

**EXAMINING THE IMPACT OF EXPOSURE TO TOXIC  
CHEMICALS ON VETERANS AND THE VA'S  
RESPONSE**

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**HEARING**

BEFORE THE

**COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE**

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 29, 2015

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**TUESDAY, SEPTEMBER 29, 2015**

U.S. SENATE,  
COMMITTEE ON VETERANS' AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:04 a.m., in room 418, Russell Senate Office Building, Hon. Johnny Isakson, Chairman of the Committee, presiding.

Present: Senators Isakson, Moran, Boozman, Heller, Cassidy, Rounds, Tillis, Blumenthal, Brown, Tester, Hirono, and Manchin.

**OPENING STATEMENT OF HON. JOHNNY ISAKSON,  
CHAIRMAN, U.S. SENATOR FROM GEORGIA**

Chairman ISAKSON. I am going to call this hearing of the Veterans' Affairs Committee of the U.S. Senate to order. We have three members who will testify first today. One of them is here, punctual and on time, former Ranking Member Richard Burr. We welcome him. And hopefully by the time the two opening statements by myself and the Ranking Member have been made, Senator Daines and Senator Gillibrand will be here. But we want to start promptly so people will know we mean to start promptly around here on the Committee. I think that is important.

This is an important hearing today for a lot of reasons, most importantly because we want to determine the presumptive nature of certain exposures to our veterans that could cause debilitating and deadly diseases. We want to hear testimony from the Veterans Administration. We are going to hear testimony from toxic experts and we are going to hear testimony from three members of the U.S. Senate.

For me, it is very important that we have a thorough examination of what it takes to get to a presumptive conclusion that a disease or a disability has been caused by an exposure, that it be as scientific as it can be so it is absolutely, unequivocally clear. I am not an expert at that type of thing. I am a salesman. I am not an expert in science or technology or anything else, but I am here to learn, as I know the Ranking Member is, as well.

I want to particularly thank Senator Burr and Senator Tillis for what they have done at Camp LeJeune to bring this issue forward over the last several years. I look forward to moving toward a successful conclusion in terms of presumption on that particular issue.

With that said, today we will have three panels. First, the three Senate members that are here to testify, then the VA, then we will have a final panel to testify on the nature of toxic exposure and causation.

With that said, I will turn to Senator Blumenthal, the Ranking Member.

**OPENING STATEMENT OF HON. RICHARD BLUMENTHAL,  
RANKING MEMBER, U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thank you, Mr. Chairman. I want to express my appreciation to you for holding this hearing to examine the multi-faceted harmful impacts of toxic exposures and the need for additional legislation, including the extension of the Secretary's authority to grant that presumptive coverage for service-connected disabilities based on exposure to herbicides.

I very much regret that this authority, which Congress has provided the Secretary for the last 15 years, was not included in the extenders package that the Senate passed last week. I understand that this omission was based in part over the Chairman and other members' concerns regarding its possible scoring implications for the larger package that has bipartisan support to move before these vital authorities expired.

Given our very mutual concern for veterans exposed to toxic chemicals in conflicts today and in prior years, I am hoping that the Chairman will assure me, as he has done privately, that he will give full and favorable consideration to legislation that I have introduced to ensure that the Secretary will regain this specific authority and, in the interim, work with me to encourage the Secretary to use his general rule to make authority as needed for all veterans who may have been impacted by these exposures. I am hoping that those assurances will be forthcoming at some point today or in the near future.

To this end, I have introduced S. 2081, which would extend the Secretary's authority for an additional 15 years. It also ensures that there are no impediments in extending compensation to veterans exposed to herbicides, as medical evidence, research, and studies support. I have a letter from the Blinded Veterans Association expressing support for this measure and I ask that it be included in the record for this hearing.

Chairman ISAKSON. Without objection.

[The information referred to is in the Appendix.]

Senator BLUMENTHAL. Thank you. I look forward to hearing from all of our witnesses about this measure, along with other important issues including helping Blue Water veterans and all those returning from Iraq and Afghanistan with toxic exposures.

Potential exposure to toxic chemicals during military service raises serious and complicated questions. While the impact is undeniable, establishing and qualifying a clear link between the exposures and health effects has become an intolerably long and complex process.

As a result, I am hopeful that the Committee will continue to drill down and dig down and monitor the recommendations made by the Institute of Medicine's biennial updates on the health effects

of Agent Orange exposure to ensure that the VA responds appropriately.

In its report, *Veterans and Agent Orange, 2012 Update*, IOM stated, “The amount of research providing reliable information on the consequences of paternal exposure is extremely sparse not only for Agent Orange, but for the full array of environmental agents that may pose threats to the health of future generations.”

Here is what we know about the modern battlefield. There are all sorts of toxic substances out there, many more than are imaginable to the layperson, whether it is depleted uranium, pollutants from burn pits, or nerve gas in unexploded ordnance. We know that the modern battlefield includes perils even for the veteran who has not been engaged in combat.

When a veteran signs up for duty, he or she has not signed up their children or grandchildren. Risking their own lives does not mean volunteering the next generation for neurological conditions, cancer, or other life-threatening conditions.

So, earlier this year I introduced legislation with Senator Moran that is one step only, one step in the right direction. It says that we need to know a lot more because we know so little about the effects of these toxic substances on veterans and their families. We need to know more through a research center that can do the kind of fact-finding and fact-gathering and other kinds of medical and scientific research that will show us the way to better diagnose and treat the effects of toxic exposure.

We need an advisory board of experts that can tell the secretaries of VA and HHS and other responsible government agencies they can do better. The IOM’s 2011 report entitled, *Blue Water Navy Veterans and Agent Orange Exposure*, failed to find sufficient evidence to connect Blue Water Navy service with exposure to Agent Orange sufficient to merit a presumption, and led the Secretary of VA to issue a determination of no presumption in 2012. But this issue warrants and demands further investigation.

In particular, the VA needs to follow up on an Australian Government study that established the possibility that so-called Blue Water Navy ships off the coast of Vietnam ingested water contaminated by Agent Orange through their distillation systems that produced drinking water for their crews.

Finally, I was deeply troubled and perplexed by Secretary Mabus’s recent remarks dismissing links between Camp Lejeune water and the higher incidence of a number of illnesses of veterans who served in that area. We cannot be cavalier about the risks that our servicemen and women have taken.

I know that Navy Secretary Mabus is also deeply concerned about this issue and I thank him for his concern. But many others in positions of authority have failed to demonstrate those kinds of concerns. My hope is that we will hear more from our witnesses that will bolster and substantiate the ongoing and increasing efforts to do more and do better in dealing with toxic exposure to dangerous chemicals on our battlefield and elsewhere in our military. I look forward to the opportunity for this important conversation. Thank you to our witnesses for being here today. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Ranking Member. In reference to his opening statement, I commit to him, as I have privately, then we are going to see to it that we explore thoroughly the causation of various diseases that take place, and when we find conclusive scientific evidence, we will move accordingly. I look forward to working with him on that effort as we improve the lives of our veterans.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Chairman ISAKSON. I would like to welcome our three guest Senators. As is the tradition on the Committee, we will not ask questions of them, but we will ask for their testimony. I would ask that each of them try to keep their remarks within 5 minutes, if possible. We welcome our first alumni, Richard Burr, the former Ranking Member of the Committee. Senator Burr, the floor is yours.

**STATEMENT OF HON. RICHARD BURR,  
U.S. SENATOR FROM NORTH CAROLINA**

Senator BURR. Mr. Chairman, Ranking Member, thank you for the opportunity to give the Committee my perspective on the effects of toxic exposure on our Nation's veterans and the Department of Veterans Affairs' often inadequate and frustrating response.

Mr. Chairman, this has been a long road and I ask for the Committee's indulgence because I am not sure that I can give you this very long history in 5 minutes; it may take 6 minutes.

Chairman ISAKSON. We will be easy.

Senator BURR. To my colleague, Senator Blumenthal, I wish I could hold Secretary Mabus in the same regard that you do, but if there has been an epiphany that has happened lately as it relates to his concern over whether the appropriate documents were available, and many cases they have made it as difficult as it possibly can be.

Before I begin, Mr. Chairman, I would like to recognize Master Sergeant Jerry Ensminger, U.S. Marine Corps, retired, from White Lake, NC, who is here today and who has been a relentless advocate for Camp Lejeune, for its veterans for over 15 years. Let me just say, Jerry, we would not be here today if it was not for your fidelity, your courage, and your commitment.

Mr. Chairman, during my time on the Committee, one toxic exposure issue continued to garner our attention because of its scope, its severity, and the intense public interest. That is the contamination of the water supply at Camp Lejeune, NC.

From 1953 to 1987, we know Camp Lejeune residents were exposed to poisoned water from industrial dumping on the base and contamination from a dry cleaner off base. This 34-year event has been called the worst incident of environmental exposure in our Nation's history. Hundreds of thousands of servicemembers, their families, civilian workers, drank and bathed in water that had been exposed to mixed cancer-causing chemicals that, in one case, took the life of a 9-year-old girl, Janey Ensminger, who was born on base.

Once metabolized, the chemical in the water could cause birth defects and increased risk of multiple cancers. The Government scientific investigation into Camp Lejeune began in 1989, but we have



only seen significant progress in the last 5 years spurred by the uncovering of critical Navy and Marine Corps records and the completion of a long overdue study on the effects of the contamination.

Along the way, I went to great lengths to reveal the truth about Camp Lejeune and hold the military and the VA accountable. To this day, I remain appalled at how the U.S. Government has treated these servicemembers and their families. Our Government rewarded the sacrifices of these patriotic men and women by negligently poisoning them and their families and by engaging in a decades long cover-up.

It was not until 2011, after significant Congressional pressure, that the VA began consolidating all disability claims at one VA regional office in coding and tracking them. During the time I introduced the Janey Ensminger Act, named in honor of Master Sergeant Ensminger's late daughter. The law was passed and signed into law in 2012. It has provided the much needed and overdue medical relief to veterans and eligible family members seeking health care for cancers and conditions associated with toxic exposure at Camp Lejeune.

Janey's Law was based on scientific findings required by Congressionally mandated review, because within the VA, there was neither the expertise nor the resources to explore the science of toxic exposure. The Government studies on Camp Lejeune conducted by the CDC's Agency for Toxic Substances and Disease Registry, or ATSDR, are based on test results from water samples taken at Camp Lejeune over successive years.

The study shows some of the highest levels of recorded toxins in any U.S. water system and it reached the taps in houses, barracks and offices. ATSDR has found that Camp Lejeune residents experienced higher rates of mortality at a younger age than those from an unaffected Marine Corps base, higher incidence of birth defects in children born on the base, and a statistically high number of male breast cancer survivors.

In fact, several chemicals found in Camp Lejeune water are now classified as known human carcinogens by the EPA and the International Agency for Research on Cancer.

Mr. Chairman, the resistance inside the VA to the scientific data and the fact that Camp Lejeune demonstrates how VA has dealt with the scientific facts of toxic exposure overall. In the case of LeJeune, their approach ranged from scare tactics like issuing over-inflated estimates on long-term cost of care to this Committee for benefits, and suggesting the Department of Defense should take care of Camp Lejeune families instead of VA.

They produced passive aggressive rebuttals of the scientific findings, have sought additional scientific studies, and created a bizarre procedural hurdle for Camp Lejeune veterans to overcome in the disability claims process.

To this day, Lejeune veterans from across the country contact my office and relate demoralizing accounts of ignorant VA doctors in the claims process that is frequently deaf and blind to scientific evidence and medical opinion. This summer, Secretary McDonald indicated he wants his people to back away from this adversarial approach, work with veterans with a history of toxic exposure, and

begin by engaging Congress and Government scientists to develop sound policies for Camp Lejeune veterans.

In July, Senator Tillis and I sat down with the Chairman and Secretary McDonald to raise some questions that were very serious about a VA team of clinicians reviewing Lejeune veterans' disability claims before final decisions were made on service connection.

These VA doctors were, in various cases, cherry picking the science, misrepresenting or misinterpreting scientific studies, using questionable sources, and overruling the opinions of veteran oncologists.

In the glaring case of one Marine, Norman McIlhenny, suffering from kidney cancer, a VA clinician stated that there was no evidence of the chemicals at Camp Lejeune water, the carcinogen TCE, which was known to cause kidney cancer. VBA later denied the claim. When VA was later shown evidence that the exposure to TCE is widely accepted as a cause of kidney cancer, VA removed the citation and the denial notice, then reissued it, then denied the claim again.

Mr. Chairman, this is unbelievable, but sadly true. There are many other Camp Lejeune veterans with similar stories. Mr. Chairman, at our July meeting, Secretary McDonald, to his credit, openly and fully recognized the fact that the science on Camp Lejeune was undeniable and he agreed to work with ATSDR to compile data for a presumptive disability policy soon afterwards.

Soon afterwards, VA publicly announced support for three cancers that would be covered. Last week, ATSDR submitted its 70-page report to VA detailing at least six cancers where sufficient evidence of causation from toxic exposure at Lejeune exists and several other conditions where moderate evidence of causation exists.

Secretary McDonald has taken the first step to acknowledge ATSDR, and other key agencies must play an integral role in helping VA confirm and understand toxic exposure. But I am not convinced the olive branch from the Secretary will result in good policy beyond Lejeune if VA ultimately decides on polishing its image more than the scientific merit.

When it comes to confirming toxic exposure like those at Camp Lejeune, make certain that VA heeds the best science, will be required strong and engaged leadership from Secretary McDonald, and, Mr. Chairman, rigorous oversight from this Committee. Congress must ensure VA health and benefits policy is based on fact, not conjecture or emotion, so those veterans who have been harmed by toxic exposures are properly cared for and compensated for their suffering.

Mr. Chairman, I thank you for this opportunity. I thank you for the indulgence of the Committee and I trust the Committee will continue its very important responsibilities.

Chairman ISAKSON. Thank you, Senator Burr. Thank you for your focus on Camp Lejeune, as we continue to work with you until we get a solution on all those problems. Thank you for your testimony.

Senator Gillibrand.

**STATEMENT OF HON. KIRSTEN GILLIBRAND,  
U.S. SENATOR FROM NEW YORK**

Senator GILLIBRAND. Thank you, Mr. Chairman. Thank you, Ranking Member Blumenthal. I am grateful for this hearing and for the bill that you recently introduced. I want to thank Senator Daines for joining me today. He has been a tremendous partner in this push to give our Blue Water veterans the coverage that they have earned and deserve.

During the Vietnam War, thousands of American servicemembers were exposed to Agent Orange, servicemembers like Keith Martel from upstate New York. Keith was a sailor in Vietnam for 3 years, from 1967 to 1970. A few years after he got out, he joined the New York Army National Guard and stayed with them for decades. On September 11 he answered the call of duty and went to Ground Zero. Then 2 years later in his 50s, Keith was sent to Iraq.

Keith was exposed to Agent Orange when he was in Vietnam and now he has prostate cancer, which has been linked to Agent Orange. So, what do you think the Department of Veterans Affairs did when Keith first went to them for coverage? They said, sorry, your boat was here, not here, so we cannot help you. Sorry, you did not have boots on the ground.

All those Blue Water Navy veterans like Keith, we are letting them down. The U.S. Government has recognized the dangers of Agent Orange since 1960. Congress passed the Agent Orange Act in 1991, which allowed all Vietnam veterans to receive presumptive coverage if they had Vietnam service medals and could prove symptoms related to Agent Orange exposure.

But in 2002, the VA decided to change the intent of Congress and halted its coverage to an estimated 174,000 veterans, including those who had served in the Blue Water just off Vietnam's coast. Since then, instead of treating every Vietnam veteran who suffers from a disease caused by Agent Orange, the VA is only treating those veterans who stepped foot on Vietnamese soil or his boots—or whose boats were patrolling Vietnamese rivers.

This distinction, which excludes the veterans who served on boats in Vietnam's bays and harbors, was recently ruled by the Court of Appeals for Veterans Claims as arbitrary and capricious. We are seeing veterans who did serve, who were exposed to Agent Orange and are now sick being denied coverage because of this arbitrary bureaucratic decision by the VA.

The science does not support the policy. The Australian Department of Veterans Affairs recently commissioned a study specifically about the Navy's water distillation process. In the study, ships in near-shore marine waters collected water that was contaminated with the runoff from areas sprayed with Agent Orange, and they found that the distillation methods used on their ships, the same methods used on the American Navy ships, actually concentrated Agent Orange in the drinking water.

Mr. Chairman, the evidence is clear. We have to pass the Blue Water Navy Vietnam Veterans Act of 2015, and because of the urgency of this issue, I request that your Committee mark up our legislation and expeditiously report it favorably to the floor for consideration by the full Senate. Thank you.

Chairman ISAKSON. Thank you, Senator Gillibrand.

Senator Daines.

**STATEMENT OF HON. STEVE DAINES,  
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you, Chairman Isakson, Ranking Member Blumenthal, and my colleagues on the Veterans' Affairs Committee for allowing me to testify in this very important hearing on examining the impact of exposure to toxic chemicals on veterans and the VA's response.

Montana veterans have strongly voiced concerns about the VA, that they have not acted in the best interests of our Vietnam veterans exposed to dangerous toxins, especially those who served in the Navy. While I continue to call for the Department of Veterans Affairs to clean up its poor record, the VA has not made substantive changes to the care of the men and women who defended this great nation when they were asked. Instead, the VA has chosen to exclude specific groups of veterans from receiving their medical benefits directly leading to deaths caused by Agent Orange-related cancers. I hope that today, in this Committee, we can convince the Department of Veterans Affairs that avoiding the care of those who have protected us is not how our Government should treat those who have given so much to defend our Nation and our fellow citizens. To address this unfair disparity, I have introduced Senate Bill 681, the Blue Water Navy Vietnam Veterans Act of 2015 with Senator Gillibrand. I want to thank Senator Gillibrand for her leadership and her excellent testimony here today.

In 2001, the Veterans Administration abruptly cutoff funding for benefits of these fully deserving Navy veterans. It has been called arbitrary and capricious. I urge the Committee to dig into why this decision was made and what was the basis of the decision in 2001 when these benefits were so abruptly cutoff.

During the Vietnam War, the U.S. had sprayed more than 19 million gallons of herbicides to defoliate the dense forests of Vietnam, with Agent Orange being the most commonly used herbicide. Dioxin is the most harmful chemical found in Agent Orange and has been proven to cause a variety of cancers, Parkinson's disease, coronary issues, and many more deadly diseases for those that come into contact with it.

I am disturbed that those tasked with the ultimate responsibility of taking care of our veterans will be so callous as to remove their benefits. To this day, I have not been persuaded that the VA had a legitimate reason to do so.

Within the last year, two Montanans living in the northwest part of my State, and using the Kalispell Veterans Service Office, applied for medical benefits. Both of these men are Blue Water Navy veterans, one of them having served on a patrol boat, the other on a destroyer. Both of these veterans have been diagnosed with cancers and diseases that the VA has readily admitted result from coming into contact with Agent Orange.

Unless we pass legislation to include Blue Water Navy veterans like these two Montanans, they will be denied critically important VA care for diseases that our own military exposed them to. As the son of a Marine, I understand the importance of keeping the promises made to our veterans. Our bill would simply reinstate medical

benefits for Blue Water veterans who served on ships within the territorial waters of Vietnam.

These Blue Water Navy veterans should have access to the best medical care and not be ignored by the VA. This sort of indifference to our veterans is unacceptable, especially when combined with the constant failure by the VA to do its job. Our nation should not hesitate to invest in the care of these veterans and correct this wrong.

So, I ask you to join us in cosponsoring this legislation and quickly pass it out of the Committee and the Senate so we can restore the medical benefits our veterans rightly deserve. Thank you.

Chairman ISAKSON. Well, Senator Daines, thank you for your testimony. Senator Gillibrand, thank you for your testimony. Senator Burr, thank you for being here. As I said, we have a tradition on the Committee of not questioning our Members. We do not question their testimony, nor do we try and trip them up with questions, but we appreciate your testimony.

We are committed as a Committee to see to it that causation and presumption is an issue that we solve. We understand what you have testified to, each of you, and we will work very hard to do it expeditiously before the end of this year. Thank you very much for your testimony.

Senator BLUMENTHAL. I wanted to do cross-examination, but the Chairman forbade me to.

Chairman ISAKSON. He is just a reformed lawyer.

Senator BLUMENTHAL. Thank you all. It was excellent.

Chairman ISAKSON. Our next panel will be made up of Dr. McLenachen—not Doctor, I am sorry—David R. McLenachen, Acting Deputy Director for Disability Assistance, Veterans Benefits Administration, accompanied by Ralph L. Erickson, who is a doctor and Director of Pre-9/11 Era Post-Deployment Health, Veterans Health Administration. So, if you will take your seats. Mr. McLenachen, you are recognized for your testimony.

**STATEMENT OF DAVID R. McLENACHEN, ACTING DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY RALPH L. ERICKSON, M.D., M.P.H., Dr.P.H., DIRECTOR, POST-DEPLOYMENT HEALTH, VETERANS HEALTH ADMINISTRATION**

Mr. McLENACHEN. Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee. Thank you for the opportunity to discuss the Department of Veterans Affairs process for establishing service connection presumptions. I am accompanied by Dr. Ralph Erickson, Director of Post-Deployment Health at the Veterans Health Administration. He is a doctor and I am not.

VA's authority to establish presumptions derives from statute. Many statutes relate to a particular event or location or set of circumstances. The VA can also craft presumptions under its broad regulatory authority also established by statute.

These statutes and the regulations that implement them allow VA to deliver disability compensation to veterans when evidence of service connection might otherwise be incomplete. When considering circumstances unique to the experiences of Vietnam and Gulf War veterans, VA relies on reports from the National Academy of

Sciences (NAS) and other sound medical and scientific information to establish presumptions.

At VA's request, NAS reviews existing scientific and medical studies and summarizes the strength of evidence supporting association and causation. VA does not solicit and NAS does not make recommendations concerning the establishment of presumptions. Dr. Erickson can provide more insight on how this NAS review process works.

Upon receipt of the finished NAS reports, VA staff review the findings and other available evidence, then make recommendations to the Secretary regarding the determinations of presumptions. The Secretary reviews staff recommendations and decides to create or not create presumptions. If the Secretary determines that a positive association between some circumstance of service and subsequent disability, VA issues a proposed regulation for public comment.

The proposed regulation outlines the eligibility criteria to qualify for the presumption and the scientific evidence supporting the presumption. Once VA has received and reviewed the public comments, VA publishes a final regulation establishing the presumption, if appropriate.

Through the Agent Orange Act of 1991 and subsequent amendments, Congress created a presumption that veterans who served in the Republic of Vietnam during the period January 9, 1962, to May 7, 1975, were exposed to Agent Orange and other herbicides that are now associated with 14 diseases.

VA's current policy, established through notice and comment rulemaking in 1994, extends this presumption of exposure to veterans with duty or visitation in the Republic of Vietnam, including its inland waterways, but not off Vietnam's coast during that period. The U.S. Court of Appeals for the Federal Circuit reviewed and upheld this policy in its 2008 *Haas vs. Peake* decision.

However, in response to the Court of Appeals for Veterans Claims' recent decision in *Gray vs. McDonald*, VA has begun the process of thoroughly evaluating and clarifying its policies regarding this distinction between inland waterways and offshore service.

Similarly, VA recently announced that it will amend its regulations to establish presumptions of service connection for certain conditions resulting from exposure to contaminated water at Camp Lejeune. We intend to establish a presumption for three diseases that are known to be related to chemicals that were in the water at Camp Lejeune from 1953 through 1987.

We are working with the Center for Disease Control's Agency for Toxic Substances and Disease Registry, and possibly other scientific experts, to identify additional diseases that may have an association with exposure to chemicals in the water at Camp Lejeune during this period.

This is in addition to the health care that VA already provides qualified Camp Lejeune veterans and the health care reimbursement it provides to their family members as a result of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012.

Regarding S. 901, the Toxic Exposure Research Act, VA continues to oppose the bill for the reasons stated in our written and

oral testimony earlier this year. Mr. Chairman, VA takes very seriously its obligation to care for disabled veterans, their families, and their survivors. We look forward to resolving these complicated legal and scientific matters through coordination with Congress and other concerned stakeholders.

In particular, whether they are created by statute or regulation, new presumptions can significantly impact VA's workload and delay the processing of claims for all veterans. For this reason, the consideration of a presumption must include a careful analysis of the additional resources that VA will require to timely deliver benefits to exposed veterans.

This concludes my testimony, Mr. Chairman. We would be pleased to address any questions that you or the other Members of the Committee might have. Thank you.

[The prepared statement of Mr. McLenachen follows:]

PREPARED STATEMENT OF DAVID R. MCLENACHEN, ACTING DEPUTY UNDER SECRETARY FOR DISABILITY ASSISTANCE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

#### OPENING REMARKS

Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee, thank you for the opportunity to discuss the Department of Veterans Affairs' (VA) process for establishing service connection presumptions. My testimony will provide an overview of presumptive service connection and explain the types of presumptions, the legislative authority for establishing presumptive service connection, regulatory implementation of presumptive service connection, and the science and rationale behind presumptive service connection. I am accompanied by Doctor Ralph Erickson, Director, Pre-9/11 Era, Post Deployment Health.

#### OVERVIEW OF PRESUMPTIVE SERVICE CONNECTION

Service connection requires medical evidence of a current disability; lay or medical evidence establishing the occurrence of an injury, disease, or event during active military, naval, or air service; and, medical or scientific evidence establishing a link or nexus between the two. A presumption of service connection relieves the Veteran of the burden of producing evidence that directly establishes one or more of these elements. These presumptions fill an evidentiary gap in cases where VA knows that necessary facts may not be documented in the Veteran's individual records. They are generally only rebuttable by clear and convincing evidence to the contrary. This is a high bar, and they are rarely rebutted.

#### STATUTORY AUTHORITY FOR PRESUMPTIONS

VA's authority to establish presumptions derives from statute. There are statutes specific to a particular event, or location, or set of circumstances, such as those addressing status as a former prisoner of war or participation in radiation risk activities (38 U.S.C. § 1112), exposure to herbicides in the Republic of Vietnam (38 U.S.C. § 1116), and service in the Southwest Asia theater of operations during the Persian Gulf War (38 U.S.C. § 1118). These statutes establish presumptions that allow VA to deliver disability compensation where otherwise-necessary evidence of exposure or inurrence of injury or disease might be incomplete.

Section 1112 establishes several presumptions, each applicable to a different cohort of Veterans. Paragraph (a) establishes entitlement to service connection for chronic or other listed disease if manifest to a compensable degree within a specified number of years following separation from service. This presumption is available to every Veteran with 90 or more days continuous active service during a period of war or after December 31, 1946. Paragraph (b) establishes former prisoner of war entitlement to service connection for listed disabilities if manifest to a compensable degree at any time following separation from service. Paragraph (c) establishes entitlement to service connection for listed radiation-related disabilities if manifest at any time following participation in a radiation risk activity, which is also defined in that section. Under this statute, once the Veteran establishes qualifying service, the law provides a presumed nexus to that service for any listed disability.

Section 1116 codifies the Agent Orange Act of 1991 and subsequent amendments. This section establishes a presumption of herbicide exposure for Veterans who served in the Republic of Vietnam from January 9, 1962, through May 7, 1975, and charges the Secretary of Veterans Affairs with prescribing regulations which provide a presumption of service connection for diseases related to those herbicides. It covers both the in-service incurrence and the nexus elements necessary to substantiate a claim for service connection.

Section 1118 charged the Secretary with prescribing regulations that provide a presumption of service connection for diseases related to exposure to biological, chemical, or other toxic agents, environmental or wartime hazards, or preventive medicine or vaccine associated with service in the Southwest Asia theater of operations during the Persian Gulf War.

Based on the mandates set forth in sections 1116 and 1118, VA relies on reports from the National Academy of Sciences (NAS) and other sound medical and scientific information, where available, to establish presumptions of service connection. Upon review of such information, if the Secretary determines that a positive association exists between service in a given location and exposure to a particular agent, hazard, or other foreign substance, VA issues, to the public for notice and comment, a proposed regulation regarding the presumption. The proposed regulation outlines the scientific and/or medical basis for the presumption, as well as the eligibility criteria to qualify for the presumption. Once VA has received and reviewed the public comments, VA publishes a final regulation establishing the presumption.

#### SCIENTIFIC BASIS

In preparing its reports for both Agent Orange and Gulf War health issues, NAS committees conduct comprehensive searches of all medical and scientific studies on the health effects of the environmental exposure being reviewed. In the course of this literature search and review, it is not uncommon for these committees to cover thousands of abstracts of scientific and medical articles, eventually narrowing their review to the hundreds of peer-reviewed journal articles which are the most relevant and informative to the question at hand. At this stage, the NAS committee scores the strength of the total medical and scientific evidence available by utilizing broad categories of association such as “inadequate or insufficient evidence of an association” or “limited or suggestive evidence of an association” or “sufficient evidence of an association.” Of note is that the NAS committees do not make direct recommendations for new presumptions.

Upon receipt of the finished NAS reports, VA establishes task-organized technical work groups comprised of experts in medicine, disability compensation, health care, occupational and environmental health, toxicology, epidemiology, and law. These technical work groups, along with senior VA leaders who comprise a standing task force for this purpose, review in detail the NAS reports and all available scientific and medical information before making recommendations to the Secretary regarding the determination of presumptions. These recommendations to the Secretary are based on the strength and preponderance of the medical and scientific evidence.

#### REGULATORY IMPLEMENTATION

VA, like other Federal agencies, must draft regulations to implement the authority granted by Congress. VA's regulations describing the requirements for service connection are generally located in sections 3.303 through 3.318 of title 38, Code of Federal Regulations. Regulations implementing presumptions are generally found here as well.

The Secretary also has at his disposal a general rulemaking authority, prescribed in section 501, title 38, United States Code. Section 501 authorizes the Secretary to prescribe any rules and regulations necessary or appropriate to carry out the laws administered by the Department. Under this broad authority, VA has used the rule-making process to craft numerous presumptions necessary to streamline its delivery of benefits to certain Veterans, including:

- former Reservists with regular and repeated contact with contaminated C-123 aircraft used to spray Agent Orange in Vietnam who are presumed to have been exposed to herbicides and are entitled to benefits as Veterans (38 CFR § 3.307(a)(6)(v) (published June 19, 2015));
- Veterans serving on the Korean demilitarized zone who are presumed to have been exposed to Agent Orange and other tactical herbicides between April 1, 1968, and August 31, 1971 and are thus entitled to service connection for Agent Orange disabilities on a presumptive basis (38 CFR § 3.307(a)(6)(iv)); and



- Veterans with full body exposure to mustard gas who are entitled to a presumption of service connection for certain respiratory and other disorders (38 CFR §3.316).

VA also uses regulations to prescribe the rules that are necessary to fully implement broad statutory authority, such as the determination under section 1116 that Veterans who served in the Republic of Vietnam are entitled to a presumption of exposure to Agent Orange.

#### AGENT ORANGE

VA's current policy, established through notice and comment rulemaking, extends the presumption of Agent Orange exposure to Veterans with "duty or visitation" within the Republic of Vietnam, or on its inland waterways, between January 9, 1962 and May 7, 1975. The "duty or visitation" requirement was incorporated in VA regulations issued in 1994 to implement the Agent Orange Act of 1991. Prior to 2002, internal VA policies allowed receipt of the Vietnam Service Medal (VSM) to be accepted as proof of Vietnam service. That medal, however, was awarded for "support" of the Vietnam War in various geographic locations rather than for service in Vietnam itself. In 2002, VA revised its internal policy to clarify that "duty or visitation" in Vietnam refers to presence within the Republic of Vietnam, on land or inland waterways.

This rationale and interpretation of Vietnam service was upheld by the United States Court of Appeals for the Federal Circuit in *Haas v. Peake*, 525 F.3d 1168 (2008), cert. denied, 555 U.S. 1149 (2009). VA's position on various legislative proposals that would extend the presumption of exposure to Veterans whose only service was on Vietnam's offshore waters, such as S. 681, 114th Cong., has been consistent with VA's current policy.

Under the general policy described above, VA necessarily has distinguished "inland waterways" from "offshore waters." In April 2015, the U.S. Court of Appeals for Veterans Claims issued its decision in *Gray v. McDonald*, 27 Vet. App. 313 (2015), which required VA to review and clarify its policies for determining whether coastal bodies of water, such as Da Nang Harbor, constituted "inland waterways" or "offshore waters" for purposes of applying the presumption of herbicide exposure. Shortly after the court's decision, VA began the very deliberate process of thoroughly evaluating and clarifying its policies regarding such determinations.

#### CAMP LEJEUNE

Similarly, VA recently announced that it will start the process of amending its regulations to establish presumptions of service connection for certain conditions resulting from exposure to contaminated drinking water at the U.S. Marine Corps Base Camp Lejeune in North Carolina. This process is in addition to the healthcare VA already provides for 15 conditions to eligible Veterans who were stationed at Camp Lejeune for at least 30 days between August 1, 1953, and December 31, 1987, as a result of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012. VA also provides reimbursement of healthcare expenses for those 15 conditions to eligible family members who resided at Camp Lejeune during that time period.

The diseases that are currently being reviewed for potential presumptive service connection include kidney cancer, angiosarcoma of the liver, and acute myelogenous leukemia, which are known to be related to long-term exposure to the chemicals that were in the water at Lejeune from the 1950s through 1987. The chemicals are Benzene, Vinyl Chloride, Trichloroethylene and Perchloroethylene, which are known as volatile organic compounds, used in industrial solvents and components of fuels.

VA is working with the Agency for Toxic Substances and Disease Registry, and potentially will work with NAS, to evaluate the body of scientific knowledge and research concerning exposure to these chemicals and potentially related diseases.

VA will carefully consider all public comments received when determining the final scope of any presumptions. Because there is no specific statutory authority for this undertaking, VA will draft necessary and appropriate rules under the general rulemaking authority prescribed in section 501.

The Department has previously provided its views on S. 901 to this Committee on June 24, 2015.

#### CLOSING REMARKS

VA takes very seriously its obligation to care for disabled Veterans, their families, and their survivors. Some of the tools we use are the laws authorizing presumptive service connection. These laws fill a critical evidentiary gap when suspected expo-

tures to toxic substances cannot be specifically documented in a Veteran's service records or by other contemporaneous evidence. We look forward to resolving these complicated legal and scientific matters through continued partnership with Congress, NAS, and other concerned stakeholders.

This concludes my testimony, Mr. Chairman. I would be pleased to address any questions you or other Members of the Committee may have.

Chairman ISAKSON. Thank you for your testimony. Let me begin the questioning by asking you, why are you acting in your title?

Mr. MCLENACHEN. Sir, the position was vacated by a senior executive that retired. I have been acting in this position, as well as the Director of VBA's Pension and Fiduciary Service. I permanently fill the position as of next Monday.

Chairman ISAKSON. As of next Monday? You will be permanent next Monday?

Mr. MCLENACHEN. Yes, sir.

Chairman ISAKSON. How long have you been Acting Deputy?

Mr. MCLENACHEN. Fourteen months.

Chairman ISAKSON. Why has it taken 14 months for you to go from acting to permanent?

Mr. MCLENACHEN. I do not have that information, sir.

Chairman ISAKSON. It is not a trick question, but for the Members of the Committee, I have gotten on Secretary McDonald a lot about this, there are far too many responsible positions in the VA where the title is acting. That does not send the right signal to our veterans nor the people they work for, so I am glad that you are going to become permanent next week. I hope we will have a more expeditious permanent determination by the VA in their appointments in the future.

Mr. MCLENACHEN. Yes, sir. Thank you.

Chairman ISAKSON. Now, in your objection to S. 901, the Toxic Exposure Research Act, as I understand it from your testimony, you call it duplicative. Is that correct?

Mr. MCLENACHEN. Well, Mr. Chairman, because I am not the medical professional here and do not have that expertise, I am going to defer to Dr. Erickson to take the question.

Chairman ISAKSON. Fair enough. Dr. Erickson.

Dr. ERICKSON. Mr. Chairman, thank you for the question. Our concern—the primary concern is not one of duplication of effort, but rather that perhaps there are other Federal agencies that are better postured, equipped, resourced, and staffed to actually answer some of the more difficult questions that are in the legislation. Being able to look at multi-generational effects suggests looking at pediatric populations; likewise, doing fairly complex genetic studies.

Now, it is certainly true that VA is involved in doing genetic research, and at times asking questions concerning the health of children of veterans. However, we recognize that there are other parts of the Federal Government that actually have greater capability than we have in this regard. To that end, we would rather collaborate with them than be the primary lead.

Chairman ISAKSON. Well, I understand the duplicative statement that was made, but, you know, when we have the National Institute of Health, we have the CDC, we have a lot of other organizations, and it seems to me like—I am just an observer, this is Sen-

ator Blumenthal's bill, not mine—but there does not seem to be a catalyst to bring people together.

I mean, you can have all the great research institutions in the world, but if they are not communicating, they are not coordinating, if there is not a unified mission, then you never get a result. You get a lot of separate research that are in desperate need of coordination.

The reason I ask the question is, it seems to me like one of the things I have heard, particularly for Camp Lejeune—I think Senator Tillis would agree with me—we get competing information. We get maybe this is a causation, maybe this is an association, maybe it is not, and if we had a central clearinghouse that was a catalyst, we would all be better off. That is my only reason for asking that question.

On the Camp Lejeune question, I will ask, the CDC, as I understand it, has said there are six health conditions that should be presumptions now?

Mr. MCLENACHEN. Actually, as of the last meeting on September 22, they provided us information as, I believe, Senator Burr mentioned, about a number of conditions. The Secretary has already decided that he is going to create a presumption regarding three of those. That was before we had this additional information from ATSDR. Now that we have it, he has directed us—we work very closely with the VHA, Dr. Erickson's staff and others in VHA, to review this information.

But, just for your information, there were 17 conditions that were listed in the information that ATSDR provided to us. We are not talking about three conditions or six conditions. We have got all of that information. We are going to look at it and make the right decision about which conditions are covered.

Chairman ISAKSON. Collectively?

Mr. MCLENACHEN. Yes, sir.

Chairman ISAKSON. Well, that would be my recommendation. I would like the record to reflect that while the Ranking Member was gone, I spoke favorably about his legislation.

Senator Blumenthal.

Senator BLUMENTHAL. I am going to pass on questions right now.

Chairman ISAKSON. Senator Rounds.

#### **HON. MIKE ROUNDS, U.S. SENATOR FROM SOUTH DAKOTA**

Senator ROUNDS. Thank you, Mr. Chairman. I am just curious. I think you make a point, sir, when you suggest that perhaps the VA is not the appropriate entity to be doing the research and, in fact, I suspect that if I was one of the individuals suffering with this, I would have a lot more confidence in getting something done if we had a different agency doing the research, but with a clear understanding that the response and that the entity responsible for responding to and providing services afterwards would be the VA.

Would you have an objection to Senator Moran's proposal? I think that is S. 901, if I am not mistaken, that we are speaking of. Would you have an objection to that bill if the appropriate agencies who do that type of research were the responsible entities for actually getting it done, completing it, and then delivering the results to the VA?

Dr. ERICKSON. Yes, Senator Rounds, thank you for the question. This is as a quick statement and background. I served in the U.S. Army for 32 years on active duty, went to war a number of times. The last assignment I had on active duty, I was fortunate to be the commander of the DOD's largest biomedical laboratory, that being the Walter Reed Army Institute of Research, which is not too far from this location.

I certainly have experience in being able to run a very large, what I would say, well-funded research laboratory that deals with soldier/veteran issues. I understand that we need to work across the interagency frequently. A recent experience with ATSDR has underscored for me that, in fact, they have significant experience and expertise that we simply do not have.

I understand, certainly, your point that you need a single belly-button. You need someone who will be responsive, who will manage this. The point I was trying to make is, there are others who can do some of the cutting edge research that is necessary in a more efficient way than we can.

