

Military-Veterans Advocacy Written Testimony for the Record
in Opposition to

HR 5083 and
in Support of

Military Residency Choice Act and HR 3216, HR 4150, HR 4764, HR 5047, HR 5162, HR 5166,
HR 5392, HR 5407, HR 5416

June 23, 2016

Submitted to the United States House of Representatives Veterans Affairs Committee



Commander John B. Wells, USN (Retired),
Executive Director

Introduction

Distinguished Committee Chairman Jeff Miller, Ranking Member Corrine Brown and other members of the Committee; thank you for the opportunity to present the Association's views on the pending legislation before the Committee, HR 5083, the VA Appeals Modernization Act of 2016.

About Military-Veterans Advocacy

Military-Veterans Advocacy Inc. (MVA) is a tax exempt IRC 501[c][3] organization based in Slidell, Louisiana that works for the benefit of the armed forces and military veterans. Through litigation, legislation and education, MVA works to advance benefits for those who are serving or have served in the military. In support of this, MVA provides support for various legislation on the State and Federal levels as well as engaging in targeted litigation to assist those who have served.

As well as legislative advocacy, Military-Veterans Advocacy represents veterans in all facets of the veterans law system. MVA is admitted to practice before the Department of Veterans Affairs, the Court of Appeals for Veterans Claims, the Court of Appeals for the Federal Circuit and the Supreme Court of the United States.

Military-Veterans Advocacy's Executive Director Commander John B. Wells USN (Ret.)

MVA's Executive Director, Commander John B. Wells, USN (Retired) is a 22 year veteran of the Navy. Commander Wells served as a Surface Warfare Officer on six different ships, with over ten years at sea. He is well versed in the actual and potential harms caused by toxic exposure in the five military services.

Since retirement, Commander Wells has become a practicing attorney with an emphasis on military and veterans law. He is counsel on several pending cases at various levels in the veterans legal system. He is very familiar with the veterans law rules and presents Continuing Legal Education on this subject to other attorneys.

HR 5083 VA Appeals Modernization Act of 2016

MVA does not support the VA Appeals Modernization Act of 2016, HR 5083, as currently written.

General Comments

As often happens with the Department of Veterans Affairs, their proposal concentrates too much on form rather than substance. The Secretary seems to be asking Congress to trust

them to work for the benefit of the veteran. Repeated scandals including document destruction and falsification as well as criminal conduct on the part of the VA should put the Congress on notice that the Department, in its present form, is not worthy of trust. We hope that this review and our recommendations will be helpful in crafting legislation that is results oriented.

The proposed legislation does nothing to fix the systemic problems within the VA Appellate system. Instead it seems to make the process easier for the VA, at the expense of the veteran. The proposed legislation flies in the face of the non-adversarial, pro-veteran system envisioned by Congress. Currently the VA takes an adversarial anti-veteran approach designed to provide the illusion of efficiency while denying veterans their earned benefits.

Areas of Concern Not Addressed in the Proposed Legislation

HR 5083 does not address the pending inventory of over 450,000 appeals. The actions of the VA in clearing the backlog through increased claim denials has expanded the appellate backlog. For some unfathomable reason, the Secretary and Acting Executive of the Board of Veterans Appeals, have failed to take action to resolve this backlog. Currently, the Chairman has the power to appoint temporary Board members from VA employees. This needs to be changed legislatively to remove the qualification that the temporary board member be a VA employee. MVA recommends, allowing the appointment of retired Military Judges to adjudicate the backlog near their local residence. While that would require some training in VA law, the retired Military Judges are conversant with the hazard of military service. Additionally, they are trained to make decisions in an equitable and efficient manner.

The proposed legislation does address the Board of Veterans Appeals but it does not speak to the crux of the problem. The key to solving the appellate backlog is addressing issues at the Board. Initially, and as a matter of priority, the President must appoint a qualified chairman of the Board. Secondly, MVA recommends that all members of the Board, acting or permanent, be certified as Administrative Law Judges. The lack of training and learned reasoning in the opinions of the Board members is frankly striking.

