade, 2nd Infantry Division (Stryker Brigade Combat Team), Fort Lewis, Wash.

**1st Lt. Keith N. Heidtman, 24, of Norwich, Conn.** Heidtman died May 28 in Muqdadiyah, Iraq, of wounds suffered when his OH-58D Kiowa helicopter crashed after receiving heavy enemy fire during combat operations. He was assigned to the 2nd Squadron, 6th Cavalry Regiment, 25th Combat Aviation Brigade, 25th Infantry Division, Schofield Barracks, Hawaii.

**Chief Warrant Officer Theodore U. Church, 32, of Ohio.** Church died May 28 in Muqdadiyah, Iraq, of wounds suffered when his OH-58D Kiowa helicopter crashed after receiving heavy enemy fire during combat operations. He was assigned to the 2nd Squadron, 6th Cavalry Regiment, 25th Combat Aviation Brigade, 25th Infantry Division, Schofield Barracks, Hawaii.

**Staff Sgt. Joseph M. Weiglein, 31, of Audubon, N.J.** Weiglein died May 29 in Ilbu Falris, Iraq, of wounds suffered when an improvised explosive device detonated near his position during a dismounted patrol. He was assigned to the 2nd Battalion, 14th Infantry Regiment, 2nd Brigade Combat Team, 10th Mountain Division (Light Infantry), Fort Drum, N.Y.

**Sgt. Richard V. Correa, 25, of Honolulu, HI.** Correa died May 29 in Ilbu Falris, Iraq, of wounds suffered when an improvised explosive device detonated near his position during a dismounted patrol. He was assigned to the 2nd Battalion, 14th Infantry Regiment, 2nd Brigade Combat Team, 10th Mountain Division (Light Infantry), Fort Drum, N.Y.

**Pfc. Robert A. Liggett, 23, of Urbana, Ill.,** died May 29 in Rustamiyah, Iraq, from injuries suffered in a non-combat related incident. Liggett was assigned to the 2nd Battalion, 69th Armor Regiment, 3rd Brigade Combat Team, 3rd Infantry Division, Fort Benning, Ga. His death is under investigation.

**Pfc. Matthew A. Bean, 22, of Pembroke, Mass.,** died May 31 at the National Naval Medical Center, Bethesda, Md., of wounds suffered on May 19 in Lutifiyah, Iraq, when he was struck by enemy small arms fire. He was assigned to the 2nd Battalion, 15th Field Artillery Regiment, 2nd Brigade Combat Team, 10th Mountain Division (Light Infantry), Fort Drum, N.Y.

**Cpl. Jonathan A. Markham, 22, of Bedford, Texas,** died May 29 in Abu Sayda, Iraq, of wounds suffered when an improvised explosive device detonated near his dismounted position. He was assigned to the 6th Squadron, 9th Cavalry Regiment, 3rd Brigade Combat Team, 1st Cavalry Division, Fort Hood, Texas.

**Pfc. Matthew E. Baylis, 20, of Oakdale, N.Y.,** died May 31 in Baghdad, Iraq, of wounds suffered on May 30 when his dismounted patrol encountered enemy small arms fire. He was assigned to the 2nd Battalion, 12th Infantry Regiment, 2nd Brigade Combat Team, 2nd Infantry Division, Fort Carson, Colo.

**Sgt. Bacilio E. Cuellar, 24, of Odessa, Texas.** Cuellar died May 30 in Baghdad, Iraq, of wounds suffered when the vehicle he was in struck an improvised explosive device. He was assigned to the 1st Battalion, 18th Infantry Regiment, 2nd Brigade Combat Team, 1st Infantry Division, Schweinfurt, Germany.

**Spc. James E. Lundin, 20, of Bellport N.Y.** Lundin died May 30 in Baghdad, Iraq, of wounds suffered when the vehicle he was in struck an improvised explosive device. He was assigned to the 1st Battalion, 18th Infantry Regiment, 2nd Brigade Combat Team, 1st Infantry Division, Schweinfurt, Germany.

**Pfc. Joshua M. Moore, 20, of Russellville, Ky.** Moore died May 30 in Baghdad, Iraq, of wounds suffered when the vehicle he was in struck an improvised explosive device. He was assigned to the 1st Battalion, 18th Infantry Regiment, 2nd Brigade Combat Team, 1st Infantry Division, Schweinfurt, Germany.

**1st Lt. Kile G. West, 23, of Pasadena, Texas.** West died May 28 in Abu Sayda, Iraq, of wounds suffered when his vehicle was struck by an improvised explosive device. He was assigned to the 6th Squadron, 9th Cavalry Regiment, 3rd Brigade Combat Team, 1st Cavalry Division, Fort Hood, Texas.

**Sgt. Anthony D. Ewing, 22, of Phoenix, Ariz.** Ewing died May 28 in Abu Sayda, Iraq, of wounds suffered when his vehicle was struck by an improvised explosive device. He was assigned to the 6th Squadron, 9th Cavalry Regiment, 3rd Brigade Combat Team, 1st Cavalry Division, Fort Hood, Texas.

**Cpl. Zachary D. Baker, 24, of Vilonia, Ark.** Baker died May 28 in Abu Sayda, Iraq, of wounds suffered when his vehicle was struck by an improvised explosive device. He was assigned to the 6th Squadron, 9th Cavalry Regiment, 3rd Brigade Combat Team, 1st Cavalry Division, Fort Hood, Texas.

**Cpl. James E. Summers, III, 21, of Bourbon, Mo.** Summers died May 28 in Abu Sayda, Iraq, of wounds suffered when his vehicle was struck by an improvised explosive device. He was assigned to the 6th Squadron, 9th Cavalry Regiment, 3rd Brigade Combat Team, 1st Cavalry Division, Fort Hood, Texas.

**Spc. Alexandre A. Alexeev, 23, of Wilmington, Calif.** Alexeev died May 28 in Abu Sayda, Iraq, of wounds suffered when his vehicle was struck by an improvised explosive device. He was assigned to the 6th Squadron, 9th Cavalry Regiment, 3rd Brigade Combat Team, 1st Cavalry Division, Fort Hood, Texas.

**Sgt. Chadrick O. Domino, 23, of Ennis, Texas,** died May 31 in Baghdad, Iraq, of wounds suffered when he encountered enemy small arms fire while on dismounted patrol. He was assigned to the 1st Battalion, 23rd Infantry Regiment, 3rd Brigade, 2nd Infantry Division (Stryker Brigade Combat Team), Fort Lewis, Wash.

**Spc. William J. Crouch, 21, of Zachary, La.,** died June 2 in Al Hadid, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. Crouch was assigned to the 2nd Squadron, 1st Cavalry Regiment, 4th Brigade, 2nd Infantry Division, Fort Lewis, Wash.

**Spc. Doonewey White, 26, of Milpitas, Calif.,** died May 29 in Balad, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle during combat operations May 28 in Baghdad, Iraq. He was assigned to the 2nd Battalion, 5th Cavalry Regiment, 1st Brigade Combat Team, 1st Cavalry Division, Fort Hood, Texas.