The epigenetic research that is called for is very new. The existing background and evidence for that is such that if there is going to be a significant amount of laboratory and benchwork that will be necessary, that this is not something that we necessarily have the expertise within VA to be able to manage.

Senator ROUNDS. Thank you. I agree and, in fact, I think the cleaner we get the processes within the VA the better off we are going to be. We have got a bureaucracy which is as big as anything in the Federal Government today.

With regard to the issues surrounding the Blue Water soldiers and sailors that we are talking about in Vietnam and thereabouts, do we have a disagreement with what has been found with the scientific studies that were reported just a minute ago on terms we discussed, in terms of what the country of Australia was able to determine?

Can you share with us the thought processes with regard to the analysis that was done there versus the analysis, or if there has been an analysis done in terms of researchers within our own country on the same issue?

Mr. MCLENACHEN. Let me just address initially consideration of the policy issue there. What the IOM study did do is validate the lab study that was done regarding the Australian Navy exposure. In other words—

Senator ROUNDS. You say it validated it?

Mr. MCLENACHEN. Yes. They concluded that if there was water taken in that was contaminated, they validated that was a way that there could be exposure. Our policy was based on Navy directives instructing that ships take on water far offshore. So, there is a lot more that goes into the policy rather than just the fact that yes, U.S. Navy used desalination processes similar to Australia, but they did take on water far offshore, and the IOM had no evidence to suggest that that water was contaminated. As far as the specific science behind that process, I will defer to Dr. Erickson.

Dr. ERICKSON. Senator, I think you will be hearing more about this in great detail from the following panel, from our IOM colleagues. We, of course, commissioned the study of Blue Water Navy

in asking the IOM to deal with the questions that you and others have proposed concerning the exposure, potential exposure of these individuals. As I think you are aware, the IOM conclusion was that they had neither sufficient evidence in favor or against being able to rule, being able to advise us.

To that end, and with additional information that has become available to our Secretary, that is now being considered at the VA. That is something that both Mr. McLenachen and myself have participated in a small workgroup with the Secretary to discuss and it is presently at a deliberative point.

Senator ROUNDS. Thank you. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you very much, Senator. Senator Blumenthal wants to reclaim his time after which I will go to Senator Tester to restore our order, then we will go to Senator Tillis, then we will go to Senator Manchin.

Senator BLUMENTHAL. I have just two quick questions. First of all, I take it from your testimony that Secretary McDonald has sent to Congress a request for legislation to reauthorize the extension of the Secretary's authority to determine presumptions for service connection of diseases.

Would you, therefore, think it is important and necessary to approve Senate Bill 2081, which, in effect, extends this authority for an additional 15 years?

Mr. MCLENACHEN. It is the Department's position that we would support that bill.

Senator BLUMENTHAL. Thank you.

Mr. MCLENACHEN. We have seen the draft bill and would support it. One point I want to make, though, Senator, if I may, is the bill would reauthorize a specific process or procedure for getting information from the National Academy of Sciences and it has specific time limits for the rulemaking process. In our view, those rulemaking time limits are unreasonably short given the current Federal agency rulemaking process, so I just ask that the Committee consider whether those are appropriate.

Senator BLUMENTHAL. I am sure we will take that point under consideration.

Mr. MCLENACHEN. Thank you.

Senator BLUMENTHAL. Second question. In preparing for this hearing, I heard from the Blinded Veterans Association, the BVA, regarding an eye cancer called choroidal melanoma. I understand from the BVA that this type of cancer is rare in the civilian population, but it is ten times more common among Vietnam era veterans and currently is not being considered for an epidemiological study.

I would like you to commit that you will consider it and tell the Committee the process by which the VHA decides to subject a particular issue to such a study.

Mr. MCLENACHEN. Senator, I am not familiar with that particular cancer, but we will certainly take that for the record and get back to the Committee, unless Dr. Erickson has anything he would like to add.

Dr. ERICKSON. Senator, certainly we have epidemiologists that work in my shop, so following this meeting I will take that up with them right away, and we will get back to you.

Senator BLUMENTHAL. What is the process by which you consider whether to do an epidemiological study?

Mr. MCLENACHEN. If it is a large study, certainly funding is always an issue. If it is a study that we can accomplish in-house using existing data from our health care system, in that case the funding issue is less of a major consideration. Initially, the consideration is going to basically be feasibility. Can we get to the data? Will there be enough cases for us then to be able to study to be able to answer some of those questions?

Senator BLUMENTHAL. Thank you.

Chairman ISAKSON. Is Senator Tester coming back? I messed up the order a minute ago when I got a pass over here and I should have gone to Senator Tester then, which I apologize for. I think I will go to Senator Tillis and then Senator Manchin, then when Senator Tester gets back, I will go to him. How about that?

Senator TILLIS. You need to put that in a spreadsheet, Mr. Chair.

Chairman ISAKSON. I will tell him our decision.

#### **HON. THOM TILLIS, U.S. SENATOR FROM NORTH CAROLINA**

Senator TILLIS. Mr. Chair, I appreciate you calling this Committee. I want to start by something I am going to do in every Committee meeting until we get closure on it. Your point about too many acting positions in the VA is spot on. First among them is the Inspector General. It is unacceptable and irresponsible not to have that position filled by somebody and I call on the Administration to do their job.

Now, I want to talk about you all doing your job. I think you all know that, for the most part, I come into these Committee meetings highly supportive of the VA. I have gone out to the VA facilities and made sure that those folks know that I am there to help them. But, we have got a big issue here. It came from a conference call that I just had on Friday and I think we are conflating issues at the expense of taking ground where we can take ground.

When I hear a comment like, well, we have got the Agent Orange and Blue Water issues solved before we can really move forward on a holistic basis with the Camp Lejeune exposure, that is unacceptable. There is not a single veteran that has ever served in the armed services who will say, we will not fight one battle until we can win them all. We have six of these diseases confirmed by the CDC that say that there is sufficient evidence of causation, period. We should look at the others and figure out whether we should do more.

We should figure out a methodology and when everything is equal, the tie goes to the veteran. We need to get the Lejeune issue solved quickly. I was told 2 months ago that any claims for the diseases related, the three at least, would be delayed and not denied until we came up with a policy.

The reason that we needed to do that is if you get a claim denied, then the veteran has to go through the process again. Whereas, if we just delay the decision until after we have the policy, they can move through the process in the order that they should. Conflating—look, my wife's uncle's name is inscribed on the Vietnam Veterans Memorial. He died from Agent Orange exposure.

I have great sympathy for what Senator Blumenthal and everybody else is doing. I want this Lejeune problem solved. I think Secretary Mabus should be ashamed of the statement he made this week because he has taken the eye off the ball of solving this problem.

So, I would like to get an assurance, first and foremost—I have not cited you two personally. I thank you for your service and I appreciate the work that you are doing. This is a process that is broken. We have got to solve the problem, not only with the three diseases, because I continue to hear about the three, but the CDC says six. So, let me start there. What has the CDC presented on the six conditions that they say there is sufficient evidence of causation that the experts in the VA think are wrong?

Mr. MCLENACHEN. I will defer to Dr. Erickson about that.

Dr. ERICKSON. Senator Tillis, thank you for the question. I was fortunate to be a member of the VA team that has met with ATSDR professionals. We met on August 19 and September 22. We think we will be at the final meeting sometime prior to October 13. Our ATSDR colleagues provided us with a 67-page document that was very well received. It involved a tremendous amount of work summarizing, aggregating the body of information that is available—not just ATSDR studies, but all of the occupational environmental studies within the scientific literature.

Again, not wanting to usurp the authority of my big boss, Secretary McDonald, I can really tell you that we are moving from that work, that smaller work group that has been meeting with ATSDR, to a deliberative process that will, I think, move relatively quickly in bringing recommendations to the Secretary. I was able to listen in on that phone call that you had with the Secretary, Senator, and I very much appreciate the urgency to get this settled. As a veteran, I very much feel that as well.

Senator TILLIS. Let me—because my time is about to expire—I would like to get an assurance from you all. I thought that I had that assurance in July, according to my staff, which I may be wrong and if I am I will come to the next Committee and say that I am. But, I have been told that there have been claims denied since I was given an assurance that they would not be for at least the three types of diseases.

What I would like is an assurance for at least the six conditions, where we have sufficient evidence of causation, that there is not going to be another denial, and if there is, you know—I know that I have ratcheted up my temperature in this meeting which will not compare to the next one if that happens because we owe it to these veterans.

I will just finish my statement, Chairman. I will try to go quickly because I meet with you all on a regular basis, there are a lot of things you are doing that is good work. This is just not one that I am pleased with the progress.

I want to make sure, but there is another piece here that we need to talk about. The disability benefits are mandatory spending. We will spend whatever we have to when we find out we have an obligation. I have heard on a couple of occasions about the operational impact and I get that. If we have to serve more veterans, we have to serve more veterans.

Somebody is saying, well, we need to be careful because we do not want to hold up the backlog because that will create bad optics. I do not care. If we need a backlog to be created because we have people who may have legitimate claims, create the backlog and then we will figure out how to fund the operation to draw down the backlog. But let us not have policy being driven by optics that politicians just need to deal with.

I will be honest with you all and I will stand up for you all. If you start putting processes in place where we are serving more veterans and it requires more people, I will be one of the first ones to do whatever I have to do to provide you all with the resources to do it. Thank you, Mr. Chair.

Chairman ISAKSON. Thank you, Senator Tillis.  
Senator Manchin.

**HON. JOE MANCHIN, U.S. SENATOR FROM WEST VIRGINIA**

Senator MANCHIN. Thank you, Mr. Chairman. As you can tell, it is very emotional for all of us because we have had people that served that we have lost—people who were very dear and near to us.

History has shown our actions in combat, and we are finding even on our installations, no matter how necessary or well-meaning, have often carried unintended consequences. I think we just heard Senator Tillis talk about Lejeune, burn pits, all the issues decades-old.

The thing that we seem to be fighting over is or the delay is based on what we call presumption. I would like to know how you all intend or what have you learned from past experiences and what you are doing now because we know with all the conflicts we have been involved with in the last ten or more years, this is going to come to roost in 10, 20, 30 years from now.

What have you done that we have learned from the past that we did not do which we are calling presumptive and not taking care of anybody to make sure this does not repeat itself?

Mr. MCLENACHEN. First, let me just address the point of developing policy. As science develops, so must our policy, which I think is really the issue that you are raising. As the science develops to the point where we can create a presumption, we should be creating a presumption. What we have learned is it is often a lengthy process to create the presumption. We have to go through rule-making. We need to find ways to streamline that as much as possible.

Senator MANCHIN. No, I think what I am saying is, that we have been engaged for almost two decades in the Middle East and our soldiers have been exposed. We know that. We know there has been chemical and a host of other exposures. You all have to be aware of that or they have to be, I would say, communicating with you all that you are preparing and building a case now.

When they come to you 10, 20, 30 years from now, we have already set the stage. We do not have to go through this process we are going through, this timely process now. I think that is why you are seeing the compassion that Senator Tillis has and all of us have. How can we keep from repeating this?



Mr. MCLENACHEN. We get regular information from, for example, the National Academy of Sciences. In addition to that, I am sure that Dr. Erickson can give you more detailed information about what his staff does as far as—

Senator MANCHIN. Are you all connected with Department of Defense right now knowing what soldiers that are basically—I mean, my goodness, we have had four and five deployments just in West Virginia from our National Guard.

Dr. ERICKSON. Senator, we work very closely with the Department of Defense. We share a lot of staff in directing research that goes directly to those very issues you have talked about. I sit and co-chair with the DOD partner, the Deployment Health Work Group, that helps to guide much of this.

But even more so, I will tell you, we are trying to be proactive so that we are not 10 and 20 years from now caught in this situation. In particular, we are working with Department of Defense to create what is called the Individual Longitudinal Exposure Record, the ILER. This, in fact, will be a database which will collect all of the exposures for every servicemember through the course of their entire career, and basically then be available to VA so that when an individual comes to us years later after faithful service and they say, I have this disease, I have this condition, we will be able to reach into the ILER to be able to say, yes, you were exposed here, you were exposed there, we have got great evidence, we have got background to work with, we are going to take care of you.

Senator MANCHIN. If we were able to come to an agreement with you all, all of us agree to give presumptiveness to some or all of the claims being brought forward, how would that affect your claims process; and does a presumptive finding speed up your workload or does it increase in numbers so greatly that it slows it down?

Mr. MCLENACHEN. It generally increases the workload significantly. It depends on the presumption. The best example is the 2010 addition of three presumptive conditions for Agent Orange exposure which was, to a large extent, part of the cause of our backlog that we have been dealing with, which is, you know, down to about 75,000 claims, whereas at one point it was 611,000 claims.

Those are the kind of problems that we have, and what the Secretary is suggesting, he is not suggesting that policies should be based on that. He is saying, if we know that that is going to happen, he wants to work with the Congress to make sure that we have the resources we need to timely process all claims regardless of whether it is one of the presumptive conditions or one of the more than one million claims we receive every year. So, it does have a large impact on our workload and it depends on the presumption.

Senator MANCHIN. OK. Thank you, Mr. Chairman. I would concede my time to Senator Tester since he has been waiting so long.

Chairman ISAKSON. We will take in order the following: Senator Tester, followed by Senator Heller, followed by Senator Hirono, followed by Senator Cassidy, followed by Senator Moran.

Senator Tester.

**HON. JON TESTER, U.S. SENATOR FROM MONTANA**

Senator TESTER. Well, thank you, Mr. Chairman. You are way kind and I would tell you it is always dangerous to agree with the good Senator from West Virginia.

I have got some questions. How many Blue Water vets are out there still living?

Mr. MCLENACHEN. Our estimate, Senator Tester, is about 174,000. That is the population that we started with.

Senator TESTER. How many do you think have symptoms?

Mr. MCLENACHEN. We track this information. Of those 174,000, about 40,000, we believe, are already covered by our current policy; that is the policy where if a ship sent personnel ashore, we have a presumption.

Senator TESTER. There were boots on the ground. How many left?

Mr. MCLENACHEN. About 80,000.

Senator TESTER. 80,000 that maybe would have symptoms.

Mr. MCLENACHEN. Well, those are 80,000 that are still alive. Of those we tracked a little over 20,000 that were denied benefits based on Blue Water service.

Senator TESTER. OK. Have you guys developed a cost for this?

Mr. MCLENACHEN. We are working on that.

Senator TESTER. Can you give me a ballpark?

Mr. MCLENACHEN. I can get that to you, Senator. Let me take that for the record.

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. JON TESTER TO  
DAVID R. MCLENACHEN, U.S. DEPARTMENT OF VETERANS AFFAIRS

Response:

- General Operating Expenses Costs:
  - 2016—729 FTE
  - By 2025—Reduced to 200 FTE
  - 2016—\$77.7 million
  - 5 years—\$208.3 million
  - 10 years—\$357.7 million
- Mandatory Costs:
  - 2016—\$1.3 billion
  - 5 years—\$3.0 billion
  - 10 years—\$5.3 billion

Senator TESTER. It is important and I will tell you why it is important. I would like to know what happened in 2001, too. I would also like to know what happened to the Priority 8 vets. It took them out. My guess is it was not a bureaucrat sitting in a room with no windows in it. It was probably somebody, maybe on this Committee or maybe in the Administration, that said, you guys have got to figure out ways to save some money.

Mr. MCLENACHEN. I could answer that question for you, Senator.

Senator TESTER. Yes, please.

Mr. MCLENACHEN. This has been our policy since 1994. Prior to 2002, the policy was based on receipt of the Vietnam service medal.

Senator TESTER. Yes.

Mr. MCLENACHEN. The Vietnam service medal was awarded to individuals who provided support in places other than Vietnam.

Senator TESTER. OK.

Mr. MCLENACHEN. For that reason, we changed the policy at that time to ensure that the presumption actually relates to the risk of exposure, and that is why the policy was changed. It was changed by regulation, by VA.

Senator TESTER. So, it was VA that directed that?

Mr. MCLENACHEN. Yes.

Senator TESTER. The Secretary?

Mr. MCLENACHEN. It was. It was a regulation issued by VA.

Senator TESTER. OK. All right. So, getting back to it, do you believe these Blue Water vets had an exposure to Agent Orange? Do you believe that a certain percentage of them present suffered some health problems?

Mr. MCLENACHEN. Yes. We already cover 40,000 of them, according to our estimates.

Senator TESTER. OK. So, you agree that this bill should go forward?

Mr. MCLENACHEN. If you are referring to S. 681, the Department does not support that bill, did not support it.

Senator TESTER. Why?

Mr. MCLENACHEN. Because the Air Force did not spray herbicides over offshore—off the shores of Vietnam. Now, that is not the end of the policy issue.

Senator TESTER. OK.

Mr. MCLENACHEN. As the Secretary has instructed us, based on the Gray decision that we received from the Court of Appeals for Veterans Claims, he has directed us to take another look at all of our policies.

Senator TESTER. Well, I would just say, look, this is heavy duty stuff.

Mr. MCLENACHEN. Absolutely is.

Senator TESTER. Let me tell you about stuff we spray on “ag” land. Agent Orange blows this out of the water. I can tell you that when they spray, especially from an airplane, two or three miles away from my house, I can smell it, and those are ag chemicals. That is not Agent Orange.

So, I think direct application to a human being is not necessarily what needs to be the standard. This is a farmer talking, not an M.D., not a researcher. I will just tell you, just because they did not get it—and look, I want people to get benefits who deserve benefits. If you do not deserve the benefit, you should not get it. OK?

Mr. MCLENACHEN. That is our mission.

Senator TESTER. Yes, that is exactly right. So, when we are talking about this, it is really important that we talk about reality. I am not being critical of the VA, by the way. I tend to be more on your side than others. Tell me about the guys who ran the airplanes. Are they covered, the C-123 folks?

Mr. MCLENACHEN. Yes, they are. We issued a regulation recently establishing a presumption of exposure and service connection for that.

Senator TESTER. That is good. Let me talk a little bit about genetic research. Dr. Erickson, I think you said that you did not have the capacity to deal with it. I am not speaking for Senator Moran here, but I do think the Chairman is right. There needs to be a lead dog. Do you have the capacity to contract out?

Dr. ERICKSON. The short answer is yes, sir.

Senator TESTER. OK. So, you could really be the overseeing agency and contract the research out so you make sure you get the information back if we were to do this?

Dr. ERICKSON. We could.

Senator TESTER. OK. I think, you know, we are talking about veterans and we are talking about generational things which is pretty complex. I get it that you do not have the capacity. I think we had this discussion on the building in Denver, as a matter of fact, and I think that there are certain areas where it is good for you guys to contract stuff out.

Do not be opposed to it because you do not have the capacity when you can contract out and get that capacity. Are you guys opposed to this bill, the presumptive care one—not the presumptive care one, but what we talked about, the generational impact.

Dr. ERICKSON. It is VA's position that we are opposed to it.

Senator TESTER. Is VA opposed to it because you do not have the capacity? Is that why?

Dr. ERICKSON. That was the primary point. Again, we do not have the capacity; we are not postured as well as other Federal agencies. There is concern that it could be a distractor because language within the legislation, as I read it, talks about us assigning one of our medical centers as being the hub for this.

Now, there is also language within the bill, if I read it correctly, that talks about provision of care to descendants, which is a little bit of a move away from our traditional role at VA of taking care primarily of veterans.

Senator TESTER. I got you. But if the research shows that this is a problem, do you not think it is right? Not to put you on the spot.

Dr. ERICKSON. It would always be right to do the correct thing for veterans and their families.

Senator TESTER. All right. You guys do what you want, but if I were you guys, I would work with the bill's sponsors to figure out how you can make this bill work from a VA perspective. Then, if the sponsors agree and this Committee agrees, we are probably off and running. Thank you, Mr. Chairman.

Chairman ISAKSON. Senator Heller.

#### **HON. DEAN HELLER, U.S. SENATOR FROM NEVADA**

Senator HELLER. Mr. Chairman, thanks for holding this hearing. I know that there are a lot of veterans watching this hearing closely, and I would like to share with the witnesses some of the questions that they have. I am no different than any other Senator in this Committee or any Senator regarding the number of phone calls that we receive from our veterans and their concerns for these issues. But I want to thank you both for being here. And congratulations on your new status, by the way.

Mr. MCLENACHEN. Thank you.

Senator HELLER. I guess what strikes me most about this hearing is not only exposures to toxins and how they can be linked to certain diseases for our veterans, but as important is the birth defects and other problems that affect the children and grandchildren of these veterans.

Mr. Chairman, I am a son of a disabled Navy veteran, brother of a retired Navy veteran. Fortunately for our family, neither of them are Blue Water Navy veterans and we are grateful for that. But I share the concerns with veterans back home and their concerns about having been exposed to some of these toxins. They deserve more from us. And as a father and grandfather, watching what they are dealing with, I can truly sympathize with the issues that they have and their concerns.

I want to share with you an issue just last month of a Vietnam veteran from Las Vegas. He wrote to me about his battle with bladder cancer. He pointed out that many other veterans who served in Vietnam also are suffering from bladder cancer and that may be due to toxic exposure.

I just want to raise the same questions to you that he raised to us and hopefully, he and they can get some answers because I know they are watching intently on this hearing. Is there a venue for veterans to tell the VA that certain diseases are more common and see if theirs may be related to toxic exposure?

Mr. MCLENACHEN. Well, as far as a venue for them specifically to do it? We get the same communications all the time and raise issues and discuss them with VHA and the experts over on Dr. Erickson's staff. In addition to that, you will hear from the Institute of Medicine about the very detailed work that they do in this area as far as what does the science show about the association between exposure and specific conditions, and as the science develops, we get information about it.

Senator HELLER. Doctor.

Dr. ERICKSON. Senator Heller, we have regular meetings with VSOs and with veteran advocates. That is certainly a great avenue to approach us. Over 30 percent of veterans have expressed, in a recent survey, that they are very concerned about environmental issues, so we want to hear from them.

We have had veterans groups assist us in updating our web pages such that the information we are posting is the most current, the most useful both to veterans and to providers. We recently created an environmental exposure app for the iPhone which veterans can use and which providers can use. It is free on the Apple Web site, free for download.

We have a number of newsletters that we send out. We have registries which help us to link-in veterans so we can, on a regular basis, reach out to them. Likewise, at the local level, we have environmental health clinicians and coordinators who help to make sure that all the providers at those facilities are kept abreast of the latest information made as policy decisions. We look to have a multilayered approach to reach veterans such as the one you have mentioned.

Senator HELLER. And that is great and I appreciate the answer to that. Doctor, let me ask you one other question. When these veterans do raise these concerns, and all these opportunities that you claim are available to them, how do you ensure that the VA talks to the Institute of Medicine to look into these specific claims?

How can they be guaranteed this? You go through this whole process. How can you assure them that their concerns are going directly to where they need to go; IOM, as an example?

Mr. MCLENACHEN. If we understand the question correctly, you are asking, once we get that information, essentially what do we do with it?

Senator HELLER. Right, sure. They go to VA hospitals. This is not the same question. This is not a repeat of the same question. What they are saying is they come and talk to you and you hold all these clinics and you have all these hearings and then they want to know where the information goes. That is what they want. They want to be assured, they want to be assured that you are taking this information, their concerns and their problems, and making sure that there is a follow-up on it.

Dr. ERICKSON. Right. Senator, maybe I can give you two examples, and this is by no means a promise that 100 percent satisfaction will be reached. However, for instance, the National Gulf War Resource Center President, Mr. Ron Brown, has worked with us very closely for Gulf War veteran issues. He collects those issues, brings them to us.

He worked very closely with us to make sure that the newsletters we published this year addressed the very issues that those Gulf War veterans he represents were, in fact, included in the newsletter; that we, in fact, found SMEs to write the articles to answer those questions. Likewise, he worked with us to update our Web site.

Concerning Fort McClellan, which is an emerging issue, we have had a lead advocate from Fort McClellan meet with us on a regular basis so that we are regularly fed information. To the degree that we can, we want to be responsive. We owe this to the veterans.

Senator HELLER. OK. Mr. Chairman, my time has run out.

Chairman ISAKSON. Thank you.  
Senator Hirono.

#### **HON. MAZIE K. HIRONO, U.S. SENATOR FROM HAWAII**

Senator HIRONO. Thank you, Mr. Chairman. I realize that it is very challenging to determine the causal effect of exposure to a substance and subsequent health of concerns. In the meantime, though, veterans who argue that their medical condition is service-related by exposure to some kind of a chemical or a substance, what is the burden that they bear, assuming that there is no presumption of connectedness? What is their burden? Do they have to show by clear and convincing evidence?

Mr. MCLENACHEN. No, we do not apply that high of a standard, but in situations where there is not a presumption, we determine service-connected conditions based on the information that we receive. So, on a case-by-case basis, the veteran can establish, whether it is providing us information or it is us obtaining information through our duty to assist, that the veteran was actually exposed to a harmful herbicide, for example, and actually developed a condition, we will service-connect that condition.

The presumption makes it easier for us because then neither the veteran nor VA has to go out and find evidence that there was—this exposure actually occurred in service or that their disability developed in service.

Senator HIRONO. It seems as though if there is no presumption, then it is a pretty high burden for the individual veteran to make

the connection claim. I have heard concerns from the Hawaii VFW about veterans who were exposed to radiation during the atomic debris cleanup of the Marshall Islands in the 1970s and 1980s, and several thousand of our troops were exposed as they were doing this cleanup.

I think we already have evidence as to what kinds of medical conditions are connected to exposure to radiation, so when a veteran or, let us say, a number of veterans present with similar kinds of medical conditions, and we already know through other research, particularly after Hiroshima and Nagasaki, what would happen. Does that help to create a presumption?

Mr. MCLENACHEN. Yes. Actually, the Congress has a very long history of creating presumptions. They date back to chronic disabilities that develop after service. We can trace it all the way back to the 1920s. Radiation exposure is one of the presumptions that Congress has created for veterans and we do grant benefits on that basis.

Senator HIRONO. On the other hand, for these service people who were engaged in the cleanup, they are not categorized as—I think you have a presumption category called “atomic veterans” and they are not included. Why is that?

Mr. MCLENACHEN. I think that—

Senator HIRONO. Because we know that exposure to the environment, especially after 9/11 and what happened to the 9/11 first responders, all kinds of health issues that arose. I think we were convinced that that was as a result of their efforts after 9/11. So, here is another group that were exposed to radiation as a result of cleanup.

Mr. MCLENACHEN. I believe Dr. Erickson can address it.

Dr. ERICKSON. Senator, some of the more recent radiation exposure events, Tomadochi, Marshall Islands cleanup, et cetera, there were actual measurements taken of what radiation was present at the time.

Individuals that are actually filing claims are reviewed on a case-by-case basis, and based on where they were, how many days, et cetera, there is actually a risk profile that is developed following established standards to then determine, you know, whether or not now the disease that they are filing the claim for is more likely than not to have been caused by the radiation. So, there actually is a rigorous process that is followed in the absence of there being a presumption.

Senator HIRONO. Have some of these service people who have made these claims who were involved in the cleanup of Marshall Islands, have they been provided the health care services as service-connected?

Dr. ERICKSON. I would—we would have to get back to you to give you the exact numbers.

Senator HIRONO. Well, is it some, is it zero?

Mr. MCLENACHEN. It is not zero; it is some. As Dr. Erickson said, we go out and we get actual information which we use to rate the claim based on the dose exposure to adjudicate those claims.

Senator HIRONO. Considering that this is another group that is seeking a certain kind of status as atomic veterans, then I would be interested to know how many people you have already assessed

as having shown that connection. If there is a significant number of them, then I would think that would raise an issue for you all as to whether they ought to be categorized as atomic veterans.

Mr. McLENACHEN. We will take that for the record and get that information to you.

Senator HIRONO. Thank you.

RESPONSE TO REQUEST ARISING DURING THE HEARING BY HON. MAZIE K. HIRONO  
TO U.S. DEPARTMENT OF VETERANS AFFAIRS

Response. VA is unable to provide the requested data because we do not have a method for identifying claims related to Marshall Islands cleanup during the 1970s and 1980s. Statutory and regulatory provisions do not include these Veterans as participants in a "radiation risk activity" and thus presumptively "radiation exposed." Veterans who participated in the cleanup of Enewetak Atoll, part of the Marshall Islands, are not considered radiation-exposed for the presumption of service connection for disabilities because the cleanup project was a tightly controlled radiological work environment. Personnel that entered radiologically contaminated areas were monitored for both external and internal exposure. Of over 12,000 individual dosimetry records, only four exceeded 0.050 rem, and the highest of these was 0.070 rem. Throughout the cleanup project, over 760,000 cubic meters of air were sampled on the controlled islands. Nearly 5,200 air samplers' filters were analyzed by the lab. No significant airborne radioactivity of any type (including beta) was detected. Extensive recording of all radiation safety data was accomplished. In addition to recording personal doses in each individual's military records, a permanent computerized database of all radiation safety information has been established at Defense Nuclear Agency's (DNA) Field Command in Albuquerque. The exhaustive data accumulated over the 3 years of the project do not indicate any area or instance of concern over radiological safety. All doses, internal and external, were minimal. (Taken from chapter 4 of DNA 1981—"The Radiological Cleanup of Enewetak Atoll." <http://www.dtra.mil/Home/NuclearTestPersonnelReview/EnewetakAtollCleanupDocuments.aspx>)

However, VA takes seriously its obligation to care for Veterans exposed to ionizing radiation and has special processes to both verify exposure and establish service connection for Marshall Islands cleanup. These processes are described in 38 CFR 3.311, which is attached. For such claims, the Veterans Health Administration (VHA) Office of Public Health provides the Veterans Benefits Administration with a medical opinion concerning the likelihood of causation. VHA considers data from several publicly available reports on the cleanup from DOD's Defense Threat Reduction Agency (DTRA)/Nuclear Test Personnel Review (NTPR). DOD DTRA/NTPR has requested funding from Congress to further investigate radiation doses due to Veterans' participation in the cleanup.



## ATTACHMENT—38 CFR 3.311

3.311-1

§3.311 -- Claims based on exposure to ionizing radiation

3.311-1

**§3.311 Claims based on exposure to ionizing radiation.***(a) Determinations of exposure and dose:*

(1) *Dose assessment.* In all claims in which it is established that a radiogenic disease first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in §3.307 or §3.309, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. When dose estimates provided pursuant to paragraph (a)(2) of this section are reported as a range of doses to which a veteran may have been exposed, exposure at the highest level of the dose range reported will be presumed. (Authority: 38 U.S.C. 501(a))

(2) *Request for dose information.* Where necessary pursuant to paragraph (a)(1) of this section, dose information will be requested as follows:

(i) *Atmospheric nuclear weapons test participation claims.* In claims based upon participation in atmospheric nuclear testing, dose data will in all cases be requested from the appropriate office of the Department of Defense.

(ii) *Hiroshima and Nagasaki occupation claims.* In all claims based on participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, dose data will be requested from the Department of Defense.

(iii) *Other exposure claims.* In all other claims involving radiation exposure, a request will be made for any available records concerning the veteran's exposure to radiation. These records normally include but may not be limited to the veteran's Record of Occupational Exposure to Ionizing Radiation (DD Form 1141), if maintained, service medical records, and other records which may contain information pertaining to the veteran's radiation dose in service. All such records will be forwarded to the Under Secretary for Health, who will be responsible for preparation of a dose estimate, to the extent feasible, based on available methodologies.

(3) *Referral to independent expert.* When necessary to reconcile a material difference between an estimate of dose, from a credible source, submitted by or on behalf of a claimant, and dose data derived from official military records, the estimates and supporting documentation shall be referred to an independent expert, selected by the Director of the National Institutes of Health, who shall prepare a separate radiation dose estimate for consideration in adjudication of the claim. For purposes of this paragraph:

(i) The difference between the claimant's estimate and dose data derived from official military records shall ordinarily be considered material if one estimate is at least double the other estimate.

(ii) A dose estimate shall be considered from a "credible source" if prepared by a person or persons certified by an appropriate professional body in the field of

health physics, nuclear medicine or radiology and if based on analysis of the facts and circumstances of the particular claim.

(4) *Exposure.* In cases described in paragraph (a)(2)(i) and (ii) of this section:

(i) If military records do not establish presence at or absence from a site at which exposure to radiation is claimed to have occurred, the veteran's presence at the site will be conceded.

(ii) Neither the veteran nor the veteran's survivors may be required to produce evidence substantiating exposure if the information in the veteran's service records or other records maintained by the Department of Defense is consistent with the claim that the veteran was present where and when the claimed exposure occurred.

(b) *Initial review of claims.*

(1) When it is determined:

(i) A veteran was exposed to ionizing radiation as a result of participation in the atmospheric testing of nuclear weapons, the occupation of Hiroshima or Nagasaki, Japan from September 1945 until July 1946 or other activities as claimed;

(ii) The veteran subsequently developed a radiogenic disease; and

(iii) Such disease first became manifest within the period specified in paragraph (b)(5) of this section; before its adjudication the claim will be referred to the Under Secretary for Benefits for further consideration in accordance with paragraph (c) of this section. If any of the foregoing 3 requirements has not been met, it shall not be determined that a disease has resulted from exposure to ionizing radiation under such circumstances.

(2) For purposes of this section the term "radiogenic disease" means a disease that may be induced by ionizing radiation and shall include the following:

- (i) All forms of leukemia except chronic lymphatic (lymphocytic) leukemia;
- (ii) Thyroid cancer;
- (iii) Breast cancer;
- (iv) Lung cancer;
- (v) Bone cancer;
- (vi) Liver cancer;
- (vii) Skin cancer;
- (viii) Esophageal cancer;
- (ix) Stomach cancer;
- (x) Colon cancer;
- (xi) Pancreatic cancer;
- (xii) Kidney cancer;
- (xiii) Urinary bladder cancer;
- (xiv) Salivary gland cancer;

- (xv) Multiple myeloma;
- (xvi) Posterior subcapsular cataracts;
- (xvii) Non-malignant thyroid nodular disease;
- (xviii) Ovarian cancer;
- (xix) Parathyroid adenoma;
- (xx) Tumors of the brain and central nervous system;
- (xxi) Cancer of the rectum;
- (xxii) Lymphomas other than Hodgkin's disease;
- (xxiii) Prostate cancer; and
- (xxiv) Any other cancer.

(Authority: 38 U.S.C. 501(a))

(3) Public Law 98-542 requires VA to determine whether sound medical and scientific evidence supports establishing a rule identifying polycythemia vera as a radiogenic disease. VA has determined that sound medical and scientific evidence does not support including polycythemia vera on the list of known radiogenic diseases in this regulation. Even so, VA will consider a claim based on the assertion that polycythemia vera is a radiogenic disease under the provisions of paragraph (b)(4) of this section. (Authority: Pub. L. 98-542, section 5(b)(2)(A)(i), (iii)).

(4) If a claim is based on a disease other than one of those listed in paragraph (b)(2) of this section, VA shall nevertheless consider the claim under the provisions of this section provided that the claimant has cited or submitted competent scientific or medical evidence that the claimed condition is a radiogenic disease.

(5) For the purposes of paragraph (b)(1) of this section:

- (i) Bone cancer must become manifest within 30 years after exposure;
- (ii) Leukemia may become manifest at any time after exposure;
- (iii) Posterior subcapsular cataracts must become manifest 6 months or more after exposure; and
- (iv) Other diseases specified in paragraph (b)(2) of this section must become manifest 5 years or more after exposure. (Authority: 38 U.S.C. 501(a); Pub. L. 98-542)

(c) *Review by Under Secretary for Benefits.*

(1) When a claim is forwarded for review pursuant to paragraph (b)(1) of this section, the Under Secretary for Benefits shall consider the claim with reference to the factors specified in paragraph (c) of this section and may request an advisory medical opinion from the Under Secretary for Health.

(i) If after such consideration the Under Secretary for Benefits is convinced sound scientific and medical evidence supports the conclusion it is at least as likely as not the veteran's disease resulted from exposure to radiation in service, the Under Secretary for Benefits shall so inform the regional office of jurisdiction in writing. The Under Secretary for

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§3.311 Claims based on exposure to ionizing radiation

3.311-4

Benefits shall set forth the rationale for this conclusion, including an evaluation of the claim under the applicable factors specified in paragraph (c) of this section.

(ii) If the Under Secretary for Benefits determines there is no reasonable possibility that the veteran's disease resulted from radiation exposure in service the Under Secretary for Benefits shall so inform the regional office of jurisdiction in writing, setting forth the rationale for this conclusion.

(2) If the Under Secretary for Benefits, after considering any opinion of the Under Secretary for Health, is unable to conclude whether it is at least as likely as not or that there is no reasonable possibility, the veteran's disease resulted from radiation exposure in service, the Under Secretary for Benefits shall refer the matter to an outside consultant in accordance with paragraph (d) of this section.

(3) For purposes of paragraph (c)(1) of this section, "sound scientific evidence" means observations, findings, or conclusions which are statistically and epidemiologically valid, are statistically significant, are capable of replication, and withstand peer review, and "sound medical evidence" means observations, findings, or conclusions which are consistent with current medical knowledge and are so reasonable and logical as to serve as the basis of management of a medical condition.

(d) *Referral to outside consultants.*

(1) Referrals pursuant to paragraph (c) of this section shall be to consultants selected by the Under Secretary for Health from outside VA, upon the recommendation of the Director of the National Cancer Institute. The consultant will be asked to evaluate the claim and provide an opinion as to the likelihood the disease is a result of exposure as claimed.

(2) The request for opinion shall be in writing and shall include a description of:

- (i) The disease, including the specific cell type and stage, if known, and when the disease first became manifest;
- (ii) The circumstances, including date, of the veteran's exposure;
- (iii) The veteran's age, gender, and pertinent family history;
- (iv) The veteran's history of exposure to known carcinogens, occupationally or otherwise;
- (v) Evidence of any other effects radiation exposure may have had on the veteran; and
- (vi) Any other information relevant to determination of causation of the veteran's disease.

The Under Secretary for Benefits shall forward, with the request, copies of pertinent medical records and, where available, dose assessments from official sources, from credible sources as defined in paragraph (a)(3)(ii) of this section, and from an independent expert pursuant to paragraph (a)(3) of this section.

(3) The consultant shall evaluate the claim under the factors specified in paragraph (c) of this section and respond in writing, stating whether it is either likely, unlikely, or

approximately as likely as not the veteran's disease resulted from exposure to ionizing radiation in service. The response shall set forth the rationale for the consultant's conclusion, including the consultant's evaluation under the applicable factors specified in paragraph (e) of this section. The Under Secretary for Benefits shall review the consultant's response and transmit it with any comments to the regional office of jurisdiction for use in adjudication of the claim.

(e) *Factors for consideration.* Factors to be considered in determining whether a veteran's disease resulted from exposure to ionizing radiation in service include:

- (1) The probable dose, in terms of dose type, rate and duration as a factor in inducing the disease, taking into account any known limitations in the dosimetry devices employed in its measurement or the methodologies employed in its estimation;
- (2) The relative sensitivity of the involved tissue to induction, by ionizing radiation, of the specific pathology;
- (3) The veteran's gender and pertinent family history;
- (4) The veteran's age at time of exposure;
- (5) The time-lapse between exposure and onset of the disease; and
- (6) The extent to which exposure to radiation, or other carcinogens, outside of service may have contributed to development of the disease.

(f) *Adjudication of claim.* The determination of service connection will be made under the generally applicable provisions of this part, giving due consideration to all evidence of record, including any opinion provided by the Under Secretary for Health or an outside consultant, and to the evaluations published pursuant to §1.17 of this title. With regard to any issue material to consideration of a claim, the provisions of §3.102 of this title apply.

(g) *Willful misconduct and supervening cause.* In no case will service connection be established if the disease is due to the veteran's own willful misconduct, or if there is affirmative evidence to establish that a supervening, nonservice-related condition or event is more likely the cause of the disease.