The controllable remand rate is definitely unsatisfactory. Too many cases are remanded back because the board member simply does not do his or her job. MVA proposes that if more than 30% of any Board member's decisions are remanded within a given year the Chairman should review the performance and recommend action to the Secretary including probation, suspension or termination. Remands based upon a change in law or regulation would not be considered in computing the remand percentage. Given the high level of remands, MVA recommends that the remand percentage and action taken be included in the annual report to Congress.

MVA also recommends the addition of a statutory provision that ensures that a change in the interpretation of a statute or regulation which clarifies or explains an existing law or regulation or merely represents the agency's reading of statutes and rules rather than an attempt

to make new law or modify existing law is to be considered clear and unmistakable error for purposes of this section. The clear and unmistakable error (CUE) statute does not address the impact of the VA reversing themselves in an interpretive regulation. The VA, without authority ruled in 38 C.F.R. § 20.1403(e) that such a reversal should not be considered CUE although there was no basis to do so and most courts hold that changes in interpretive regulations are retroactive. *See, Patrick v. Shinseki*, 668 F.3d 1325, 1329 (Fed. Cir. 2011); *Paralyzed Veterans of Am. v. West*, 138 F.3d 1434, 1436 (Fed.Cir. 1998) and *Nat'l Org. of Veterans' Advocates, Inc. v. Sec'y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001).

Although not addressed in the proposed legislation, MVA recommends the following to streamline the appeal process:

- § Promulgate a scheduling order for each appeal with cutoff dates that can be extended for good cause shown.
- § Assign a board attorney to monitor the appeal and resolve disputes concerning the events in the scheduling order.
- § The board attorney should attend all hearings.
- § Absent unique or special circumstances, require the decision to be issued within 30 days of the hearing.
- § Hold Veterans Service Managers accountable for improper adjudications.
- § Establish and publish a training program for Veterans Service Officers.

MVA specifically recommends the addition of the following section:

§ 7101(f) to read as follows:

[1] *Any member of the board conducting hearings shall be a certified Administrative Law Judge.*

[2] *Any member of the Board whose decisions shall be remanded by the Court of Appeals for Veterans Claims or higher authority shall not be assigned to any subsequent readjudication.*

[3] *When the Court of Veterans Claims or higher authority remands in excess of thirty percent of any decisions of a particular Board member in any given year, that Board member's performance will be reviewed by the Secretary. If performance is found to be deficient the Chairman will recommend probation, suspension or decertification to the Secretary. Remands based on changes in the law or regulation, to include judicial action, shall not be considered in computing the percentage of remands.*

[4] *The Chairman in his annual report to Congress will include a discussion of the number of remands, and actions taken under this paragraph.*

Amend Section 7101(c)(1)(A) of Title 38 United States Code by substituting the words "qualified persons" for "employees of the Department."

Duty to Assist

HR 5083 guts the existing duty to assist. While the Board normally covers up the failure of the Secretary to perform that statutory duty, this proposal virtually eliminates it subsequent to the initial decision.

The VA proposal seems to limit the entire appellate review to the original record submitted to the agency. While this is common in Administrative Procedures Act reviews, it is not appropriate here. Unlike most administrative hearings, attorneys are not able to engage in paid representation, even if the veteran so desires, until the initial denial has been received. This effectively leaves the veteran without legal representation. Secondly, the system as it currently exists (and would exist under the proposed legislation) does not allow for discovery. As a result, information and witnesses are discovered throughout the process. Attorneys and appellate level VSOs are trained to prepare a proper record which often results in the discovery and production of new evidence. MVA's comments on the legislation, attached hereto, allow for evidence to be submitted at all stages of the proceeding. It further requires the VA, as part of their duty to assist, to provide reasonable discovery. This would include contact information for decision makers and medical referrals, to allow the veteran to conduct an interview. At the discretion of the veteran the interview could be recorded or otherwise transcribed to be used at the hearing.

As a case in point, an illustrative incident occurred last month. MVA was retained as counsel for veteran WS in late January 2016 and the proper information was submitted within the required 30 day period. A copy of the veterans claims file was requested along with other matters under the duty to assist. Subsequent to faxing this information to the Evidence Intake Center, the case was transmitted back to the Board. In mid-April, the Board mailed out a notification that the case was docketed and that the veteran had 90 days "or until the decision was rendered" to provide supplemental evidence. Still waiting for the claims file, MVA began to gather what evidence it could and prepared to make a submission. Three weeks later the Board acted to deny the claim, without providing the claims file or the information requested under the duty to assist. This was an obvious attempt to "stream roll" a case to prevent MVA from preparing a proper submission.