**Lt. Col. Michael A. Robinson, 42, of Sylacauga, Ala.**, died June 1 in Kabul, Afghanistan. Robinson was assigned to Mobilization Command, Deployment Processing Command, Marine Corps Installations East, Camp Lejeune, N.C. His death is under investigation.

**Staff Sgt. Travis W. Atkins, 31, of Bozeman, Mont.**, died June 1 in Al Yusufiyah, Iraq, when an improvised explosive device detonated near his unit. Atkins was assigned to the 2nd Battalion, 14th Infantry Regiment, 2nd Brigade Combat Team, 10th Mountain Division (Light Infantry), Fort Drum, N.Y.

**Sgt. Bruce E. Horner, 43, or Newport News, Va.**, died June 1 in Baghdad, Iraq, of wounds suffered when his unit came in contact with enemy forces using small arms fire. He was assigned to the 127th Military Police Company, 709th Military Police Battalion, 18th Military Police Brigade, 21st Theater Support Command, Fliegerhorst, Germany.

**Spc. Romel Catalan, 21, of Los Angeles, Ca.**, died June 2 in Ameriyah, Iraq, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to the 1st Battalion, 23rd Infantry Regiment, 3rd Brigade, 2nd Infantry Division (Stryker Brigade Combat Team), Fort Lewis, Wash.

**Chief Warrant Officer Christopher M. Allgaier, 33, of Middleton, Mo.** Allgaier died May 30 in Upper Sangin Valley, Afghanistan, when his helicopter crashed apparently due to enemy fire. He was assigned to the 3rd General Support Aviation Battalion, 82nd Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

**Chief Warrant Officer Joshua R. Rodgers, 29, of Carson City, Nev.** Rodgers died May 30 in Upper Sangin Valley, Afghanistan, when his helicopter crashed apparently due to enemy fire. He was assigned to the 3rd General Support Aviation Battalion, 82nd Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

**Staff Sgt. Charlie L. Bagwell, 28, of Lake Toxaway, N.C.** Bagwell died May 30 in Upper Sangin Valley, Afghanistan, when his helicopter crashed apparently due to enemy fire. He was assigned to the 3rd General Support Aviation Battalion, 82nd Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

**Sgt. Jesse A. Blamires, 25, of West Jordan, Utah.** Blamires died May 30 in Upper Sangin Valley, Afghanistan, when his helicopter crashed apparently due to enemy fire. He was assigned to the 3rd General Support Aviation Battalion, 82nd Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

**Sgt. Brandon E. Hadaway, 25, of Valley, Ala.** Hadaway died May 30 in Upper Sangin Valley, Afghanistan, when his helicopter crashed apparently due to enemy fire. He was assigned to the 3rd General Support Aviation Battalion, 82nd Brigade Combat Team, 82nd Airborne Division, Fort Bragg, N.C.

**Sgt. Charles R. Browning, 31, of Tucson, Ariz.**, died June 1 in Mehtar Lam, Afghanistan, of wounds suffered when an improvised explosive device detonated near his vehicle. He was assigned to Company B, 1st Battalion, 158th Infantry Regiment, Arizona National Guard, Gilbert, Ariz.

**Sgt. Shawn E. Dressler, 22, of Santa Maria, Calif.** Dressler died June 2 in Baghdad. He died of wounds suffered when an improvised explosive device detonated near his vehicle during combat operations June 2 in Baghdad, Iraq. He was assigned to the 1st Battalion, 18th Infantry Regiment, 2nd Brigade Combat Team, 1st Infantry Division, Schweinfurt, Germany.

**Pfc. Joshua D. Brown, 26, of Tampa, Fla.** Brown died June 3 in Baghdad. He died of wounds suffered when an improvised explosive device detonated near his vehicle during combat operations June 2 in Baghdad, Iraq. He was assigned to the 1st Battalion, 18th Infantry Regiment, 2nd Brigade Combat Team, 1st Infantry Division, Schweinfurt, Germany.

**Spc. Jeremiah D. Costello, 22, of Carlinville, Ill.** Costello died June 2 near Qayyarah, Iraq, of wounds suffered when an improvised explosive device detonated near their vehicle. He was assigned to the 5th Battalion, 82nd Field Artillery Regiment, 4th Brigade, 1st Cavalry Division, Fort Bliss, Texas.

**Spc. Keith V. Nepsa, 21, of New Philadelphia, Ohio.** Nepsa died June 2 near Qayyarah, Iraq, of wounds suffered when an improvised explosive device detonated near their vehicle. He was assigned to the 5th Battalion, 82nd Field Artillery Regiment, 4th Brigade, 1st Cavalry Division, Fort Bliss, Texas.

**Casualty Count is now 3932**  
**Since 10 November 2001**

# **VVIC Meeting Business**

## **Guests Present**

## **Announcements and Acknowledgements**

### **President's Remarks**

(D. Sinclair, AUS)

### **1<sup>st</sup> Vice President's Remarks**

(G. Flowers, USMC)

### **2<sup>nd</sup> Vice President's Remarks**

(T. O'Malley)

### **Chief of Staff's Remarks**

(S. O'Grady, AUS)

### **Master At Arms Remarks**

(K. Payne, USN)

## **General Collection**

## **Minutes of the previous meeting**

## **Finance Officer's Report**

## **Intelligence Officer's Report**

1. International Outreach
2. Web activities

## **Service Officer's Report**

1. P. Knauth, AUS
2. D. Sinclair
3. D. Drysdale
4. C. Ricard

## **Inspector General's Report**

## **Quartermaster's Report**

## **Legislative matters:**

## **Administrative Items:**

1. Website photos:
  - a. Sinclair
  - b. Payne
  - c. Lang
  - d. Mella
  - e. McInnes
  - f. Thomson
2. World Wide Web; to find information on Veteran's issues.
3. Replying to Op-Ed pieces that push your button

## **Old Business:**

1. VA Clinic in Bellingham, letter of support.
2. VVIC.NET & VVIC.CA domain ownership
3. Our immortality, the need for getting our house in Order. Sinclair Bio as an example. (at the meeting).
4. Reading of the names? The reason's we remember. A local

psychiatrist mentioned this as a result of a certain Veteran's stated concerns.

5. What to do about VA errors in processing claims.
6. What to do about fraud when encountered.

### **New Business:**

1. Establishing a Service Officer's archive.
2. Summertime event?

### **New Business from the floor:**

*The next General Meeting is 21 June 2007 at 1930 hours at the British Columbia Regiment.*



# Vietnam Veterans In Canada

## Minutes 524

**General Meeting held on 24 May 2007  
British Columbia Regiment, Vancouver, B.C.**

VVIC President Don Sinclair chaired the meeting.

15 People on the sign-in sheet including family members S. Carmack, J. Carmack, and family member J. Mella. Associate member David Holwill manned the bar.

A moment of silence was held and the names of 60 U.S. Military casualties were read out.

Guest Nihls Dahlgren, 2nd District Commander of the American Legion Dept., of Washington was introduced as were all members in attendance.