[50 FR 34458, Aug. 26, 1985, as amended at 54 FR 42803, Oct. 18, 1989; 58 FR 16358, Mar. 26, 1993; redesignated at 59 FR 5107, Feb. 3, 1994; 59 FR 45975, Sept. 6, 1994; 60 FR 9628, Feb. 21, 1995; 60 FR 53277, Oct. 13, 1995; 63 FR 50994, Sept. 24, 1998; 67 FR 6871, Feb. 14, 2002]

**Supplement *Highlights* references:** 7(1), 10(1), 13(1), 14(7), 18(4), 34(1), 50(3).

(No. 50 2/25/02)

Chairman ISAKSON. Senator Cassidy, followed by Senator Moran.

**HON. BILL CASSIDY, U.S. SENATOR FROM LOUISIANA**

Senator CASSIDY. So, I have got a bunch of questions. I think, Dr. Erickson, you mentioned that the Australian data was perhaps not directly—somehow it did not relate necessarily to the American data because they may have taken their water on board to distill at different locations.

I have read that in Australia, the drinking water was taken in relatively small estuaries closer to the shore and that for the boilers was even further out. What were the policies for the U.S. Navy in terms of where they would take on water to distill?

Mr. MCLENACHEN. I can answer the question, Senator. It is our information that the Navy had a directive that that water was to be taken on offshore and I believe it was 11 or 12 miles offshore.

Senator CASSIDY. Now, if you are 11 or 12 miles off of the Mekong Delta, that would still be an estuary type situation, so do we know that they had requirements to be—and I presume they would often be off that estuary. In that situation, did they need to be further out?

Mr. MCLENACHEN. I do not have any information on that, Senator.

Senator CASSIDY. Do we know the amount of particulate matter, organic matter which is normally suspended in the waters off of the Mekong Delta? Do we know that? Relatively easy to find out. That is why I am asking.

Mr. MCLENACHEN. I will defer to Dr. Erickson, but I believe the IOM study did address that to a certain extent.

Dr. ERICKSON. I would defer to the next panel because I would have to look that up, Senator. I just do not have that available.

Senator CASSIDY. Now, I read from the Australian data that if there is organic material, that they tend to retain—you have a greater distillation effect, as much as 70 percent distillation within the first process. Now, again, this seems relatively easy to ascertain. Maybe we have to wait for the IOM. Do you know if that has been ascertained again; what is the organic material, et cetera?

Mr. MCLENACHEN. No. I believe my non-scientific reading of the IOM report indicated exactly what you are saying, which is if that process was used, would it enhance essentially the strength or the degree of the—

Senator CASSIDY. But we are not sure about that? Do we have any banked tissue samples or serum samples from veterans, men and women who served at the time? Do we have any tissue banks or serum banks from their service?

Dr. ERICKSON. Senator, we certainly have for the Air Force members who were participating in the spraying of Agent Orange. The Institute of Medicine, in fact, is working with us to make those specimens available for study. But I am not aware of any specimens that would have covered anyone who was serving in the Navy.

Senator CASSIDY. OK. I noticed in the eligibility for current benefits, basically, somebody could have been in Saigon at a desk job, but they would be eligible for Agent Orange benefits even if they plausibly never had an exposure, correct?

Mr. MCLENACHEN. That is correct.

Senator CASSIDY. Now, the Blue Water folks are saying, listen, there was transport, there were vessels going on and off from the mainland to these vessels, and plausibly there could have been cross-contamination. I do not know.

How was the chemical transported? Was it in boats or was it flown over? I do not know that.

Mr. MCLENACHEN. It was flown, is my understanding. I do not have any additional information on that.

Senator CASSIDY. I am seeing people in the back shake their heads. It makes sense to me that if you are transporting tons, you would be more likely to do it by boat than by air, because it is not like you needed it acutely. You are going to use it, you know, a planned use.

So, if the guy on the desk job in Saigon is eligible, but there is transport in boats and there is loading in boats and there is X, Y, Z in boats, plausibly it seems as if there should be—I can see why the Blue Water guys are a little upset.

Mr. MCLENACHEN. Senator, if we have information on ships that were hauling it and veterans had access based on serving on those ships, they would be on the ship list and that we would be recognizing as having the potential for exposure.

Senator CASSIDY. Got you. Now, last, in the VA system, clearly you all have large epidemiological databases potentially, and have you been able to look back at the incidence of dioxin-related conditions in the Blue Water vets relative to the Air Force or relative to those who were boots on the ground?

Dr. ERICKSON. Senator, the answer is that there has not been a study of the Blue Water Navy by VA. The high-risk groups that we studied and have been studied for decades now were the Army Chemical Corps.

Senator CASSIDY. I get that.

Dr. ERICKSON. And——

Senator CASSIDY. Now, the Australians did that and they actually found an increase incidence of certain tumors within the Blue Water group. Granted, we do not know where they got their water, vis-a-vis, us, but I guess it kind of begs the issue of why have you not? If this is out there and we have got all this data, it seems—if the Australians can do it—you see where I am going with this?

Dr. ERICKSON. In the case of Blue Water Navy, Senator, we would have to go get the data. We would have to launch a rather large survey which would reach out to those individuals.

Senator CASSIDY. You cannot just take your subset of Naval veterans who have sought their care in the VA and compared them to a cohort of Army and Marine and Air Force veterans?

Dr. ERICKSON. If we felt that particular group was representative of the entire Navy experience, then that would be a good study design, sir.

Senator CASSIDY. I can tell you there is a statistician that knows how to correct the variables, you know, some sort of regression analysis. It just seems like if we have all these unanswered questions, that study should have already been done. Maybe the IOM has done it.

Dr. ERICKSON. Part of the challenge, Senator, if I may, is there is a lot of mixing of these populations. There would have been people who——

Senator CASSIDY. I accept that it is dirty data, but the Australians did it.

Dr. ERICKSON. What I mean by this, sir, is that individuals who, during one tour, might have been way off shore. The next tour they may have come into port. Once they came into port, then they,

under the presumption rules, you know, they are covered, so now they are enrolled in VA. Some challenges—and your point is well taken.

Senator CASSIDY. I am way over time. Thank you for your indulgence. I yield back.

Chairman ISAKSON. Senator Moran.

**HON. JERRY MORAN, U.S. SENATOR FROM KANSAS**

Senator MORAN. Mr. Chairman, thank you for conducting this hearing. Secretary, thank you very much for being here. Let me, first of all, express my support for a bill I am a cosponsor of and that is the Blue Water Navy Vietnam Veterans Act of 2015. I will generally confine my remarks and questions to the bill that Senator Blumenthal and I introduced related to toxic exposure.

First of all, let me express my concern for family members of those veterans and for the veteran who encountered that toxic exposure. It seems to me that those who served our country in the military, who were drafted, who volunteered, they have an expectation of taking certain risks associated with their military service.

But I cannot imagine that any one of those men or women expected that their service would result in health care concerns for their children or their grandchildren. What a terrible burden that must be if you now believe that something that you voluntarily did has a consequence for people who were yet to be born, your children and grandchildren.

I think this is an issue that is so deserving of the VA's attention and certainly of Congress's attention. My understanding is that—I am not certain, Mr. Secretary. You on behalf of the VA oppose that bill, is that true? That is your testimony today?

Mr. MCLENACHEN. Yes. VA opposed that bill, yes.

Senator MORAN. And you do that by referring to testimony that was given previously. Your testimony indicates the Department has previously provided its views on S. 901 to this Committee on June 24, 2015. When I read the testimony of that date, everything that is said about the VA's opposition is related to what it believes is a duplication of efforts previously and currently underway at the VA or at other agencies.

My impression, I think probably this comes from what Dr. Erickson said this morning, is that is no longer your position. So, I mean, you denied, discounted the duplication and now, as I understand it, oppose the bill because the focus needs to be headquartered someplace other than the VA. True?

Dr. ERICKSON. If I may, Senator Moran, for me the overriding concern—and yes, the VA position—is that there are other agencies that are better positioned to do this. But the duplicative effort—let me speak to that. There are some things at VA we do very well. We do large surveys, large epidemiologic studies of veteran cohorts.

We have been in consultation with Vietnam Veterans of America to put together a Vietnam morbidity study, which is getting ready to be launched. As part of that study, we will be looking at the health of their children, but not the epigenetic piece. That is a little beyond the scope of the morbidity study. Likewise, there is an upcoming OEF/OIF veterans health study which will also be including questions of children, of veterans' children.



I think the issue here is, again, perhaps this new recognition that VA and veterans in particular benefit considerably when we partner with the right Federal agency. Again, I use the ATSDR collaboration to which we have alluded as it relates to Camp Lejeune, as being a very strong example of how that can benefit veterans.

Senator MORAN. Well, I cannot imagine that is anything but true. We ought to be encouraging collaboration. There are agencies and departments who have expertise. There are outside experts who we ought to rely on. So, I do not think you are saying anything contrary to what common sense, perhaps, would suggest to be true.

What Dr. Jain stated in that reference, the day of that testimony, the current VA activities include collaboration, et cetera, work being done by the National Institute of Health, Environmental Health and Sciences. It talks about studies and yet, I mean, the VA believes, as I understand, that there is insufficient evidence for benefits to accrue.

Let me say it differently. There is insufficient evidence to tie the conditions that we find in children or grandchildren of veterans to the exposure of their mothers, fathers, grandmothers, or grandfathers. So, if that is a true statement, that the VA cannot find the connection, the scientific evidence, then it seems to me that the VA ought to be terribly interested in making that determination.

It ought to be insufficient for the VA to say there is insufficient evidence. You ought to be determining whether there is evidence or not, scientifically, medically, for that condition. Is that true?

Mr. MCLENACHEN. Senator, if I might, one of the issues here is the extent of our current authority. Congress has given us authority, in limited situations, for example, spina bifida, to pay benefits to, say, a descendent of somebody who was been exposed. Other than that, our authority is very limited. We pay benefits to survivors based on the veterans' exposure. We allow survivors to substitute in a veterans' claim and we pay accrued benefits.

Senator MORAN. So, would you support—would the VA support the authority to do exactly that? I mean, what this bill does is to set the parameters by which that conclusion can be reached. Then I assume that you would endorse the idea that those benefits should be paid if that scientific evidence, medical evidence is prevalent?

Mr. MCLENACHEN. If Congress determines that that is what the Government should be doing and asks VA for its views on that, Senator, I feel very confident we would provide our views, let you know what they are.

Senator MORAN. Even though you provide the legislation designed to accomplish that?

Mr. MCLENACHEN. Well, if it is a bill that is introduced into the Congress and not one of our own legislative proposals, we would provide our views on it on that basis. If it is something that we would propose, yes, we would definitely propose something that we support, which this may happen to be what it is.

Senator MORAN. My point is, you oppose the bill that is designed to give us the standing in which we have the credibility to give you the authority; yet, you oppose the bill that creates that opportunity for us?

Mr. MCLLENACHEN. I understand what you are saying. It would be helpful to have the research before you decide whether that is a benefit that should be provided.

Senator MORAN. My time has expired. I have just a couple of summations. Certainly everything that I have read by other agencies indicate that there is a need for additional evidence, scientific/medical research and that any suggestion that the VA or anybody else has reached the necessary conclusions, necessary evidence to draw a conclusion, is inadequate, is inaccurate.

So, when the VA talks about duplication, there is plenty of room for scientific and medical evidence to be determined that has not been researched or studied previously.

At then second, I would appreciate an answer to Senator Rounds' question which, I believe the question was, if the focus was elsewhere—somebody else is in charge of this program—would the VA then support the legislation, the concept contained in this legislation? I do not think that Senator Rounds' question was answered.

Dr. ERICKSON. The answer is yes, Senator.

Senator MORAN. Thank you. I would highlight what Senator Tester had to say which was—and I cannot speak for Senator Blumenthal, but I have no doubt that what I, and I would guess Senator Blumenthal would be very interested in is finding the right place to house this effort. I would think we would start with the premises that we want to be housed by somebody who wants to do it so that the right attitude and approach is taken.

Again, if we find the right place to do this, I then assume that the VA would be supportive of this effort. Is that accurate?

Dr. ERICKSON. Yes, sir.

Senator MORAN. Thank you both.

Chairman ISAKSON. Senator Boozman.

#### **HON. JOHN BOOZMAN, U.S. SENATOR FROM ARKANSAS**

Senator BOOZMAN. Thank you, Senator Isakson, and again, thank you so much for having this so important hearing. I apologize for being late. I am going to have to run out and then come back in the middle of the next panel in working with the budget issues that we are facing now, trying to help get some of those things sorted out. Mr. McLenachen?

Mr. MCLLENACHEN. Yes, sir.

Senator BOOZMAN. Did I get that right?

Mr. MCLLENACHEN. Yes, you did.

Senator BOOZMAN. Good, very good. I am proud of myself. On a separate issue of alleged toxic exposure, in Arkansas, we have a significant number of Gulf War 1 veterans who allege chronic illness due to toxic exposures. The Arkansas National Guard's 39th Infantry Brigade deployed in the Gulf in 1990, 1991.

Some of these folks have some real health issues now. Many of these veterans claim that they were exposed to toxic substances like benzene due to the oil fires that the Iraqi military set, and have issues like Agent Orange exposure and the Camp Lejeune water contamination situation. It takes a significant amount of time and research to fully grasp the effects and causal connection of such exposure.

Can you give me an update? Can you give all of us an update on what efforts the VA is continuing to pursue to help these Gulf War veterans?

Mr. MCLENACHEN. Since that is a medical science research issue, I will defer to Dr. Erickson on that.

Dr. ERICKSON. Certainly. Thank you for the question, Senator. We continue to partner with Gulf War veterans, veterans service organizations in particular, the National Gulf War Resource Center which is headed up by Mr. Ron Brown. He has worked very closely with us to make sure that our Web sites are accurate and our newsletters are actually useful by topic.

He and his partner, Jim Bunker, have actually recommended to us research that they think is necessary for us to be able to answer some of these questions. And literally, while we sit in this room, the Gulf War Research Advisory Committee, which is, in fact, a Federal advisory committee, is meeting at VA headquarters. As you probably know, that committee, in fact, provides advice concerning the research to fill the gaps in a Gulf War illness.

Senator BOOZMAN. Very good. Thank you. Mr. McLenachen, with the Camp Lejeune water situation, it is my understanding that the VA representatives went down to North Carolina and explained how the disability claims process worked and the steps that people needed to take in order to file a claim and receive compensation. However, VA added another layer of bureaucracy to the process by adding subject matter experts into the adjudication process.

I guess, you know, I would like to know if that was correct and if it is correct. Adding these SMEs into the adjudication process is unique to the Camp Lejeune situation. Is that correct? Then, the other question I have is, why was this done?

Mr. MCLENACHEN. Senator, I would not say it is unique because in every compensation claim that we adjudicate, we are required to obtain current, through our duty to assist, an examination or a medical opinion as required to properly adjudicate the claim. Sometimes we will get private evidence that does not require us to do that through VHA, but if we need an opinion, we often go to VHA and ask for an opinion.

Our adjudicators are not the medical experts. They are the adjudicators who weigh the evidence that they are given. So, I would not say that it is unique that we have individuals providing us those kinds of opinions. However, in this case, recognizing that this is a special issue, we consolidated all those claims down to our Louisville Regional Office and we did collaborate very closely with the Veterans Health Administration to make sure that we were achieving a level of consistency that these veterans deserve.

The way we did that was consolidate in Louisville and then working with VHA to set up a system with the special SMEs, subject matter experts, to help us with getting those opinions. I think Dr. Erickson could probably talk a little bit more about the SMEs themselves and what their qualifications are.

Dr. ERICKSON. Senator, I am going to divide this into two pieces. One is the health care law that Senator Burr gave testimony to, the other would be the SMEs as it relates to presumptions. As Senator Burr appropriately said, he pushed legislation that was passed in 2012, and when that was enacted on the 6th of August, 2012,

VA immediately started providing health care for 15 different conditions to Camp Lejeune veterans.

I am proud to say that to date, we have provided health care to 21,154 veterans who had served at Camp Lejeune. Of these, 7,506 veterans have been treated specifically for a Camp Lejeune condition that is included in that law. Likewise, on the family member side of that, we have had 997 family members who have applied for the program.

Again, this program is a little newer. 176 family members are both administratively and clinically eligible. To date, there have been 906 family members whose medical claims have been paid for, 65 unique family members for a total payout of \$176,000.

On the health care side, we have moved out smartly on the bill through the legislation that Senator Burr gave testimony to.

On the presumption side, yes, there was a need for us to move beyond the cadre of compensation and pension examiners such that we would have a group that was more specially trained. We selected about 20 of these individuals, also in the fall of 2012, made sure that they were residency trained in occupational medicine, environmental, toxicology.

They received, as Mr. McLenachen said, additional training at the VBA facility in Louisville to make sure they understood the complexity of the issues. Currently they have regular telephone conferences to discuss cases, especially the more difficult cases, so as to provide a certain level of peer review for those cases. They also continue to build and work with a comprehensive bibliography, the goal being to reduce variability in the decisions that are made.

Senator BOOZMAN. Thank you, Mr. Chairman.

Chairman ISAKSON. Thank you, Senator Boozman.

Senator Hirono has a follow-up question.

Senator HIRONO. Yes. I realized that the VA, in seeking to conclude that there is a service connection, relies on information from the Department of Defense. I do have a concern that with regard to Vietnam, that maybe not all of the information that you have is accurate in terms of things such as where Agent Orange was sprayed, where the water may have been contaminated. So, there is that issue.

Dr. Ramos, who is on the second panel, notes in his testimony that veterans of the Blue Water Navy received a presumptive service connection as recently as 2002 before VA implemented a policy change. I assume that policy change meant that they no longer enjoy this presumption. Can you tell me if that is accurate, where you actually did—

Mr. MCLENACHEN. Yes. I believe that relates to my conversation with Senator Tester earlier. Our policy, dating back to 1994, was essentially consistent with what it is now, except to the extent that we used the Vietnam service medal for purposes of determining eligible Vietnam service. What we discovered was that medal was not a good way to do that because it is provided more broadly.

It is provided to individuals who provided support during the Vietnam era, rather than actual duty in the Republic of Vietnam. The statute requires being in the Republic of Vietnam and that was the issue. So, that point is when we changed our regulation to clarify that issue.

Senator HIRONO. So, basically, it was a pretty fundamental thing, whether they were even in Vietnam serving at that time?

Mr. MCLENACHEN. Yes. You might have had, for example, veterans in the Philippines who were providing support.

Senator HIRONO. Thank you. Thank you, Mr. Chairman, for that clarification.

Chairman ISAKSON. Thank you, Senator Hirono. I want to thank our two panelists for their extensive testimony and thank the Committee for their participation.

RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL  
TO U.S. DEPARTMENT OF VETERANS AFFAIRS

*Question 1. Blue Water Navy Veterans Disability Claims*—While VA does not allow the presumption of service connection to veterans who served in the territorial seas (12-miles) of the Republic of Vietnam, the Committee received a response to a pre-hearing question that indicated claims can be considered on a case-by-case basis. VA considers claims from Blue Water Navy veterans on a case-by-case basis. Has the Department granted any of these claims, and if so how many?

Response. While the statute creating the presumption of Agent Orange exposure for Veterans who served “in” the Republic of Vietnam (38 United States Code (U.S.C.) § 1116(f)) and the Department of Veterans Affairs (VA) regulation addressing the same (38 Code of Federal Regulations (CFR) § 3.307(a)(6)(iii)) do not extend a presumption of Agent Orange exposure to “Blue Water Navy” Veterans, as these Veterans are not considered to have served “in” Vietnam, VA does recognize a presumption of exposure for Navy Veterans whose ships served on inland waterways while they were aboard, and for Navy Veterans who went ashore in Vietnam even for a brief stay. Those circumstances are among the “case-by-case” bases previously described. VA does not track, and has no method for tracking, grant rates for these claims. Additionally, a claimant who does not qualify for a presumption of exposure must seek to show that they were actually exposed to Agent Orange in service to establish service connection for a current disability. VA also is unable to track grant rates for cases of that nature.

*Question 2. Camp Lejeune Water*—In his written testimony Mr. McLenachen stated that VA is in the process of amending its regulations to allow presumptions for conditions related to water contamination at Camp Lejeune to include kidney cancer, angiosarcoma of the liver, and acute myelogenous leukemia. Provide a status report, to include a timeline, on VA’s progress to date in amending its regulations.

Response. A draft recommendation for the Secretary, which is based on additional information provided by the Agency for Toxic Substances and Disease Registry, is currently under review within VA. The Veterans Benefits Administration (VBA) will begin the process of amending regulations as appropriate after the Secretary considers the recommendation and makes his final policy decision. Although this policy analysis is a high priority for VA, there is no timeline for final VA action on the matter.

*Question 3. Camp Lejeune Claims Processing*—The Committee received testimony that in 2013 the Department consolidated Camp Lejeune claims processing at the Louisville, Kentucky Regional Office. What was the denial rate for Camp Lejeune claims before the consolidation and what has it been since? What qualifications are required and what special training do these “subject matter expert” claims processors receive who adjudicate Camp Lejeune water decisions?

Response. VA consolidated the processing of claims based on exposure to contaminated water at Camp Lejeune to VBA’s Louisville Regional Office in December 2010. At that time, VBA attempted to identify any claims previously decided with service at Camp Lejeune being implicated as the cause of disability. We were able to identify 195 claims that VA decided between 1997 and 2010, with an 83 percent denial rate.

Following a 2012 review of completed decisions, VA determined medical professionals with expertise in occupational and environmental health are required to obtain the best possible medical opinion evidence for adjudication of claims by Veterans exposed to the contaminated water at Camp Lejeune. VA identified these experts and provided them with three days of training on Veterans’ exposure to the water at Camp Lejeune. To date, the grant rate for primary disease categories associated with exposure to water at Camp Lejeune (renal cancer, leukemia, breast cancer, etc.) is 11 percent.

*Question 4. Agent Orange Presumptive Authority*—The Secretary’s specific authority to grant presumption of service-connected disabilities based on exposure to herbicides in the Republic of Vietnam (38 U.S.C. § 1116) lapsed as of September 30, 2015 after having been in effect for 15 years. Provide a summary of the presumptions the Secretary granted under this specific authority during that 15-year span.

Response. Although VA’s authority under section 1116 expired on September 30, 2015, the Secretary has general rulemaking authority under 38 U.S.C. § 501, which will allow him to establish appropriate presumptions of service connection should it become necessary in the future.

The Agent Orange Act itself established an association between Agent Orange exposure and:

- (1) Non-Hodgkin’s lymphoma;
- (2) Soft tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi’s sarcoma, or mesothelioma); and
- (3) Chloracne or another acneform disease consistent with chloracne.

Subsequent associations and dates established by VA regulations include:

- (4) Porphyria cutanea tarda [February 3, 1994];
- (5) Hodgkin’s disease [February 3, 1994];
- (6) Respiratory cancers of the lung, bronchus, larynx, or trachea [June 9, 1994];
- (7) Multiple myeloma [June 9, 1994];
- (8) Prostate cancer [November 7, 1996];
- (9) Acute and subacute peripheral neuropathy (later replaced by (16)) [November 7, 1996];
- (10) Type 2 diabetes mellitus [May 8, 2001];
- (11) Chronic lymphocytic leukemia [October 16, 2003];
- (12) AL amyloidosis [May 7, 2009];
- (13) Ischemic heart disease [August 31, 2010];
- (14) Chronic B-cell leukemia [August 31, 2010];
- (15) Parkinson’s disease [August 31, 2010]; and
- (16) Early-onset peripheral neuropathy [replaced (9)] [September 6, 2013].

*Question 5. Exposure Research*—Throughout the testimony at the hearing, VA witnesses frequently stated other Federal agencies would be better suited to conduct research about indirect exposure. Please elaborate on that point and also provide details about the specific agencies that would be better positioned to conduct this research.

Response. The National Institute of Environmental Health Sciences (NIEHS), one of the National Institutes of Health (NIH) in the U.S. Department of Health and Human Services (HHS), has capacity, expertise, and a strong record of accomplishment in understanding environmental effects on epigenetics and epigenetic regulation of biological and developmental processes. Understanding both low-dose effects and the developmental windows of susceptibility will be critically important for determining the level of risk posed by indirect and transgenerational exposure. In addition, the National Toxicology Program, headquartered at NIEHS, is well placed to coordinate toxicological research from across agencies.

The Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD) is another NIH entity that has a specific and focused interest in the development of molecular level tools and multi-institutional collaborations to support analyses of gene expression and genetic pathways to explain multigenerational effects that may result from myriad environmental factors. (NICHD—<http://www.nichd.nih.gov/health/topics/epigenetics/researchinfo/pages/goals.aspx>)

VA does not have the capacity and expertise in place to perform multigenerational studies, including research such as highly specialized epigenetic analyses.

*Question 6. Epidemiological Studies*—Does VA have plans to conduct an epidemiological study on Choroidal Melanoma? If yes, please provide details regarding a timeline for such research and if no, please provide detail regarding why this issue is not being considered.

Response. There are 200 cases of choroidal melanoma in the VA Central Cancer Registry from 1995 to 2013, about 11 cases per year. There are an additional 113 melanoma cases located in the eye for a total of 313 ocular melanoma cases over this same time interval. This represents less than 0.05 percent of all cancers in the registry. The rarity of the cancer makes an epidemiological study infeasible without a very large risk.

VA’s National Program Director for Oncology found nothing in the literature or reference materials to support a claim of association between Veterans, military service, or Agent Orange and choroidal melanoma. Known risk factors for uveal

melanomas (which are mostly choroidal) are host pigmentation factors, cutaneous and iris nevi, and ultraviolet light exposure.

VA research does not currently have a study focused on the epidemiology of Choroidal Melanoma; primarily because we support investigator initiated research, and we have not reviewed an application on the topic that would be currently funded. However researchers from the Tampa VA recently published a paper as a case report, <http://www.ncbi.nlm.nih.gov/pubmed/26066556>

Further, VA maintains a comprehensive database of cancer incidence in the VA Healthcare System in the VA Central Cancer Registry: <http://catalog.data.gov/dataset/veterans-administration-central-cancer-registry-vaccr>

There is a non-VA citation, in the U.S. National Library of Medicine to a 2012 update from the Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (see chapter 8, subchapter Skin Cancer) that includes this:

This is the first update in which any information on ocular melanoma has been identified. The case-control study of Behrens et al. (2012) found some increases in the incidence of uveal melanoma in association with unspecified herbicides; this is not the degree of herbicide specificity required for results to be considered fully relevant. A Vietnam veteran submitted information (Data from Rutz [2012] available in the National Academies Public Access Records Office [<http://www8.nationalacademies.org/cp/ManageRequest.aspx?key=49448>]) received in response to a Freedom of Information Act request to VA about the frequency with which choroidal melanoma (a specific type of uveal melanoma) was diagnosed in VA facilities; the document indicated that a large number of such cases had been seen, but the lack of documentation explaining how the VA had gathered the data and exactly what they represented prevented the Committee from being able to assess their import. Because literature searches did not identify any epidemiology studies of ocular melanoma in association with the COIs, the Committee submitted an inquiry to Carol and Mark Shields, who responded (Data from Shields [2012] available in the National Academies Public Access Records Office [<http://www8.nationalacademies.org/cp/ManageRequest.aspx?key=49448>]) that their analyses of more than 2,000 cases of uveal melanoma had not revealed any association with the COIs.

*Question 7. Gray v. McDonald*—During the hearing, the Committee received testimony that cited a recent Court of Appeals for Veterans Claims decision in *Gray v. McDonald* that found VA’s demarcation between inland waterways and offshore waters to be “arbitrary and capricious.” Provide a status report, to include a timeline, on VA’s progress to date in complying with the instruction of the Court to the Department to review and clarify its definition of inland waterways and offshore waters.

Response. In April 2015, the U.S. Court of Appeals for Veterans Claims issued its decision in *Gray v. McDonald*, 27 Vet. App. 313 (2015), which required VA to review and clarify its policies for determining whether coastal bodies of water, such as Da Nang Harbor, constituted “inland waterways” or “offshore waters” for purposes of applying the presumption of herbicide exposure. Shortly after that April 2015 decision, VA began the process of reviewing and clarifying its policies regarding such determinations. Secretary McDonald has directed that this important issue merits very deliberate and thorough evaluation by VA, which is ongoing. Although this policy analysis is a high priority for VA, there is no timeline for final VA action on the matter.

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RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. JERRY MORAN ON  
S. 901, THE TOXIC EXPOSURE RESEARCH ACT OF 2015

*Question 8.* Please provide the VA’s rationale for opposing further research into the effects of toxic exposure on a servicemember’s progeny, when the VA has acknowledged that the science behind this topic is insufficient.

Response. VA fully agrees that the science behind the effects of toxic exposures on a servicemember’s progeny is presently insufficient to guide evidence-based policy. VA does not oppose further research into this important issue, but rather suggests that other Federal agencies are better equipped and postured to conduct this complex work.

*Question 9.* The VA has stated they should not be the institution to oversee and carryout this research. Please provide specific changes and recommendations for S. 901 that would place the research and responsibilities in the appropriate agencies.

Response. This important research mission should be fully-funded by Congress and assigned to the National Institute of Environmental Health Sciences (NIEHS) VA and the Department of Defense (DOD) should be directed to provide full cooperation and collaboration in the conduct of NIEHS multigenerational/epigenetic studies of the toxic environmental exposures experienced by Veterans (and in some cases their families) and their progeny. VA and DOD would be able to provide historical documents, medical records, and personnel lists (when available) as the needed foundation for these studies.

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RESPONSE TO POSTHEARING QUESTIONS SUBMITTED BY HON. THOM TILLIS TO  
U.S. DEPARTMENT OF VETERANS AFFAIRS

*Question 10.* By what date will the VA announce presumptive disability coverage for veterans with conditions for which ATSDR has determined that there is “sufficient evidence for causation” by exposure to contaminated water at Camp Lejeune? By what date will the VA announce which of the diseases designated by the ATSDR as showing “modest evidence for causation” will be included in the presumptive disability program?

Response. Although the complex policy analysis associated with creating presumptions of service connection for diseases associated with exposure to Camp Lejeune drinking water is a high priority for VA, there is no timeline for a VA announcement regarding this complex matter.

Chairman ISAKSON. I now invite our second panel to come forward. We are fortunate to have—I see five people, but I have only got four names. What am I missing? Ms. Wedge is accompanying Dr. Ramos. Now I understand.

Welcome to our second panel. Doctor Kenneth Ramos, Chair of the Institute of Medicine Committee on Veterans and Agent Orange; Commander John Wells, Executive Director of the Military Veterans Advocacy, Inc.; John Rowan, National President of the Vietnam Veterans of America; and Jerry Ensminger, Master Sergeant, U.S. Marine Corps, Retired. I want to thank all of you for being here today and we will start with Dr. Ramos.

**STATEMENT OF KENNETH S. RAMOS, M.D., PH.D., ASSOCIATE VICE PRESIDENT FOR PRECISION HEALTH SCIENCES, ARIZONA HEALTH SCIENCES CENTER, UNIVERSITY OF ARIZONA, AND CHAIR, INSTITUTE OF MEDICINE COMMITTEE ON VETERANS AND AGENT ORANGE, UPDATE 2014, THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE; ACCOMPANIED BY ROBERTO WAGE, M.S., SENIOR PROGRAM OFFICER, INSTITUTE OF MEDICINE**

Dr. RAMOS. Thank you, Mr. Chairman, Members of the Committee. I am Ken Ramos, as was stated. I am a professor of medicine at the University of Arizona Health Sciences Center, and I also serve as Associate Vice President for Precision Health Sciences at that institution. The reason that I am here is because I also serve as Chair of the last Update for the Veterans and Agent Orange Committee, which is currently finalizing its report. It is the last report following completion of a 20-plus year series, as most of you know.

I am here to speak, to represent the voices, I think, on the recommendations of multiple IOM committees and, of course, in some instances, I will also provide some comments which reflect my own thoughts and impressions regarding the issues at hand. My initial remarks will focus on IOM efforts to assess exposures to Agent Orange among Blue Water Navy veterans and the degree to which its exposures and long-term health outcomes are comparable to those



of Brown Water Navy veterans and troops on the ground, which I think is one of the issues that has been debated this morning.

As indicated in the 2011 report that the IOM committee provided from the IOM, the conclusion was made that given the lack of environmental monitoring that took place during and shortly after the war, and the variability and uncertainty in the fate and transport information for dioxin, and it is not possible to estimate the likely concentrations of dioxin in marine waters and air and at the time of the deployment for these veterans; therefore, quantitative measures of comparisons across three military populations of interest could not be made.

I think this is an issue that certainly has posed a lot of problems with regards to decisionmaking because the science itself does not really actually support any specific conclusions in that sense. This said, the committee did identify possible pathways of exposure, which of course, included the distillation efforts on board ships which has been discussed, I think, a number of times in the course of testimony provided.

I think that particular route of exposure is certainly important given efforts by the Australian Royal Navy looking at reconstruction experiments in which distillation experiments were completed establishing that, in fact, if dioxin was present in those waters, it would be concentrated through the process, and in so doing, making it available for exposure.

On the basis of those findings, which were actually ratified by the 2008 Veterans Agent Orange committee, the conclusion has been made that we do not have any evidence either for inclusion or exclusion of Blue Water Navy veterans from coverage under the Agent Orange Act; therefore, this conclusion needs to be considered in further policy decisionmaking.

Over the 20-plus years which have taken place since the veterans and Agent Orange series has been initiated, only a single epidemiological study has been completed that actually reported specific findings for Blue Water Navy veterans, showing, in fact, a higher incidence of non-Hodgkin's lymphoma in Blue Water Navy veterans and the highest and most significant risk across all branches of service for this adverse health outcome. This, I think, directly addresses one of the points that was raised in the previous discussion regarding findings for Blue Water Navy veterans in particular.

Although this particular finding for epidemiological correlation does not directly address questions related to exposure, especially in light of the quantitative deficits which I described before, this is, in fact, considered a hallmark of disease for dioxin exposure, one of the signature cancers for dioxin, and therefore, health outcomes alone presumed by the VA to be service-related to the Blue Water Navy veterans.

In reference to Senate Bill 681, which has been discussed here, it should be noted that in the judgment of all IOM committees which have taken on studies related to this, it is highly unlikely that any future scientific research will provide any additional information that would resolve questions related to exposures given the limitations which I described before, including those which were connected to service in the territorial waters of Vietnam.

Whether or not the claims of Blue Water Navy veterans are to be processed like those of other Vietnam veterans, that is ultimately a policy decision and not one that can be answered on the basis of science.

Given the lack of exposure information collected during or immediately after deployment for many of the conflicts that we have to deal with, I do not expect that new data will become available, you know, from past conflicts given that the collection of exposure information was not completed during that particular episode, and oftentimes what we find ourselves doing is trying to reconstruct exposures on the basis of statistical models that, as good as they might be, certainly will never provide complete answers, either at the population or the individual level.

In my opinion, plans to extend the Agent Orange Act under House Resolution 3423, cited as the Agent Orange Extension Act of 2015, to complete an additional cycle is an excellent proposition that would not only ensure continuity in the monitoring of the health status of Vietnam veterans, but perhaps more importantly, provide all of us an opportunity to set a path forward on how to establish that area of evaluation processes that would be coherent across multiple military situations.

I think we should learn from the experiences of the—you know, the mistakes that have been made in the past, certainly put in place, I think, resolutions that will enable us to move forward in a way that is going to be informed by actual data.

I think it is also important to note that renewing the biennial updates as has been completed up until now probably is not going to be advisable given the fact that the needs that we have right now are needs for data rather than continued updates that probably sort of slow the process.

Last, in reference to Senate Bill 901, Toxic Exposure Research of 2015, I think it is important to know that plans to establish a National Center for Research on the diagnosis and treatment of health conditions of the descendants of veterans exposed to toxic chemicals during service in the Armed Forces, although very important and highly significant and laudable, I believe it is actually premature at this point in time in light of the scarcity of scientific and medical data to support the contention that toxic exposures to veterans, particularly male veterans, can be transmitted to descendants across one or multiple generations.

I think the danger in moving forward perhaps prematurely could certainly add confusion to an already very crowded environment. That said, I think efforts to create an advisory committee charged with overseeing the assessment and handling of possible health effects from all military exposures would be highly desirable in order to increase continuity and coherence of efforts across various situations.

I thank you for inviting me to be here and I look forward to a dialog with you on this and issues that you may want to discuss. Thank you.

[The prepared statement of Dr. Ramos follows:]

PREPARED STATEMENT OF KENNETH S. RAMOS, M.D., PH.D., ASSOCIATE VICE PRESIDENT FOR PRECISION HEALTH SCIENCES, ARIZONA HEALTH SCIENCES CENTER, UNIVERSITY OF ARIZONA AND CHAIR, INSTITUTE OF MEDICINE COMMITTEE ON VETERANS AND AGENT ORANGE, NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE

Good morning, Mr. Chairman, Senator Blumenthal, and Members of the Committee. My name is Dr. Kenneth Ramos. I am Associate Vice President for Precision Health Sciences at the University of Arizona and a Professor of Medicine in the Division of Pulmonary, Allergy, Critical Care and Sleep Medicine at the Arizona Health Sciences Center. I also act as Director of the Center for Applied Genetics and Genomic Medicine and am Director of the College of Medicine M.D.-Ph.D. Program. Previously, I held faculty positions at the University of the Sciences in Philadelphia, at Texas Tech University Health Sciences Center, Texas A&M University, and at the University of Louisville School of Medicine. I am currently serving as chair of the Committee that is preparing the last update in the Veterans and Agent Orange (VAO) series of Institute of Medicine (IOM) reports mandated by the Agent Orange Act of 1991 (PL 102-4) and renewed in the Veterans Education and Benefits Expansion Act of 2001 (PL 107-103). Today I will be talking about the VAO series of reports, but I will begin by discussing another IOM report that attempted to assess the exposure of Blue Water Navy (BWN) Vietnam veterans to Agent Orange.

In 2010, an IOM committee completely separate from the VAO committees was tasked to study whether the Vietnam veterans in the BWN experienced exposures to herbicides and their contaminants that were comparable with those of the Brown Water Navy Vietnam veterans and troops on the ground in Vietnam, with a focus on Agent Orange and dioxin exposures. The Committee was asked to compare the possible routes of exposure of BWN veterans on ships and of ground troops in Vietnam, and the potential mechanisms of herbicide exposures (such as water exposure from contamination of potable water, air exposure from spray drift, and food and soil contamination). It was also asked to compare the risks of long-term adverse health effects in ground troop veterans, BWN veterans, and other "era" veterans, and to review any studies that addressed adverse health effects specifically in BWN veterans. I will focus on the exposure aspects of the resulting 2011 report Blue Water Navy Vietnam Veterans and Agent Orange Exposure, but first I should note that, just prior to the initiation of this Committee's work, the VAO committee for Update 2008 had made a statement about the BWN controversy (based on a less extensive review of details of exposure estimation and its understanding than the BWN Vietnam veterans had previously been included) to the effect that available scientific information did not support making a decision to exclude them from coverage under the Agent Orange Act.

The BWN committee gathered information on how Agent Orange had been used in Vietnam and the quantity and geographic range of its application. The Committee also considered data on the magnitude of dioxin contamination of Agent Orange. After reviewing information on releases of Agent Orange to the environment, the Committee explored its fate and transport in air, fresh and marine water, sediment, soil, and food to assess the plausibility of Agent Orange and dioxin exposure of military personnel who did not actually handle the herbicide themselves. The Committee attempted to identify any monitoring data on dioxin had been gathered during or shortly after the Vietnam War. The Committee also considered fate and transport models that could be used in conjunction with the limited available data to examine the plausibility of exposure of ground troops and BWN veterans to the chemicals. The Committee attempted to determine where BWN ships were during the war, their missions, how close they came to the Vietnamese coast, and the activities conducted aboard the ships by the sailors.

Many data sources and methods were identified and pursued by the Committee, including published peer-reviewed literature, models for assessing the environmental concentrations of Agent Orange and dioxin, anecdotal information from veterans and other interested parties on veteran experiences during the war and afterwards, and such other information sources as written and published accounts of the war (including memoirs), government documents, and ships' deck logs.

To determine whether BWN personnel had exposures to dioxin comparable with those of ground troops and Brown Water Navy personnel, the Committee sought to determine whether there were plausible exposure pathways between releases of Agent Orange (specifically, the spraying of Agent Orange during the Operation Ranch Hand missions) and the three populations.

The Committee considered using a mathematical model to estimate likely dioxin concentrations based on Agent Orange inputs to the environment, but it found that input data and, importantly, data with which to evaluate model performance, were

not available. The Committee did make the assumption that Agent and dioxin would have entered waterways from riverbank spraying or as runoff from soil, particularly in the Mekong delta area that was heavily sprayed and that experienced frequent flooding. The amount entering the rivers would be highly diluted by river flows.

The concentration of dioxin in marine waters would be reduced to a great extent by dilution in river water and by dispersion in air, as well as by further dilution in the coastal waters. Given the total lack of monitoring information conducted during or shortly after the war and the variability and uncertainty in the fate and transport information on dioxin as it pertains to Vietnam, the Committee concluded that it is not possible to estimate the likely concentrations of dioxin in marine waters and air at the time of BWN deployment.

The Committee was also tasked with comparing exposures among three military populations that served in Vietnam: troops on the ground, Brown Water Navy personnel, and BWN personnel. Since the 1970s, IOM committees and other groups have attempted to reconstruct Vietnam veterans' potential exposure to Agent Orange and dioxin. Given the lack of exposure data on ground troops, the uncertainty of exposure models, and the limited knowledge about exposure among BWN veterans, the Committee concluded that it was not possible to make quantitative exposure comparisons among the three military populations of interest to the VA. Therefore, the Committee evaluated the *plausibility* of exposure of the three populations to Agent Orange and dioxin via various mechanisms and routes. Several plausible exposure pathways and routes of exposure to Agent Orange—associated dioxin in the three populations were identified. Plausible pathways and routes of exposure of BWN personnel include inhalation and dermal contact with aerosols from spraying operations that occurred at or near the coast when BWN ships were nearby, contact with marine water, and uses of potable water prepared from distilled marine water.

Large US Navy ships—such as aircraft carriers, cruisers, and destroyers—had their own distillation systems to produce potable-water and distribution systems that included water-treatment processes. The issue of distillation of marine water is important because the VAO committee for *Update 2008* found that BWN veterans could have been exposed to dioxin via contaminated potable water. This conclusion was based on an Australian Department of Veterans Affairs report that determined that Royal Australian Navy personnel who served offshore in Vietnam were exposed to Agent Orange—associated dioxin because the distillation systems aboard the ships were thought to be able to concentrate the dioxin in marine water into the potable water during the evaporative process. If Agent Orange—associated dioxin was present in the marine water, distilled potable water would be a plausible pathway of exposure for BWN veterans.

The 2011 committee concluded that, qualitatively, ground troops and Brown Water Navy veterans had more plausible pathways of exposure to Agent Orange—associated dioxin than did BWN veterans. But one exposure mechanism was specific to BWN ships: possible dioxin contamination of potable water from onboard distillation plants. However, without information on the dioxin concentrations in the marine feed water, it is impossible to determine whether BWN personnel were exposed to Agent Orange—associated dioxin via ingestion, dermal contact, or inhalation of potable water.

In the course of their work over 20 years, VAO committees have only found a single epidemiological finding specific to BWN veterans. Non-Hodgkin lymphoma was among the selected cancers addressed in CDC's 1990 case-control study assessing the role of Vietnam service as a risk factor. As shown in the table below from VAO *Update 2012*, BWN veterans have been found to have a higher incidence of non-Hodgkin lymphoma than other naval Vietnam veterans and had the highest, most significant risk across all branches of service for this adverse health outcome.

	Deployed Veterans	Odds Ratio (95% Confidence Interval)
US CDC Selected Cancers Study—case-control study of incidence of non-Hodgkin lymphoma (Dec 1, 1984–Nov 30, 1989) among US males born 1929–1953		
.....	99	1.5 (1.1–2.0)
Army Vietnam veterans .....	45	1.2 (0.8–1.8)
Marine Vietnam veterans .....	10	1.8 (0.8–4.3)
Air Force Vietnam veterans .....	12	1.0 (0.5–2.2)
Navy Vietnam veterans .....	32	1.9 (1.1–3.2)
Blue Water Navy Vietnam veterans .....	28	2.2 (1.2–3.9)

Although this does not address the question of dioxin exposure directly, this disease is considered a signature cancer of dioxin exposure, and so this health outcome alone is presumed by VA to be service-related for BWN veterans.

**Ultimately, the BWN committee, like the VAO committee for Update 2008, was unable to state with certainty that BWN personnel were or were not exposed to Agent Orange and its associated dioxin.** Owing to a lack of data on environmental concentrations of Agent Orange and Agent Orange—associated dioxin and an inability to reconstruct likely concentrations, as well as the dearth of information about relative exposures among the ground troops and Brown Water Navy personnel and BWN personnel, it is impossible to compare actual exposures across these three populations. Thus, the judgment of both these IOM committees was that **exposure of BWN Vietnam veterans to Agent Orange—associated dioxin cannot reasonably be determined and no future scientific research is likely to provide additional information that would resolve the issue.** Whether or not the claims of BWN veterans are to be processed like those of other Vietnam veterans is ultimately a policy decision.

In fact, the paucity of reliable information on toxic exposures that military personnel may experience has been a problem not just with respect to the BWN situation. One of the three tasks assigned by the Agent Orange Act for each health effect evaluated by a VAO committee was to determine “the increased risk of disease among those exposed to the herbicides during service in the Republic of Vietnam during the Vietnam era.” After several updates that remarked individually for each of the dozens of health outcomes reviewed that such risks could not be calculated due to the lack of exposure information, VAO committees eliminated the individual sections in favor of a generic statement at the beginning of their reports. (This is an example of a legislative requirement that remained inconsistent with reality, even after two more decades of scientific progress.) IOM committees assessing the possibility of health consequences in other veteran cohorts (e.g., Gulf War, Operation Iraqi Freedom, etc.) have lamented the lack of information collected during or immediately after a deployment that might shed light on the frequency, duration, and intensity of the exposures that veterans experienced. In the case of Agent Orange, great efforts have been made to gather exposure estimates retrospectively, such as gathering blood sample from Air Force veterans who served in Operation Ranch Hand and modeling an exposure opportunity index for individual veterans based on melding information abstracted from records of spray missions and troop movements. The results of these exposure estimation efforts have largely proven to be frustrating; at best they have provided a very rough estimate of potential exposure for a particular group of services members. In response to repeated recommendations from VAO and other IOM committees, DOD has been attempting to develop ways to avoid repetition of this situation going forward, but anticipating what should be collected in various circumstances is exceedingly challenging. For example, collection of biologic samples from each servicemember before and after deployment might be ideal for some exposures such as depleted uranium, but useless for those that leave no detectable marker in a person. Unfortunately, I do not expect data will become available from past conflicts that will permit more accurate reconstructions of those exposures nor that the actual exposure of individual servicemembers is ever likely to be known.

In addition to highlighting the difficulty of obtaining useful exposure data on veterans, the production of the series of VAO reports has been a constructive learning experience in other respects. Theoretically, the procedure set out in the Agent Orange Act and adopted in other instances when troops have possibly experienced toxic exposures might be expected to anticipate health problems that might ultimately prove to be more prevalent in a particular set of veterans. In practice, however, the approach of culling results from existing epidemiologic studies for adverse effects characteristic of the “suspect” toxic agent in a given situation and then periodically iterating the procedure for more recent findings has been fraught with challenges and conveyed a sense of delayed response to the veterans. The process is contentious and time-consuming, and the underlying rationale is somewhat circular. Although answers prior to the manifestation of harm in veterans would be desirable, a shift in emphasis toward monitoring the veterans themselves more closely might ultimately be more definitive. Unfortunately, an improved approach is not readily apparent, especially not one that would smoothly transition from established procedures.

Renewing the biennial AO updates may not be the optimal way to move forward, but extending it temporarily would at least ensure continuity to the monitoring of the health status of Vietnam veterans as they continue to age and a guaranty of periodic consideration of their situation. Production of one more VAO update after the one currently nearing release would provide time to re-evaluate the current

process of identifying and assessing possible service-associated health problems in veterans and their families for compensation. Before legislating changes for which the scientific basis may be premature, this could be an opportunity to define a process that would be more coherent across various military situations.

Thank you for asking me to join you today. If you would like additional clarification of any of the points I raised, I would be happy to answer your questions.

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Chairman ISAKSON. Thank you for your testimony.  
Commander Wells.

#### **STATEMENT OF JOHN WELLS, COMMANDER, U.S. NAVY, RETIRED, EXECUTIVE DIRECTOR, MILITARY VETERANS ADVOCACY, INC.**

Commander WELLS. Thank you, Mr. Chairman, Ranking Member Blumenthal. Thank you for the opportunity to come talk to you today on the theme of examining the impact of exposure to toxic chemicals on veterans and the VA's response. That gives rise to two questions; both deserve a straightforward answer.

First off is the impact of toxic research. Toxic exposure has been horrendous and the VA response has been disappointing, to say the least. Why do we need Senator Moran's bill and Senator Blumenthal's bill?

Because—and this whole Blue Water Navy situation is a good reason why, because this started not with the United States, not with the Navy, but with the Government of Australia who has toxic exposure research, does toxic exposure research, outreached, and found there was a 22 to 26 percent increase above the norm in cancer research among Navy veterans compared to the 11 to 13 percent above the norm for Army veterans, and I think it was 7 to 9 percent for Air Force veterans.

They discovered that. They are the ones who initiated the University of Queensland study that you have heard so much about on water distillation that actually showed that the distillation process did not remove the Agent Orange dioxin; it enriched it.

Mr. Chairman, Senators, I was a Navy engineer. I was chief engineer on three different ships. I spent 22 years in the Navy. Water was my business. We made it, we distilled it, we used it for the boilers, we used it for drinking, and the first thing I would like to mention is, the VA is sending you out on a wild goose chase with this policy that says you cannot make water close to shore.

What the policy actually said was that you should not make potable water close to shore unless it was necessary. That is the exact wording out of the water bill. It became necessary quite often in dealing with the tropics because people drank a lot of water, showered a lot, and used the water.

But more importantly, it does not matter because there was no restriction on making water for the boilers. They called it feed water, which was the same distillation system all the way down to the final distribution manifold.

So, if they sat in Da Nong Harbor and made water for the boilers, that entire system was contaminated; and if they went 12 miles, 20 miles, 100 miles out to sea, that system was still contaminated. The VA knows that, and yet, they continue to bring that excuse to you and it is—I cannot think of a nice polite word to say it, so I will not. OK?

Like the same thing, oh, we never sprayed over the harbors. Guys, we did spray over the harbors. There were defective spray nozzles. Senators, when I say guys I am talking generically. It is just a habit of mine. There were defective spray nozzles and sometimes they were dumping it making a landing. But again, it does not matter.

Now, it is a tough concept for the VA to understand. It was mixed with petroleum. Petroleum floats. It would wash into the rivers, plus we sprayed the river banks and would go out to sea. Again, another tough concept for the VA. Rivers run out to sea and it would get out into the harbors, out into the South China Sea.

How do we know this? The IOM, bless their hearts, did a good—some good work for us. They missed one thing. There was a report done by the Russians on Nha Trang Harbor, where they actually took bottom sediment samples in the Cau River downstream from where it was sprayed—your Committee staff has this report. They actually found that there was Agent Orange in the bottom sediment. All right?

Then they went out and they took transepts coming out from the river and found more Agent Orange throughout the coral, which killed the coral, by the way. That is why they went in, to figure out what was going on, and they found it still in the bottom sediment. So, it kind of proves the point that rivers run out to sea.

I have this, by the way, 5-minute temporally prepared statement which I have kind of thrown aside, so let us talk about one other thing, the original decision. They said, Well, it was not in the Republic of Vietnam, so therefore, we could not include the sea. Well, guess what? In 1954 in the Geneva Accords, the United States recognized Vietnamese sovereignty over the territorial seas.

They did the same thing in the 1973 peace agreement. The Joint Chiefs of Staff recognize the 12-mile limit. And that, by the way, is not off the mainland; that is off the outermost islands. You will see it on the chart on the written testimony.

So that whole opinion was in violation and we are flaunting international law. What is the problem with the VA? Well, you know, I met with Deputy Secretary Gibson twice. Good guy, you know, I like him a lot. But I basically said to him, Mr. Secretary, the people that you have studying this issue do not have any surface ship experience, do they? He admitted that was the case.

That is the problem. That is why we need the Toxic Research bill, to get people, along with their subject matter experts, and yes, it should be the VA. You do not take jobs away from them for bad behavior, and quite frankly, DOT and HHS is not much better. They just have not hit the headlines yet.

We need this bill. We need S. 901. We need S. 681. We need to restore the benefits to these people who earned them.

I am sorry, Mr. Chairman, I ran over time. Thank you again for allowing me to come here.

[The prepared statement of Commander Wells follows:]

PREPARED STATEMENT OF COMMANDER JOHN B. WELLS, USN (RETIRED), EXECUTIVE DIRECTOR, MILITARY-VETERANS ADVOCACY INC.

#### INTRODUCTION

Distinguished Committee Chairman Johnny Isakson, Ranking Member Richard Blumenthal and other Members of the Committee; thank you for the opportunity to respond to the Department of Veterans' Affairs on the Blue Water Navy Vietnam Veterans Act (S. 681).

#### AGENT ORANGE AND THE BLUE WATER NAVY

In the 1960's and the first part of the 1970's the United States sprayed over 12,000,000 gallons of a chemical laced with 2,3,7,8-Tetrachlorodibenzodioxin (TCDD) and nicknamed Agent Orange over southern Vietnam. This program, code named Operation Ranch Hand, was designed to defoliate areas providing cover to enemy forces. Spraying included coastal areas and the areas around rivers and streams that emptied into the South China Sea. By 1967, studies initiated by the United States government proved that Agent Orange caused cancer and birth defects. Similar incidence of cancer development and birth defects have been documented in members of the United States and Allied Armed Forces who served in and near Vietnam.

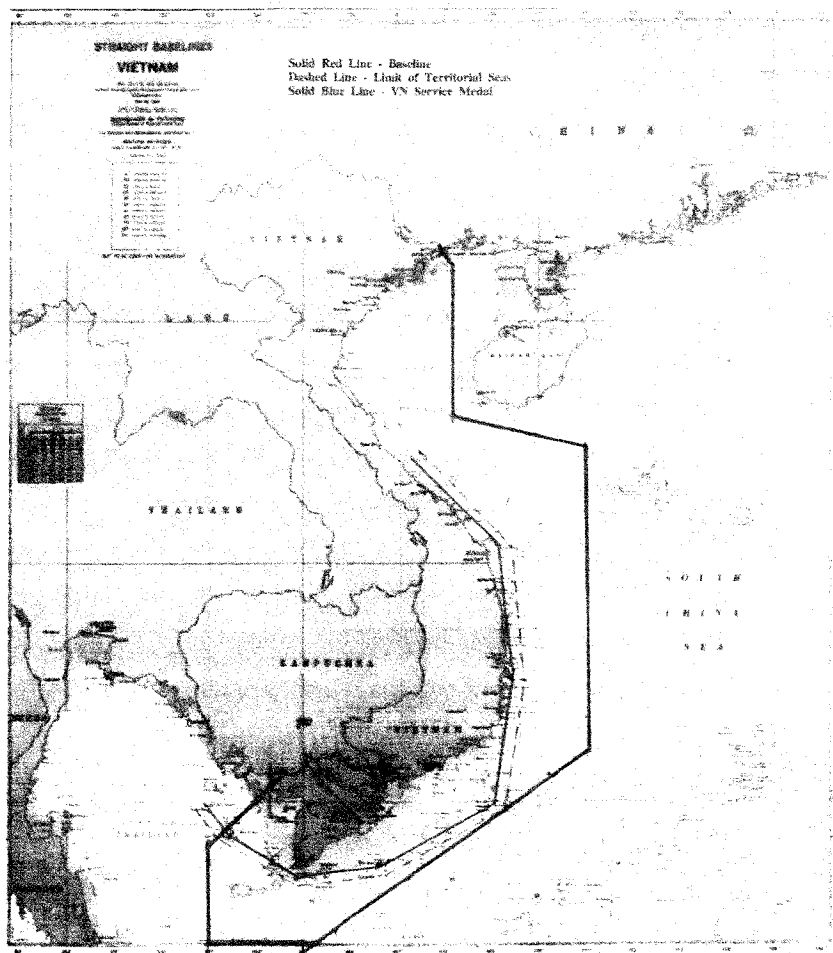
Throughout the war, the United States Navy provided support for combat operations ashore. This included air strikes and close air support, naval gunfire support, electronic intelligence, interdiction of enemy vessels and the insertion of supplies and troops ashore. Almost every such operation was conducted within the territorial seas.

The South China Sea is a fairly shallow body of water and the thirty fathom curve (a fathom is six feet) extends through much of the territorial seas. The gun ships would operate as close to shore as possible. The maximum effective range of the guns required most operations to occur within the territorial seas as documented in the attachment.<sup>1</sup> Often ships would operate in harbors or within the ten fathom curve to maximize their field of fire. The maximum range on shipboard guns (except the Battleship 16 inch turrets) required the ship to operate within the territorial seas in order to support forces ashore.

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<sup>1</sup>The red line on the chart is known as the base line. Vietnam uses the straight baseline method which intersects the outermost coastal islands. The dashed line is twelve nautical miles from the baseline and represents the territorial seas. The bold line marks the demarcation line for eligibility for the Vietnam Service Medal. Prior to 2002, the VA granted the presumption of exposure to any ship that crossed the bold line. S. 681 will restore the presumption only to a ship that crosses the dashed line.





It was common practice for the ships to anchor while providing gunfire support. Digital computers were not yet in use and the fire control systems used analog computers. By anchoring, the ship's crew was able to achieve a more stable fire control solution, since there was no need to factor in their own ship's course and speed. It was also common for ships to steam up and down the coast at high speeds to respond to call for fire missions, interdict enemy sampans and other operational requirements.

Small boat transfers were conducted quite close to land. Many replenishments via helicopter took place within the territorial seas. Small boat or assault craft landings of Marine forces always took place within the territorial seas. Many of these Marines re-embarked, bringing Agent Orange back aboard on themselves and their equipment. Additionally mail, equipment, and supplies staged in harbor areas were often sprayed before being transferred to the outlying ships. Embarking personnel would take boats or helicopters to ships operating in the outlying ships. Embarking personnel would take boats or helicopters to ships operating in the territorial seas. The Agent Orange would adhere to their shoes and clothing as well as to mail bags and other containers. It would then be tracked throughout the ship on the shoes of embarking personnel and the clothing of those handling mail and other supplies brought aboard. Their clothing was washed in a common laundry, contaminating the laundry equipment and the clothing of other sailors.

Flight operations from aircraft carriers often occurred outside of the territorial seas. As an example, Yankee station was outside of the territorial seas of the Republic of Vietnam. Dixie Station, however, was on the border of the territorial seas. Some carriers, especially in the South, entered the territorial seas while launching or recovering aircraft, conducting search and rescue operations and racing to meet disabled planes returning from combat. Aircraft carriers also entered the territorial seas for other operational reasons. Many times these planes flew through clouds of Agent Orange while conducting close air support missions. These planes were then washed down on the flight deck, exposing the flight deck crew to Agent Orange.

Mail for the ships positioned throughout the combat area was staged at air fields and docking facilities throughout South Vietnam. Mailbags were often in sprayed area and the Agent Orange not only contaminated the bag, but leached through to some of the mail. This mail was transported to the ships by carrier onboard delivery (COD) aircraft or helicopters. The boat or helicopter crews were exposed to the Agent Orange and carried it throughout the ship. Additionally, the mail itself was distributed to divisional mail petty officers and passed on to individual sailors.

#### AGENT ORANGE ACT OF 1991

In 1991, the Congress passed and President George H.W. Bush signed, the Agent Orange Act of 1991, Pub.L. 102-4, Feb. 6, 1991, 105 Stat. 11. This Federal law required VA to award benefits to a veteran who manifests a specified disease and who “during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975.”

In 1997 the VA General Counsel issued a precedential opinion excluding servicemembers who served offshore but not within the land borders of Vietnam. The opinion construed the phrase “served in the Republic of Vietnam” as defined in 38 U.S.C. § 101(29)(A) not to apply to servicemembers whose service was on ships and who did not serve within the borders of the Republic of Vietnam during a portion of the “Vietnam era.” The opinion stated that the definition of the phrase “service in the Republic of Vietnam” in the Agent Orange regulation, 38 CFR § 3.307(a)(6)(iii), “requires that an individual actually have been present within the boundaries of the Republic to be considered to have served there,” and that for purposes of both the Agent Orange regulation and section 101(29)(A), service “in the Republic of Vietnam” does not include service on ships that traversed the waters offshore of Vietnam absent the servicemember’s presence at some point on the landmass of Vietnam.”<sup>2</sup>

After lying dormant for a few years, this General Counsel opinion was incorporated into a policy change that was published in the *Federal Register* during the last days of the Clinton Administration.<sup>3</sup> The final rule was adopted in *Federal Register* in May of that year.<sup>4</sup> Comments by the VA concerning the exposure presumption recognized it for the “inland” waterways but not for offshore waters or other locations only if the conditions of service involved duty or visitation within the Republic of Vietnam.

Historically the VA’s Adjudication Manual, the M21-1 Manual, allowed the presumption to be extended to all veterans who had received the Vietnam service medal, in the absence of “contradictory evidence.” In a February 2002 revision to the M21-1 Manual, the VA incorporated the VA General Counsel Opinion and the May 2001 final rule and required a showing that the veteran has set foot on the land or entered an internal river or stream. This “boots on the ground” requirement is in effect today.

#### HYDROLOGICAL EFFECT

The Agent Orange that was sprayed over South Vietnam was mixed with petroleum. The mixture washed into the rivers and streams and discharged into the South China Sea. In addition, the riverbanks were sprayed continuously resulting in direct contamination of the rivers. The dirt and silt that washed into the river can be clearly seen exiting the rivers and entering the sea. This is called a discharge “plume” and in the Mekong River it is considerable. Although the Mekong has a smaller drainage area than other large rivers, it has approximately 85% of the sediment load of the Mississippi. In two weeks, the fresh water of the Mekong will travel several hundred kilometers.<sup>5</sup> Notably, the Agent Orange dioxin dumped off the

<sup>2</sup> VA Op. Gen. Counsel Prec. 27-97 (1997).

<sup>3</sup> 66 Fed.Reg. 2376 (January 11, 2001).

<sup>4</sup> 66 Fed. Reg. 23166.

<sup>5</sup> Chen, Liu et. al, *Signature of the Mekong River plume in the western South China, Sea revealed by radium isotopes*, Journal of Geophysical Research, Vol. 115, (Dec. 2010).

east coast of the United States was found in fish over one hundred nautical miles from shore.<sup>6</sup>

By coincidence, the baseline and territorial seas extend further from the mainland off the Mekong River. At its widest point off of the Mekong, the territorial seas extend to 90 nautical miles from the mainland. This was due to the location of the barrier islands owned by Vietnam. Given the more pronounced effect of the Mekong plume, however, the broader area off the Mekong Delta is appropriate. The force of the water in this area is greater than the river discharge in other parts of the country.

Eventually, the Agent Orange/petroleum mixture would emulsify and fall to the seabed. Evidence of Agent Orange impingement was found in the sea bed and coral of Nha Trang Harbor.<sup>7</sup> During the Vietnam War, the coastline, especially in the harbors and within the thirty fathom curve was a busy place with military and civilian shipping constantly entering and leaving the area in support of the war effort. Whenever ships anchored, the anchoring evolution would disturb the shallow seabed and churn up the bottom. Weighing anchor actually pulled up a small portion of the bottom. The propeller cavitation from military ships traveling at high speeds, especially within the ten fathom curve, impinged on the sea bottom. This caused the Agent Orange to constantly rise to the surface. The contaminated water was ingested into the ship's evaporation distillation system which was used to produce water for the boilers and potable drinking water. Navy ships within the South China Sea were constantly steaming through a sea of Agent Orange molecules.

#### THE AUSTRALIAN FACTOR AND THE DISTILLATION PROCESS

In August 1998 Dr. Keith Horsley of the Australian Department of Veterans Affairs met Dr. Jochen Mueller of the University of Queensland's National Research Centre for Environmental Toxicology (hereinafter NRCET) in Stockholm at the "Dioxin 1998" conference. Horsley shared a disturbing trend with Mueller. Australian VA studies showed a significant increase in Agent Orange related cancer incidence for sailors serving offshore over those who fought ashore. Based on that meeting, the Australian Department of Veterans Affairs commissioned NRCET to determine the cause of the elevated cancer incidence in Navy veterans.

In 2002, as the American Department of Veterans Affairs (VA) was beginning to deny the presumption of exposure to the United States Navy veterans, NRCET published the result of their study.<sup>8</sup> Their report noted that ships in the near shore marine waters collected water that was contaminated with the runoff from areas sprayed with Agent Orange. The evaporation distillation plants aboard the ships codistilled the dioxin and actually enriched its effects. As a result of this study, the Australian government began granting benefits to those who had served in an area within 185.2 kilometers (roughly 100 nautical miles) from the mainland of Vietnam.

#### INSTITUTE OF MEDICINE (IOM) REPORTS

In June 2008, Blue Water Navy representatives presented to the IOM's Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (Seventh Biennial Update) in San Antonio, Texas. That Committee report<sup>9</sup> accepted the proposition that veterans who served on ships off the coast of the Republic of Vietnam were exposed to Agent Orange and recommended that they not be excluded from the presumption of exposure. The Committee reviewed the Australian distillation report and confirmed its findings based on Henry's Law. The VA did not accept these recommendations. Instead then Secretary Shinseki ordered another IOM study. On May 3, 2010, Blue Water Navy representatives testified before the Institute of Medicine's Board on the Health of Special Populations in relation to the

<sup>6</sup>Belton, et. al, 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and 2,3,7,8-Tetrachlorodibenzo-p-Furan (TCDF), In Blue Crabs and American Lobsters from the New York Bight, New Jersey Department of Environmental Protection (November 12, 1988).

<sup>7</sup>Pavlov, et, al, *Present-Day State of Coral Reefs of Nha Trang Bay (Southern Vietnam) and Possible Reasons for the Disturbance of Habitats of Scleractinian Corals*, Russian Journal of Marine Biology, Vol. 30, No. 1 (2004).

<sup>8</sup>Mueller, J; Gaus, C, et. al. *Examination of The Potential Exposure of Royal Australian Navy (RAN) Personnel to Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans Via Drinking Water* (2002).

<sup>9</sup>IOM (Institute of Medicine). 2009. *Veterans and Agent Orange: Update 2008*. Washington, DC: The National Academies Press.

project “Blue Water Navy Vietnam Veterans and Agent Orange Exposure.”<sup>10</sup> They concluded:

(1) There was a plausible pathway for some amount of Agent Orange to have reached the South China Sea through drainage from the rivers and streams of South Vietnam as well as wind drift,

(2) The distillation plants aboard ships at the time which converted salt water to potable water did not remove the Agent Orange dioxin in the distillation process and enriched it by a factor of ten,

(3) Based on the lack of firm scientific data and the four decade passage of time, they could not specifically state that Agent Orange was present in the South China sea in the 1960’s and 1970’s,

(4) There was no more or less evidence to support its presence off the coast than there was to support its presence on land or in the internal waterways, and

(5) Regarding the decision to extend the presumption of exposure “given the lack of measurements taken during the war and the almost 40 years since the war, this will never be a matter of science but instead a matter of policy.”

Notably this report did not contradict the findings of the Seventh Biennial report that the Blue Water Navy personnel should not be excluded from the presumption of exposure.

The IOM’s Eighth Biennial Update recognized that “it is generally acknowledged that estuarine waters became contaminated with herbicides and dioxin as a result of shoreline spraying and runoff from spraying on land.”<sup>11</sup> The Ninth Biennial Update stated that “it is generally acknowledged that estuarine waters became contaminated with herbicides and dioxin as a result of shoreline spraying and runoff from spraying on land, particularly in heavily sprayed areas that experienced frequent flooding.”<sup>12</sup>

#### LAW OF THE SEA

The Agent Orange Act of 1991 provides that:

\* \* \* [A] veteran who, during active military, naval, or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, and has \* \* \* [Diabetes Mellitus (Type 2)] shall be presumed to have been exposed during such service to an herbicide agent containing dioxin \* \* \* unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during service.

38 U.S.C. § 1116(a)(3). (Emphasis added).

Vietnam claims a 12 mile territorial sea. The United States has consistently recognized Vietnamese sovereignty over the territorial seas of Vietnam. This recognition was expressly incorporated into the 1954 Geneva Accords Art. 4 which established the Republic of Vietnam. <https://www.mtholyoke.edu/acad/intrel/genevacc.htm> (last visited June 6, 2014). It was confirmed again in Art. 1 of the 1973 Paris Peace Treaty which ended the Vietnam War. [http://www.upa.pdx.edu/IMS/currentprojects/TAHv3/Content/PDFs/Paris Peace Accord 1973.pdf](http://www.upa.pdx.edu/IMS/currentprojects/TAHv3/Content/PDFs/Paris%20Peace%20Accord%201973.pdf) (last visited June 6, 2014). During the war, the United States recognized a 12 rather than a 3 mile limit. See, *The Joint Chiefs of Staff and the War in Vietnam 1960–1968*, Part II which can be found at [dtic.mil/doctrine/](http://dtic.mil/doctrine/) \* \* \* /jcsvietnam\_pt2.pdf at 358.

Vietnam claims as internal or inland waters the landward side of the baseline.<sup>13</sup> Additionally, bays such as Da Nang Harbor are considered part of inland waters and under international law are the sovereign territory of the Nation.<sup>14</sup>

The Secretary has recognized the presumption of exposure for those who served onboard ships who were in “inland” waters. The VA definition only includes inland rivers and does not cover the bays and harbors. Recently the Court of Appeals for Veterans Claims has rejected the VA’s exclusion of Da Nang Harbor from the definition of inland waters as irrational and not entitled to deference.<sup>15</sup> In this case, the Court reviewed the case of a veteran whose ship was anchored in Da Nang Harbor

<sup>10</sup> IOM (Institute of Medicine). 2011. *Blue Water Navy Vietnam Veterans and Agent Orange Exposure*. Washington, DC: The National Academies Press.

<sup>11</sup> IOM (Institute of Medicine). 2012. *Veterans and Agent Orange: Update 2010*. Washington, DC: The National Academies Press.

<sup>12</sup> IOM (Institute of Medicine). 2014. *Veterans and Agent Orange: Update 2012*. Washington, DC: The National Academies Press.

<sup>13</sup> United States Department of State Bureau of Intelligence and Research, *Limits in the Seas No. 99 Straight Baselines: Vietnam*. (1983).

<sup>14</sup> Convention on the Territorial Sea and Contiguous Zone, [1958] 15 U.S.T. 1607, T.I.A.S. No. 5639.

<sup>15</sup> *Gray v. McDonald*, No. 13–3339, 2015 WL 1843053 (Vet. App. Apr. 23, 2015).

but who did not set foot on land. Da Nang Harbor is surrounded on three sides by land and is considered inland waters under international law. The VA is now required to rationally specify what they consider to be inland waters.

COST OF S. 681

In October 2012, the Congressional Budget Office provided a preliminary estimate that the Blue Water Navy Vietnam Veterans Act would cost \$2.74 billion over ten years. The estimate is currently being recomputed based on information provided in a meeting between CBO and MVA. CBO originally used a gross exposure population of 229,000 people. This estimate was based on the number of veterans serving within the Vietnam Service Medal area. The Navy Historical and Heritage Command and the Congressional Research Service estimated that the number of sea service veterans serving inside the territorial seas was 174,000. Of the 713 ships deployed to Vietnam, however, there is documentation that 330 have entered the inland rivers. An MVA analysis provided to CBO estimates 83,000 sea service veterans are already covered under the existing inland waters provision. Of the remaining 91,000 veterans, 1100 are covered under a different provision of the law for Non-Hodgkins Lymphoma. MVA estimates another 10% of the crews actually set foot in Vietnam. This includes crew members who went ashore for conferences, to pick up supplies, equipment or mail and those who piloted and crewed the boats and/or the helicopters that operated between the ships and shore. Additionally, some personnel went ashore to see the doctor, the dentist, the chaplain or the lawyer. They called home. Shopped at the PX and departed on emergency leave or permanent change of station orders. Additionally, men reporting to the ship would often transit through Vietnam. Finally, a number of ships that were at anchorage would send a portion of the crew ashore for beach parties or liberty.

Although the official CBO report has not yet been issued, informal liaison indicates that the cost will be \$1 billion or less. The VA has estimated a ten year cost of \$4.4 billion but has not provided any data to support the conclusion. In a meeting between MVA officials and Deputy Secretary Sloan Gibson held on September 1, 2015, the VA estimate was discussed. MVA provided the Deputy Secretary several considerations which might affect the score. CBO remains confident that their \$1 billion or less estimate is correct.

Irrespective of what the cost is, MVA understands the need for a “pay for.” There will be some automatic offsets in both discretionary and mandatory spending. There will be a dollar for dollar offset for Navy veterans currently receiving a non-service-connected pension as well as those receiving non-service-connected medical treatment at Veterans Health Administration (VHA) facilities. Additionally, under concurrent receipt laws, some veterans who are also military retirees will have a dollar for dollar offset due to waiver of their Title 10 pension (less Federal tax liability).

As most Blue Water Navy veterans are in their 60’s they are Medicare eligible or will become Medicare eligible during the ten year cost cycle. In a previous report, the CBO has compared the cost of Medicare treatment with treatment at a VHA facility.<sup>16</sup> One of the key findings of this report was that private sector Medicare services would have cost about 21 percent more than services at a VHA facility. When dealing with retirees, the cost would be greater since Medicare only provides coverage for 80% of the cost. TRICARE for Life provides an additional 20% coverage for military retirees.

Should the cost of the bill approach \$1 billion, enactment of round downs would generate the required \$1 billion. Round downs were in use for two decades through 2013 until they were discontinued by then Chairman Bernie Sanders. Round downs require disability payments to be “rounded down” to the nearest dollar. This would result in a maximum loss of \$11.88 per veteran per year. The average loss per veteran would be \$.49 per month or \$5.88 per year. In a poll of almost 500 veterans, authorized by Military-Veterans Advocacy via the Blue Water Navy Awareness Facebook site, 90% of respondents supported the use of round downs. In a separate poll conducted by the Fleet Reserve Association of 1148 veterans revealed that 73.52% supported the use of round downs. Informal liaison with several veterans organizations found that these organizations will not oppose round downs if that is the only means available of funding S. 681.

While Military-Veterans Advocacy understands and appreciates the reluctance of some Senators to enact round downs, it is a small price to pay to restore earned benefits to tens of thousands of veterans. If the VA will not extend coverage to the

<sup>16</sup> Congressional Budget Office, *Comparing the Costs of the Veterans’ Health Care System With Private-Sector Costs* (December 2014).

bays and harbors and the territorial seas, Military-Veterans Advocacy urges the Committee to incorporate “round downs” as an offset.

#### IMPACT OF THE *GRAY V. MCDONALD* DECISION.

In April of this year the Court of Appeals for Veterans Claims decided *Gray v. McDonald*, 27 Vet. App. 313 (2015). In *Gray*, the Court found that the VA’s exclusion of bays and harbors was irrational and that their stated reasoning was arbitrary and capricious.

The time period for appealing the *Gray* decision has passed and the VA must now re-write their regulation. A draft regulation continued to exclude the bays and harbors and was used to deny at least two claims at the Board of Veterans Appeals. That regulation should not have been released and when called to the attention of the Deputy Secretary was quickly rescinded. The Board of Veterans Appeals has since been cautioned to not rely on that draft. Military-Veterans Advocacy estimates that if the bays and harbors, as defined by the 1958 Convention on the Territorial Seas and the Contiguous Zone, are included under current law, the actual cost of S. 681 will be reduced to \$100 million over ten years. If the VA extends the presumption to the territorial sea and beyond, the cost of the bill will be reduced to zero.

MVA officials met with VA Deputy Secretary Sloan Gibson on July 6, 2015 and September 18, 2015. Both meetings were productive and the Deputy Secretary seemed to be responsive to the presentations. Although no decision has been reached, MVA is heartened by the willingness of the Deputy Secretary to meet and listen to our position and we look forward to further consultations.

#### LITIGATION POST *GRAY*

The Blue Water Navy Vietnam Veterans Association had previously brought suit against the Secretary under the Administrative Procedures Act in the United States District Court for the District of Columbia. The court dismissed that case for lack of jurisdiction, after recognizing that the plight of the Blue Water Navy veterans was of concern. An appeal of that jurisdictional ruling is pending before the United States Court of Appeals for the District of Columbia.

The case of *Trumbauer v. MacDonald*, concerning Da Nang Harbor is now pending before the United States Court of Veterans Appeals. The Secretary’s brief is due October 5, 2015. Military-Veterans Advocacy has file an amicus brief in this case.

Another appeal, *Johnson v. MacDonald*, concerning Nha Trang Harbor is pending before the United States Court of Veterans Appeals. The initial brief is due October 19, 2015. Military-Veterans Advocacy is representing the veteran.

The case of *Crisp v. McDonald*, involving Da Nang Harbor, will be filed by Military-Veterans Advocacy on behalf of the veteran. This is one of the two cases where benefits were denied using the prematurely released draft regulation. That appeal must be filed before Thanksgiving. As a sign of good faith, MVA has not yet filed the appeal to give the VA an opportunity to resolve this issue amicably.

#### ADDITIONAL TOXIC EXPOSURE CONCERNS

Unfortunately, exposure to toxic substances is part of life in the military. Some of these exposures are not preventable, while some could be prevented. Irrespective of whether there is any fault or negligence, the important issue is how we take care of our veterans who are victims of this exposure.

The Agent Orange problem will not end with the Blue Water Navy and S. 681. Other ships that remained outside of the territorial seas were exposed through aircraft embarkation, contaminated personnel, equipment, mail etc. Veterans were exposed in Guam, Johnston Island, Thailand, Laos, Cambodia, Korea, Okinawa and even sites in the United States such as Gulfport Mississippi and Fort McClellan, Alabama.

Additionally, Agent Orange is not the only toxic exposure that requires the attention of the Congress. Asbestos contamination, radiation, the Camp Lejeune water tragedy, depleted uranium, petroleum fumes and open air burn pits have exposed hundreds of thousands of veterans to toxic materials just as dangerous as chemical weapons.

The Toxic Exposure Research Act, S. 901, is an important step to become proactive in the worked of toxic exposure. S. 901 will establish a center at an existing VA facility to research the diagnosis and treatment of health conditions of the biological children, grandchildren, or great-grandchildren of individuals exposed to toxic substances while serving as members of the Armed Forces that are related to such exposure. It further directs the VA to conduct a national outreach and education campaign directed toward members of the Armed Forces, veterans, and their

family members to communicate information on incidents of exposure of members of the Armed Forces to toxic substances, health conditions resulting from such exposure, and the potential long-term effects. It also requires DOD and the Department of Health and Human Services to assist the VA in implementing such campaign.

Congressman Tim Walz has also introduced H.R. 3423 to extend the Institute of Medicine's Biennial Agent Orange Committee for two years. It is expected to pass the House. Military-Veterans Advocacy recommends making this Committee a permanent entity and expanding its charter to include all toxic exposures. Working closely with the research facility envisioned by S. 901, the United States can take a proactive approach to quickly identify and treat veterans who have been exposed to toxic substances.