Announcements and Acknowledgements: International Memorial Day will be held on the 27th of May at the Field of Honour, Mountain View Cemetery Vancouver B.C. Fall-in is at 1400 Hrs.

### **Attachments and Handouts:**

Handouts 1: Agenda #524. Compiled by VVIC S-2.  
2: Federal Register Part #2 from the U.S., Dept., of Veteran Affairs.

Attachments: 1: Minutes of VVIC General meeting #523.  
2: Reciprocal Agreement between the U.S., Veterans Administration and the Canadian Department of Veterans Affairs.  
3: Senator Sanders has a plan to help protect Veterans. By Wilson Ring of AP.  
4: Vet group stands tall for sick G.I. By Jim Spencer of the National Post.  
5: Vietnam Vet Pace passes torch to the new generation of leaders. By Jim Garthmore of American Forces Press Services.  
6: VA bonus winners sat on review boards. By Hope yen of Assoc., Press.  
7: Pentagon Redeploys soldiers with Stress Disorders. InterPress service.  
8: Where have all the leaders gone. By lee Iacocca.

**VVIC President Don Sinclair's Remarks:** A slight correction to the cover page of Agenda #524. Don's Saigon street sign was liberated in 1971 not 1968.

**VVIC 1st V.P. G. Flowers Remarks:** Gerry has been appointed as the V.P. of the UWSS in the U.S. Noted that this position is important for the promotion of veteran issues.

**VVIC 2nd V.P. Tom O'Malley's Remarks:** Reminds all members and thanks W. Carmack VVIC S-2 for the great amount of work that he has done doing all the documentation work for VVIC.

**Chief of Staff Steve O'Grady:** Is in the process of collecting recorded evidence in VVIC possession on Military Wannabees in the U.S., and Canada. The goal is to approach the press to see if there is any interest in bringing this issue before the public. A suggestion is made to design a uniform type of questionnaire to be given out to all VVIC members to find out what each member's funeral preferences are.

**Master at Arms Ken Payne's Remarks:**

1: Ken plans on taking the Service Officers course which is to be held at Sedro Woolley, Wash., on the 26th of May.

2: A reminder of the Veteran's Day ceremonies at Hovander Park on the 29th of May.

3: A reminder that the Bellingham Vet Center is now discouraging Veterans from forwarding packages for pick-up being delivered to the center.

Minutes of previous General meeting accepted.

**Finance Officer L. Reid's Report.** As of the 30th of April VVIC has \$423.97 in the bank.

**Intelligence Officer's Report (S-2)** VVIC web-site expansion continues to progress. vetpress.ca and vetpress.us have been added. These sites will serve all Veterans with many articles of interest.

**Service Officer's Report.**

1: P. Knauth's service records have now been located in Pittsburg Pa.

2: D. Sinclair was awarded a VA claim back in 1974. The records to this claim are to be forwarded to the Vet Center in Bellingham.

3: D. Drysdale, longtime VVIC member is in the UBC cancer building located near the Vancouver General Hospital. All Vets in the Vancouver area are encouraged to drop in and give Dave a visit.

**Legislative Matters;** VVIC S-2 to keep members posted on Senator Barry Sanders Veteran Benefits Bill.

**Administrative Items:**

1: VVIC members who have not submitted Vietnam era photos for our web-site, Sinclair, O'Malley, Payne, Lang, Mella, McInnes and Thomson.

2: VVIC member T. O'Malley's VA claim at present is not registered in Canada. Will take 6 to 9 weeks to transfer his records from Seattle to the White River Junction VARO in Vermont and the Foreign Medical Program.

**Old business:**

1: VVIC has sent a letter of support for the new VA Clinic to be located in the Bellingham area. VVIC President Sinclair will be discussing this matter with Jim Pace in Bellingham shortly.

2: VVIC.net and VVIC.ca has been purchased in W. Carmack's name at a cost of \$167.00 for two years. The purpose is to protect the VVIC from webname domain hijackers. In the near future they will be transferred to VVIC with perhaps membership donations to reimburse Woody for expenses incurred.

**New Business from the Floor:** As of this date we are not sure if VVIC members will be invited to the 4th of July celebrations at the American Consul's residence.

On our sick list at this time we still have D. Drysdale in VGH. In the past week it has been noticed that Dave has made great progress by all who have visited him. Keep it up Dave, all of us at VVIC are rooting for you. We do look forward to seeing you at one of the meetings very soon.

This VVIC General meeting was held after the American legion Post 375 meeting. Our meeting ran from 2049 to 2137. Our next VVIC General meeting will be held on June 7th at the BCR in Vancouver starting at 1930 sharp. See ya'll there.

Meeting Adjourned at 2137.

**Steve O'Grady,**  
*Chief of Staff*



## Navy Pilot Missing From Vietnam War Is Identified

DoD Press Release No. 672-07

The Department of Defense POW/Missing Personnel Office (DPMO) announced on 30 May that the remains of a U.S. serviceman, missing in action from the Vietnam War, have been identified and will be returned to his family for burial with full military honors.

He is **Lt. Michael T. Newell, U.S. Navy, of Ellenville, N.Y.** He was buried on 30 May 2007 in Arlington National Cemetery near Washington, D.C.

On Dec. 14, 1966, Newell was flying an F-8E Crusader aircraft as wingman in a flight of two on a combat air patrol over North Vietnam. During the mission, the flight leader saw a surface-to-air missile explode between the two aircraft. Although Newell initially reported that he had survived the blast, his aircraft gradually lost power and crashed near the border between Nghe An and Thanh Hoa provinces in south central North Vietnam. The flight leader did not see a parachute nor did he hear an emergency beacon signal. He stayed in the area and determined that Newell did not escape from the aircraft prior to the crash.

Between 1993 and 2002, joint U.S./Socialist Republic of Vietnam (S.R.V.) teams, led by the Joint POW/MIA Accounting Command (JPAC), visited the area of the incident five times to conduct investigations and survey the crash site. They found pilot-related artifacts and aircraft wreckage consistent to an F-8 Crusader.

In 2004, a joint U.S./S.R.V. team began excavating the crash site. The team was unable to complete the recovery and subsequent teams re-visited the site two more times before the recovery was completed in 2006. As a result, the teams found human remains and additional pilot-related items.

Among other forensic identification tools and circumstantial evidence, scientists from JPAC also used dental comparisons in the identification of the remains.

For additional information on the Defense Department's mission to account for missing Americans, visit the DPMO Web site at <http://www.dtic.mil/dpmo> or call (703) 699-1169.

## Asked to Serve Again, a Soldier Goes Down Fighting

By Dan Barry  
The New York Times

Sunday 27 May 2007

Combat horrors in Afghanistan left Jamie Dean angry and withdrawn and eventually led to his death.

The sniper fired. It was a clean shot, if there is such a thing. And down for good fell another U.S. soldier.