#### CONCLUSION

MVA continues to urge the adoption of S. 681. It will restore the earned benefits to tens of thousands of Navy veterans that were taken from them over a decade ago. This bill is supported by virtually all veterans organizations including the American Legion, Veterans of Foreign Wars, Vietnam Veterans of America, Reserve Officers Association, Fleet Reserve Association, Military Officers Association of America, Association of the U.S. Navy and other groups. We have always enjoyed the support of the Military Coalition. Enactment of this legislation is overdue and Military-Veterans Advocacy most strongly supports its passage.

MVA further supports the enactment of S. 901 and H.R. 3423 to require research into toxic exposure treatment for veterans and their descendants.

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#### SUPPLEMENTAL WRITTEN TESTIMONY OF JOHN B. WELLS, COMMANDER, USN (RETIRED), EXECUTIVE DIRECTOR, MILITARY-VETERANS ADVOCACY

Distinguished Committee Chairman Johnny Isakson, Ranking Member Richard Blumenthal and other Members of the Committee, thank you for the opportunity to supplement out testimony on the question of: "Examining the impact of exposure to toxic chemicals on veterans and the VA's response."

A response to the two questions is fairly straightforward. The impact of toxic exposure has been horrendous and the VA response has been disappointing to say the least.

Military-Veterans Advocacy has taken the lead in petitioning Congress for relief for the Blue Water Navy veterans who were exposed to Agent Orange through their potable water supply. Our Australian allies discovered that the evaporation distillation systems did not remove the Agent Orange dioxin during the distillation process—it actually enriched it. Instead of embracing the findings of our Allies, the VA attacked the study until its science was confirmed by two separate committees of the Institute of Medicine.

The Blue Water Navy situation was especially tragic since they were granted the presumption of exposure to Agent Orange prior to 2002. The VA General Counsel, in an opinion that flaunted international law and domestic policy interpreted the provisions of the Agent Orange Act requiring service "in the Republic of Vietnam" as meaning the land mass. Although the General Counsel used the terminology "inside the borders of Vietnam," the VA rejected the inclusion of bays harbors and the territorial seas. This is despite the fact that the United States recognized Vietnamese sovereignty over these waters in the 1954 Geneva Accords and the 1973 Paris Peace Treaty. It was an irrational decision and was partially invalidated by the Court of Appeals for Veterans Claims in the landmark case *Gray v. McDonald*. Military-Veterans Advocacy proudly filed an amicus brief in that case. The court listened. That appeal period has expired and the VA is re-writing their regulation. Due to other pending court decisions we expect and hope for a positive decision this Fall.

I do want to take a moment to thank the VA for finally agreeing to cover our brothers in arms who flew the C-123 aircraft after the war. Although not entirely satisfied with the effective date of the new regulation, I do believe it is a step in the right direction. I also want to mention to the Committee that I have met twice with VA Deputy Secretary Sloan Gibson and General Counsel Leigh Bradley on the Blue Water Navy issue. We have shown them how the Agent Orange, mixed with peritoneum, floated out to the bays harbors and territorial seas. They reviewed the report showing the presence of Agent Orange in Nha Trang Harbor. Hopefully, we have finally put to rest the old VA misrepresentation that the Agent Orange never left the landmass. Petroleum floats and rivers run out to sea. A tough concept maybe, but a truism none the less. Both Secretary Gibson and General Counsel Bradley were interested in this matter and I thank them for their courtesy.

Currently pending before this body is S. 681 which will restore the presumption of exposure to the territorial seas. Military Veterans Advocacy urges its enactment. In doing so, we are not unaware of the offset requirements of the Pay as You Go Act. We have identified sufficient funds to pay for the bill through round downs. This would require the disability checks for all veterans to be rounded down to the nearest dollar. The most it would cost a veteran is \$11.88 per year. The average cost is \$5.88 per veteran per year.

We understand and appreciate the resistance to round downs but the bottom line is that we need to ensure that these sick and disabled veterans are covered. Many are dying. Many had to leave the work force early. Some will leave their families destitute when they die. These veterans earned their benefits and we ask that you provide to provide them. While it is possible that the VA will grant the Blue Water Navy veterans partial or complete relief, we must be prepared to act if they do not. Accordingly, Military-Veteran Advocacy asks that you markup S. 681 and if the VA does not grant relief, send it to the floor using round downs as a pay for.

This will not resolve the toxic exposure problem. The Blue Water Navy is a large part of the problem but not the entire problem. Agent Orange was also used on Guam, Johnston Island and in Thailand Laos and Cambodia. In the United States Agent Orange was used in the Canal Zone, Fort McClellan and Gulfport MS. Other veterans have been exposed to PCBs, depleted uranium, petroleum and other toxic fumes, asbestos and the latest killer, open air burn pits.

Toxic exposure is a personal battle to me. My step-daughter Joanne has suffered birth defects due to Agent Orange. Her natural father was an Australian soldier fighting beside the United States in South Vietnam. She lives in Australia where she receives better services than she could get in the United States.

Personally, I have been exposed to asbestos after working for years in shipboard engineering spaces. Through the grace of God I have not developed symptoms. Many others have.

Open air burn pits have been called the Agent Orange of the 21st Century. Troops berthed downwind of these hellish pits were exposed to all types of toxic fumes. Worse, the Special Inspector General for Afghanistan Reconstruction found, even when incinerators were available at places like Camp Leatherneck in Afghanistan, open air burn pits were used. Military-Veterans Advocacy is currently representing a Lieutenant Commander who was sexually assaulted and then forced out of the Navy just shy of her retirement availability for raising the issue of open air burn pits at Camp Leatherneck. LCDR Celeste Santana is fighting with MVA to gain the retirement she lost for trying to do the right thing.

And of course, Sen Burr's comments on Camp LeJeune hit home. Like the Blue Water Navy the Marines and their dependents were poisoned via their drinking water.

The problem is that no one knows the extent of the damage caused by toxic exposure and whether or not it is generational. A central toxic exposure research facility, located at a state-of-the-art VA medical facility will allow the United States to assess the harm caused by these exposures and to reach out to those harmed. This will allow the VA to become proactive rather than reactive and stop this senseless adjudication on a case by case basis. As this program gains traction it will eliminate much of the backlog and ensure that those who truly need the benefits receive them. Military-Veterans Advocacy also recommends that the IOM Agent Orange Biennial Committee to be expanded to include all toxic exposures and to be made permanent.

As you know we are currently standing up a state-of-the-art facility in New Orleans. This new facility would be a fantastic site for the new facility S. 901 will authorized. Southeastern Louisiana has significant toxic exposure experience most recently with the BP Oil spill but also through our familiarity with "cancer alley." Universities such as Tulane and LSU will stand ready to work with the Federal Government to pursue the needed scientific research and evaluation. Our local industries would step forward to engage in private-public partnerships.

Perhaps the location of the site is a bit premature, but the identification of the problem is needed. This bill is needed to address the many toxic exposures that have placed our veterans in jeopardy. It is a form of chemical warfare that is even more egregious than Saddam Hussein, because most of the chemicals come from our own side.

Military-Veterans Advocacy appreciate the issues surrounding costs and are the first to admit that the Pay as You Go Act has been of tremendous assistance in arresting the trillion dollar deficits that were common place not that long ago. But today the Congress is funding several trillion dollars worth of expenditures. Taking care of veterans is part of the responsibility of raising a military force, that is Constitutionally mandated. Many of the things we spend Federal dollars on are not Constitutionally mandated. I do not want to get into specifics because, again, I do



not want to give rise to partisan disputes. But, we believe, as citizens, that Congress should fund their constitutional mandates first.

Military-Veterans Advocacy is a grass roots organization. We are all volunteers. No one gets paid. We come to you not to address a political agenda but to ask you to keep faith with the veterans. I have met many of you and I respect all of you. We recognize that you are good people trying to do the best job that you can. In the long run, S. 901 will help us to take care of our veterans and streamline the bloated and inefficient adjudication system. Accordingly, we urge you to adopt S. 681 and S. 901. If this requires a modification of the Pay As You Go Act, or an exception thereto, we ask you to take that action.

One final thought—the exposure to toxic substances does not just affect veterans. Agent Orange dumped off the coast of New Jersey was found in seafood several years later 150 miles off the New York bight. Agent Orange that is being rededicated today near Da Nang airport, with U.S. Taxpayers dollars I might add, is finding its way back into the areas where fish farms are located. And by the way, FDA does not test Vietnamese seafood for the dioxin. Next time you go out to eat, you might want to check where the seafood comes from. Just a thought.

Again thank you for allowing us to present our written and oral testimony and may God bless you, God bless the United States of America and God bless the military and veterans who have kept us safe.

Chairman ISAKSON. You did just fine.  
Mr. Rowan.

**STATEMENT OF JOHN ROWAN, NATIONAL PRESIDENT,  
VIETNAM VETERANS OF AMERICA**

Mr. ROWAN. Good morning still, Mr. Chairman.

Chairman ISAKSON. Barely.

Mr. ROWAN. Senator Blumenthal, Senator Moran, Senator Hirono, nice to meet you all. We have prepared testimony which we have submitted for the record. It is long and I am not going to get into all that. Let me just get to the heart of this.

First of all, I wish we had an Individual Longitudinal Exposure Record when I was going through Vietnam. It would have been very interesting. I was interested about the Senator talking about the folks sitting in Saigon.

Amazingly, how many of those people who sat in Saigon got exposed in all kinds of strange ways, not the least of which was the food they were eating every day or the water they were drinking every day. That stuff was pretty pervasive all over the place. Actually, I would guarantee you there were probably more Agent Orange exposure in the base camps and in the air bases than there was out in the bush.

We did not go out in the bush and try to defoliate the entire jungle, but we certainly defoliated everything that grew around the air bases and around the base camps. And I would contend that my exposure to Agent Orange came from the three showers I took a day in the 130 degree heat in June and July 1967.

I cannot believe it has been 48 years since I tromped through Vietnam. In the 48 years since I came home, they have done nothing in the VA to study anything related to Agent Orange exposure. Everything we do is we are always relying on somebody else's testing and somebody else's, you know, research, which is ridiculous.

The key to the 901 bill is the national center. That is the key. I contend that before they set the National Center for Post Traumatic Stress Disorder up, they did not know a whole hell of a lot about that either.

Yet, somehow that is now the quintessential place to go to get information on PTSD. I would like to see this new national center

be the place to go for research on toxic exposure for everyone going down to the children and grandchildren, maybe even great-grandchildren.

Unfortunately, Vietnam veterans are now old enough to have great-grandchildren and we see the causes. We have held town hall meetings in 42 States all over the country, about 200 or more. Over 2000-plus families have come to us telling us about all kinds of horrific situations with their progeny.

This research must be done, it just has to be done. Doctor, it is far from premature when it has been 50 years since we had been exposed and we do not have a clue about what is going on relating to anything that ever happened to us 50-plus years ago or 48 years ago.

VVA obviously supports the Blue Water issue. By the way, the Air Force did spray the ships. I had—one of the people who is very involved in our organization was an Air Force crew member on the Ranch Hand cruise. He said, if they had a lot of excess stuff in the plane when they were coming in for a landing and they had to dump it out to sea, they dumped it out to sea. If there was a Navy ship there, they believed it would be more fun to dump it on them. You know, a little inter-service rivalry there. So, God knows how many times that was done.

S. 2081, the new bill that Senator Blumenthal has brought up, is also important. Again, because of this lack of research over all of these years—I am now 70—it has taken so many years now to get information about what has happened to me and my colleagues who were Vietnam veterans 50 years ago. We are still finding out every day more and more and more as more and more research gets done.

So, it is very important that the process of the ILER, the 1991 bill continue and that this extender go on. You are optimistic going to 2030. I have no idea how many of my colleagues will still be around in 2030, but hopefully some of us will be. It is important. It is also important that 901 does not talk just about us, but it talks about the vets who came after us, the Persian Gulf War and the new wars.

Unfortunately, the more we learn about the new wars and with the exposures we have over there, I think the horrors are starting to show up already. And God knows what is going to happen 20 or 30 years from now. So, it is important that these bills get done.

We are also looking to do a new bill which will take the Agent Orange Act of 1991 and expand it to include the other wars, frankly, so that they will be coming along like us and get the same research done. Research is the key. It needs to be done, it has never been done, we need it done, and that is the bottom line.

You know, the other thing that concerns me is the CBO. I know Congress is having fun yelling at the VA bureaucracy, but the Congress has so little bureaucracy with the Congressional Budget Office which is giving us such a hard time about scoring which should be a simple bill. It is a research bill.

It is not determining what comes out of that research; it is a research bill. We need them to tell us how much it is going to cost to do the research, which we do not think is astronomical and is within the VA's existing budget. Thank you.

[The prepared statement of Mr. Rowan follows:]

PREPARED STATEMENT OF JOHN ROWAN, NATIONAL PRESIDENT/CEO,  
VIETNAM VETERANS OF AMERICA

Good morning, Chairman Isakson, Ranking Member Blumenthal, and other Senators on this distinguished and important committee. Vietnam Veterans of America (VVA) very much appreciates the opportunity to offer our comments concerning several bills affecting veterans that are up for your consideration. Please know that VVA appreciates the efforts of this Committee for the fine work you are doing on behalf of our Nation's veterans and our families.

I ask that you enter our full statement in the record, and I will briefly summarize the many of the important points of our statement.

*S. 901, Toxic Exposure Research Act of 2015*, introduced by Senator Jerry Moran (KS), and cosponsored by Richard Blumenthal (CT), would establish in the Department of Veterans Affairs a national center for research on the diagnosis and treatment of health conditions of the descendants of veterans exposed to toxic substances during service in the Armed Forces that are related to that exposure, to establish an advisory board on such health conditions, and for other purposes.

Among the invisible wounds of war are those brought home by troops, some of which may not manifest for years or even decades after the toxic exposure(s) while in military service to America. Most tragically, they may also pass on the effects of these toxic wounds to their progeny. No one can argue that our children and grandchildren should have these burdens visited on them. S. 901 is a multi-generational, multi-exposure bill. It provides a common vehicle for evaluating potential transgenerational effects of toxic exposures, from Camp Lejeune and Fort McClellan to Agent Orange in multiple locations, to the toxic plumes that sickened thousands of Gulf War veterans.

Toxins, such as TCDD and 2,4D dioxin, are believed to cause birth defects in children of military personnel who came into contact with these toxins—in-country troops during the Vietnam War, as well as the several thousand Reservists who rode in and maintained aircraft that had been used to transport the toxins. Because the various herbicides used in Vietnam were generally mixed with kerosene or JP-4 or an admixture of these two petroleum products so that they would cling to leaves better, the toxins became suspended at or near the surface as run-off in streams then into rivers and ultimately the South China Sea. For this reason, these chemicals were taken in by the desalination units on Navy ships to make potable water for the ship's boilers and other purposes. The desalination units had the perverse effect of concentrating the dioxin up to 30 times over. Navy personnel who served off the coast of Vietnam were exposed in this manner to even greater concentrations of these toxins than some of the ground personnel.

For Gulf War veterans, the exposure was to chemical weapons in Iraqi ammo dumps containing chemical and biological agents that were blown up by U.S. Forces at the end of the Gulf War; pesticides and burn pit smoke and possibly tainted vaccines and medicines ingested by troops in Afghanistan and Iraq may also have proved toxic.

This is a simple and straightforward proposal that will begin to address the needs of the progeny of every generation of veterans, because the health conditions seen in some are so heartbreaking to so many families who wonder, "Did my service cause my children (grandchildren) to suffer?" (Please see "Faces of Agent Orange" at <https://www.facebook.com/pages/Faces-of-Agent-Orange/187669911280144>)

VVA unequivocally supports S. 901.

Vietnam Veterans of America applauds the leadership of Senator Jerry Moran (KS), working with his colleague Senator Dick Blumenthal (CT), to construct and introduce this bipartisan bill to begin to properly address the situations outlined above.

Let me address a few important issues within this legislation:

First, the National Center envisioned in this bill belongs in the Department of Veterans Affairs. Doctrine, law, and precedent all dictate that, since the time of Abraham Lincoln, the concerns of veterans and their progeny are vested in this department. This Center for Excellence is a small entity that will functionally manage the activities to assist the Advisory Board in overseeing research.

Second, we agree with VA testimony earlier this year that the VA lacks the internal capability, capacity, and experience in the intergenerational research that will be required. The Advisory Board provides the VA Secretary with knowledge and scientific expertise to obtain research required by the legislation.

Third, we believe that the VA does have the capability, capacity, and experience to contract with any number of governmental, quasi-governmental, academic, scientific, or non-profit research organizations skilled in the research and administration outlined in the legislation; and further, such organizations would be able to achieve the intent of the legislation in a timely and cost-efficient way.

Fourth, the legislation gives the VA Secretary a strong, independent Advisory Board—of unpaid professionals—to provide diverse perspectives and technical expertise, assuring that the VA is provided with research-based outcomes that are respected and acknowledged by the military, our veterans and their descendants, and the scientific communities.

While VVA's exploration into the health complications of veterans exposed to toxic substances during their service has centered on the families of Vietnam veterans, the veterans of more recent wars also report health issues in their children. For this reason, VVA is calling for more research on the generational legacy of toxic exposures for all veterans who have been exposed while serving in the Armed Forces.

The Toxic Exposure Research Act of 2015, embodied in S. 901 and H.R. 1769, does just that. This Act directs the Secretary of the VA to select one VA Medical Center to serve as the National Center for the research and diagnosis into health conditions of descendants of individuals exposed to toxic substances while serving in the Armed Forces.

The Toxic Exposure Research Act now has 18 bi-partisan co-sponsors in the Senate and 97 bi-partisan cosponsors in the House. The Act also has significant support in the community. The support from the military and veterans community has been overwhelming. Both the Military Coalition (representing 31 military and veterans groups) and the National Military and Veterans Alliance (representing 32 military and veterans groups) have publicly endorsed the Act. The National Association of Counties passed a Resolution supporting the Act, as did the National Association of County Executives. The National Federation of Republican Women also recently passed a Resolution supporting this Act. (Please see the appendices to this statement.)

VVA agrees with VA testimony before the House Veterans' Affairs Subcommittee on Health on April 23, 2015, that this bill will be funded from the Research & Development line item of funding already accorded to VA. Frankly, the VA and the Department of Defense should have been funding good research in this area for the last forty years, so it is only fitting that part of this appropriation go to the Center of Excellence and to promising research proposals from within or without of the VA that will move us toward better understanding of the effects of these toxins or combinations of same.

It is time that the Congress takes this meaningful step toward justice for every generation's progeny. It is our hope that this legislation will be passed in 2015 so that the research can begin, and science can provide the answers so desperately needed by our veterans and their families.

*S. 681—Blue Water Navy Vietnam Veterans Act of 2015*, introduced by Senator Kirsten Gillibrand (NY)—This legislation would restore presumptive coverage for service-connected ills that afflict thousands of naval personnel who served in the Vietnam theatre of operations—coverage that the Department of Veterans Affairs abruptly ended in March 2002.

As noted on page 2 of this statement there is now no longer doubt of how the Navy personnel were exposed. Those who claim the toxin in the waters could not get out as far as the aircraft carriers should take a look at all of the highly radioactive debris from the Nuclear plant disaster in Japan that is now washing up on the western shores of the United States, having been carried more than 3,000 miles by the ocean currents.

During the Vietnam War, some 20 million gallons of "Agent Orange" and other toxic substances was sprayed to remove jungle foliage around fire bases and to deny the enemy the ability to grow or harvest crops. Toxic chemicals in these herbicides have been linked to several afflictions, including non-Hodgkin's Lymphoma, various cancers, Type II diabetes, and Parkinson's disease. The Agent Orange Act of 1991 empowered the VA Secretary to declare certain illnesses presumptive to exposure to Agent Orange, enabling veterans who served in Southeast Asia to receive health care and disability compensation for such health conditions.

In March 2002, however, the VA ceased awarding benefits to any of the 534,300 so-called blue water veterans, limiting those eligible under provisions of the Agent Orange Act only to "boots on the ground" Vietnam veterans.

Blue water veterans afflicted with any of the presumptive service-connected maladies that the VA acknowledges to be associated with exposure to Agent Orange ought not be excluded from receiving healthcare services and disability compensa-

tion for which their boots-on-the-ground brother and sister veterans are eligible. They, too, served honorably and well, and S. 681 introduced by Senator Gillibrand, will accord them benefits that they have earned.

VVA fully supports S. 681.

#### CAMP LEJEUNE

When President Obama signed into law in early August a bill 2012 enabling the Department of Veterans Affairs to provide health benefits to veterans and families diagnosed with diseases related to water contamination at Camp Lejeune, North Carolina, thanks in no small part to the energy and passion of Senator Richard Burr (NC), it culminated a more than fifteen-year struggle by families who believed something toxic at Lejeune had been behind the maladies that had taken the health—and the lives—of their loved ones.

“I think all Americans feel we have a moral, sacred duty toward our men and women in uniform,” President Obama said before signing the Honoring America’s Veterans and Caring for Camp Lejeune Families Act of 2012 in the Oval Office. The law covers those with conditions linked to water contamination that occurred at Camp Lejeune between 1957 and 1987.

The military is a collection of very dangerous occupations beyond the obvious of hostile fire from our Nation’s enemies. Therefore VA should operate as an occupational health care system that researches and diagnoses and treats maladies, illnesses, and conditions that may result from events or exposures that may have occurred during the veteran’s military service.

VVA thanks you for the opportunity to share our views on the vitally needed legislation that you are considering today. I will be pleased to answer any questions you might have.

Chairman ISAKSON. Thank you, Mr. Rowan.  
Master Sergeant Ensminger.

#### **STATEMENT OF JEROME ENSMINGER, MASTER SERGEANT, U.S. MARINE CORPS, RETIRED**

MSgt. ENSMINGER. Yes. Thank you and good afternoon, Mr. Chairman. My name is Jerry Ensminger. I served faithfully in the U.S. Marine Corps for nearly a quarter of a century. Of my four children who all were born during my military career, my daughter, Janey, was the only one to have been conceived, carried, or born while we lived aboard Marine Corps Base Camp Lejeune, NC, during the years of the water contamination.

When Janey was 6 years old, she was diagnosed with leukemia. She fought a valiant battle against her disease, but she eventually lost the war. She passed away on 24 September 1985 at the age of nine. That is correct. The 30th anniversary of her death was just five short painful days ago.

Janey is but one example of the multitude of tragedies suffered by former Camp Lejeune families who were exposed by this negligence. It was not until August 1997 that I became aware of the contaminated tap water within Camp Lejeune. The Department of the Navy and the U.S. Marine Corps did their very best to conceal the truth, but eventually that genie escaped its bottle.

At first, the Department of the Navy and Marine Corps reported that the contamination had reached only a few of the base’s water supply wells and they had immediately taken those wells off-line. There was absolutely no mention that the contaminants had reached our taps. When that fact was finally revealed, authorities with the Department of the Navy and Marine Corps publicly described the levels of contaminants that we were exposed to as minute, trace, small, or minuscule.

Many years later when the truth was finally revealed, Camp Lejeune's contaminated tap water is now known as the worst and largest tap water contamination incident of a major water system in the history of our Nation. I would say that is a far cry from our leaders' description of the contaminant levels as minute, trace, small, or minuscule. Would you not agree?

Mr. Chairman, I will now address my years of experiences with the Veterans Administration concerning the Camp Lejeune contamination issue. I would like to preface my detailed comments with this one statement which I feel encapsulates the VA/Camp Lejeune saga. Agents within the VA system have expended more effort, time, and money devising methods to deny Camp Lejeune victims their rightful benefits rather than providing them.

During our April 2010 Camp Lejeune community assistance panel meeting, Mr. Brad Flohr of the VBA, described in great detail the VA claims process which Camp Lejeune veterans needed to follow when submitting a claim for service-connected benefits. A court-recorded transcript is available on ATSDR's Web site of that meeting.

In 2013, the VA changed the rules and the requirements for Camp Lejeune claims. They had created an entire new step in the adjudication process for Camp Lejeune claims only. This step was called subject matter experts, or SMEs, who were selected from existing VA medical staff.

These so-called SMEs were neither scientifically or medically qualified to make the judgments or evaluations that their VA handlers were tasking them to make. The fact that the VA has veered out of their lane of providing health care and benefits and into areas of expertise for which they have no business venturing, raises some very troubling questions for me.

First and foremost, what is the motivation for VA staff in their incessant pursuit in denying veterans their benefits? Most of the VA staff involved in this VA/Lejeune debacle are or were retired military medical officers and their actions exhibit an almost maniacal desire to deny their fellow veterans their benefits.

Second, we need to determine if a Congressionally-approved standardized VA claims process exists which veterans can confidently follow when making a claim. Apparently, the current policy allows the VA to modify the claims process at their whim without Congressional oversight. This allows the VA to create insurmountable obstacles in the claims process for which most veterans do not have the knowledge or the finances to overcome.

In layman's terms, this amounts to authorizing a sports team to change the rules at any time they desire even during a game. How could anyone be successful in such a scenario? They cannot. For example, I have witnessed many Camp Lejeune veterans claims where these so-called VA SMEs completely ignored and even challenged the veterans' attending oncologists and other medical specialists.

Third, Mr. Chairman, in light of the VA's Camp Lejeune/SME fiasco, with their demonstrated desire to rely on outdated science and their refusal to recognize and utilize the most up-to-date scientific studies available, I must personally oppose Bill S. 901 in its current form.

S. 901 would not only be dangerous to the welfare of our veterans and their families, it would create a conflict of interest and a duplication of efforts which other existing Governmental agencies are tasked, staffed, and equipped to perform. I would be in favor of a modified S. 901 which would mandate one or a combination of these existing agencies to perform the tasks outlined in this bill.

In closing, Mr. Chairman, no other military toxic exposure incident in our history has been documented or studied as thoroughly as Camp Lejeune. Much of the science is already in and more is coming in future study reports. Many Camp Lejeune veterans and their families have waited, suffered, and yes, some even died waiting for this scientific evidence.

They should not need to wait any longer for the help that they deserve. We were all at Camp Lejeune to serve and protect our Nation. None of us ever expected nor deserved to be poisoned, especially here on our own shores.

Now, the VA representative you heard earlier brought up this VA app, exposure app that they have got. One of my colleagues just went to that app. The information on the Camp Lejeune page is incorrect. It is outdated science. It says TCE may cause kidney cancer. That app is like a computer; it is only good as what you put in it. Thank you.

[The prepared statement of Master Sergeant Ensminger follows:]

PREPARED STATEMENT OF JEROME M. ENSMINGER,  
MSGT U.S. MARINE CORPS (RET.)

**Testimony of:**  
**Jerome M. Ensminger**  
**61 Hunters Run**  
**Elizabethtown, NC 28337**  
**(910) 625-9711**

Good Morning,

My name is Jerry Ensminger, I served faithfully in the United States Marine Corps for nearly a quarter of a century. Of my four children, who were all born during my military career, my daughter Janey was the only one to have been conceived, carried, or born while we lived aboard Marine Corps Base, Camp Lejeune, NC during the years of contaminated water. When Janey was six (6) years old she was diagnosed with Leukemia, she fought a valiant battle against her disease but she eventually lost the war, she passed away on 24 September 1985 at the age of nine (9). That is correct, the 30<sup>th</sup> anniversary of her death was just five (5) short, painful days ago. Janey is but one example of the multitude of tragedies suffered by former Camp Lejeune families who were exposed by this negligence.

It wasn't until August of 1997 that I became aware of the contaminated tap water aboard Camp Lejeune. The Department of the Navy (DON) and the United States Marine Corps did their very best to conceal the truth, but eventually that genie escaped it's bottle. At first, the DON/USMC reported that the contamination had reach only a few of the base's water supply wells and they had immediately taken those wells off-line, there was absolutely no mention that the contaminants had reached our taps. When that fact was eventually revealed, authorities with the DON/USMC publicly described the levels of contaminants we were exposed to as



**“minute,” “trace,” “small,” or “miniscule.”** Many years later when the truth was finally revealed, Camp Lejeune’s contaminated tap water is now known as the worst and largest tap water contamination incident of a major water system in the history of our nation. I would say that that is a far cry from our leaders description of the contaminant levels as **“minute,” “trace,” “small,” or “miniscule,”** don’t you agree?

Mr. Chairman, I will now address my years of experiences with the Veterans’ Administration (VA) concerning the Camp Lejeune contamination issue. I would like to preface my detailed comments with this one statement which I feel capsulates the VA/Camp Lejeune saga. **“Agents within the VA system have expended more effort, time, and money devising methods to deny Camp Lejeune victims their rightful benefits rather than providing them!”** During our April 2010 Camp Lejeune, Community Assistance Panel (CAP) meeting Mr. Brad Flohr of the VBA described in great detail the VA claims process which Camp Lejeune veterans needed to follow when submitting a claim for service connected benefits. (court recorded transcript is available at [www.atsdr.cdc.gov](http://www.atsdr.cdc.gov) Camp Lejeune page).

In 2013 the VA changed the rules and the requirements for Camp Lejeune claims. They had created an entire new step in the adjudication process **for Camp Lejeune claims only**. This new step was called **“Subject Matter Experts” (SMEs)** who were selected from existing VA medical staff. These so-called SMEs were neither scientifically or medically qualified to make the judgments or evaluations their VA handlers were tasking them to make. The fact that the VA has veered out of their lane of providing healthcare and benefits and into areas of expertise of which they have no business venturing, raises some very troubling questions for me. First and foremost, what is the motivation for VA staff in their incessant pursuit in denying veterans’ their benefits? Most of

the VA staff involved in this VA/Lejeune debacle are or were retired military medical officers and their actions exhibit an almost maniacal desire to deny their fellow veterans their benefits. Secondly, we need to determine if a congressionally approved standardized VA claims process exists which veterans can confidently follow when making a claim. Apparently, the current policy allows the VA to modify the claims process at their whim without congressional oversight. This allows the VA to create insurmountable obstacles in the claims process for which most veterans don't have the knowledge or finances to overcome. In layman's terms this amounts to authorizing a sports team to change the rules at anytime they desire, even during a game. How could anyone be successful in such a scenerio? They Can't! For example, I have witnessed many Camp Lejeune veterans' claims where these so-called VA SMEs completely ignored and even challenged the the veterans' attending oncologists or other medical specialists! Thirdly Mr. Chairman, in light of the VA's Camp Lejeune SME fiasco, with their demonstrated desire to rely on outdated science and their refusal to recognize and utilize the most up to date scientific studies available, I must personally oppose the bill S.901. In it's current form, S.901 would not only be dangerous to the welfare of our veterans and their families, it would create a conflict of interest and a duplication of efforts which other existing governmental agencies are tasked, staffed and equipped to perform. I would be in favor of a modified S.901 which would mandate one or a combination of these existing agencies to perform the tasks outlined in this bill.

In closing Mr. Chairman, no other military toxic exposure incident in our history has been documented nor studied as thoroughly as Camp Lejeune. Much of the science is already in and more is coming in future study reports. Many Camp Lejeune veterans and their families have waited, suffered, and yes even died waiting for this scientific evidence, they shouldn't need to wait any longer for the help they deserve. We were all at Camp Lejeune to serve and protect our nation, none of us ever expected nor deserved to be poisoned...especially here on our own shores! Thank you.

Chairman ISAKSON. Without objection, we will include your comments about the VA app so they are part of the hearing record. I appreciate you bringing it forward and appreciate all of your testimony.

Mr. Ensminger, our hearts go out to you in the loss of your daughter. Our admiration goes to you for taking the time to come here and testify today in a very forthright and powerful way. I am pleased to tell you that Senator Burr, Senator Tillis, and this Committee are working hard on the Camp Lejeune situation.

I think progress is being made with what CDC has now come back with and hopefully we are finally going to bring a resolution, far too late, but a resolution nonetheless, on that case. I thank you very much for your testimony.

MSgt. ENSMINGER. Yes, sir.

Chairman ISAKSON. Dr. Ramos, I am going to say something and this is one of those yes or no things. You have got to tell me I have got it right or I have got it wrong.

Dr. RAMOS. Sure.

Chairman ISAKSON. I was taking notes fast, though I do not write well. You said the lack of monitoring—talking about the Blue Water Navy off of Vietnam, there is no quantitative science to support and it would be unlikely in the future that enough data could be gathered to determine whether or not exposure to Blue Water Navy would or would not have been a cause of cancer. Is that correct?

Dr. RAMOS. That is correct, quantitatively.

Chairman ISAKSON. Quantitatively. Dr. Ramos, you said it is strictly a question not of science, but of policy. Is that correct?

Dr. RAMOS. I did say that, correct.

Chairman ISAKSON. In other words, the Congress of the United States has to make the decision, are we going to award those benefits or not. Is that correct?

Dr. RAMOS. That is correct.

Chairman ISAKSON. There is not a scientific accumulation that could be anticipated because of the lack of collection that could certify it otherwise?

Dr. RAMOS. That is correct, sir.

Chairman ISAKSON. OK. Make a note of that back there. (I am talking to my staff.)

Senator BLUMENTHAL. I will make a note of it, too.

Chairman ISAKSON. Commander Wells, you were actually in the business of purifying water on a ship, is that right?

Commander WELLS. Yes, Senator. As an engineer on the ship, we had responsibility for the water distillation storage and distribution systems.

Chairman ISAKSON. This is a wild question but just out of curiosity, because I know this was 40 or 50 years ago, but just out of curiosity, when you were in the process of doing that, did it ever occur to you that you might be processing water that could be a problem for soldiers to ingest?

Commander WELLS. Not at all, sir. I mean, we had several criteria tests for purity, but that was based on what could possibly damage the boilers. As far as potable water, there was actually a lot less testing. The only thing we had to do was add chlorination

to it and do cultures sometimes to make sure there was no bacteriological contamination. As far as anything dealing with Agent Orange, nobody ever even thought of it, to be honest with you.

Chairman ISAKSON. I think, Dr. Ramos, a fair statement to say is at the time that he was processing that water, he said the science would not have been there to have told us that would have been a problem anyway. Is that correct?

Dr. RAMOS. No. Actually if the question had been asked, that experiment could have been done back then, but it just was not asked.

Chairman ISAKSON. So, that is your testimony, it was not asked and the experiments were not done?

Dr. RAMOS. That is correct. The experiments were actually completed post in reconstruction studies.

Chairman ISAKSON. Ms. Wedge, you have been sitting there patiently for a long time. Did you have anything you wanted to contribute to this conversation?

Ms. WEDGE. Only that I concur with everything Dr. Ramos said. I was a study director for the Blue Water Navy study and we looked very, very hard for any kind of sampling data that had been collected during or shortly after the war. We found none of it.

Chairman ISAKSON. It was nonexistent?

Ms. WEDGE. Nonexistent.

Chairman ISAKSON. So, you corroborate your boss's testimony?

Ms. WEDGE. I do.

Chairman ISAKSON. That is a smart employee. Thank you.  
Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman, and I want to thank all of you for being here today. I recognize that each of you has invested a substantial part of your personal and professional lives in this cause, and I particularly appreciate the passion and urgency that you bring to this debate. This nation needs to understand, with passion and urgency, the importance of this issue. It affects veterans of every era.

There may be new toxic substances and chemicals on the battlefield, but the principle is the same, that anybody in the vicinity of combat and many who may only be near it can be exposed to this type of insidious and pernicious chemical harm. And future generations bear the burden.

The passion and urgency of this issue has to be understood by our Nation. The research that would be authorized by the bill I have introduced is long overdue, and I say that almost as a completely inadequate characterization that is so often used around here in these halls, long overdue.

In this instance, it is almost criminally overdue because Congress and the country have simply chosen to look the other way. Whether it is Agent Orange or the chemicals in the water that you processed or the depleted uranium, pollutants from burn pits or nerve gas in unexploded ordnance found on the battlefields in Iraq and Afghanistan, our men and women in uniform have suffered, they continue to suffer, and their children and grandchildren will suffer.

So, I am grateful for your advocacy and for the personal pain that you have brought to this forum. As a parent and a citizen, I

want to thank each and every one of you; as a parent of two sons who have served and one now serving. I believe this Nation has an obligation that it has shirked unwisely and unforgivably, and I am determined that we will move more quickly with the measures that have been proposed to remedy this issue and with others that I intend to introduce.

I think the stories you have brought here are the most powerful part of your testimony. So, I would like to ask Mr. Rowan and the Vietnam Veterans of America, first thanking you for your support for this measure and your advocacy.

I understand that you have stories from families available that could be submitted for the record and that they would help to bolster support for S. 901 and some of the other measures we are considering. I would like to ask that those stories be submitted for the record.

Chairman ISAKSON. Without objection.

Mr. ROWAN. We will be happy to do so. It is called "Faces of Agent Orange." We have a whole compilation of all the—distillations of the hearings we have been holding over the years.

[VVA's *Faces of Agent Orange* stories follow:]



## JOE INGINO

By Jim Belshaw

“I never put two and two together,” Joe Inginio said.

It took a long time before he could do the math, and even after the metaphorical numbers in his Agent Orange equation added up, he still had difficulty talking about it. He does to this day.

“Talking about it now, you just get choked up,” he said. “Sometimes you want to punch something, you know? You just keep blaming yourself. I went to two Agent Orange town hall meetings and listened to other fathers talking about their children, and it just gets very emotional. It’s very difficult to listen to them and then to speak about your own children. It’s very hard.”

Joe served with the First Infantry Division in 1969-70. In 1971, he met the woman who was to be his wife. In 1972, they married. His wife would suffer through several miscarriages, but eventually they had six children, one of whom lived for only a brief time.

“My wife carried our daughter for seven months, and something happened that caused the baby to break away from her,” he said. “She lived for a day and a half, maybe two days. Then she died.”

One year later, another daughter,

Katie, was born. At birth, she was diagnosed with an “imperforate anus” and scoliosis. A specialist performed emergency surgery that saved her life; several months later a second surgery came. The physicians wanted to move her to another hospital for the initial surgery, the same hospital in which Joe’s daughter had died the year before. He couldn’t bring himself to take another infant through those hospital doors. A different hospital was chosen.

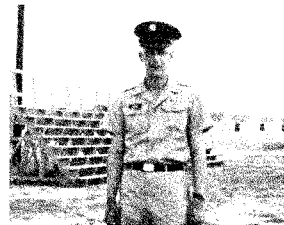
In the course of Katie’s hospitalizations, a physician showed Joe pictures of his daughter’s spine.

“It looked like a bag of bones,” he said. “It was just a whole thing of bones, and none of them were together or connected.”

Katie would not be the only Inginio child with long-standing health problems. All of his children have asthma; all of them showed learning disabilities in their school years. In later years, Katie would give the Inginos a grandson, but he, too, would be diagnosed with health issues — hearing difficulties and autism.

None of the birth defects or illnesses had shown up anywhere in Joe Inginio’s family medical history or his wife’s.

Joe had been going to the VA for many years. On one visit, after routine blood



Joe Inginio, 1968,  
Fort Mead, Maryland



The Inginio Children  
(1 to r, back to front):  
Annamarie, Joseph Jr.,  
Stephanie, Lisa, and Katie



## Faces of Agent Orange

### Joe Ingino's Story Continued...

work was done, his PSA numbers came back alarmingly high. He went to see a urologist. He was diagnosed with prostate cancer. It was the beginning of a long decline.

"I had prostate surgery," he said. "Then everything escalated — diabetes, coronary problems, hypertension, a pacemaker."

The residual issues often related to prostate surgery forced him to give up his job as a truck driver for a local municipality, but he was still active in VVA. He served as president of Chapter 82, Nassau County, Long Island. He attended conferences and town halls, listening to other veterans speak of Agent Orange-related issues for them and their families. He began to see his own health problems and his children's in a different way.

"I thought I was just another regular Vietnam vet with some PTSD problems and stuff," he said. "Then everything started weighing on me more with my children."

An insidious side effect — guilt — came with the knowledge of Agent Orange-related health issues. He blamed himself for his children's health problems.

"We blame ourselves," he said. "It bothered me immensely. It really bothered me. Just the idea of it."

A veterans' counselor told him of "false guilt," assuring him that he had done nothing wrong. His family supported him unequivocally, a unified stand for which he is appreciative. But he still speaks of guilt with difficulty.