His name was Sergeant James Dean, but everyone called him Jamie. He was the farm boy who fished, hunted and tossed a horseshoe like nobody else. He was the guy at the end of Toots Bar, nursing a Bud and talking NASCAR. He was the driver of that blue Silverado at the red light, his hands on the wheel, his mind on combat horrors that made him moody, angry, withdrawn.

Now here he was, another U.S. soldier, dead. Only Dean was killed at the front door of his childhood home, the day after Christmas and three weeks before his redeployment, shot by a sniper representing the government for whom he had already risked his life in Afghanistan. His wife and parents received the news not by a knock on the door, but by gunfire in the neighborhood.

"If they had just left him alone," says his wife, Muriel.

In the summer of 2001, weeks before Sept. 11, Jamie stunned his family by enlisting in the army; he was 23. A woman had just broken his heart, yes, but he explained that he wanted to experience life beyond installing air conditioners in confining St. Mary's County. And his younger sister, an air force medic, had been talking up the military.

From April 2004 to April 2005, Jamie served in Afghanistan. Now and then he'd talk to family members by telephone. "Just, 'Hi, I'm fine,'" his mother, Elaine, says. "Or, 'It sucks here.'"

Jamie came back quieter in the summer of 2005, with "Dean" tattooed on his upper back and a cobra tattooed on his muscle-defined arm. But he kept private

any changes beneath the skin, his mother says. "You don't want to know, Mom,' he would always say."

One night at Toots, while drinking a beer, he met a woman named Muriel whose bluish-green eyes entranced him. They became inseparable, cobbling together a family that included her two children, three dogs and a cat. Muriel's good for Jamie, people said, even without knowing how she was nudging him to get counseling for nightmares so bad they would both wake up soaked in sweat.

"The patient states he feels very nervous, has a hard time sleeping, feels nauseous in the a.m., and loses his temper a lot, 'real bad,'" reported a Veterans Affairs evaluation from December 2005. "Was nearby an explosion that destroyed a Humvee with four GIs killed in front of his eyes. The patient is tired of feeling bad," it said.

Jamie was prescribed some medication that did not seem to work at first. ("Cries for no reason," said a report in February 2006.) His doctor adjusted the prescription.

Things got better, it seemed. Jamie returned to air-conditioning work. He donned a white tuxedo and married Muriel in a summer ceremony at the Elks Lodge. He sang some country-western karaoke and talked about getting his wife to go deer hunting.

A few days after Thanksgiving, a FedEx truck delivered an envelope to the Dean farm just as Jamie was about to go hunting. It was a form letter of redeployment, as impersonal as a bank statement.

"It was downhill after that," Muriel says.

He withdrew from the present, it seemed. He drank more and took his medication less. Finally, on Christmas Day, he and Muriel returned from a family gathering with plans to watch his favorite football team, the Dallas Cowboys, on TV. He went out to buy some beer - but went to Toots Bar instead.

She called him, and he came home, livid. He smashed some glasses, said something about winding up in a body bag, and sped away in his Silverado. He wound up at the family home, alone, talking on a cell phone with his sister, Kelly, saying things like: "I just can't do it anymore."

When his sister heard a gunshot, she called 911. The deputy sheriffs arrived at the isolated farmhouse around 10 p.m. and quickly determined that Jamie was drunk, agitated and carrying a shotgun. He told the deputies to back off.

Based on something a family member had said, the police knew that Jamie had other shotguns in the house, but they mistakenly believed he was an army ranger. "Rambo," his mother says ruefully.

At 4:19 a.m., the police shot dozens of tear-gas canisters, smashing the windows in front of Jamie's horseshoe trophies, piercing walls decorated with garland. Several minutes later, Jamie fired shotgun pellets in the general direction of a police car parked at least 45 metres away. Then he sat down on the back porch.

A situation in which an armed man was in his own house, alone and a threat to no one but himself, had now escalated into a military action. On the ground, men with guns; in the sky, the whop-whop of helicopters. Now and then, Jamie would respond to some movement or sound with a shot into the ground or into the air.

Around noon, two negotiators pulled up to a family friend's garage, where Jamie's loved ones were cloistered a kilometer away. His wife was pacing. His mother was bracing herself. His father, Joey, was staring into the woods.

The negotiators asked them to say gentle things to Jamie into a tape recorder. Muriel remembers calling him baby, saying she loved him and asking him to come on out.

At 12:25, a negotiator talked briefly by telephone to Jamie, who indicated he might come out; "I'm going home," he said. Then the police cellphone's battery died.

At 12:34, Jamie was reached again by telephone, but the volume was low and the negotiator could not make out what was being said.

At 12:45, the police cut power to the house and began shooting more tear gas through the front and the back of the house.

At 12:47, an armoured vehicle called a Peace Keeper pulled up to the house. Jamie opened the front door and, according to the police, pointed his 20-gauge shotgun at the vehicle. A state police sniper, positioned in a garage 65 metres away, took aim.

Later, a spokesperson for the Maryland State Police would say the department was reviewing its actions, but would refer to a statement by its superintendent, Colonel Thomas E. Hutchins, in which he said that Dean bore "sole responsibility." The police could not walk away, the colonel had said, because the soldier had the potential to do harm to himself or to others.

Later, Richard D. Fritz, the state's attorney for St. Mary's County, would criticize the state police as using tactics that were "progressively assaultive" and "most unfortunate." In the end, he would say, this paramilitary operation was "directed at an individual down at the end of a dark road, holed up in his father's house, with no hostages."

And later, the Dean family would be left with the mess of absence. Jamie's blood on the cream-coloured carpet. The dozens of holes in the walls. The photo albums that still carry the whiff of tear gas, burning the eyes.

But at that moment, in the early afternoon of the day after Christmas, they heard the gunfire in the distance, and they knew another U.S. soldier had fallen.

(forwarded by M. Ribotto)

## Judge Warns of Vets Disability Backlog

Associated Press | May 23, 2007

WASHINGTON - A special federal court that hears veterans' disability appeals is facing its highest caseload ever as the government increasingly turns down benefits for war veterans, its chief judge said Tuesday.

Judge William P. Greene Jr., who presides over the U.S. Court of Appeals for Veterans Claims, warned of a strained court that has had to recall five retired judges in recent months to assist with growing backlogs of veterans unhappy with the level of disability benefits assigned to them by the Department of Veterans Affairs.

The seven-judge court is now averaging 300 appeals per month, which don't include veterans returning from Iraq and Afghanistan because many of the cases haven't reached the appeals level yet. If the court is to keep up, it will need more staff and building space, Greene told a House Veterans Affairs subcommittee.

"Our present space is or will be inadequate for the type of caseload we are now experiencing," he said. "Adequate space is crucial if we are to make efficient use of recalled judges and any future full-time active judges."

Greene's comments come as a slew of congressional panels are studying ways to improve veterans care, including reducing backlogs of veterans seeking disability benefits. In a study earlier this year, Harvard professor Linda Bilmes said it took up to 177 days for the VA to process an initial claim and then an average of 657 days to process an appeal, resulting in significant hardship to veterans.

In the first half of the current fiscal year, the veterans court was among the busiest of the federal appeals courts. It saw 2,542 new appeals filed in six months, the highest ever, compared to 3,729 for all of the previous fiscal year.

Those numbers continued a sharp increase in appeals filed beginning in fiscal year 2005 as denial of benefits by the VA's Board of Veterans Appeals jumped from 9,299 in 2004 to 13,033 in 2005. Last year, total denials reached 18,107, according to the court.

On Tuesday, Greene said the court is making efforts to reduce delays by regularly recalling retired judges, and working to implement an electronic case filing system to reduce paperwork. It also is considering whether in some clear-cut cases it should make rulings without attaching an explanation.

But that won't likely be enough, Greene said. He predicted many more appeals in the coming months and years, citing the complexity of cases of veterans returning from Iraq and Afghanistan with signs of post-traumatic stress disorder who may be denied benefits if the symptoms aren't readily clear.

Brian Lawrence, a legislative director for the Disabled American Veterans group, criticized what he called the court's overly deferential review of VA decisions on veterans' claims, which he said added to delays.

Some two-thirds of the VA's initial decisions are typically found to be in error by the court, but rather than overturning the decision and ordering payment of benefits, the court usually sends the appeal back to the VA to take a second look, Lawrence said.

Only in limited cases, after a ruling is deemed final, can a veteran appeal a ruling of the veterans court to the U.S. Court of Appeals for the Federal Circuit or the Supreme Court.

"Such a remand leaves unresolved the errors allegedly committed by the board, reopens the appeal to unnecessary development and further delay and further overburdens a system straining to meet growing backlogs," Lawrence told the House subcommittee.

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## The VA Appeals Hamster Wheel

### House Committee on Veterans' Affairs

Statement of Barton F. Stichman, Joint Executive Director, National Veterans Legal Services Program

Testimony Before the Subcommittee on Disability Assistance and Memorial Affairs of the House Committee on Veterans' Affairs

May 22, 2007

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the views of the National Veterans Legal Services Program (NVLSP) on the challenges facing the U.S. Court of Appeals for Veterans Claims (“the CAVC”).

NVLSP is a nonprofit veterans service organization that supported throughout the 1980s bills to repeal the then longstanding bar to judicial review of VA decision-making on claims for benefits. Since the CAVC was created in 1988, NVLSP has represented nearly 1,000 VA claimants before the Court. NVLSP is one of the four veterans service organizations that comprise the Veterans Consortium Pro Bono Program, and in that Program, NVLSP recruits and trains volunteer lawyers to represent veterans who appeal to the CAVC without a representative. In addition to its activities with the Pro Bono Program, NVLSP has trained thousands of veterans service officers and lawyers in veterans benefits law, and has written educational publications that have been distributed to thousands of veterans advocates to assist them in their representation of VA claimants.

At the outset, NVLSP wishes to acknowledge and commend Chief Judge Greene, the other judges, and the staff of the CAVC on the affirmative steps they have taken and are scheduled to take in the future to minimize the time lag between the filing of an appeal and a decision by the Court. These efforts are already bearing fruit. The continuing increase in the number of appeals that are annually filed at the CAVC makes these ongoing efforts doubly important.

My testimony today is informed by the frustration and disappointment in the claims adjudication system experienced by many disabled veterans and their

survivors. They face a number of serious challenges, including in the judicial appeal process. As we describe below, there are several significant problems that cry out for a legislative fix.

## 1. The Hamster Wheel

For many years now, those who regularly represent disabled veterans before the CAVC have been using an unflattering phrase to describe the system of justice these veterans too often face: “the Hamster Wheel”. This phrase refers to the following common phenomenon: the veteran’s claim is transferred back and forth between the CAVC and the Board, and the Board and the RO, before it is finally decided. The net result is that frustrated veterans have to wait many years before receiving a final decision on their claims.

There are at least three aspects of the CAVC’s decision-making process that contribute to the Hamster Wheel phenomenon: (1) the policy adopted by the CAVC in 2001 in *Best v. Principi*, 15 Vet.App. 18, 19-20 (2001) and *Mahl v. Principi*, 15 Vet.App. 37 (2001); (2) the CAVC’s reluctance to reverse erroneous findings of fact made by the Board of Veterans’ Appeals; and (3) the case law requiring the CAVC to dismiss an appeal if the veteran dies while the appeal is pending before the Court.

### A. How Best and Mahl Contribute to the Hamster Wheel

In *Best* and *Mahl*, the Court held that when it concludes that an error in a Board of Veterans’ Appeals decision requires a remand, the Court generally will not address other alleged errors raised by the veteran. The CAVC agreed that it had the power to resolve the other allegations of error, but announced that as a matter of policy, the Court would “generally decide cases on the narrowest possible grounds.”

The following typical scenario illustrates how the piecemeal adjudication policy adopted by the CAVC in *Best* and *Mahl* contributes to the Hamster Wheel phenomenon:

- \* after prosecuting a VA claim for benefits for three years, the veteran receives a decision from the Board of Veterans’ Appeals denying his claim;
- \* the veteran appeals the Board’s decision within 120 days to the CAVC, and files a legal brief contending that the Board made a number of different legal errors in denying the claim. In response, the VA files a legal brief arguing that

each of the VA actions about which the veteran complains are perfectly legal;

- \* then, four and a half years after the claim was filed, the Central Legal Staff of the Court completes a screening memorandum and sends the appeal to a single judge of the CAVC. Five years after the claim was filed, the single judge issues a decision resolving only one of the many different alleged errors briefed by the parties. The single judge issues a written decision that states that: (a) the Board erred in one of the respects discussed in the veteran's legal briefs; (b) the Board's decision is vacated and remanded for the Board to correct the one error and issue a new decision; (c) there is no need for the Court to resolve the other alleged legal errors that have been fully briefed by the parties because the veteran can continue to raise these alleged errors before the VA on remand.
- \* on remand, the Board ensures that the one legal error identified by the CAVC is corrected, perhaps after a further remand to the regional office. But not surprisingly, the Board does not change the position it previously took and rejects for a second time the allegations of Board error that the CAVC refused to resolve when the case was before the CAVC. Six years after the claim was filed, the Board denies the claim again;
- \* 120 days after the new Board denial, the veteran appeals the Board's new decision to the CAVC, raising the same unresolved legal errors he previously briefed to the CAVC.
- \* the Hamster Wheel keeps churning . . .

The piecemeal adjudication policy adopted in Best and Mahl may benefit the Court in the short term. By resolving only one of the issues briefed by the parties, a judge can finish an appeal in less time than would be required if he or she had to resolve all of the other disputed issues, thereby allowing the judge to turn his or her attention at an earlier time to other appeals. But the policy is myopic. Both disabled veterans and the VA are seriously harmed by how Best and Mahl contribute to the Hamster Wheel. Moreover, the CAVC may not be saving time in the long run. Each time a veteran appeals a case that was previously remanded by the CAVC due to Best and Mahl, the Central Legal Staff and at least one judge of the Court will have to duplicate the time they expended on the case the first time around by taking the time to analyze the case for a second time. Congress should amend Chapter 72 of Title 38 to correct this obstacle to justice.