"Everyone said, 'You didn't do anything wrong,' but it's still this guilt you have and you're blaming yourself," he said. "It might be 'false guilt,' but it

doesn't feel like it. We all feel like we brought this stuff to our families. I don't have to tell you how much it pisses us off."

He continues to be active in VVA, encouraging veterans to learn everything they can about Agent Orange and its effects. He said that in his time as president of Chapter 82 he frequently received calls from veterans' wives with questions about their husband's health after they read Agent Orange stories in *The VVA Veteran*.

He visits congressional offices whenever he can, often finding young aides who want to be helpful but who know little or nothing about Agent Orange. They've heard of it, but often just hearing of it is the extent of their knowledge.

"I just want Vietnam vets to please get checked out," he said. "Learn everything you can about Agent Orange. Go to the VA or find a service officer and ask questions. There's lots of information at VA hospitals. There are a lot of things the VVA has about Agent Orange. Vets need to get their stories out about children, and let the country know what they're going through, and what their children are going through."

*Significant numbers of Vietnam veterans have children and grandchildren with birth defects related to exposure to Agent Orange. To alert legislators and the media to this ongoing legacy of the war, we are seeking real stories about real people. If you wish to share your family's health struggles that you believe are due to Agent Orange/dioxin, send an email to [mporter@vva.org](mailto:mporter@vva.org) or call 301-585-4000, Ext. 146.*

### Many Thanks To Our Sponsors

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## The Hansens

By Jim Belshaw

Karl Hansen's son, Adam, had been dead five years before questions about Agent Orange arose. Until then, Karl had not given the herbicide a thought in all the years that followed his Vietnam tour of duty. But after Adam's death, he found himself reconsidering not only the tragedy that befell his son, but health problems faced by other of his children as well.

Burkitt's lymphoma, a form of cancer so rare that only 300 cases a year are reported in the United States, led to Adam's death. He was 25 years old. The exceptionally aggressive disease killed him so quickly that Karl had little time to investigate the rare cancer's mystery. After Adam died, Karl needed answers and began researching Burkitt's. It was in the course of that search that Agent Orange unexpectedly entered the discussion.

Karl served with the Army in Vietnam in 1968-69. He remembered the spraying, but thought little of it, even when he was in Vietnam.

"I didn't have a clue," he said. "I knew there was spraying going on, but I didn't know if it was for mosquitoes or what it was for. I didn't think about it at all when I was there. What caught my attention was the stuff I saw on the Internet and after I joined VVA and saw some of the articles on Agent Orange being written."

Karl and his wife had six children

— four daughters, then Adam, then another daughter, a birth order that was something of a family joke, because it was exactly the opposite of Karl's parents. His father, a Navy veteran, also had six children. But first came four boys, then a girl, then a boy.

Karl said Adam was a "wonderful kid." Neither a smoker or drinker, he steered clear of the trouble a boy might find growing up. He was a good student and built a reputation as a hard worker in every job he took on. At 25, he was a newlywed with a good job in Provo, Utah, managing the care of model homes for one of Utah's largest home builders. He was in his last semester at Brigham Young University and due to graduate. Karl was so proud of his son, who would be the first in the family to graduate from college.

Around Mother's Day 2005, Karl heard that Adam had been sick. He went to a doctor who diagnosed some kind of parasite.

But the problem persisted. Adam's stomach became distended, and on a visit to one of his sisters, she was shocked at the sight.

"When she saw him, she told him something was very wrong," Karl said. "She said, 'You've got something growing in you.'"

He went to a doctor again, and this time



*Karl Hansen in Vietnam, 1968*



*Adam loved the outdoors*



*Adam with Mom and Dad; despite all, he fought with a smile*





## Faces of

### The Hansons' Story Continued...

he was hospitalized immediately. A colonoscopy showed cancer in his colon. The physician identified it as Burkitt's.

"I had never heard of it until I found out about Adam," Karl said.

Treatment was difficult. In the first round of chemo, Adam had a pulmonary embolism. The hospital "crash cart" kept him alive, and after a week in the ICU, he showed signs of recovery. Then came the second round of chemotherapy. It would be even worse. Severe neurological problems prevented him from performing the simplest movements. His eyes began to move in different directions, and the neurologist didn't know what was wrong. After two weeks, a nurse from a different department asked if anyone had tested for toxins in his blood. A test showed an ammonia level several hundred times higher than normal.

"There was nothing they could do for him," Karl said. "We had to let him go."

After Adam's death, Karl began the search for answers. In that search, he came across Agent Orange for the first time.

"I ran across something about someone's son who had died of Burkitt's, and a doctor told him several first-born sons of Vietnam veterans had died of it," Karl said. "The doctor wouldn't document it. So I don't know if it was someone shooting off his mouth, or if there was something to it. But it made me start thinking more about Agent Orange. I remembered at the base camps and firebases I spent time at that there was no foliage in the immediate area. There was a lot of dirt, but no foliage."

In *The VVA Veteran*, he read about the daughter of a Vietnam veteran who suffered from Raynaud's disease, which

causes discoloration of the fingers and toes, primarily. It is believed the disease decreases the blood supply to the affected areas.

Two of Karl Hansen's daughters suffer from Raynaud's. One has had it for several years; the second was diagnosed only months ago.

"She was at her daughter's soccer game, and it was rainy and cold," he said. "She took off her glove, and her fingers were white, almost to the knuckle."

Karl has been concerned about tremors in his hands. He worries that the coming years will make them only worse. He has another worry as well: One of his daughters has suffered from similar tremors for several years.

No one in his family or in his wife's family has any history of any of the diseases that have afflicted Karl and his children.

"What makes me sick is when I think about Agent Orange possibly having something to do with this and what it did to my kids," he said. "It just tears you up. I don't know if any of this will be passed on to my grandchildren. I have 12 grandchildren. I think there's a very good chance that all of this is connected to Agent Orange."

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## DAN GRIFFIN

By Jim Belshaw

In any conversation about the effects of Agent Orange on the children of Vietnam veterans, Dan Griffin's daughters create a calm demand that he listen:

He has two daughters – Kim, born while he was in Vietnam, and Shannon, born after his return. Kim is healthy, Shannon is not. She has been diagnosed well into adulthood with numerous blood-borne diseases and dysfunctions of her autoimmune system. One of these diseases has so disfigured her face, she cannot bring herself to leave her home. Her nose has virtually disappeared.

"She's a prisoner of war," Dan said. "She's a POW of the Vietnam War."

She adamantly refused to have her picture included in this story until persuaded to do so by her father.

"She was a beautiful young woman," he said. "To me, she's still beautiful, and I love her. But I hope she never sees this story or these pictures."

He said Agent Orange came to mind immediately when Shannon began having health problems.

"I made the Agent Orange connection pretty much as soon as she started having problems," he said. "One born while I was in Vietnam, and she's fine; the second, born after Vietnam, and she's not fine. It wasn't too hard for me to come up with a connection there."

He has his own Agent Orange connection in a melanoma removed from his back. He served in Vietnam from 1968-69 as an infantryman with the 1st Cav. He has no memory of being sprayed directly, but there is no doubt he spent a year in an area that saw spraying.

"In the early years, you had to prove you were sprayed, but you no longer have to do that," he said. "You have to prove only that you were in Vietnam. They sent me a map with the locations where my unit operated. They had an overlay that showed where Agent Orange was sprayed. Three of them were right where we were."



Dan Griffin, 1968



Dan Griffin, 1992



*The Griffin's story continued...*

He received a check from the Agent Orange settlement.

"I got my \$600 check," he said. "Did you know you get the same amount if you die?"

His battle now is on behalf of Shannon. She is 38 years old. Her quality of life is poor. She is always tired, always beset with fevers. Her father said she's been diagnosed with Hansen's (leprosy); Sjogren's syndrome (an autoimmune disease); Mitral valve prolapse (when the valve between the heart's left upper chamber and the left lower chamber doesn't close properly); Raynaud's disease (discoloration of the extremities caused by blood vessel spasms, resulting in cold and lack of sensation in the fingers and toes); and "saddle nose."

"She's gone to just about every specialist there is, and most of them say, 'Well, we're just not sure,'" he said. "One disease is disintegrating the cartilage in the hip, ankle, heart, and nose. The nose is gone. Basically, she doesn't have a nose. And not just because I'm her father, but she was a very attractive woman, and now she won't leave her home."

They cannot get insurance coverage for the damage to the nose, because insurance companies say the surgery is "cosmetic."

He has had no discussion with the VA about his daughter, even though he is more than familiar with the theory that says he should put in a claim and wait to see if it is granted.

"You look at the diseases they're compensating veterans for, and it's a long list," he said. "It's common now to see guys making claims connected to Agent Orange. I've been to a lot of funerals, too. A lot of guys I know died with an Agent Orange-related disease."

But they don't grant compensation to the children of male veterans. He has been involved in veterans' affairs for many years and is the executive director of VVA Chapter #9 in Westchester. His experience in veterans' affairs leaves him doubtful about any forthcoming help from the VA for the children of Vietnam veterans.

Like so many other veterans with children suffering from exotic diseases with no family history to connect them with such diseases, Dan Griffin says the VA must conduct studies on the diseases and Agent Orange. He does not expect that to happen until the VA culture is changed.

He says what is needed is some kind of collection point, a telephone number or e-mail address, where veterans could call to report birth-defect problems. He points to the importance of knowing the numbers of children and grandchildren in the veterans community who suffer from diseases and birth defects likely connected to Agent Orange.

"The whole mentality at the VA is Save Money," he said. "They're slowly taking care of us veterans, but they're not doing anything for children with birth defects, except for spina bifida. I thought maybe after they did that it would open the door, but there has been nothing added for children. And it's been years now."

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*Faces of*





## SHEILA CLEMENT

By Linda May

Sheila Clement looks at things like any other nurse would, and she would like to see medical science focus on what it can do for the children and grandchildren of Vietnam veterans.

She was married for about two years to Jerry Fox, whom she called "JD." He was in the U.S. Army and served in Vietnam 1968-69, at the same time as his brother, Rick, now 62, who was a Marine.

JD died in 1994 at the age of 41.

"JD's brother is dying, as we speak," she said.

Sheila and JD married after his tour of duty.

"I knew them a long time. JD and Rick were happy, normal teenagers. They'd go fishing together and things were fine. But they came back very different," she said. "My ex-husband quickly disintegrated after he came back from Vietnam. He was bloated-looking. From the chest down, he was huge. He looked 20 years older."

Her belief is that an herbicide like Agent Orange affected his internal organs.

"He was only a teenager when he went over. It gradually ate away at him," she said. "When he died, they figured his heart just exploded."

After a domestic violence episode, JD and Sheila divorced, but she is not buying the assumption that Post-traumatic Stress Disorder is the only cause of antisocial behavior in some Vietnam veterans.

"I knew JD and his brother from teenagers. They weren't like that back then. Plus, Vietnam veterans were not all on the front line, but that didn't mean they were not exposed to Agent Orange," she said. "They could have been working in the motor pool and not on the DMZ. Some have no horror stories, but so many of them came back acting the same as those that did, looking older than they are."

JD's brother performed a supply job in the Marine Corps, and now he is only middle-aged, but he is deathly ill.

Sheila has a friend upstate from her Michigan home who surrounds himself with Vietnam paraphernalia and speaks in phrases he learned in-country. He neglects his health and keeps to himself.

"I'm from a tiny lakeshore town, and I personally know at least five people who are messed up or who died from this chemical. I would like to know what's going on inside of these people."

It was at her friend's home that she picked up a copy of *The VIA Veteran*



Rick Fox and family.



The Fox brothers before Vietnam:  
Jerry "JD" Fox (front, center);  
Rick Fox (back row, right).



## Faces of AGENT ORANGE

### SHEILA CLEMENT's Story Continued...

magazine and read about Agent Orange and saw the number of obituaries of Vietnam veterans in their 60s.

Suddenly her list of five names seemed to grow exponentially.

"Looking at this magazine, all the emotions came back. I was sitting there thinking, here I go again. You think you put it away, and then something happens that keeps it coming back. Was I meant to read this?" she said.

Sheila (who retired from nursing because of fibromyalgia) and JD had one child, a son who is now 38 years old. He has two daughters, who are 11 and 14. Her son has had bouts with Bell's palsy, and he has increasing pain in his joints and muscles.

Sheila is proud of his children, her A-student granddaughters. But her eldest granddaughter was born with "lazy eye" and had to wear special eyeglasses. She took seizure medication for a time and has been referred to a lung specialist for intermittent fluctuations in her oxygen level. She was subjected to multiple EEGs and underwent sleep studies. Sheila's younger granddaughter was born with galactosemia, a rare genetic metabolic disorder severely affecting the body's ability to break down enzymes. If left untreated, galactosemia can cause brain damage, an enlarged liver, or kidney failure and the child can die. It is likely to be passed on to her children. Her younger granddaughter also has severe allergies.

"Are they doing genetic testing? Are they doing blood tests? When did that gene kick in and mutate? My son's blood work showed that he passed it on," she said.

Sheila thinks that miraculous things can happen now because of gene therapy, and she would like to see a massive registry of blood and tissue samples and the results put into a research databank.

"Collect it and log it until something pops up in the research," she said. "Figure out these connections. It's not far-fetched. It's also not about compensation; it's about relief. Just do the testing and the studies. It's possible now to alter the course, to manipulate a gene, to fix it or stop something from happening. There has been enough heartache already. We need to stop this now. We can't afford to have it affect our future generations. With the medical advances of today, we can deal with it. The time has come to stand up and admit what has happened. We can no longer brush this under the rug."

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## Shelia and Henry Snyder

By Jim Belshaw

Shelia Snyder asks a straightforward, troubling question: "Why do I have to worry about my grandkids because their grandfather served our country? There is nothing to justify that."

Her husband, Henry, served in Vietnam with the Army in 1968-69. He is diabetic and the recipient of a VA-approved claim related to Agent Orange. One of her grandchildren, born with multiple and devastating birth defects, died a few months after her first birthday. When the founder of the Agent Orange Quilt of Tears, Jennie LeFevre, died in 2004, Shelia and Henry took over, travelling with the Quilt, and sharing information about the horrific effects of Agent Orange.

It wasn't until the late 1990s that Shelia became aware of the Agent Orange issues veterans and their families had been dealing with for many years. Her husband, Henry, had met a Vietnam veteran, Jack Griffin, in an online chat room and over time forged a close friendship. Because the chat line was voice, not typed, Shelia often picked up bits of the conversation while at home with Henry.

Both men came from Michigan, and there was much talk about hunting and fishing and other things they had in common. One day one of those commonalities caught Shelia's ear.

"Jack told Henry about Agent Orange," she said. "At that time Henry had become

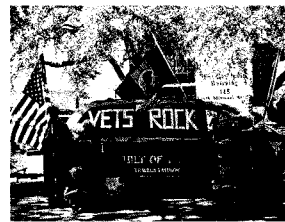
diabetic. He used to drive a truck for a living, but once he became diabetic, he had to stop. Jack told him he needed to make a claim with the VA. He was just on him and on him and on him about having that checked out. Finally, Henry got tired of hearing Jack push, and he went to the VA."

Henry put in a claim for diabetes. Shelia called it a "lifesaver," because it allowed both of them to educate themselves about Agent Orange. Jack advised him on what to do and how to handle the VA. When Henry's claim finally was approved, though, the celebration was bittersweet.

Jack Griffin had serious health issues of his own — non-Hodgkin's lymphoma.

"Jack died of Agent Orange-related cancer almost to the day that Henry got the letter from the VA saying that his claim had been approved," Shelia said. "Henry went into a terrible slump when Jack died. It was like Jack was part of our family. His voice was in our house every day. It was very strange for me. Henry and I had lost parents together, and I never saw the kind of reaction I was getting after Jack passed away."

About the same time, two people came into Shelia Snyder's life that would have great influence over the years to come. One was Fred Wilcox, who had written a book, *Waiting for an Army to Die: the Tragedy of Agent Orange*. The book tells the stories of veterans and their families and the legacy of Agent Orange that





## Faces of

### Shelia and Henry Snyder's Story Continued...

afflicted them.

The second person was Jennie LeFevre, the widow of a Vietnam veteran and the creator of the Agent Orange Quilt of Tears. (On the Web it is at [www.agentorangequiltoftears.com](http://www.agentorangequiltoftears.com))

After the death of Jack Griffin, Shelia read about the Quilt of Tears traveling to a town not far from the Snyder's Florida home. She thought she might get ideas for making a quilt in remembrance of Jack. It took some doing on her part to talk Henry into going, but he finally acquiesced.

Shelia took the Wilcox book with her. When she finally got a chance to speak with Jennie LeFevre, Jennie was busy with other people. Shelia and Henry waited on the periphery. Then Jennie noticed the book in Shelia's hands.

"She looked at my book and said, 'Oh, my God, you have that book! I have the same book!'" Shelia said.

It was not the only coincidence.

"It was really weird, because she thumbed through it, and she had started to tell me how she had highlighted certain areas of the book," Shelia said. "I opened my copy of it, and I had done exactly the same thing. It was strange."

The beginnings of their friendship "broke the ice" with Henry, and he started coming out of the depression that had come with the death of Jack Griffin. Shelia found herself working with Jennie on the Quilt project, an effort she found to have great importance.

"Now I feel like the Quilt is Henry's PTSD therapy," she said.

In 2004, their granddaughter, Hope Nicole, was born. Before the birth, the family faced a grim prognosis. Tests showed that the infant had no brain, only

a brain stem. Babies such as this are expected to die at or shortly after birth. Hope Nicole would live more than a year.

While speaking with a hospital counselor, Shelia mentioned Agent Orange. In an online retelling of the story, Shelia wrote: "I brought up the subject of dioxin/ Agent Orange ... but she honestly didn't seem to have a clue about dioxin. After I explained some about Agent Orange, the counselor dismissed the subject quite quickly, which I didn't really like, but I was becoming too overwhelmed with the options and decisions that were being explained to my son and pregnant daughter-in-law."

The possible Agent Orange connections to birth defects in the children and grandchildren of Vietnam veterans is something Shelia Snyder does not want to see so easily dismissed.

"I want to prevent these things from happening in the future," she said. "I don't want to see this happening to generation after generation. The VA needs to pay attention to birth defects. There's research and information others have done. Legitimate scientists a whole lot smarter than I am have done a lot of work on these questions. The VA needs to pay attention to these people. All of this information has been there for years, and they just keep shoving it under the carpet. They pay no attention to it."

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## The Morrises

By Jim Belshaw

**B**obbie Morris sells cars in Pennsylvania, car sales being something that runs in the family. Her Vietnam veteran husband, Philip, worked in the car business for 37 years. When Bobbie first sits down with a customer, she likes to "break down the walls," make the customer comfortable, and create an atmosphere in which conversation is open and easy-going. It helps her to sell a car. It helps some customers in ways she hadn't dreamed.

"You have no idea what happens when I talk to some of the men," she said.

They talk to her about things they don't discuss with men who sell cars. When the sales associate is a man, it's all business. Everyone in the cubicle is there to discuss buying a car—interest rates, down payments, monthly payments. It's all business.

When the sales associate is Bobbie, other matters come up.

"There was one guy, he came in to buy a utility vehicle," she said. "So we got to talking, and all of a sudden, he's telling me about problems he's having with his legs and with his diabetes."

When the conversations turn this way, there is a question she always asks: "Were you in Vietnam?"

The man with diabetes said yes, he had been in Vietnam. She steered the talk to Agent Orange and told the customer where he could find more information on it and how he could get tested to see if he qualified for VA benefits.

He called the next day and said he was coming in to talk about the payment schedule on the vehicle. His wife came with him. She pulled Bobbie aside.

Bobbie recalls what the man's wife said: "She said, 'Do you know why he came back? It wasn't about the payment. It was because you talked to him about Vietnam.'"

He wound up joining VVA Chapter 862, to which Bobbie's husband belongs.

Bobbie said the "light bulb" on Agent Orange came on a year ago at the AVVA Leadership Conference in Louisville, Kentucky, where speakers at a town hall meeting spoke about Agent Orange and its effects, not only on veterans, but on their children and grandchildren. Veterans spoke, too, telling of health problems suffered by their children.

Bobbie could not help but think of her daughter, Dara Rae, who has been deaf from birth, 37 years ago. She now has three leaks in her heart. Doctors worry that she may not be up to the surgery because of other health problems.







## Faces of AGENT ORANGE

### The Morris's Story Continued...

Thinking about her daughter inevitably brought tears. Her AVVA regional director saw her crying and asked if she was all right.

"I told her about Dara, and she said, 'You're not alone,'" Bobbie said. "I always thought I was."

Before the town hall meeting switched on the Agent Orange "light bulb," Philip and Bobbie hadn't given herbicide a thought. Over the years, he had received two letters urging him to be tested, but he threw them away. The letters spoke to "in-country" Vietnam veterans. Philip served with the Air Force in Thailand.

After the convention, Bobbie struck out on a search to gather as much information as she could. She found that Agent Orange, thousands of barrels of it, were stored at Korat Air Base, where Philip was stationed.

Her brother, 100 percent disabled and a Vietnam veteran, told her that when he first arrived in Vietnam, he thought it was raining. He was soaking wet. He was the newbie, and he asked if it was the monsoon.

The Air Force was spraying.

"A year ago, all of this came together for me," Bobbie said. "We need to get information out to as many people as we can. I see myself working on this for a long time. This is something I'm going to continue with. First and foremost is Beaver County, because I live here."

To that end, she and others held a second annual Veterans Day balloon release to generate publicity in the local media and draw attention to the Agent Orange issue. While working on an AVVA project, she called widows in her chapter whose husbands had died from Agent Orange-related diseases.

"I wanted to know if they could tell me one thing they wished they'd had," she said. "They all said they didn't have enough information on Agent Orange. So I guess what drives me now is to get the information out. That's what they need."

Bobbie said her boss, Keith Edwards, at Morrow Ford Lincoln & Mercury, is very supportive of her Agent Orange outreach efforts. He contributes the orange balloons for the Veterans Day balloon release.

"My boss says people tell me everything," she said. "He doesn't know what it is, but they sit at my desk, and they tell me everything. Well, I think people are called to do different things. I am honored when veterans open up to me and talk to me about Vietnam. I have tremendous respect for all they have gone through—their physical, spiritual, and mental suffering, and if I can help just one person, I've done some good."

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## The Petroskys

By Jim Belshaw

### The Petrosky's story is brought to you by Chapter 176, Centralia, Illinois.

Pete Petrosky and his wife had planned on having a large family. They talked about it before getting married. At least five kids, they agreed, a house full of kids. They stopped after two daughters.

"I was not going to bring anyone else into this world," Pete said. "We wanted to have a large family. But after those two kids came, I said something's wrong. There's either something wrong with me or something wrong with you [his wife], because we have no history of anything like this in either of our families."

Those "two kids" who came were his daughters, Lisa and Kimberly. Lisa was born with some kind of "soft tissue" growth covering the roof of her mouth. He remembers trying to get more information from doctors, but it never went beyond "a soft tissue growth." Whatever it was, it did not belong there.

Kimberly, his second daughter, was born with a cleft lip that would evolve into even more serious health issues and a long history of surgeries. At one point in her young life, she nearly died and would have done so had not the Petroskys rushed her to an emergency room.

Pete believes he knows what caused the birth defects—Agent Orange, and it has shadowed him since his time in Vietnam.

"I want some kind of explanation or a better understanding from the VA that it accepts that veterans have a connection to something like

my daughter's cleft lip," he said. "They'll recognize women Vietnam veterans as having problems with these kinds of things, but not men, not me. It makes no sense to me. This Agent Orange thing has stuck in my craw for a long time."

He served at Bien Hoa in 67/68 during the TET Offensive in the Air Force. He worked in the motor pool, servicing all of the vehicles on the base and working with the Army as well.

"We had a service that went out on the perimeter at night to bail out the 101st and 173rd when they got stuck," he said, laughing at the memory of pulling the Army out of the mud. "I went out on the perimeter with a wrecker. Real quiet vehicle, right? We worked on all the equipment they used."

He remembers the base being sprayed with Agent Orange. He remembers the aircraft overhead dumping their loads of vegetation killer.

Back home, he no longer gave any thought to Agent Orange. He and his wife began what they thought would be that large family. The first was Lisa.

"We didn't know anything about Agent Orange with the first one," he said.

They went for a regular check-up on the new baby one day, and the doctors found the odd "soft tissue" covering the roof of her mouth. They took her to a specialist to have the tissue surgically removed.



Pete Petrosky, Bien Hoa, 1967



Kimberly



## Faces of

### The Petroskys Story Continued...

In 1973, Kimberly was born with a cleft lip.

"The doctor brought her out to me, and she was wrapped up in a blanket," he said. "It was quite upsetting. The doctor said, 'Don't get too excited. She's a very healthy baby.' Well, it was back to the specialists again."

At the time, he was having trouble holding on to jobs, too. The economy was sour. The nearby Pittsburgh steel mills were anything but solid economically. Meanwhile, surgery to correct the cleft lip beckoned for Kimberly, who was then six months old.

At nine months, she nearly died.

Pete's wife called him at work. She couldn't get Kimberly to wake up. Pete rushed home. He couldn't wake her, either. They put her in the family car and rushed her to the emergency room.

"She was breathing, but very little," he said. "The doctors didn't know what was going on. After all was said and done, it turned out to be a bowel obstruction and gangrene had set in. If we hadn't gotten her in when we did, she probably would have died."

But Kimberly was far from being out of the woods.

"Later on down the road, it got infected and she needed surgery again," he said.

More surgeries for Kimberly came. The cleft lip had flattened her nose and her nostrils needed to be rounded. Years later, as she began attending school, it was discovered that she had a "still eye."

His oldest daughter, Lisa, has never been married. She is 40. His younger daughter, Kimberly, 36, is married and has two healthy children.

"If you don't think we went through pure hell when those two kids [his grandchildren] were born..." he said, his voice trailing off. "I was scared to death. I had to sit down with my daughter when she got married and explain to her and her husband that they might have consequences down the road."

At a recent Agent Orange meeting, he began talking to a Marine who served at Khe

Sanh. The Marine told him one of his sons was having a serious problem with anxiety. Pete told him he had noticed a change in his youngest daughter since the birth of her children. She seemed to be anxious frequently.

"It was my wife who said it had to be the Agent Orange," he said. "I've watched documentaries on TV about how many Vietnamese children have cleft lip/palate. My thing with the VA is it won't even recognize male veterans as being carriers of anything. I haven't talked to the VA about it. I've gone in for PTSD, and I mentioned that the kids might be connected somehow to my PTSD problems."

The VA has awarded him a disability due to PTSD.

"I sit in on meetings with veterans from all over Pennsylvania, and what are we doing? Nothing," he said. "They say there's nothing we can do. I say, 'Bullshit.' We've hit a stumbling block, and it needs to be opened up and recognized nationally as far as I'm concerned. I've been on a vendetta about this for some time now."

He spoke of a chapter member whose daughter was born with severe birth defects. She is 36 years old and has never been able to walk or talk.

"She's never driven a car, she's deaf, she crawls around on the floor, and those two parents have never abandoned her," he said. "To never hear your child speak, to never hear your child say 'I love you' or anything like that—it has to be a very tough row to hoe. My wife and I have managed to raise a family, and we have a home and two grandchildren, but this Agent Orange thing bugs me. It really bugs me."

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## Jim "Butch" Whitworth

By Jim Belshaw

When Jim "Butch" Whitworth went home to Missouri from the recent Vietnam Veterans of America Leadership Conference in Orlando, he needed to buy an extra suitcase to take back all of the Agent Orange materials pressed upon him by those at the conference who had been involved with the issue for many years.

Butch, too, stresses the importance of communication when it comes to such matters. It is critical that Vietnam veterans know they may be due substantial assistance from the Department of Veterans Affairs (VA) concerning diseases related to Agent Orange exposure.

"When they gave me that material, I copied and copied and copied, until I finally had to buy a \$60 suitcase to bring all the stuff back for my fellow veterans in St. Peters VVA Chapter 458," he said.

He had a special, compelling interest in the Agent Orange material, the most striking being that after years of battling disease himself and having gone through the heartbreak of serious medical difficulties with his daughter, he had been unaware of the VA help available to him. He hadn't even considered contacting the VA about it.

He was, in fact, exactly the kind of veteran to which he now finds himself so dedicated.

"People in VVA gave me the information," he said. "And I read articles in *The VVA Veteran*. I've got a couple of guys in my chapter with problems or their kids or grandchildren have problems. I'm reading all this stuff, and I know something's not right. And people from VVA are telling me I needed to make a claim with the VA. Well, I hadn't done any of that."

Over the years, he had spent \$10,000 of his own money on insurance, and \$5,300 for medicines.

"The people at VVA were flabbergasted," he said. "I didn't figure the government owed me anything, and boy, they jumped all over my butt."

He served in Vietnam in 1968 as a radio operator with the 1st Air Cav. In addition to the workaday exposure to Agent Orange, he remembers reading in later years about chemicals involved with the diesel fuel used to burn human waste.

"I remember wearing gloves but no mask," he said. "I remember that black smoke curling up all over the place. We all had to take a turn at it. It was a detail like KP or guard duty."





## Faces of Agent Orange

### Jim "Butch" Whitworth's Story Continued...

About eight years ago, his heart problems began. Today, he's on his second pacemaker. A third back operation in 2002 ended his career in construction. Then in December 2007, he had a terrible pain in his groin area. He couldn't shake it for weeks and finally went to see a doctor.

Blood tests were ordered and a CT scan done on his stomach area. There was no hernia. But there was leukemia.

Admitted immediately to a hospital in St. Louis, chemotherapy began. Then a bone marrow transplant when it was found that his sister was a perfect match. He lost 33 pounds.

"It was quite an ordeal for me and my sister," he said. "I got the transplant and spent three weeks and three days in the hospital. I've survived two years this past July."

Long before his own health deteriorated, he and his wife faced a long, difficult battle with a brain tumor diagnosed in their toddler daughter, Emily, in 1978. She was 2 ½ years old. A neurosurgeon told them Emily would not live to see her tenth birthday.

Today, she is 32, married and a marine biologist at the Mayport Naval Base in Jacksonville, Fla. But she must deal with severe handicaps as a result of the brain tumor and the efforts to control it.

"We fought it for 18 years," Butch said. "They'd bore holes in her head and run tests. They put in a shunt that became infected, and finally they went after it with a Gamma Knife. They took out all of the tumor, except for one little piece. She's handicapped now. She has a terrible

limp, her right foot is turned inside, her hip gives out, and she lost the use of her right arm."

Butch's father gives insight to his granddaughter.

"My dad said, 'That daughter of yours has the most incredible drive and determination. She'll work four hours to do a job that would take you or me two minutes.'"

Butch has three claims pending with the VA. In addition to his VVA friends, his own doctor insisted on him making the claims when she found out he was a Vietnam veteran. He's on YouTube, too, doing everything he can to spread the word.

"If nothing else, I'm hoping that sharing my story will help," he said. "I just tell people this is what I had, and I had it bad."

He comes from an extended family with many children. He is unique among them.

"I'm the only one who has these cancers," he said. "I'm the only one who has a pacemaker. And I'm the only one who served in Vietnam."

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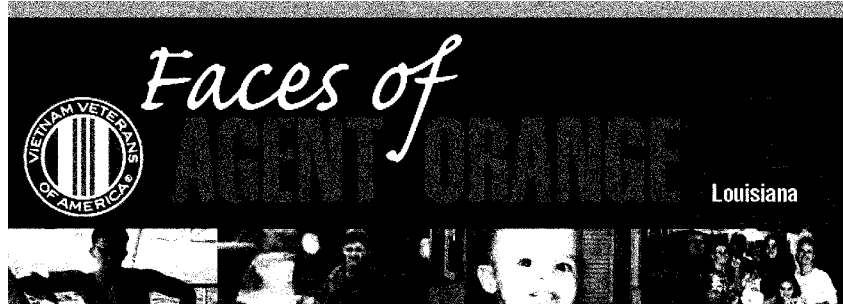
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## Dayna Dupuis Theriot

By Jim Belshaw

### Dayna and Keeyan's story is brought to you by The Missouri Vietnam Veterans Foundation.

Dayna Dupuis Theriot writes a letter filled with questions, not the least of which is to whom she should send it for answers. She scours the Internet looking for such answers and finds only tantalizing clues, or more to the point, one clue, one connector between her son and the various abnormalities that have been visited upon him. The clue repeatedly shows itself, but never to the degree that she can say it is the answer with any certainty.

"Every time I put in one of Keeyan's abnormalities with that information about my dad, Agent Orange in the first thing that would pop up," she said.

With the exception of a too small body, his physical appearance gives no indication that her young son knows firsthand the medical mysteries that Dayna includes in her letter:

- "Esophageal Atresia/stricture
- "Dyslexia and learning disabilities
- "Speech and hearing problems
- "Asthma and allergies so severe that Keeyan is on Xolair injections (normally for people who are 12 years of age or older according to the Xolair Web site)
- "Ileocolitis (a form of Crohn's disease)
- "Premature Ventricular Contractions (heart disease)."

Her father, a Vietnam veteran who served in the Army, is under treatment for

PTSD, but has never been diagnosed with a disease connected to Agent Orange. Nonetheless, pointing to the presence of Agent Orange in her Internet research, Dayna finds yet another clue hard to pin down.

"My father was in an area that was heavily sprayed with Agent Orange," she said. "He's been through a lot. I don't know how he would handle it if we found out this kind of thing was transferred from his body to us. It would have a powerful emotional effect on him. I would hate for him to blame himself. What I'm doing now is just looking for answers. You don't know who else is out there with the same problems."

Dip in anywhere in her letter and "powerful emotional effect" becomes understatement.

"My son, Keeyan, was born August 2, 2000, weighting only 4 lbs., 14 oz.," she writes. "He had problems before coming home with his sugar levels and body temperature. We stayed in NICU (Newborn Intensive Care Unit) for five days before allowing us to go home. He then came home to vomiting, choking, and almost losing him in our home.

"He was checked by his pediatrician to discover his esophagus was strictured. It was narrowed so severely that it only allowed a few drops in at a time and not



Dayna and her son Keeyan  
- Keeyan is 8. He weighs 48  
pounds



## Faces of

### Dayna Dupuis Theriot's Story Continued...

even his own mucus could be digested. It is similar to Esophageal Atresia. He was admitted, and the surgeon dilated the esophagus. It lasted two weeks before collapsing again. So in September 2000, only 4 weeks old, a thoracotomy was done. They would cut out the narrowed part and resection the damaged esophagus."

As her letter continues, it takes on a peculiar phenomenon of language, one in which mothers become conversant in a medical language usually reserved only for specialists, men and women who have spent the greater part of their lives studying such things. It falls to mothers to understand medical terms and procedures that would leave most people scratching their heads.

This is not the case with the mothers of children like Keeyan Theriot. They understand the complications, because the complications become the stuff of daily life.

"After the procedure was done, he assured us that Keeyan would be fine," she writes. "He then began vomiting, choking, and the esophagus was so irritated that it began to bleed. We began PH probe studies to find out what was going on. The studies showed reflux and it was really bad. So they put him on a drug given to patients with esophageal cancer to be able to tolerate feedings. It didn't help ...

"We went to see a Pediatric Surgeon for Rare Anomalies. He gave us a few options ... He mentioned doing a fundoplication/missen so he would not be able to vomit. The procedure was done at age 4 1/2 ... only to be discouraged by vomiting and bleeding ..."

Some of the questions Dayna asks are the same questions asked by the wives of other Vietnam veterans exposed to Agent Orange:

+If the children of women veterans are determined to suffer from such

service-connected disabilities, why are the children and grandchildren of male veterans excluded? (Dayna's son, as well as the children of other women, were born with conditions that are on the presumptive list for children of women veterans.)

+Studies show more defects in women than men. Why?

+There are cases of second and third generations, but no proven studies. Why?

+Are there more studies planned for future generations?

+In the small study of 24 Vietnam veterans, they all had some type of chromosomal changes. Why was the study stopped?

It is a proven fact, Dayna points out, that more children of Vietnam veterans suffer learning disabilities, health issues, asthma/allergies, birth defects, and other health issues. "They all seem familiar to me," she says. Kids are also born with rare disorders that may show up later."

"It's been rough," she said. "You always have in the back of your mind that [answers] would leave you with some closure and you would be done with this. I mean, you have to live with it, but at least you know why and you say, OK, this is the way life is going to be. We're going to have to live with it, like it or not. This has been my life for the last eight years. I have no idea how I get through this. It takes a lot."

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## TOMMY THORNTON

By Jim Belshaw

*"I remember being sprayed several times. We didn't have any idea what it was they were spraying. When we were out on the road between Pleiku and Dak To, we were recovering a couple of tanks and a bulldozer, and they sprayed us. A bunch of planes, C-130s, I think, came over. They were spraying along the road."*

— Tommy Thornton

Tommy Thornton had four children, all daughters — Tracy, Hope, Angela, and Chelsey.

Tracy was born in 1970. She had numerous problems from birth. She stayed sick for about the first six months of her life. Thornton says he never really got an answer as to why. Eventually, Tracy also was found to suffer from severe dyslexia. But by then, she had been labeled.

"Retarded," he said. "But she wasn't."

She died in 2002.

"She had surgery on her back," he said. "They say she committed suicide, but I don't believe it. She woke up in pain, took some medication, went back to sleep. Woke up in pain again, took more medication, went back to sleep and didn't wake up. I think she overtook her pain medication. It's easy to do, especially

when they give drugs that are dangerous. She was 33 or 34. My memory's crap, man. When I need to remember something, I can't."

Hope was born a year after Tracy. She, too, suffered from numerous problems. He provided a list: Migraines, seizures, chemical imbalance causing syncopal episodes, Barrett's Esophagus in first stage, GERD (gastroesophageal reflux disease), acid reflux, irritable bowel syndrome, polyps, colitis, mitral valve prolapse, asthma, bronchial spasms, chronic bronchitis, chronic pneumonia, interstitial cystitis, diabetes, neuropathy in legs, cervical cancer, cancerous tumor removed from abdominal wall, cancerous tumor removed from left breast, losing hair and teeth.

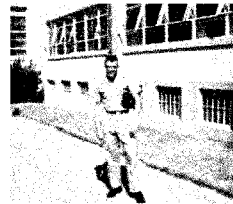
"This is the short list so far," he said. "There may be more to come."

Angela, born two years after Hope, is a cancer survivor and unable to have children of her own.

"She's doing OK, but I've kind of lost contact with her," he said.

The youngest, Chelsey, is 15 years old.

"She's losing her hair, clumps of it come out," he said. "And she has bad pain in her legs that hasn't been diagnosed."







## Faces of AGENT ORANGE

### TOMMY THORNTON's Story Continued...

He served in Vietnam in 1967-68. He said he worked on recovery teams and spent a lot of time out on Vietnam's roads, bringing back helicopters, tanks, trucks, APCs, and even men killed in action.

"I traveled on every road you can name in Vietnam for one reason or another," he said.

When he returned to the states, and after his release from the Army, he had digestive problems for about two years. He suffered from acne as well. He continues to suffer from chronic fungus infections, athlete's foot, and other related problems.

"I'm on the Agent Orange Registry with the VA, but I didn't get nothing out of it," he said. "I had skin problems all the time."

He's 61 years old and lives alone, about fourteen miles outside of Woodville, Texas.

"I didn't connect any of it to Agent Orange until way later, because nobody ever said anything about it," he said. "I didn't know nothing about it until somebody said I was showing signs of stuff connected to Agent Orange."

Those conversations were a long time coming for him. He didn't talk much about Vietnam.

"You have to understand that for a lot of years I didn't talk to people much," he said. "That was a lot of my problem getting my VA benefits. I didn't talk a lot about what I did, and I didn't talk a lot about what I went through. It was eating me from the inside out. And when I did try to tell someone about what was

bothering me, they'd say things like that didn't happen. They'd say I was lying. Those people don't understand. They didn't care. So I was diagnosed as being paranoid schizophrenic and all kinds of weird stuff. But I was just suffering."