## B. How the Court's Reluctance to Reverse Erroneous BVA Findings of Fact Contributes to the Hamster Wheel

Over the years, NVLSP has reviewed many Board decisions in which the evidence on a critical point is in conflict. The Board is obligated to weigh the

conflicting evidence and make a finding of fact that resolves all reasonable doubt in favor of the veteran. In some of these cases, the Board's decision resolves the factual issue against the veteran even though the evidence favorable to the veteran appears to strongly outweigh the unfavorable evidence.

If such a Board decision is appealed to the CAVC, Congress has authorized the Court to decide if the Board's weighing of the evidence was "clearly erroneous." But the Court interprets the phrase "clearly erroneous" very narrowly. The Court will reverse the Board's finding on the ground that it is "clearly erroneous" and order the VA to grant benefits in only the most extreme of circumstances. As the CAVC stated in one of its presidential decisions: "[t]o be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week-old, unrefrigerated dead fish. . . . To be clearly erroneous, then, the [decision being appealed] must be dead wrong . . . ." *Booton v. Brown*, 8 Vet.App. 368, 372 (1995) (quoting *Parts & Electric Motors, Inc. v. Sterling Electric, Inc.*, 866 F.2d 228, 233 (7th Cir. 1988)).

The net result of the Court's extreme deference to the findings of fact made by the Board is that even if it believes the Board's weighing of evidence is wrong, it will not reverse the Board's finding and order the grant of benefits; instead, it will typically vacate the Board decision and remand the case for a better explanation from the Board as to why it decided what it did – thereby placing the veteran on the Hamster Wheel again. Congress should amend the Court's scope of review of Board findings of fact in order to correct this problem

### C. How the Case Law Requiring the CAVC to Dismiss an Appeal if the Veteran Dies While the Appeal is Pending Contributes to the Hamster Wheel

On April 24, 2007, Christine Cote testified on NVLSP's behalf before this Subcommittee about another contributor to the Hamster Wheel: the case law that requires the CAVC to dismiss an appeal if the claimant dies before the appeals process has been completed. Under this case law, a qualified surviving family member cannot continue the appeal at the CAVC. Instead, the qualified surviving family member must start from square one and file a new claim at a VA regional office for the benefits that the veteran had been seeking for years at the time of his death. As Ms. Cote explained, Congress should take legislative action to allow a qualified surviving family member to substitute for the deceased veteran and continue the appeal at the CAVC.

## 2. Injustice and Inefficiency Due to the Lack of Class Action Authority

The second major set of issues we would like to address involves the injustice and inefficiency that derives from the fact that federal courts do not currently have clear authority to certify a veteran's lawsuit as a class action. When Congress enacted the Veterans' Judicial Review Act (VJRA) in 1988, it inadvertently erected a significant roadblock to justice. Prior to the VJRA, U.S. district courts had authority to certify a lawsuit challenging a VA rule or policy as a class action on behalf of a large group of similarly situated veterans. See, e.g., *Nehmer v. U.S. Veterans Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989); *Giusti-Bravo v. U.S. Veterans Administration*, 853 F. Supp. 34 (D.P.R. 1993). If the district court held that the challenged rule or policy was unlawful, it had the power to ensure that all similarly situated veterans benefited from the court's decision.

But the ability of a veteran or veterans organization to file a class action ended with the VJRA. In that landmark legislation, Congress transferred jurisdiction over challenges to VA rules and policies from U.S. district courts (which operate under rules authorizing class actions) to the U.S. Court of Appeals for the Federal Circuit and the newly created U.S. Court of Appeals for Veterans Claims (CAVC). In making this transfer of jurisdiction, Congress failed to address the authority of the Federal Circuit and the CAVC to certify a case as a class action. As a result of this oversight, the CAVC has ruled that it does not have authority to entertain a class action (see *Lefkowitz v. Derwinski*, 1 Vet.App. 439 (1991), and the Federal Circuit has indicated the same. See *Liesegang v. Secretary of Veterans Affairs*, 312 F.3d 1368, 1378 (Fed. Cir. 2002).

The lack of class action authority has led to great injustice and waste of the limited resources of the VA and the courts. To demonstrate the injustice and waste that result from the unavailability of the class action mechanism, we have set forth below an illustrative case study taken from real events.

### Case Study: The Ongoing Battle Between the VA and Navy "Blue Water" Veterans

This case study involves the five-year old battle that is still being fought between the VA and thousands of Vietnam veterans who served on ships offshore the Republic of Vietnam during the Vietnam War (hereinafter referred to as "Navy blue water veterans"). In section A below, we summarize this five-year old battle

being waged without the benefit of a class action mechanism. In section B, we describe the more efficient and just way the battle would have been waged if a class action mechanism had been available. Finally, in section C, we describe how the piecemeal way the battle is currently being fought will inevitably result in dissimilar VA treatment of similarly situated veterans.

#### A. The Five-Year Old Battle Between the VA and Navy Blue Water Veterans

From 1991 to 2002, the VA granted hundreds, if not thousands of disability claims filed by Navy blue water veterans suffering from one of the many diseases that VA recognizes as related to Agent Orange exposure. These benefits were awarded based on VA rules providing that service in the waters offshore Vietnam qualified the veteran for the presumption of exposure to Agent Orange set forth in 38 U.S.C. § 1116.

In February 2002, VA did an about face. It issued an unpublished VA MANUAL M21-1 provision stating that a “veteran must have actually served on land within the Republic of Vietnam. . . to qualify for the presumption of exposure to” Agent Orange. As a result, all pending and new disability claims filed by Navy blue water veterans for an Agent Orange-related disease were denied unless there was proof that that the veteran actually set foot on Vietnamese soil. In addition, the VA began to sever benefits that had been granted to Navy blue water veterans prior to the 2002 change in VA rules.

In November 2003, the CAVC convened a panel of three judges and set oral argument to hear the appeal of Mrs. Andrea Johnson, the surviving spouse of a Navy blue water veteran who was denied service-connected death benefits (DIC) by the Board of Veterans’ Appeals on the ground that her deceased husband, who died of an Agent Orange-related cancer, had never set foot on the land mass of Vietnam. See *Johnson v. Principi*, U.S. Vet. App. No. 01-0135 (Order, Nov. 7, 2003). The legal briefs filed by Mrs. Johnson’s attorneys challenged the legality of the 2002 Manual M21-1 provision mentioned above. Thus, it appeared that the CAVC would issue a precedential decision deciding the legality of VA’s set-foot-on-land requirement.

Six days before the oral argument, however, the VA General Counsel’s Office made the widow an offer she could not refuse: full DIC benefits retroactive to the date of her husband’s death – the maximum benefits that she could possibly receive. Because Mrs. Johnson did not and could not file a class action, once she signed the VA’s settlement agreement, the oral argument was cancelled, the

Court panel convened to hear the case was disbanded, and the appeal was dismissed. Buying off the widow allowed the VA to continue for the next three years to deny disability and DIC benefits to Navy blue water veterans and their survivors based on VA's new set-foot-on-land rule.

Some Navy blue water veterans and survivors who were denied benefits by a VA regional office based on the 2002 rule gave up and did not appeal the RO's decision. Some appealed the RO's decision to the Board of Veterans' Appeals, which affirmed the denial. Some of those who received a BVA denial gave up and did not appeal the BVA's denial to the CAVC. And some of those who were denied by the RO and the BVA did not give up and appealed to the CAVC.

One of those who doggedly pursued his disability claim all the way to the CAVC was former Navy Commander Jonathan L. Haas. He filed his appeal in March 2004. The CAVC ultimately convened a panel of the Court and scheduled oral argument for January 10, 2006 to decide Commander Haas' challenge to VA's set-foot-on-land rule. This time, however, the VA did not offer to settle. On August 16, 2006, a panel of three judges unanimously ruled that VA's 2002 set-foot-on-land requirement was illegal. See *Haas v. Nicholson*, 20 Vet.App. 257 (2006).

But this did not end the battle between the VA and Navy blue water veterans. In October 2006, the VA appealed the decision in Haas to the U.S. Court of Appeals for the Federal Circuit, where it is currently pending. Last fall, Secretary of Veterans Affairs R. James Nicholson also ordered a moratorium at the 57 VA regional offices and the Board of Veterans' Appeals that prevents the ROs and the BVA from deciding any claim filed by a Navy blue water veteran or survivor based on an Agent Orange-related disease unless there is proof that the veteran had actually set foot on Vietnamese soil. VA estimates that the moratorium covers 1,500 claims pending at the BVA and an untold number of similar claims pending at the 57 ROs. This moratorium will stay in effect at least until the Federal Circuit decides the VA's appeal. A decision by the Federal Circuit is not expected for another year.

Thus, if the VA ultimately loses its challenge to the unanimous CAVC decision at the Federal Circuit, the VA will nonetheless have succeeded in withholding disability benefits from thousands of Navy blue water veterans and survivors for the six-year period from 2002 to 2008.

B. How This Battle Would Have Been Waged If A Veteran Could File a Class

## Action

Compare the true events described above with how the battle between the VA and Navy blue water veterans would have been coordinated if a federal court (the Federal Circuit or the CAVC) had authority to certify a case as a class action on behalf of similarly situated VA claimants. Years ago, Mrs. Johnson could have asked the Court with class action authority to certify her lawsuit as a class action on behalf of the following class members: (1) Navy blue water veterans who (a) have filed or henceforth file a VA disability claim based on an Agent Orange-related disease and (b) never set foot on the land mass of Vietnam and (2) all surviving family members who filed or henceforth file a DIC claim based on the death of such a Navy blue water veteran from an Agent Orange-related disease.

If the Court certified Mrs. Johnson's lawsuit case as a class action, the VA would not have been able to end the case by buying her off. Class actions cannot be dismissed merely because one class member is granted benefits. The Court could then have ordered the VA to keep track of, but not decide, the pending claims of all class members until the parties filed their briefs and the Court issued an opinion deciding the legality of VA's set-foot-on-land requirement. This action would have conserved the limited claims adjudication resources of the VA by allowing the agency to adjudicate other claims while the class action was pending. When actually occurred instead is that the regional offices and the Board expended scarce resources adjudicating and denying thousands of claims filed by Navy blue water veterans during the period from 2002 to the fall of 2006, when Secretary Nicholson's moratorium went into effect.

This action would also have conserved the resources of thousands of disabled class members and their representatives. They would not have to complete and submit notices of disagreement, substantive appeals forms, and responses to VA correspondence in order to keep their claims alive.

Then, after the Court resolved the legality of VA's set-foot-on-land requirement, it could act to ensure that all of the pending claims filed by class members were uniformly and promptly decided by the VA in accordance with the Court's decision. And all of this would have occurred well before 2008 because Mrs. Johnson's earlier case would have led to the key Court decision, not the later filed case of Commander Haas.

## C. Why the Current Battle Will Inevitably Result In Dissimilar Treatment of Similarly Situated Disabled Veterans and Their Survivors

By definition, all of the Navy blue water veterans and their survivors who have been denied benefits due to the VA's set-foot-on-land rule are suffering from, or are survivors of a veteran who died from, one of the following diseases that the VA recognizes as related to Agent Orange exposure: soft-tissue sarcomas, Hodgkin's disease, lung cancer, bronchus cancer, larynx cancer, trachea cancer, prostate cancer, multiple myeloma, chronic lymphocytic leukemia, and diabetes mellitus (Type 2). These are seriously disabling, often fatal diseases.

Assume that the Federal Circuit ultimately agrees with the unanimous panel of the CAVC and affirms its ruling that VA's set-foot-on-land requirement is unlawful. Further assume that Secretary Nicholson agrees to comply with the Court's ruling, lifts his moratorium, and orders the ROs and BVA to decide all of the claims subject to the moratorium and belatedly pay these disabled war veterans and their survivors – to the extent that they are still alive -- the many-years-worth of retroactive disability or death benefits they were long ago denied due to VA's set-foot-on-land requirement.

Even if all this were done, the fact would remain that hundreds, if not thousands of similarly situated Navy blue water veterans and their survivors would never receive the benefits that those whose claims were subject to the moratorium would receive. That is because VA's denial of their claims for disability or death benefits for an Agent Orange-related disease became final before Secretary Nicholson's moratorium. To be specific, the following similarly situated VA claimants are not subject to Secretary Nicholson's moratorium and will never receive benefits based on their claims:

Navy blue water veterans who filed a disability claim and survivors of Navy blue water veterans who filed a DIC claim that was denied by a VA regional office based on its set-foot-on-land rule, and who either

- \* did not file a notice of disagreement with the RO decision during the one-year appeal period; or
- \* filed a timely notice of disagreement, but failed to file a timely substantive appeal to the Board of Veterans Appeal; or
- \* filed a timely notice of disagreement and a timely substantive appeal, received a decision from the Board of Veterans' Appeals denying their claim based on VA's set-foot-on-land rule, and failed to file a timely appeal with the CAVC.

The number of these similarly situated claimants is likely to be high. Veterans

with seriously disabling diseases often give up on their claim when the VA tells them that they are not entitled to the benefits they seek. Their disabilities deplete their energy and their resources. Fighting the VA bureaucracy can seem a very daunting task to a veteran suffering from cancer. Plus, they are not lawyers and are not familiar with the legal authorities relied upon the CAVC in Haas. When the VA tells them they are not entitled to benefits because they did not set foot on land in Vietnam, they often believe that the VA must know what it is doing. Thus, many of these disabled veterans simply give up and don't appeal their cases all the way to the CAVC.

If the Federal Circuit rules in the favor of the Navy blue water veterans, no law requires the VA to use their computer systems to identify similarly situated claimants who are not included in the Nicholson moratorium. No law requires the VA to notify these similarly situated claimants about the Court's decision. And even if these similarly situated claimants somehow found out about the Court decision and reapplied, the VA would refuse to pay them the retroactive benefits that it paid to the claimants subject to the Nicholson moratorium because the VA would conclude that its previous final denial of the claim – which occurred before the Haas decision -- was not the product of "clear and unmistakable error."