He said he's talked to the VA about his children but that nothing comes of it. He is haunted by the guilt he feels for having "caused" the problems for his children, and he now worries about grandchildren and the possible health problems they may face as they grow older.

"I stay pretty much to myself," he said. "I haven't worked since 1986. I've had back problems since I got back from Vietnam, and they tell me the pain in my legs is peripheral neuropathy, and it's directly related to Agent Orange, but I don't know and I don't care. But when it starts showing up in my kids ... man, it sucks. I don't get it. But I guess it's how our government works — denial, denial, denial."

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# Faces of

## Alabama



## Sherri Wise

By Jim Belshaw

When an Agent Orange diagnosis first confronted Sherri Wise's father in 2002, he denied the fact of it.

"He said this is our country, that our government would not do this," she said.

He went into the hospital two days before 9/11. On that fateful day, Sherri and her mother rode a hospital tram to visit him. They found themselves surrounded by veterans.

"We saw these men who were disfigured, emotionally distraught, physically incapable of fighting," she said. "But the minute that first plane hit, you could see the wheels turning in their heads. When the second plane hit, we were surrounded by men who said they would protect us. We were never in danger, but it was the most touching thing. The whole time we were there, everywhere we walked, there was a man trying to reassure us that everything would be OK."

Soon the fact of her father's condition became too much for him to deny—heart attack, stroke, diabetes, eyesight failing, kidneys failing...

"It was one thing after another," she said. "The VA doctors said they could

relate everything he had to Agent Orange. His main reaction was to worry about the family. His first question was: "Could I pass any of this on to my kids?" We were all born after his exposure."

He served in Vietnam with the 82nd Airborne in 1966-67.

"He had such faith that our country's government would make it right," she said. "I'm angry. We're all angry. But he kept saying: 'They'll make it right. I did what I had to do in Vietnam. I'd do it all over again.' That amazes me."

Sherri has undergone 13 back surgeries. Diagnosed with degenerative back discs at 20 years old, her doctors expressed disbelief that it could happen to someone so young.

"I have fibromyalgia, neuropathy, Type 2 Diabetes, arthritis, and depression," she said. "I'm 35 years old. The doctors said there is no reason for me to have degenerative discs at this age. I was born with a leg out of socket, as well."

Her older brother has been diagnosed with degenerative discs and severe depression; her younger sister suffers from depression.

Sherri's youngest child was born with a congenital heart defect; her oldest is



*Sherri's mom and dad: Vietnam veteran Ronald Steve Harrison with his wife, Reba Harrison*



*Sherri, with daughter Andrea, and Grandpa Harrison*



*The Harrisons: Ronald, Reba, Sherri, and baby Ginger*



## Faces of Agent Orange

### Sherri Wise's Story Continued...

bipolar. There is no family history of such things.

"I look at them, and I wonder if I passed this on," she said. "Deep down, I know I did, and it just breaks my heart. Any time any little thing comes up with them, I'm really hit by the fact that I did this to them. I know logically I didn't, but it makes no difference. The VA won't do anything. They either don't know how or don't care."

She praises one doctor the family has met throughout the years, the first doctor to diagnose her father. She said he was an older man who was straightforward about Agent Orange and the fact that so little research has been done to determine its effects on the children and grandchildren of Vietnam veterans.

"That man sat with us and talked to us about it, and I think he was the most honest man we met."

In May 2008, her father entered the VA hospital for the last time. She said he died as a result of an allergic reaction to a drug and that his last 11 days were spent in confusion, unable to respond to those around him, unable to eat.

"It was very difficult," she said. "But he never stopped saying, 'They'll take care of it. They'll make it right.' Until the day he died, he believed that our government would take care of it."

She said she was consumed with anger when he died and that her anger did not find a release until she became involved with Agent Orange Legacy, an Internet support program for the families of Vietnam veterans. She began meeting

and talking with other family members whose experience tracked with hers.

"It was strange talking to other people who had gone through it, and I started realizing all the things that correlated," she said. "These people were going through the exact same things and experiencing the exact same things with their loved ones."

She stresses the importance now of spreading information about Agent Orange. Like so many others, she is adamant that the VA must research the question of links between the veterans' Agent Orange diseases and health issues arising in their children.

"It needs to be talked about," she said. "Somebody has to talk about it. The biggest thing to tell the government is: You did this. Now help us. Honor these veterans."

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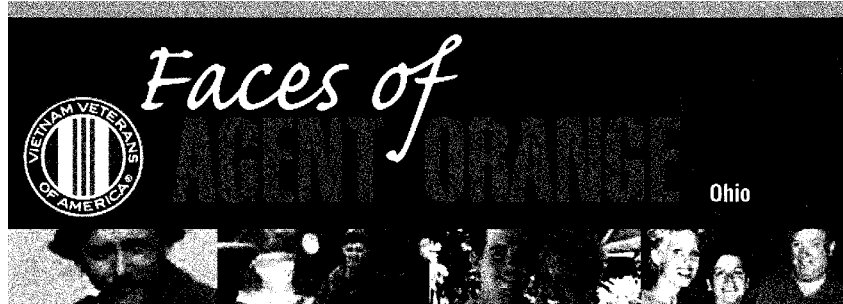
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## Gary Jones's Story

By Jim Belshaw

### Gary Jones's story is brought to you by the California Veterans Benefit Fund.

For Gary Jones, the puzzle that is Agent Orange can be explained, or more to the point, not explained, by two words — “circumstantial” and “coincidence.” The words are at once the core and the conundrum of his Agent Orange experience.

“The problem with all this Agent Orange discussion is that everything is circumstantial,” Jones said. “We can’t prove anything. But after awhile, the word ‘coincidence’ just doesn’t work anymore. Something is causing all these different problems.”

He pulled two tours of duty in Vietnam, one blue, the other brown. The first for the young Naval officer came in the deep water off the Vietnam coastline; the second came inland, in the brown water of the Cam Lo River, near the DMZ, where he worked delivering supplies with Marines and an ARVN unit.

“My job was kind of like being on the old Red Ball Express, but on water,” he said.

Before Jones returned to Vietnam with Vietnam Veterans of America in recent years, the dominate memory of the country for him always came with a reddish hue, not the deep, rich green that stretches across Vietnam as far as the eye can see.

“Everything was reddish,” he said. “Red mud, red water. Everything in my mind was red because we’d killed off the vegetation.”

The area in which he operated was heavily saturated with Agent Orange, the chemical defoliant being delivered by air, from the backs of trucks, and by hand. At the time, he said, no one knew much about the defoliant.

“We didn’t have a clue,” he said. “You could smell the stuff. I thought it was mosquito spray or something. No one told us anything.”

Because he was stationed near a large base, certain amenities were enjoyed. The locals washed the Americans’ clothes — in barrels that once held Agent Orange. The Americans, if they could get their hands on one of these barrels, often cut it lengthwise and used it as a barbecue.

For many years, Jones congratulated himself for escaping the lingering effects of the chemical that had brought so much misery to the lives of others. Then several years ago, he noticed a rash near his ankles. It would come and go, and come and go, never rising above the level of irritant.

“Then I had a pretty substantial breakout up and down my legs, and they did a biopsy on it and came back as ‘psoriasis-like,’” he said. “It’s basically an immune-deficiency disease. In the most critical cases, it can become nephrotic. A year or two ago, I started getting pretty sick, and it turned out I was dealing with a nephrotic syndrome that attacked my kidneys. So now I have



Gary Jones in Vietnam



Jones and family



## Faces of

### Gary Jones's Story Continued...

two problems, and both are immune-deficiency related."

At his own local VVA chapter, he spoke with a former Army warrant officer. The Army friend struggled with exactly the same health problem.

"Then he says, 'I've got five other guys with the same thing,'" Jones said. "Now the word 'coincidence' has gone completely out of the conversation, and I'm thinking, 'OK, you're being hounded by immune-deficiency problems, and the group includes only those guys who were in-country in Vietnam. What does that mean?'"

He can prove nothing, continually finding himself circling back to "circumstantial."

Then his oldest son developed the same rash, but on his chest, not on his legs. His youngest son battled a serious attention deficit disorder that still plagues him. Neither Jones nor his wife knows of anyone in their immediate or extended families with either of the medical diagnoses given their sons.

"I don't expect to go to the VA and have a conversation about any of this," Jones said. "I'm already being compensated for PTSD and a hearing loss. At one point I had decided to go in and talk about it, but I decided I needed to get a lot more evidence and a lot more of the story before I submit anything. But I plan to put it on my record."

He said he has no complaints about the VA and, in fact, calls himself "a kind of advocate for the VA." He's heard all the horror stories about VA health care and says he believes them, but he also believes that, in the larger picture, the VA provides good health care for veterans. Still, he sees room for improvement and changes.

He said statistics show that 80 percent of veterans don't use the VA system at all. He would like to see the VA work closer with civilian doctors so the general practitioners

will be more likely to make inquiries of veterans.

"In all the intake interviews I've done with new civilian doctors, I have never been asked: Are you a veteran? Where did you serve? What were you exposed to?" he said.

Jones wants the VA, and the government in general, to recognize that men and women in the armed forces are routinely exposed to toxic situations rarely faced by civilians.

"There should be a general health program where these people are monitored throughout their lives so that problems that are not only proven to be connected to their service, but are probably connected, are watched," he said. "We need to stay on top of these health situations so when something connected to military service arises, they can respond to it quickly."

Jones doesn't think the VA can do this by itself. He sees a need for civilian health professionals to be part of the system.

"If what I'm suggesting is too much for the VA to do, and I'm inclined to think that it is, then the civilian medical community should be supported to take care of veterans who are not in the VA system," he said. "These Agent Orange guys are dying 30 and 40 years after the fact with no treatment. That should never happen. We owe our veterans the support they need."

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## THE WORTHINGTONS

By Jim Belshaw

**The Worthington's story is brought to you by The Missouri Vietnam Veterans Foundation.**

Herb Worthington's e-mail, meant to provide background on his own Agent Orange-connected diseases and the diseases now afflicting his children, is not yet two sentences long before the words leap off the page.

"It rips me apart with self-hatred every time I tell it," he writes. "I get so sad, the tears flow like a stream, and it makes it that much more difficult, because the keyboard is totally blurred." Asked about it later, he says, "I hate myself. Why? For bringing all this pain and suffering to my children. They don't deserve it." He has not spoken to his children about it. "I don't have the courage," he said.

His daughter, Karen, 35, suffers from multiple sclerosis (MS). His son, Michael, 33, has suffered from bronchitis and allergies since infancy. Michael's own children also have been diagnosed with chronic bronchitis, and Herb says the grandchildren also display uncontrolled and inexplicable fits of anger. Herb, himself, is 100 percent disabled, diagnosed with Agent Orange-caused Type II Diabetes. He suffers from

"terrible" Peripheral Neuropathy, which the VA recognizes as a service-connected condition.

"It starts out as a tingling, like pins and needles," he said. "Hands and feet get cold. You think they're cold, but they could be warm to the touch. As it progresses, they go numb and have stabbing knife-like pains. They say it's a circulation problem, a secondary condition usually to diabetes. Now the VA in Newark is trying to deny guys because of self-medication because the disease is also symptomatic to alcoholism."

Married for 41 years to Angela Sorrentino ("She supports me 10 million percent"), he is President of the New Jersey State Council. They met in high school. Both went to college. Herb working a full-time factory job to stay in school at the New York Phoenix School of Design in Manhattan. They married in 1968, the summer before their senior year. Five days after he graduated in 1969, he was drafted. After completing AIT, he received orders to Vietnam as



*The Worthingtons*



*1970: Herb at a fire support base in the Plain of Reeds near the Cambodian Border*



*children, Michael and Karen*



## Faces of AGENT ORANGE

### The Worthington's Story Continued...

a Light Weapons Infantryman. He was assigned to the 2/60 Recon Battalion, 3rd Brigade, 9th ID. He found himself in "charmingly named hell holes" such as the Parrot's Beak, Tan Tru, the Plain of Reeds, and then with the 25th ID in Cu Chi. "What is significant of such places is the amount of Agent Orange dumped on the Plain of Reeds and the barren dust bowl camp known as Cu Chi," he said.

Three years after he came home, he and Angela started a family, the firstborn being Karen, who would grow into such an attractive woman that strangers stopped her on the sidewalks of New York to ask if she were a model or an actress. "She was talented, played two instruments, was an athlete (all state softball catcher), and an A student," he said. "Everything went well until her senior year of high school, when she started getting migraine headaches." Several MRI's and doctors later, she was diagnosed with MS. She married, then divorced, and swears she will never have children for fear of passing the disease to them. "She still works, but she uses a cane, and the right side of her face is numb," Herb said. "Now she's beginning to fall down. She goes to the MS center in New York. She's seen so many specialists and tried different treatments, but I think most of it is a bunch of crap. It's so sad to see her like this."

He sees signs of disease in his grandchildren, too. His son, Michael, has two children, one 3 years old and the other soon to be 5. "Both suffer from bronchitis," he said. "And they can

turn to anger in a second. I can see the physical change in them when they do it. I can see it coming, because I watch them like a mother hen. I'm looking for anything, you know?"

He has worked as a veterans service officer and has visited the VA to discuss his diseases and the illness of his children. He comes away angry. "I went to doctors I knew in the VA," he said. "I went to the regional office and spoke with people I knew, and I asked if there was anything, and there was nothing. You talk to these doctors, and you mention the possibility of Agent Orange, and they 'yes' me to death and say, 'Oh, that's interesting.'" He doesn't know what the future will bring. In the present, he carries a great anger toward the VA and the government and the Vietnam War. "I had a map set out for me (his life), and the war ruined almost everything," he said. "It ruined whatever chance I had to do in life: it ruined my health: it ruined my children's health. The VA hates me. They will tell you that I have an acid tongue. This thing has consumed my life like no one can imagine."

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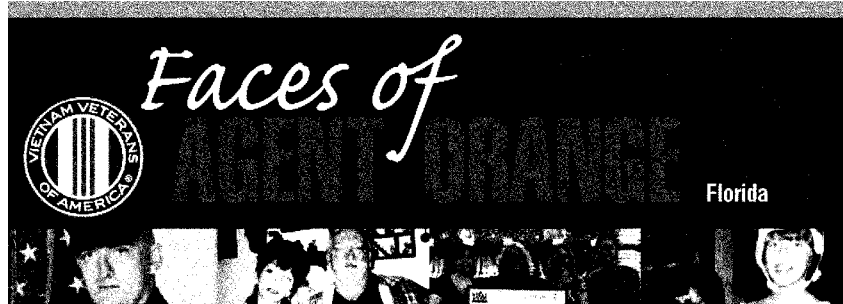
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## Betty Mekdeci

By Jim Belshaw

If there is a moment that represents the long battle Betty Mekdeci fought to shine a light on the origins of birth defects, it might be when a court's representative wrote to her about an Agent Orange project she proposed. She was told it was far beyond her ability. It was simply too big. "Awesome," the letter said. She could not possibly do it.

"That made me so angry," she said. "You just didn't tell me that I couldn't do something. It made me really mad."

She had been engaged in the fight for birth defect information for some years. She was the co-founder and executive director of Birth Defect Research for Children, Inc. She had been in courtrooms, going up against high-powered opposing attorneys and, in some cases, even her own attorneys. She didn't do well in those court cases. Then someone told her she wouldn't do well on her own, either.

"I had been thinking a lot about birth defect research globally, why we couldn't learn anything, why typical studies didn't work, and how the major causes of birth defects had been discovered. They had all been discovered by cluster identification or what we call an Alert Practitioner, who is someone who starts seeing a number of unusual birth defects. Then they look into the background of these cases and find a common factor."

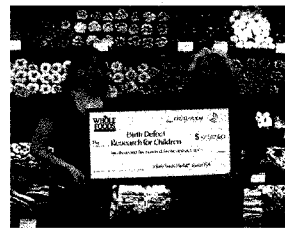
She set out to create her own Alert Practitioner, one involving thousands of people, people who were desperate to learn about birth defects.

Birth Defect Research for Children is a non-profit organization providing parents with information about birth defects and support services for children. The BDRC sponsors the National Birth Defect Registry, a research project that studies the links between birth defects and a number of causes, among them exposure to Agent Orange, an issue of particular note to Vietnam veterans.

Her interest in birth defects began in 1975, when her son was born with birth defects. Eventually, she would link those defects to a drug she had been prescribed (along with many other women) – Bendectin. Her efforts would lead to the removal of Bendectin from the world market. The initial search for information began with Betty and her mother.

In 1982, she and her husband, Mike, founded the Association of Birth Defect Children, now called Birth Defect Research for Children.

"We decided to start the organization because there was nothing for families with children who had birth defects, and it was very difficult for families to get information," she said. "I don't even remember how in the world I had the audacity to even suggest it. People are







### The Betty Nietdeck's Story Continued...

so hungry for someone to be concerned when their child has a problem."

Since 1986, when the first Agent Orange Class Assistance Programs were funded, BDRC has worked with Vietnam veterans and their families. It was during this time that work was begun on the National Birth Defect Registry, a unique form of data collection on families with birth defects.

Working with the New Jersey Agent Orange Commission to develop the Vietnam veterans' exposure section of the registry questionnaire, the BDRC collected information from thousands of families. It found a consistent pattern of disabilities in their children.

In 1992, the association presented a report to the House Committee on Veterans Affairs and the National Academy of Science Committee on Agent Orange.

"With the Vietnam veterans' children, we found immune-endocrine problems," she said. "We've found learning and attention problems, thyroid problems, and childhood cancers."

She said studies of Gulf War veterans found a "structural, observable, and non-arguable birth defect, a cranial-facial birth defect."

Today, she is working on a new approach with Vietnam veterans that will allow the veterans and families to come to a central location for extensive evaluation.

"The problem is there are so many people affected," she said. "I've thought about this for a long time, because I've worked with veterans for so many years. What we want is centers that are funded and staffed with people who have expertise on the effects of chemicals and in this

new research. Families would be given vouchers so they have a place to stay and can be evaluated. There's a lot going on but veterans don't have access to it."

Much more detailed information on Birth Defect Research for Children may be found on the organization's Web site - [www.birthdefects.org](http://www.birthdefects.org). E-mail should be sent to: [staff@birthdefects.org](mailto:staff@birthdefects.org). The mailing address: BDRC, 800 Celebration Avenue, Suite 225, Celebration, FL 34747. Telephone: 407-566-8304.

When she began her search for birth defects information, she never imagined she would find herself with an organization the size and scope of BDRC. She never imagined that one day the federal government would be coming to her for information. She never imagined she would be in contact with thousands of people.

"It's a big dream, but when we started this, people said you can't get Bendectin off the market, but we darn well did," she said. "They said you can't start a birth defects registry, but we darn well did."

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*By Jim Belshaw*

ven when the letter came in 1984, Sharon Perry and her late husband, Reuben "Bud" Perry III, didn't make any connection with Agent Orange. No red flags were raised about what was happening in their home, happening to him, happening to their daughters. The oldest, Danielle, would be sick all her life. The youngest, Lisbeth, would be diagnosed with autism — but not until she was 26. Lisbeth would have a son and he, too, would be diagnosed with autism. Bud would die in 2005 after many difficult years of dealing with the aftermath of the Vietnam War.

But in 1984, they stood in the kitchen, reading the letter about a class-action suit brought on behalf of veterans who may be suffering from the lingering effects of Agent Orange. They didn't think it had anything to do with them.

"I'll always remember standing in the kitchen and looking at one another and saying to him, 'you're not sick.'" she said.

She saved the letter anyway.

"I put it away because you never know," she said. "After that it was always in the back of my mind."

Bud pulled two tours in Vietnam, each with the "brown water" Navy, working

in the war's rivers. When he came home, new battles arose. He would eventually receive a 70 percent disability for PTSD and 30 percent for his unemployability. He put in a later claim for peripheral neuropathy for the loss of the use of his feet. Lower amounts were awarded for disability in both arms. He turned to alcohol to ease the pain. His sister wrote the VA a letter in support of the PTSD claim in 1999. She said the family did not recognize the young man who came home from Vietnam. Something was wrong. She said his soul seemed to have been ripped from inside him.

Sharon said, "He had a real rough time dealing with his PTSD, and self-medication was how he dealt with it. They wanted to blame his troubles on that."

Sharon tried to see a VA administrator. When her path was blocked, she chewed out his secretary. She never did get in to see him, but she did get to speak with someone in charge of claims. He set up an appointment with a neurologist. The physician said the peripheral neuropathy likely was caused by Bud's diabetes, a trail that led back to Agent Orange.

"What the VA doesn't want to acknowledge is that it's all caused by Agent Orange because there's a link





Stephanie Holybee, first diagnosed at 17, suffers from all three. She was in special education classes until her junior year in high school, when, her mother said, she was moved into "bottom classes" to finish her high school education.

Sonja Holybee said her daughter has never surrendered to any of the afflictions.

"All of a sudden it just hit," she said. "They diagnosed her with one thing after another, all one on top of the other. But this girl forces herself to lead a very active life. She works two jobs. She's a grocery clerk at Safeway and works in a daycare facility, too. She bowls on Thursdays, because she just won't give in to it. She says, 'It's not going to kill me.' When she was first diagnosed, the life span was 10 years. She just won't give in."

Sonja's second daughter, Melisa, was born with an extra ankle. She can turn her foot "in really weird positions." The extra bone that made this happen has been removed. Nine years ago, at age 24, she underwent surgery for supraventricular tachycardia (a rapid heart rhythm). Melisa's thumbs are short and stubby; when she first started text messaging, she found she could do it better than most. A friend noted that her unusual thumbs worked quicker on the keys because of their size.

"Melisa works with disabled children in group homes," Sonja said. "She's been doing that ever since she got out of high school. She enjoys it."

Her youngest child, Dan, 30, a sheet metal worker, is sterile.

None of the children are married.

"No one in the extended family has

ever been diagnosed with any of these diseases," Sonja said.

She said her husband, Ken, is "one of those people who keeps everything inside, but he feels he gave all these problems to his kids. He doesn't think they would have them if he hadn't been exposed to Agent Orange."

Sonja Holybee believes the government needs to acknowledge that the children of male Vietnam veterans suffer from rare disorders.

"They should, at the very least, be treated for the same conditions as the children of female Vietnam veterans," she said. "If you're the child of a male veteran, there's no chance that you'll be taken care of. More than just acknowledgment, kids like Stephanie should get some kind of treatment. Stephanie would love it because her meds cost a fortune every month."

The Holybees live in Forestville, a small town in northern California's wine country not far from San Francisco. Long ago, Sonja said, her husband went to the VA and discussed their situation with a doctor.

"Kenny asked that VA doctor about Stephanie, and that doctor said there's no way that Agent Orange had anything to do with Stephanie's condition. No way."

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*By Jim Belshaw*

It is hard to know when a group of disparate elements will coalesce in the mind to bring focus to a hazy, if not inexplicable, subject. "Connect the dots" might be the plausible cliché to describe the phenomenon, but "connect the dots" carries too little weight to describe the moment when clarity came to Bob Cummings.

"I probably started making connections between these things and Agent Orange when my grandson died in 1991, six days after he was born," he said. "Then I started putting things together. I found out more about Agent Orange exposure and finally I thought: 'It is me.'"

And so he began the struggle that so many Vietnam veterans face, the idea of their exposure to Agent Orange during the war explaining, not only exotic diseases visited upon themselves, but diseases, sometimes fatal, visited upon their sons and daughters and even their grandchildren.

"It's hard to come to grips with," he said. "They say these things are a one-in-a-million chance, and I'm asking, 'What's going on here? Was this me? Was this because of something I did?' I have no history of it in my family; my wife has no history of it in her family. So you question it. You wonder and wonder."

He has been married twice. From his first marriage, came Robbie, born with spina bifida; and a daughter diagnosed with Bell's palsy. From his second marriage came Cole, born with a congenital heart defect. He has three other children, all healthy.

He said Cole's heart defect has been more than just a physical detriment to his son.

"Cole is scared to death to get married," he said. "It terrifies him no end to have a child with a birth defect, especially after what happened with my grandson who died. Cole said to me, 'Dad, I'm so afraid to get married and have children. It really scares me.'"

Cummings said he is grateful his son spoke with him about it.

"I'm glad he said something," Cummings said. "You know, there has to be a lot of kids out there thinking the same thing and too afraid to say anything about it."

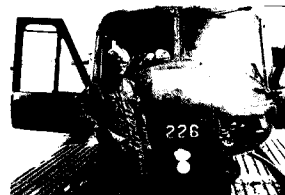
Cummings was born and grew up on the Pine Ridge Indian Reservation. He lives now in Michigan, about four hours north of Detroit. "God's country," he calls it.

In 1971-72, he served with the 101st Airborne and 1st Cav. He remembers clearly the aircraft overhead, spraying the defoliant, soaking the jungle and the troops below. He knew it was "weed killer," but had no clue to its toxic effect on human beings.

So when Robbie was born with spina bifida, he never thought to connect it with Agent Orange.

"Robbie has no use of his limbs," he said. "I'm still good friends with his mom (they're divorced), and she pretty much takes care of everything he needs. Vietnam Veterans of America service representative George Claxton got a VA claim for him."

His first marriage didn't survive the stress of Robbie nor that of the war itself. He said he drank heavily upon returning from Vietnam, and his marriage fell apart, largely due to his alcoholism.





"You go through a stage because of the guilt," he said. "You go through a suicidal stage. You go through a stage where you say, 'God, I don't ever want to go through something like this again. I don't ever want to have more kids.' There are so many feelings you go through. Parents of children with birth defects understand these emotions."

He remarried — an "angel," he said. Then Cole was born with a heart defect. Now 25, Cole has difficulty finding work. Because of insurance issues, employers are reluctant to take him on. Cole has a pacemaker and doesn't have the stamina of others his age. Bob Cummings once spoke with an insurance agent about health insurance for Cole. The agent said his company could pick up Cole. It would cost \$500 a month. Says Cummings, "Cole is my hero."

It was when he and others began a VVA chapter, and he started having conversations with other veterans, that the heretofore disconnected events of his life began to take on a more solid form. He started making the connections that led him to Agent Orange and its long-lasting effects, not only on veterans, but on their families as well.

It all came together at a state council convention in Marquette, Michigan, right after his grandson died. He started asking other veterans what they could do to focus attention on the Agent Orange issue.

"So a bunch of us in my chapter came up with the idea of the Agent Orange flag," he said. "We had done so much on the POW/MIA issue that we thought it was time to bring attention to the Agent Orange issue. I designed the flag, but it wasn't just me who made it. It was all the guys in the chapter, and the state council, too. The support I had for the project was mind-boggling."

Another surprise came with the flag project — telephone calls from the widows of men who had died from Agent Orange-connected diseases or whose children had died from strange diseases.

"They didn't know where or who to go to for help," he said. "I always told them to contact their veterans service representatives in their areas. But surprisingly, a lot of service reps in small communities, like the one I grew up in on

the reservation, have no clue what's going on. That in itself is horrific. How do we reach out to these small communities? Towns of a 1,000 people, places like that. They have no clue. We have an obligation to make sure they know."

Cummings threw himself into the Agent Orange issue until the day when one of his children surprised him with a question.

"One of the kids asked me when I was going to start spending some time with them," he said.

He said it was "like running into a wall." He curtailed his Agent Orange activities, telling himself the time had come for others to carry on.

Now, with his children grown, he says he is ready to increase his involvement in Vietnam Veterans of America.

"I want to find out what's happened with Agent Orange since I was gone," he said. "It looks like things have been progressing, but it's a slow process, and it shouldn't have to be this slow. I feel like all Vietnam veterans have a ticking time bomb inside of them, and we don't know when it will rear its head.

"My motto has always been, what can we do for the children who are the innocent victims of this war? We, as Vietnam veterans, have an obligation to do whatever we can to get help for our children. So I call on my brothers and sisters to stand up and get involved and help out. Call your chapters and different veterans organizations. We have not won the war that our children are fighting. We need to win the battle for these brave children who have stood with us through thick and thin. They are calling on us for help."

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*John Weiss*



*By Jim Belshaw*

ike Demske remembers well the difference in Vietnam's riverbanks before Agent Orange and after the herbicide was sprayed. The riverbanks provided excellent cover for the guns trained on the Navy Swift Boats.

"We were just getting annihilated," he said.

Then Adm. Elmo Zumwalt ordered the river banks sprayed.

"I'll never forget the first time we went down a river where the bank had been sprayed," Mike said. "It was like looking at the moon. There was nothing."

He also remembers no attention was paid to the effects of Agent Orange on the health of the boat crews. That Vietnam's rains might wash the chemical into the river was of no consequence to the Swift Boat crews.

"A lot of times we'd tie our clothes to a rope and run them in the prop wash to do our laundry, not thinking that the river was filled with the stuff and it was soaking into our clothes," he said. "We were all 19 and 20 years old. We didn't know any better."

After his tour of duty, he wouldn't give Agent Orange another thought until

about 15 years ago, when he came home from a softball practice and couldn't get enough water to slake his thirst. He went to his doctor. He was diagnosed with Type 2 diabetes.

That same year, he attended a VVA National Leadership Conference. Of the 30 veterans meeting to discuss Agent Orange, five had received the same diagnosis of Type 2 diabetes.

"Everyone was telling me to file a claim with the VA," he said. "It wasn't listed as a presumptive disease then, but once it was, I received some compensation."

But his health problems were just beginning. On the same day he was diagnosed with diabetes, he also was found to have psoriasis. Then in January 2009, he was found to have Fournier's gangrene. An infection spread to his groin area, and he eventually had surgery that removed his scrotum.

Health complications would not be limited to him.

His son, Scott, born in 1973, began having seizures while serving in the Air Force and was medically retired. He is a school teacher today and still suffers from the seizures. Doctors told him



*Mike Demske, 1969*



*David and Scott Demske, 1990*



*David (with fish)*



## Faces of

### Mike Demske's Story Continued...

that an abnormality in his frontal lobes disrupted electrical signals in the brain, causing the seizures.

A second son, David, born in 1978, was diagnosed with juvenile diabetes at the age of ten. Diligent with his medical care, David was able to participate in his high school and college tennis teams. Scheduled to graduate from college in May 2001, he died of myocarditis (an inflammation of the heart muscle) in January of that year.

"For a long time, I made no connection between Agent Orange and Scott and David's problems," he said. "I probably started thinking about it after David died. It was really a tragedy. He was a senior in college, going to graduate in May."

At a VVA meeting in Silver Spring, he was able to question the then-Secretary of Veterans Affairs.

"I asked him if he was aware of any studies that would link our exposure to dioxins to problems with our children and grandchildren, and he looked at me like a deer in the headlights. He couldn't respond. He had no idea."

"The VA secretary had an aide there," Mike said. "He was writing everything down and basically told us, 'We'll get back to you.' Which of course is bullshit. That's why we're trying to get enough evidence to prove there's a problem out there and to do something about it."

Because the VA refuses to conduct studies on the questions, the evidence gathered is anecdotal. But Mike Demske finds the anecdotes compelling.

"Money is one reason they won't consider guys in the blue water Navy," he said. "So many of those guys served on crews that worked on jets that flew through that stuff and brought it back to the aircraft carriers. We have one guy in our chapter who was on a crew. Those crews normally were made up of five guys. Well, four of the five guys on this crew have diabetes—and the VA won't even look at them."

At the very least, like so many other Vietnam veterans who have had to face similar health problems, he says the VA should fund studies to see if a link exists.

"I would want them to do decent studies of what the effects are on the children and grandchildren," he said. "I'm sure there's some kind of effect. My oldest son, Scott, has ADD, and his son has it, too. I never thought Agent Orange would be part of it, either, but everyone at that meeting was talking about problems their children and grandchildren have."

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## Linda May's Story

By Jim Belshaw

### Linda May's story is brought to you by the Vietnam Veterans of America Buckeye State Council.

Nine days before the Christmas of 1982, Linda May looked upon her newborn son, Steven Burdette Shaffer, and mourned the losses to come.

"He suffered horribly," she said. "I think I grieved for him from the moment I first saw him, because I knew I wouldn't have him long."

She would never see him walk or hear him talk. There would be no high school graduation, no college diploma. He would not marry. She would have no grandchildren.

"I was grieving all those losses even though I still had him," she said.

Today, on the C&LS-USA Foundation Web page, characteristics of the Cornelia deLange syndrome may be found, some of them being: low birth weight, slow growth, small stature, small head size, microcephaly, thin eyebrows that frequently meet at midline, long eyelashes, downturned lips, excessive body hair, small hands, gastroesophageal reflux, seizures, heart defects, and others.

Doctors told her he would not live through the night; then they said the week; then the month.

"After about a year of them saying not

to expect a long life span, I finally gave up and said I'm not going to listen to this any more," she said. "In my own thoughts, my own instinct, I didn't expect him to die in the hospital. I expected to have him for years longer."

Steven died on Jan. 15, 1998, a few weeks after his 15th birthday.

"Our pediatrician knew what kind of syndrome he had," she said. "It was very unusual. Many doctors were not familiar with the syndrome, at least at the time. But the pediatrician was very well read. He is a wonderful man."

Her then-husband, Larry Shaffer, was not a pediatrician. He was a former Air Force mechanic stationed in Thailand during the Vietnam War. He told her of a chemical that sometimes dripped on him from aircraft he walked beneath, on his way to fixing instruments on the F-105 Thunderchiefs.

"The first words out of his mouth when he saw Steven were 'Agent Orange,'" she said.

They found a doctor who had been with the Army's Special Forces in Vietnam. In addition to his medical degree, he held a doctorate in genetics, and he suffered from diabetes connected to Agent Orange.



Larry Shaffer in 1968 stationed at McConnell AFB in Wichita a few months before he was sent to Korat, Takli, and Nakhon Phanom



Larry Shaffer, Steven Shaffer, Linda May



At our church naming ceremony, (Steven was baptized by a nurse a few minutes after he was born.) Larry Shaffer; Steven Shaffer; Linda May; Linda's sister Nancy Cryderman and Larry Shaffer's brother-in-law, Larry Carwright, a two-tour recon pilot, now dead of cancer of the parotid.





### Linda May's Story Continued...

"He was a friend of our pediatrician, and when our pediatrician had no more answers about whatever was going on, we would see him," she said. He's now dead from the diabetes."

A friend who was a Vietnam veteran with a son who had Down syndrome went to see the pediatrician, too.

"The doctor said that, anecdotally, he had learned to ask the dads of such children if they were Vietnam veterans," she said. "He had a cluster of them. He said, 'I just really have to believe there's something to this. We have all of these odd things going on with children, and they just happen to be the children of Vietnam veterans.'"

Five years after Steven was born, the marriage between his parents ended. Linda said her former husband had undergone a severe personality change, though he was physically healthy when they split up. But he had begun to drink heavily, and his temper became explosive. She believes he then was diagnosed with PTSD and awarded 100 percent disability by the VA. About a year after he left her, his physical health rapidly went downhill.

Around 1988, he was diagnosed with lung cancer. He said during a Friend of the Court hearing that he developed high blood pressure, sleep apnea, and other conditions. He died in 2007 of an apparent heart attack while undergoing chemotherapy for thyroid cancer.

Linda has had no interaction with the VA, though she remains convinced that her former husband's exposure to Agent Orange during the war played a role in her son's physical disabilities.

"The VA has yet to acknowledge that my son's disabilities had anything to do with Vietnam," she said. "My ex-husband

went to the VA hospital and had all these things documented, and for him, there was help in the form of a paycheck."

She believes the VA should commission a study to see if there is a link between Agent Orange and the children of Vietnam veterans.

"When I first met my current husband, I went to a Vietnam Veterans of America chapter picnic, and I asked: Where are the boys?" she said. "There were so few boys compared to the number of girls. It's probably anecdotal stuff, but that was the first thing I noticed. Vietnam vets have an amazing number of girls, but they seemed hardly to ever have boys. And the boys at this picnic, well, some had disabilities. I believe there are all kinds of things they need to pay attention to, and they're trying to avoid it."

She wishes now that over the years she had written down the events of her life, kept some kind of running journal, so she would have at her fingertips all of the details.

But some details don't need to be written down. Some are not easily forgotten.

"I miss my baby very much," she said.

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## MAYNARD KADERLIK

By Jim Belshaw

Joshua Kaderlik came home one day from his fourth grade classes in Minnesota and said to his father, Maynard, "Dad, I'm really dumb."

It was not said jokingly. It came from the little boy's heart. He meant every word of it. And every word of it stunned Maynard Kaderlik. The words carried a sadness that defied description or definition.

"That one really hit home," Kaderlik said. "All his life, he has been degraded by other children who did not realize his learning disability."

It would hit home again when Kaderlik read the book, *My Father, My Son*, by Admiral Elmo Zumwalt. It was then that Kaderlik began making connections between the difficult lives led by his children and his exposure to Agent Orange in Vietnam.

Adm. Elmo Zumwalt had ordered the Agent Orange defoliation to protect riverine sailors and others from attacks along the heavily vegetated riverbanks of Vietnam. Zumwalt's son was one of those men. After Vietnam, his son developed two kinds of terminal cancer, and his own son was born with a severe learning disability.

When Maynard Kaderlik, president of the Minnesota State Council, read the book, he took note that each boy was the same age and that each father had served in the same area of Vietnam. Kaderlik served for two years off the coast of Vietnam and another year in the Mekong Delta on riverine duty with the Navy and the 9th Infantry Division of the Army.

"Zumwalt felt the spraying took his son's life," Kaderlik said. "When I was there, it was pretty obvious what had been sprayed. Something that had been green was all gray and dead. We drank the water on the rivers and bathed in it."

Kaderlik's health had been good until 2010, when he was diagnosed with prostate cancer, a disease connected to Agent Orange exposure. He believes his children paid for that exposure long before that.



Joshua Kaderlik, 1994



Melissa and Jayda

*The Kaderlik's story continued...*

Josh had always had a rough time in school. He is 32 today, and the road has not gotten any smoother.

"Today, he still struggles in the workforce, which can be very cruel," he said.

In addition to being born with a dislocated hip requiring him to wear a metal brace to put the hip back in place, Josh was born with a severe learning disability. After the day he came home to announce that he was "really dumb," Josh's parents decided to transfer him to a Catholic school, though the expense was difficult to bear.

The Catholic school tailored Josh's classes to his abilities, and within a year his father saw changes.

"It helped a great deal with his self-esteem," Maynard said. "After one year, it really soared."

His daughter, Melissa, did better in school than Josh, but had her own problems, too. She is the mother of Jayda, Maynard Kaderlik's granddaughter. Jayda has been diagnosed with autism. Kaderlik pays for the insurance that keeps his granddaughter in a program offering therapy eight hours a day, five days a week.

"It's a challenge for her mother and her grandpa," he said. "But she's getting better. I pay for the insurance so she can be in the program, and I would spend my last nickel to keep her in it. She is such a loving and thoughtful child. For her, learning has been a huge challenge. The cost of the program is very high, but I'd do anything to help her."

As it is with so many other Vietnam veterans whose children and grandchildren have struggled with exotic diseases, learning disabilities, and other health problems, Kaderlik finds it difficult to face the prospect that it was his exposure to Agent Orange that afflicts them.

"It makes you feel bad that her disability was caused by my service in Vietnam and what my country sprayed on us when we were there," he said. "She's [Jayda] going to be a wonderful person in this world."

He has no doubt about the U.S. government's responsibility, not only to its veterans, but to their children and grandchildren.

"We went off to serve our country, and now our government that ordered the spraying should take care of the children and grandchildren of the veterans, because it's affected us in one way or another," he said. "The veterans are in the fourth quarter of their lives, but the children have their lives ahead of them. They should be compensated monetarily and receive the special care and education they need so they can survive in the world."