Thus, the unavailability of a class action mechanism dooms the claims of all similarly situated Navy blue water veterans and their survivors who are not part of the Nicholson moratorium. Legislative action is needed to ensure that unjust situations like this are not repeated in the future.

Testimony here... <http://veterans.house.gov/hearings/schedule110/may07/05-22-07/5-22-07stichman.shtml>

## **VFW backs vet in trouble over protest**

By SAM HANANEL, Associated Press Writer

The nation's largest combat veterans group on Friday urged the military to "exercise a little common sense" and call off its investigation of a group of Iraq war veterans who wore their uniforms during anti-war protests.

"Trying to hush up and punish fellow Americans for exercising the same democratic right we're trying to instill in Iraq is not what we're all about," said Gary Kurpius, national commander of the 2.4 million-member Veterans of Foreign Wars.

"Someone in the Marine Corps needs to exercise a little common sense and put an end to this matter before it turns into a circus," Kurpius said.

Marine Cpl. Adam Kokesh had already received an honorable discharge from active duty before he was photographed in March wearing fatigues with military insignia removed during a mock patrol with other veterans protesting the Iraq war.

A military panel in Kansas City, Mo., will hold a hearing Monday to decide whether he should be discharged from service and, if so, with what type of discharge.

Col. Dave Lapan, a Marine Corps spokesman, said Kokesh is under administrative review because he wore his uniform at a political event, which is prohibited. And, Lapan said, when a senior officer told Kokesh that he violated military regulations, Kokesh used an obscenity and indicated he would not comply with the rules.

"It's the political activity that is prohibited, not the type of event that it was," Lapan said. "If it had been a pro-war rally, it would still have been a violation."

The panel could recommend an honorable discharge, a general discharge or an other than honorable discharge. Kokesh could not be given a dishonorable discharge, which generally results from a court-martial. The final decision would be made by the commanding general.

A second Marine who was at the same event was also called about the violation,

but told the officer he was unaware he was breaking the rules and said he would not do it again, Lapan said. That Marine has not been called to an administrative hearing.

Kurpius said the possibility of receiving a less than honorable discharge from service could threaten educational and other benefits Kokesch is eligible to receive from the Department of Veterans Affairs. The action might also prevent Kokesch from future employment opportunities that require a security clearance, Kurpius said.

"We all know that people give up some individual rights when they join the military," Kurpius said. "But these Marines went to war, did their duty, and were honorably discharged from the active roles. I may disagree with their message, but I will always defend their right to say it."

Kokesch received his honorable discharge after one combat tour in Iraq, but he remains part of the Individual Ready Reserve, a pool of former active duty service members in unpaid, non-drill status.

Kokesch's attorney, Michael Lebowitz, has called the investigation an effort to stifle critics of the Bush administration's Iraq policy.

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Associated Press Writer Lolita C. Baldor contributed to this report.

## AO & PROSTATE CANCER

A new study shows exposure to Agent Orange (AO) in the Vietnam War appears to boost veterans' risk for a recurrence of prostate cancer even after the organ is surgically removed. And if the cancer does return, it tends to be more aggressive among veterans exposed to AO than in those not exposed to the chemical defoliant. Black veterans are especially vulnerable to these tough-to-treat recurrences. Lead researcher Dr. Sagar Shah, a urology resident physician at the Medical College of Georgia, will present his team's findings at the annual meeting of the American Urological Association, in Anaheim CA. He noted that Vietnam veterans PSAs [prostate specific antigen levels] should be checked regularly and that they be screened aggressively for prostate cancer. The sooner it is identified the more treatment options are available.

Exposure to dioxin and AO has long been linked to increased risks for a variety of malignancies, including leukemia's, lymphomas, prostate cancer and lung tumors, according to Phil Kraft, program director for the National Veterans Services Fund, which lobbies on behalf of U.S. veterans. AO contains dioxin, which, Shah said, "isn't really a tumor mutagen -- it doesn't cause cancer -- but it is a tumor-promoter. So, if the cancer is there, it makes it more prominent." In the new study, Shah's team sought to determine if there were any differences in the rate or type of prostate cancer recurrences seen among a group of 1,653 black and white Vietnam veterans -- 199 of whom had been exposed to Agent Orange. All of the veterans were treated after first being diagnosed with prostate cancer between 1990 and 2006. Their treatment included surgical removal of the prostate gland. Examination of biopsy samples under a microscope showed no pathological differences between the tumors of men exposed to Agent Orange and those who were not exposed. Differences did emerge, however, when the researchers compared rates of "biochemical recurrence."

Biochemical recurrence means that blood levels of the marker prostate-specific antigen (produced by prostate cancer cells) rose sharply and steadily in the months after surgery. Doctors routinely test men for their blood levels of PSA to help spot prostate cancer. In this study, the shorter the time it took for a man's PSA level to double, the more aggressive his cancer appeared to be. Veterans exposed to AO had a higher relative risk of having a biochemical recurrence than unexposed veterans. The researchers found the rate of post-surgical prostate cancer recurrence among white veterans rose by 42% if they had been exposed to AO, compared to non-exposed veterans, Black veterans exposed to the herbicide fared even less well, with a recurrence rate that was 75% higher than

their non-exposed peers. And when prostate cancer did recur among veterans exposed to AO, "it seemed that they had a much shorter PSA doubling time, a surrogate for aggressiveness," Shah said. Among black men with a cancer recurrence, PSA levels doubled in just nine months for those exposed to AO, compared to 16 months for those unexposed to the toxin.

"Why might black Vietnam veterans be most vulnerable? Numerous studies conducted among the general population have already suggested that genetics or other factors put black American men at higher prostate cancer risk compared to whites. In addition, black troops serving in Vietnam were also more likely to have higher levels of exposure than whites. They were more likely to be ground troops and less likely to be officers away from AO exposure," Shah said. He stressed that the study did not look at recurrence rates for prostate cancer patients treated with methods other than surgery -- for example, with radiation. "We just don't know about those outcomes," he said.

***Red Wine appears protective against advanced or aggressive cancers.***

In a separate study the June 2007 issue of Harvard Men's Health Watch reported researchers have found that men between ages 40 and 64 who drink an average of four to seven glasses of red wine per week are only 52% as likely to be diagnosed with prostate cancer as those who do not drink red wine. In addition, red wine appears particularly protective against advanced or aggressive cancers. Even low consumption amounts seemed to help, and for every additional glass of red wine per week, the relative risk declined by 6%. Many doctors are reluctant to recommend drinking alcohol for health, fearing that their patients might assume that if a little alcohol is good, a lot might be better. The Harvard Men's Health Watch notes that men who enjoy alcohol and can drink in moderation and responsibly may benefit from a lower risk of heart attack, stroke, diabetes, and cardiac death.

*Source: Washington Post Health Day E.J. Mundell article 20 May 07*