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*Jayda*

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## SHARITY KEITH-REICHARD

By Jim Belshaw

These are some of the things Sharity Keith-Reichard wrote on an Agent Orange Web page:

- I was 2 when they diagnosed me with Alopecia Universalis (loss of scalp and body hair).
- I was 11 the first time someone tried to pull off my wig.
- I was almost 16 when they told me I would never have children and that I would have to undergo either a "procedure" for many months or surgery to have a "normal" sex life. I had never even had a date.
- I was 21 before I could even talk to a therapist about the embarrassing thing that was wrong with me.
- I was 34 when I found out my condition actually had a name — Mullerian Aplasia.
- I am 39 and I am still sad sometimes that I will never have a child.

There is no history on either side of her family that accounts for any of this. The only known potential environmental factor was her father's exposure to Agent Orange in Vietnam. He died in March 2009 of Agent Orange-related cancer.

She was 25 years old before she met him for the first time.

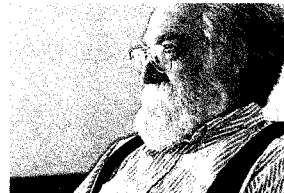
She speaks with a strong voice, the sound vibrant and energetic. It is much like her laugh and her sense of humor.

Her father was a Marine in Vietnam. He and her mother never lived together. She did not meet her father until after her mother died of cancer.

"There was a lot of secrecy," she said. "My mom didn't like to talk about my dad. I had seen one picture of him in profile. I went through a period in my teens when I was intensely curious about my dad, but my mom wouldn't answer any questions."

Shortly after her mother died, Sharity's father contacted her. A relative had called telling him about her mother's death. They exchanged letters for a few months. They tape recorded a few conversations. When she thought she was ready, she called him.

"I had typed out a list of 40-something questions that ranged from what color are your eyes to what's your favorite food," she said. "I couldn't say what we talked about. We talked about everything. We talked for eight or nine hours. Where I had been, where he had been. When I actually went to meet him a few months





## Faces of AGENT ORANGE

### SHARITY KEITH-REICHARD'S Story Continued...

later, I found out that I walk like him, I talk like him, I'm a little version of my dad, from my coloring, to my facial structure, to everything. It was amazing. I went to his house to meet him, and when I sat down, the first thing my stepmother said she noticed was that my father and I arranged ourselves exactly the same way."

They talked about her surgery and, in her words, "You can't miss the bald thing." They didn't talk much about Vietnam. He didn't like talking about it. He told her to look forward, not backward. He suffered from PTSD, and once became so angry with her that the two of them wound up speaking to a VA counselor.

They talked about her physical difficulties and the long journey it has been for her. She tried speaking with the VA about Agent Orange and the possibility that it played a role in her health problems, but she said she never received a response from the VA.

She has been married for two years. She and her husband have been together since 2001.

"My life has been full of highs and lows," she said. "I can't say I've always handled it beautifully. I set goals in life. I have a master's degree in Special Ed. I don't see the things that have happened to me as reasons to stop trying to have a life. I've gone down black holes. I've had to rebuild my life a couple of times. I've been largely blessed with good friends and people who love me. I guess, though, that it's mostly been a one-woman show. Yes, I have a husband ... a stepchild ... a stepmother ... cousins — nonetheless, I feel a little alone and a little scared."

She will be 40 this year. Regardless of what the VA does about Agent Orange research, she sees no help coming in time to make significant changes in her life. Nonetheless, she recognizes that others might benefit from such research, and she hopes the VA will at least study the Agent Orange questions.

"I'm hoping one day that they will research it," she said. "I'm about 40. I'm not going to make my hair grow, and I'm certainly not going to go back and grow a uterus so I can give birth. But there are a lot of people out there who will have children and grandchildren who will be affected by this stuff. I worry that the same things that happened to Vietnam veterans will happen to veterans of other wars. These things need to be addressed and a policy put in place. They need to take responsibility for those they're responsible for."

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## James May

By Jim Belshaw

### The May's story is brought to you by the Vietnam Veterans of Michigan.

Jim May sends four photographs of his infant grandson, Isaiah. The baby is blessed with large brown eyes and a face given to smiles — until the fourth photo appears, and one of those beautiful brown eyes disappears. In its place is an emptiness, a discolored pinkish tissue where the eye once was. In the other three photos, it is impossible to tell that the right eye is a prosthetic. The baby's real eye is gone.

"At nine months of age, he was diagnosed with retinoblastoma, cancer of the eye," Jim said. "I happen to know that there are several people in this area (Buffalo, N.Y.) who are Vietnam vets whose grandchildren have had similar problems. He had the eye removed and now he has a prosthetic. He constantly has to be checked, every four months, to make sure it hasn't spread to the other eye. He also has asthma, which requires him to take medicine every day. We have no family history of anything like this before Isaiah. I haven't talked to the VA at all about him because they haven't done anything."

He said he was going to try to get his grandson's doctor to post a note in his office saying anyone who is a Vietnam veteran with grandchildren suffering from problems similar to Isaiah's should contact Vietnam Veterans of America.

He has had other conversations with the VA, all of them concerning Agent Orange, which he is positive lies at the heart of Isaiah's cancer.

But before trying to get the VA to consider Isaiah, he had to get the VA to consider himself.

He served in the Navy and was classed as "blue water," serving on a hospital ship off the coast of Danang. He says a good deal of his time was spent off the ship and either on the ground in Danang or in its harbor, which he says is polluted with dioxin even more heavily than the nearby shore.

"We were constantly up in Danang harbor and the Danang military zone where they were doing a lot of heavy spraying of Agent Orange," he said. "They were even doing it in the harbor area. You'd be up on deck, and you could feel the stuff coming down. Helicopters would fly over and, all of a sudden, we'd get orders for a wash down. Nobody ever explained what it was."

In 1969, shortly after he returned to civilian life, he experienced a rash breaking out on both legs. His legs became swollen and he had difficulty walking. He was driving a truck at the time and said that the difficulty he had with swollen legs caused him to use his



James May on the fantail of the USS Sanctuary AH-17, waiting for the helicopters to come in with the wounded.





## Faces of

### James May's Story Continued...

hands to move a leg from the accelerator to the truck's brake. He went to a civilian hospital to have his legs checked.

"I was in the hospital for like three months," he said. "They didn't really know what it was. They were doing all kinds of blood tests on me, but no one said anything about Agent Orange, and even I didn't make the connection at the time. But I've made the connection now because I proved that I was onshore. So they've sent the paperwork for Agent Orange testing, plus they asked for evidence of my having a rash within two years of being discharged."

Prior to this recent change in his situation, the VA wouldn't consider any connection to Agent Orange at all because he was classified as a "blue water" sailor and was not eligible for Agent Orange consideration. But he managed to find all of his medical and other Navy records from his time in Vietnam, and it was enough to persuade the VA to re-evaluate his case.

"I was a 'bosun's mate' too," he said. "I proved that I took the captain to and from the shore. The bosun's mate maintains and runs the shuttle craft to and from shore. When I was there, I'd help load supplies from a truck to the boat. For all intents and purposes, I was on the ground in Danang."

He said that, because he also has submitted a PTSD claim to the VA, the Agent Orange claim may take up to 18 months to resolve. He's 63 years old.

He believes the rash on his legs is only the beginning of his Agent Orange problems. In addition to his grandson's cancer of the eye, each of his two daughters have had problems with what doctors called "suspicious cells" in their uterus.

"They don't say it's cancer," he said.

"They just say 'suspicious' cells. This has been going on with both of my daughters. The same exact thing."

At the Louisville VVA convention, he addressed the gathering and made his argument about the distinction between "blue water" and other types of Naval service. ("I've never stood up and talked to 10 people, let alone almost 800, he said.")

As far as distinctions go, he sees none.

"If I had the chance, I'd tell the VA that blue water, brown water, blue air — it's all a crock. Anyone who was over there should be included in this Agent Orange fight, because it's carried by air, carried by water, and basically all of that stuff rolls downhill. All that contamination during the monsoon season would get washed right down to the harbors. We polluted the oceans over there. We polluted the harbors, the rivers, and the shore by spraying all that stuff. It's not just an in-country thing. They poisoned everybody."

He doesn't think he won the day with his argument, but he did return home with one particularly vivid memory. A VVA member running for office called to apologize because he wouldn't be able to attend the convention.

"He couldn't attend the convention because he was attending his grandson's surgery for retinoblastoma," Jim May said.

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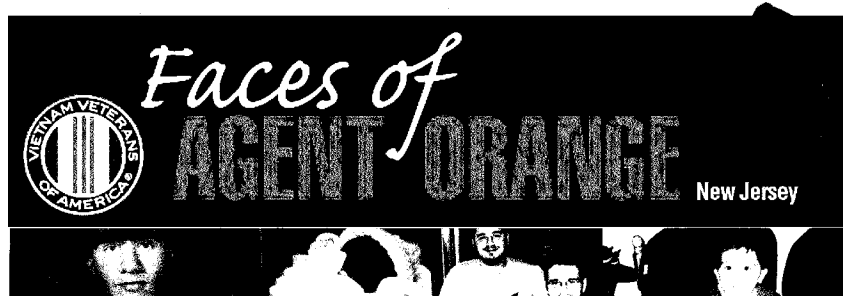
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By Jim Belshaw

Dennis Whalen's memory of the Vietnam water is vivid, as vivid as the water's color — "bright green." He served two tours with the Marines, the first with the 1st Battalion, 9th Marines, up near the DMZ — "Con Thien, Khe Sanh, we did the whole bit." They took the highest casualty rate in the history of the Marine Corps.

On his second tour, Dennis worked with the Popular Forces in Combined Action Groups, sometimes in compounds and, after Tet, in roving units, setting up for a few days in one area, then moving on to another.

He never heard of Agent Orange when he was in Vietnam. He didn't have a clue about it. He was good with the Vietnamese language, though. He picked it up easily. For reasons he can't explain, he had an interest in it. He'd been a "half-assed interpreter" and had attended Vietnamese language school in Coronado, but he was "dumped because I was a high school dropout, and I couldn't understand why I was back in school."

He said he hadn't joined the Marines to go to school, anyway. He joined the Marines to be a Marine.

"We'd be working in the mountains up near North Vietnam, and there'd be water in the bomb craters, and it would be bright green," he said. "We never heard

of Agent Orange. None of us knew what it was. Of course we drank the water out there. We drank water from the streams at the bottom of all those mountains. Hell, I drank water out of a dead NVA's canteen. You drank water where you could get it."

After he left the Marines in the early 1970s, he received a letter from a doctor connected somehow to Agent Orange. Whalen was intrigued by how the doctor knew what outfit he served with and where the outfit worked in Vietnam, but the letter said nothing about any kind of monetary compensation, and he never followed up on it.

"I didn't know nothin' from nothin'," he said. "I just wanted to catch up on some partying. I should have followed up on it, but like a dope, I had other things on my mind."

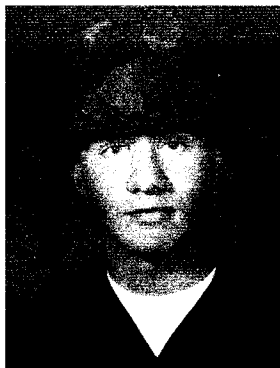
After he married and had children, Agent Orange became a subject of more interest.

He had three sons. Two of them were diagnosed with pyloric stenosis and would have to undergo surgery to correct the condition, though neither is completely recovered from the effects of it today.

Pyloric stenosis affects the gastrointestinal tract during infancy. It can cause the infant to vomit forcefully and often.



The Whalen boys: Sean, Keith, and grandson, James



Dennis Whalen, U.S.M.C., Boot Camp, 1967





"The food hits a certain point in the esophagus, and the baby can shoot it out ten feet," he said.

It can also cause dehydration. It is a narrowing of the pylorus, the lower part of the stomach through which food passes to enter the small intestine. The muscles in the pylorus can become enlarged to the point where food cannot empty out of the stomach.

"My middle son, Sean, was the first one," Whalen said. "Then my last son was born with the same condition, and it was my wife who picked up on it. She said she couldn't believe it was happening to us again. And sure enough, Keith had the same condition Sean did. The same doctor performed the surgery, and he said he had never seen two brothers have the same thing like this."

When Whalen found out that the VA recognizes pyloric stenosis as an Agent Orange-related birth defect in the children of female Vietnam veterans but not of male Vietnam veterans, he laughed dismissively.

"Unless it was an NVA, I didn't see any women up on the DMZ," he said. "That's like a slap in the face to me. We rolled in that stuff [Agent Orange]. We lived like animals in that stuff. And they say only women Vietnam veterans can pass along these diseases? I think it's a way for the government not to pay the dues on it. It's an insult to me and other guys, too."

The VA has rated him as 100 percent service-connected disabled with PTSD, but it has found no connection between Agent Orange and other health problems he deals with. He is now recovering from his fifth melanoma surgery and underwent an Agent Orange screening with the VA, but was given no benefits.

"I don't understand the VA on this, and I do understand the VA on this," he said. "It's the money. I'm not looking at me for the future. I've got this melanoma. My days are numbered as far as the future is concerned. I know that. I'm hoping that some day down the road the government will compensate my wife and sons for having these surgeries when they were babies. They've got burn stomachs to this day."

More than anything, he wants one thing in particular from the VA.

"I want honesty from them," he said. "I want them to man up and say, 'Gee, you were in that area. You came into contact with that stuff. We know you drank the water, you laid on the ground.' I would want the VA to say maybe we can compensate the family some way. They should at least put the effort in. This isn't a fairy tale. It's not a made-up story. I joined the Marine Corps. I went to Vietnam. I went twice. And I'd probably do it again if I was in the same situation. I put my ass on the line, and now it's time for the government to come up with something for my family."

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*By Jim Belshaw*

ven when the letter came in 1984, Sharon Perry and her late husband, Reuben "Bud" Perry III, didn't make any connection with Agent Orange. No red flags were raised about what was happening in their home, happening to him, happening to their daughters. The oldest, Danielle, would be sick all her life. The youngest, Lisbeth, would be diagnosed with autism — but not until she was 26. Lisbeth would have a son and he, too, would be diagnosed with autism. Bud would die in 2005 after many difficult years of dealing with the aftermath of the Vietnam War.

But in 1984, they stood in the kitchen, reading the letter about a class-action suit brought on behalf of veterans who may be suffering from the lingering effects of Agent Orange. They didn't think it had anything to do with them.

"I'll always remember standing in the kitchen and looking at one another and saying to him, 'you're not sick,'" she said.

She saved the letter anyway.

"I put it away because you never know," she said. "After that it was always in the back of my mind."

Bud pulled two tours in Vietnam, each with the "brown water" Navy, working

in the war's rivers. When he came home, new battles arose. He would eventually receive a 70 percent disability for PTSD and 30 percent for his unemployability. He put in a later claim for peripheral neuropathy for the loss of the use of his feet. Lower amounts were awarded for disability in both arms. He turned to alcohol to ease the pain. His sister wrote the VA a letter in support of the PTSD claim in 1999. She said the family did not recognize the young man who came home from Vietnam. Something was wrong. She said his soul seemed to have been ripped from inside him.

Sharon said, "He had a real rough time dealing with his PTSD, and self-medication was how he dealt with it. They wanted to blame his troubles on that."

Sharon tried to see a VA administrator. When her path was blocked, she chewed out his secretary. She never did get in to see him, but she did get to speak with someone in charge of claims. He set up an appointment with a neurologist. The physician said the peripheral neuropathy likely was caused by Bud's diabetes, a trail that led back to Agent Orange.

"What the VA doesn't want to acknowledge is that it's all caused by Agent Orange because there's a link





## Faces of

### Sharon Perry's Story Continued...

between Agent Orange and diabetes," Sharon said. "So they don't want to give thumbs up to the peripheral neuropathy. I don't know why. Well, that makes all of us have to deal with the repercussions and emotions of all that. What are we crazy? That's how the game is played. If they drive you insane, they've won. If they don't, and you decide to speak out, if enough people do that, maybe they'll lose."

Her husband started getting sicker in 1998. In 2004, Sharon urged him to put in a claim for rheumatoid arthritis. She was told that sometimes the VA can find that a veteran has improved and they'll take away money. So if you're relatively happy where you are, you should stay there.

Reuben "Bud" Perry III died in 2005.

His oldest daughter, Danielle, had trouble with infant pneumonia and ear infections. She was diagnosed with serious allergies to numerous everyday sources. She suffered with severe sinus problems and reoccurring strep throat. In the second grade, she began having serious neck spasms. There were times when she couldn't move her neck at all.

"It continued to happen on and off over the years," Sharon said.

When Danielle was 10 years old, Sharon said she suffered muscle spasms over her entire body. She was unable to walk. They had trouble finding help. Finally, they went to see a neurologist. He said he wanted the parents to tape the next episode with a video camera. They did and brought the tape to him.

"He said, 'she's faking.'" Sharon said.

It is hard for her to talk about it even today.

"You don't fake so your feet turn inward all day long. Nobody — *nobody* — does that," she said. "This kid could not do that for days at a time. She was in pain and there was no treatment for her pain. I kept thinking, can I go along with these people and believe my daughter is a fake? I couldn't. I had to make a decision. This was my little girl — *my little girl* — who had nobody else but me to stand up for her. And that's what I did. And it was hell. I can't tell you how much hell it was. You can't imagine how much hell it was."

At 26, Danielle developed a new set of symptoms. Sharon found a doctor who was actually able to identify her problem, and that was at an emergency room, where Danielle was diagnosed with spondylolithesis and spondylolysis (conditions that affect the vertebrae). The doctor ordered medications that have helped ease the pain.

The list of Danielle's diagnoses looks like this: asthma, Post-traumatic Stress Disorder (PTSD), anxiety, conversion disorder, spondylolithesis, spondylolysis, compromised immune system, hip dysplasia, cervical dysplasia, ovarian cysts, migraine headaches, fused vertebrae, bulged discs, fibromyalgia, debilitating muscle spasms, major depression, gastritis, arthritis, torticollis, granuloma annulare, and tachycardia.

"She is one of the reasons AOLegacy exists today," Sharon said. "It kills me to know that she continues to endure a host

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### Sharon Perry's Story Continued...

of medical challenges without any real medical intervention and treatment plan. And she is not alone. Everyday I meet another child of a Vietnam veteran who is going through the same thing."

She saw people writing on Betty Mekdeci's Website (Birth Defect Research for Children, Inc.). Sharon called her. Betty told her one of the persistent problems in the Agent Orange battle was the lack of a lobbying presence in Washington.

Sharon, along with Danielle, set out to make their presence known on the Internet. They created a Web page: <http://www.agentorangelegacy.us>; at another site — <http://www.agentorangelegacy.ning.com> — they created a support community where veterans and their children could tell their stories.

She said her primary goal was to create that lobbying presence on Capitol Hill, and she wants it there for the children of Vietnam veterans.

"I want to say to the children, 'this is about you,'" she said. "But when they come to me, it's about the veteran. The veteran is sick or the veteran is dying or the veteran has died. When you're in that frame of mind, you can't talk about anything else. You don't care about you, because your entire focus is on your parent. It's taken us two years to get to the point where we can now put the focus on them."

*Significant numbers of Vietnam veterans have children and grandchildren with birth defects related to exposure to Agent Orange. To alert legislators and the media to this ongoing legacy of the war, we are seeking real stories about real people. If you wish to share your family's health struggles that you believe are due to Agent Orange/dioxin, send an email to [mporter@vva.org](mailto:mporter@vva.org) or call 301-585-4000, Ext. 146.*

(Please also see "Faces of Agent Orange" at <https://www.facebook.com/pages/Faces-of-Agent-Orange/187669911280144>)

Senator BLUMENTHAL. Commander Wells, I understand that you have been involved in litigation or you know of litigation, *Gray v. McDonald*. Perhaps you could summarize for us the result of that litigation, because I think it shows how the VA bureaucracy—and I mean no disrespect to anybody who works at the VA. There are some hardworking, dedicated people there. Unfortunately, you made the point, I agree, that very often bureaucracies devote more time and effort and ingenuity to denying claims than enabling them.

Commander WELLS. Yes, sir.

Senator BLUMENTHAL. When you know in our gut they should be granted.

Commander WELLS. Thank you, Senator. We filed an amicus brief and worked very closely with the folks on *Gray vs. McDonald*. What the Court of Appeals for Veterans Claims said was that the exclusion of bays and harbors from inland waters—and actually that would include from the sovereign territory of Vietnam—was completely irrational and that they felt that the regulation was arbitrary and capricious.

They then ordered the VA to rewrite that regulation. The time for appeal has expired, and in an effort to provide assistance, I have met twice with Deputy Secretary Gibson and the general counsel, Lee Bradley, on this issue and have provided them some suggestions.

In the pipeline, we have a couple of other cases dealing with Da Nang Harbor, including one with Nha Trang Harbor as well where there is documented proof of Agent Orange exposure.

I think the VA is sensitive to this. While I cannot speak for the Deputy Secretary, I do believe that in sitting down and going through the briefings, the lightbulb came on and he was aware of what the situation is. So, we are at least cautiously optimistic that a new regulation will come out before these other court decisions come out and that we will not be dissatisfied, let me put it that way, with what they come up with. We are certainly hoping to get partial or complete relief, you know, as a result of their study.

Senator BLUMENTHAL. Thank you for that answer. Thank you for your work on this issue. The lightbulb needs to come on for the Nation on this issue.

Commander WELLS. Yes, sir. That is why we really think that your bill, S. 901, is great because it will help turn the light bulbs on. If the Australians had not turned the lightbulb on, there would be no Blue Water Navy movement.

Senator BLUMENTHAL. Let me just close by saying that term “arbitrary and capricious” is not likely used by a court to describe administrative action. People should understand it is a term of art that is used to describe the most unacceptable and unjustifiable action by an administrative bureaucracy. It is the equivalent, in layman’s terms, of dumb and unjustified.

So, I say that as a lawyer—forgive me, Mr. Chairman, I am a recovering lawyer—that the conclusion of the Court is a pretty dramatic one here. So, I think it gives us an example of how we need to push the VA and our entire Federal executive branch to do more and do better. Thank you.

Chairman ISAKSON. Senator Boozman.

Senator BOOZMAN. Thank you, Chairman Isakson. Again, thank you and Senator Blumenthal for having this very important hearing. Mr. Rowan, we certainly know that Agent Orange exposure has impacted the children of Vietnam veterans and caused serious health problems. As the Vietnam veterans population ages, what affects are we seeing in the grandchildren of these veterans?

Mr. ROWAN. Yeah, that is the really sad point that has been coming out at the hearings we have been holding. You know, it is one thing to talk to the 45-year-old daughter or son of a Vietnam vet-

eran, but to look at the 12-year-old grandson or granddaughter or great-grandchild, believe it or not, who is suffering from learning disabilities or possible other cancer issues and/or other kinds of strange things, to be honest.

Look, we have held these hearings all around the country the last several years. We have held over a couple hundred of them. There are thousands of people who have testified, so we are all over the map about what people are telling us. Yet, there are certain things that have kind of popped up to the fore that we think will probably be the highlight focus when they get this research moving to either say yea or nay. But it has really run the gamut.

Senator BOOZMAN. Who is conducting the research?

Mr. ROWAN. Nobody. That is it. We need this bill. We need this work done. That is the whole issue.

Senator BOOZMAN. Is VA showing any interest at all?

Mr. ROWAN. No. Very clearly they said no. They said, well, there are other agencies that could do this kind of work, which is true, but I will go back to my earlier analogy. I still remember when they called it post-Vietnam syndrome. OK? When we came home and we had our issues with the Vietnam vets. People would say, oh, it is post-Vietnam syndrome, like it was something bizarre just to us.

Until they finally understood what Post Traumatic Stress Disorder was, and that was facilitated by the VA itself when they created their Center of Excellence, to focus on mental health and Post Traumatic Stress Disorder issues. They need to do the same for this issue.

I understand the sergeant's reticence to give it to the VA, believe me—and you would not because the reality is they are right, the VA is right. They do not have the wherewithal inside their own organization today. But, by creating a Center for Excellence assigned to a university somewhere in this country, one of the many wonderful universities that work with the VA hospital systems, I guarantee you there would be several that would vie for the right to do this.

I guarantee you that would give them the wonderful brainpower that we get this work done and it would all be outside contractors. Who are we kidding here? It is all going to be people we can bring up in the field of expertise.

Frankly, one of our Vietnam veteran colleagues is the guy who invented the genome stuff, so what the hell. They are out there. We can find them.

Senator BOOZMAN. So, you have had your hearings and things, and yet, the reality is without S. 901—

Mr. ROWAN. We are going nowhere.

Senator BOOZMAN. We are not going any place.

Mr. ROWAN. No, no.

Senator BOOZMAN. Very good.

Mr. ROWAN. No. And as I say, it is not just for us. It was Persian Gulf veterans who were mentioned earlier. It was 25 years ago. I hate to say it, stuff is bubbling to the top already for them and their kids. Even with some of the new vets coming home, I am getting some really sad stories coming to my attention from dealing

with—many of whom are the sons and daughters of the Vietnam veterans that are in my organization.

Senator BOOZMAN. Dr. Ramos, in your written testimony, you mention the distillation process on board ships and how this process may concentrate Agent Orange in the distilled water. Can you expand on that? Is there evidence that suggests the distillation process did concentrate Agent Orange at levels significantly higher than that found in seawater?

Dr. RAMOS. The mechanics of that particular distillation process is really no different from any other purification process that takes place when you try to purify water. So, essentially, all that you are trying to do is heat up the water, vaporize it, condense it at the end, which leaves impurities behind.

When that type of experiment is carried out, sort of in the laboratory setting, not really in the field, the demonstration that was made by both the Australians and then replicated here in the U.S. following that report is that, in fact, if dioxin is present in that water it would be concentrated because dioxin, of course, is not going to be water-soluble, it is not going to vaporize at the same rate that the water does, it is retained concentrated, and then leaches into the water that sort of comes on the next cycle.

The challenge in interpreting that finding relative to the actual exposure scenario in Vietnam is, of course, that no evidence of that water being contaminated was available because it was carried out after the fact. That said, if, in fact, dioxin was there, and there are some individuals like Mr. Wells indicated before, then the possibility does exist for concentration to have taken place.

Senator BOOZMAN. Thank you, Mr. Chairman.

Chairman ISAKSON. Senator Moran.

Senator MORAN. Mr. Chairman, again, thank you very much for holding this hearing. Let me ask first unanimous consent to have included in the record a number of Institute of Medicine reviews and I want to quote a couple of times from those reports.

Chairman ISAKSON. Without objection.

[The information referred to follows:]

The entire 837-page 2010 Update PDF is available from The National Academies Press at [http://www.nap.edu/catalog.php?record\\_id=13166](http://www.nap.edu/catalog.php?record_id=13166)

The entire 1007-page 2012 Update PDF is available from The National Academies Press at [http://www.nap.edu/catalog.php?record\\_id=18395](http://www.nap.edu/catalog.php?record_id=18395)

Senator MORAN. Thank you, Mr. Chairman. The 2010 Institute of Medicine review on the impact of future generations regarding Vietnam veterans' exposure says this, possible health effects in offspring following paternal exposure merit further investigation because, "Most of the available epidemiology studies are not relevant to the primary exposure group of concern, male Vietnam veterans."

Then, in 2013, the same institute reached the conclusion, "A connection between toxin exposure and effects on offspring, including developmental disruption, and disease onset in later life is biologically plausible." Then, in 2012, "The hypothesis that paternal preconception exposure to toxic agents may result in harm to their

children remains unresolved, in part, because of the sparseness of research on the subject.”

Mr. Chairman, I thank you for allowing that to be admitted to the record, in part, to make certain that the suggestion that anything is redundant and unnecessary is at least, according to this Institute, overcome. Let me just ask the witnesses, in particular, if they have anything that would like to respond that they have not been asked related to the testimony of the representatives from the Department of Veterans Affairs.

My impression as I watched the audience, there was some disagreement in statements that were made and I wanted to give you the opportunity to explain why heads might have been shaking during their testimony.

Mr. Wells.

Commander WELLS. Senator, one of the issues that I did not have an opportunity to respond to was the estimate of 40-some thousand people that would be covered under existing law, which I think this is important because the VA has used that, in part, to justify a \$4.4 billion cost for S. 681 when our liaison, as confirmed by the Committee, with CBO indicates that it will be \$1 billion or less. Part of that—and again, I think it is because they do not have people who know what they are doing as far as Navy ships go doing this process.

We ran a manpower analysis ourselves using the Navy manning plan and we checked our analysis, double-checked it, we provided it to CBO, they agreed with our approach and showed that actually 83,000 people now are covered under existing law with another 1,100 people covered under non-Hodgkin’s lymphoma.

This, I think, is one of the reasons why the VA cost or projected cost of the bill is just way over the top. Now, I gave our figures—and we have also looked at other potential offsets that the VA has not and we gave all that information to the Deputy Secretary and I think he is working that with the VA bean counters now to see if we can respond to that.

Other than that, I would say that the VA has come up with a number of reasons why this bill should not be adopted or why the Navy vets were not exposed and some of them we have addressed here today. If you all have any questions about any of those things, I would be happy to answer them. In our prepared testimony at the legislative hearing on S. 681, we did go through a number of those. Thank you, sir.

Senator MORAN. Master Sergeant Ensminger.

MSgt. ENSMINGER. Yes, Senator. The VA’s description of their process for Camp Lejeune claims that Dr. Erickson gave while the VA was testifying and how detailed they were, nothing could be further from the truth. I am serious. We have cases where their so-called subject matter experts have used citations from *Wikipedia* in their decisions.

Some of them had conflicts of interest. While they are working for the VA as full-time staff, were also working for law firms in opposing Family Leave Act claims and workmen comp claims and toxic tort cases.

We had one subject matter expert in the case that Senator Burr brought up during his testimony, the subject matter expert said



that this veteran who had kidney cancer, they had done a comprehensive review of two decades worth of studies, and in a meta-analysis, and could find no documented evidence where TCE causes any kind of cancer.

That was dated January of this year when no less than the EPA in 2011, IARC in 2013, and our national toxicological program this the summer have classified TCE as a known human carcinogen, mainly based on the evidence that it causes kidney cancer. So, you know, I do not know what they have been reading, or what they have been looking at, but their process is far from successful.

Senator MORAN. Thank you very much.

Mr. Rowan.

Mr. ROWAN. Yeah, I would just like to add that one of the studies that was done was the Ranch Hand study where they followed these folks every 5 years for 20-plus years. The things that came out of there were horrifying, quite frankly; but it never seemed to penetrate into the VA structure. For example, I can give you something very simple. One of the things that came out very early in the Ranch Hand study was the fact of how many of them were diabetic.

They were not even looking for that. It was an accident that one of the researchers finally said, whoa, wait a minute, half of these guys are diabetic. I knew that when I was diagnosed as a diabetic in 1994, but the VA did not get around to granting me any benefit until 2003 when the Secretary finally added diabetes to the list. There are all kinds of information in that data.

By the way, those samples, those serum samples and all the rest of it, the biological stuff, was almost going to get thrown out. We had to fight like hell to get it saved, which had nothing to do with any Government agencies saving it, by the way. This stuff is still around. The researchers can still go back and access it.

I would highly encourage anybody who wants to do that kind of research to do so. But those people are still here. And one of the things that came around—I remember talking to one of my colleagues who is going through that study, and he said that after they got finished and he had talked to one of the researchers he found out that his sterility was such an off-the-chart rare issue. Later, he sat around with 12 guys at a bar when the study was done and six of them had the same issue. I mean, it is just crazy.

Senator MORAN. Mr. Rowan, thank you. Thank you for conducting the town hall meetings that the VBA has, especially the seven in Kansas. We are grateful for that.

Mr. Chairman, thank you.

Chairman ISAKSON. I want to thank all our panelists, and in light of the last comments, remind everybody that we will leave the record open for 7 days for any additional information you would like to submit. We appreciate your service to the country and appreciate your being here today.

Senator Blumenthal.

Senator BLUMENTHAL. I would like to thank each of our witnesses as well. It has been very illuminating and profoundly important.

MSgt. Ensminger, I was struck by your comments about the conflicts of interest and I would ask respectfully that you perhaps

speak with our staff confidentially so that we can follow up on some of the information that you may have.

I want to encourage each of you also to supplement the record, as I indicated earlier, with stories, personal stories, because many of these conditions do not manifest for years after exposure. This is not like the normal battlefield wound where it is visible, it is dramatic. It may be invisible at the time it occurs and manifests only years afterward and sometimes maybe a generation later. Yes, sir.

MSgt. ENSMINGER. You just said something that brought an issue up for me and many other veterans that I have talked to. Why does the VA always say in their denials that the veteran did not demonstrate any signs of kidney cancer while he was on active duty? I mean, it is the most stupid phrase I have ever seen. I mean, of course they did not. It took 20 years for them to develop kidney cancer.

Senator BLUMENTHAL. It sounds arbitrary and capricious.

MSgt. ENSMINGER. Yes, sir.

Mr. ROWAN. If I could add one thing?

Senator BLUMENTHAL. But I want to—I am not the Chairman so I cannot call on you, but I want to make one last point and that is the bill that Senator Moran and I have—and again, I want to thank him while he is here for his work on this bill—provides for research. One of the points of today's testimony is the best research in the world has to be used to be effective.

If the VA or any other agency looks away or turns a blind eye to it or ignores it or disregards it, it will have no effect. So, we need to work on the mindset and the attitude as well as the investigative authority. So, thank you very much to each of you.

Chairman ISAKSON. Mr. Rowan.

Mr. ROWAN. Thank you, Mr. Chairman. Just one quick thing. Senator Hirono—I am mispronouncing her name probably—but she came on something earlier and one of the other people mentioned Fort McClellan. The DOD does not have clean hands here. They also fight like hell every time we try to ask for information.

I mean, at the VVA, we like to sue people if we do not get what we want and we have had more suits than I care to think about against the Department of Defense to get them to cough up information. And exposure stuff, we have gone into this, the Camp Lejeune thing was water, Fort McClellan was experiments. I mean, it is just one thing after another. So, Congress must take a look at what the DOD is not providing but should.

Senator BLUMENTHAL. That is why I have been referring to the Federal executive branch, not just the VA. You are absolutely right, Mr. Rowan.

Chairman ISAKSON. Thank you all for your testimony. We stand adjourned.

[Whereupon, at 12:38 p.m., the hearing was adjourned.]

## A P P E N D I X

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September 27, 2015

The Honorable Richard Blumenthal  
Ranking Member Senate VA Committee  
United States Senate  
825 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Blumenthal,

On behalf of the Blinded Veterans Association (BVA), the only congressionally chartered veterans service organization exclusively dedicated to serving the needs of our nation's blinded veterans and their families for 70 years, BVA is concerned over issue of Agent Orange Toxic Exposure causing significant numbers of veterans to have eye cancers. Vietnam era veterans exposed to toxic substances during their service in the Armed Forces related to that exposure have been diagnosed at 2,000 cases per year from 2007 through 2011. While Choroidal Melanoma is the most common primary malignant intraocular tumor and the second most common type of primary malignant melanoma in the body. It is however, still very rare, an infrequently found tumor, with occurrences of only 5-6 per one million in the general civilian population.

In demographic reports in the U.S. total new 1,000 cases diagnosed in 2010. According to the calculations there should be about 115 Veterans diagnosed with this form of cancer. However veterans in the VA system in 2007 there were just under 2000. Then veterans had diagnosis in 2008, just over 2000 cases, then about 2200 in 2009, and about 1550 cases in 2010. BVA is concerned that this requires more than just VHA research review internally, but it requires joint partnerships, with National Eye Institute (NEI), IOM, and VHA medical surveillance systems examinations, to review Choroidal Melanoma impact on Veterans from the environmental exposures.

The BVA supports your continued leadership to improve health care for our veterans and family members impacted by toxic exposures and supports S. 2081 bill to extend authorities for the Secretary VA ability to expand presumption of service connection for compensation for diseases determined to be associated with exposure to herbicide agents or other toxic agents. We would encourage SVAC to request that VHA research CM and report back to your committee. We hope you can assist in finding answers for these veterans with eye cancer from toxic exposure.

Sincerely,

Thomas Zampieri  
BVA Chairman Government Relations Committee

Blue Water Navy Vietnam Veterans Association



9/29/2015

The Honorable Johnny Isakson  
Chairman, Senate Veterans Affairs Committee  
Via Fax

Dear Chairman Isakson,

I feel things can be simplified on the issue of the Blue Water Navy Vietnam veterans and their exposure to toxic herbicide while serving offshore Vietnam.

It doesn't matter whether we are talking about a separation of 30 feet or 30 miles between the men offshore and the troops on ground. Both groups have the SAME DISEASES. If the entire range of diseases is identical, then the CAUSE must have been identical. If not, then there were TWO TOXIC AGENTS that were involved. But in the 50 years of studying this issue, no one has ever come up with a second causal agent. Therefore, it must have been exposure to the same herbicide that poisoned both groups. There is no other way it could have happened.

That, sir, is valid science, medicine and logic, all combined into one. Please move S-681 out of Committee and to the Senate floor for a vote. The surviving Vietnam veterans of the US Navy and Marines who served offshore are depending on you for your support in this matter.

Very respectfully,

A handwritten signature in black ink, appearing to read "John Paul Rossie".

John Paul Rossie, Executive Director  
USNR, USS Radford (DD-446), RVN 1969  
A Proud Tin Can Sailor



**(COVVHA) Children of Vietnam Veterans Health Alliance, INC**

P.O. Box 1316, Wildomar, CA, 92595, COVVHA@Gmail.com, Wwww. COVVHA.net

October 5, 2015  
The Honorable Johnny Isakson  
Chairman, Senate Veterans Affairs Committee  
Via Email

Dear Chairman Isakson,

I am reaching out to you, as the Cofounder of Children of Vietnam Veterans Health Alliance and as the child of a deceased Agent Orange exposed-service connected Vietnam Veteran. Also, I was born two months premature with multiple birth defects. After a thorough discussion among our board members, and the members of our group, we have arrived at the decision to formally oppose the Toxic Exposure Act S. 901.

This bill is bringing much needed attention to the generations of people who believe their birth defects and ailments were caused by a parent's toxic exposure while in the military, but the bill, as written, is seriously flawed in meeting the needs of children of Vietnam Veterans. Most children of Vietnam Veterans I have spoken to have expressed great concern this bill essentially puts the VA in charge of researching us. There is no guarantee if a connection is discovered that the VA will truthfully report it, and/or recognize it. S. 901 gives the VA final absolute determination on what will be concluded from any information gathered or learned.

On September 29, 2015, the VA testified before the committee they do not have a facility capable of handling the overwhelming task of providing the not only the testing, but the staff/facilities, to do this research. They also made their feelings clear on the topic and have opposed the bill. This combined with the years of mistrust Children of Vietnam Veterans have learned watching their parents being denied the services and care they were eligible for makes this a miss. If the VA cannot handle the veteran's claims they have now, how can they sufficiently guarantee the testing/care of millions of children, grandchildren, and great grandchildren of these vets and others?

The National Academy of Sciences (NAS) has been responsible for having new presumptive illnesses added to the list for our Vietnam Veterans exposed to Agent Orange. This was possible from reviewing independent studies done from around the world. They are an independent source that has not only allowed Vietnam Veterans to link their illnesses to their

exposure, but has also begun reporting the exposure to male veterans likely affected their children. They needed the science to catch up to the anecdotal evidence of the children themselves. S. 901 as written would derail the progress that has recently been made by other organizations.

We agree, research is desperately needed for the children of Vietnam Veterans and subsequent military exposures, but not by doing it in the manner expressed by S. 901. We believe there are other ways to accomplish the same goals.

We also want to formally add our support for the Blue Water Navy Bill S. 681. We have many offspring of Blue Water Navy Veterans in our group who are suffering with birth defects and ailments similar to other service connected veteran's children. These veterans have the same illnesses as the veterans with "boots on the ground", and there is no further science that will be able to prove that this is the case. When in doubt the decision is supposed to go to the Veteran. This stalling is cruel and shameful. There is no reason to continue denying these sailors their benefits.

Thank You,

Heather A. Bowser  
Co-Founder  
Children of Vietnam Veterans Health Alliance