In the same case, the Board claimed that the veteran withdrew his request for a hearing. The veteran believed he requested to reschedule the hearing. Without access to the Claims file, there was no way for MVA to address this issue.

Removal of the restriction on attorney representation and the agency of original jurisdiction would help to relieve this matter. More importantly, basic discovery should be allowed. Once a case is docketed at the Board, the use of a scheduling order with milestones would ensure that the case proceeds efficiently. Assigning a board attorney to shepherd the process would help resolve matters. Providing the veteran and his representative with contact information would help expedite the process.

Unless the duty to assist continues throughout the Appellate process, the VA will be able

to suppress information favorable to the veteran. In that event, matters such as the WS case will become even more commonplace.

MVA recommends the addition of the following:

§ 5103 C. *Discovery.*

Upon request by the veteran or his or her representative, the Secretary, as part of his duty to assist, shall provide the following within 60 days of the request:

- § *Veteran's Claims File.*
- § *Copy of the pertinent parts of all documents used in adjudicating the claims. If a document of more than 10 pages is provided, all pages that were considered are appropriately marked.*
- § *Contact information for the person adjudicating the claim.*
- § *Contact information and curriculum vitae of any medical professional conducting a Compensation and Pension examination.*
- § *A copy of any other document in the possession of Secretary requested by the veteran.*
- § *A copy of any other document in the possession of any Department of the United States requested by the veteran.*
- § *Copies of any and all documents including but not limited to correspondence, both paper and electronic, between any employees of the Secretary or between an employee of the Secretary and any other person concerning the case. (Ongoing requirement)*

Reasonable discovery will allow the process to be expedited. More importantly, it will ensure that the veteran is given a fair hearing.

Information Provided Upon Denial of Benefits

HR 5083 substitutes a “notice” requirement for the Statement of the Case. Unfortunately, the proposed notice does not provide all of the information that the veteran requires in a clear and succinct format. In administrative proceedings, the agency is required to explain and justify their decision. *Motor Vehicles Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The boilerplate citations to Part 3 of Title 38 of the Code of Federal Regulations, which make up the majority of the present Statement of the Case, are confusing to many veterans and should be included in an appendix. The notification should, include a narrative of the reason for denial and in the case of the assignment of a percentage of disability, the diagnostic codes used in the determination of the disability percentage and the proper citation to the appropriate section of Part 4 of Title 38 of the Code of Federal Regulations. Often when there is a disagreement over the percentage of disability, MVA copies the pertinent provisions of Part 4 and provides it to the veteran for evaluation by his or her treating physician. This information is then included in any review. Often the treating physical highlights symptoms consistent with a higher level of disability.

A properly prepared notice should refer to the law as well as policy and allow the veteran

insight into the VA position. This allows the veteran to prepare a proper appeal and to make an intelligent decision as to whether a hearing is required. Currently the VA merely generalizes their decision leaving the veteran to speculate on what type of magical mystery tour was embarked upon by the adjudicator.

MVA recommends that the enumerated notice requirements proposed as § 5104[b] e modified to read as follows:

- (1) identification of the issues adjudicated;*
- (2) a summary of the evidence considered by the Secretary to include a listing of every document relied upon. In the instance where the document is more than 10 pages, the summary will include a citation to the proper page number.*
- (3) a summary of the applicable laws and regulations which will be included in an appendix to the document.*
- (4) identification of findings favorable to the claimant;*
- (5) identification of elements not satisfied leading to the denial;*
- (6) an explanation of how and where to obtain or access evidence used in making the decision; and*
- (7) if applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.” This should include the diagnostic codes used in the determination of the disability percentage and the proper citation to the appropriate section of Part 4 of 38 C.F.R.*
- (8) the appeal rights of the veteran.*

Such Form as the Secretary May Prescribe

Without question VA has a form for every use and some of them actually make sense. Many do not. The forms are drafted by VA employees who are more concerned with bureaucratic achievement than helping the veterans. Although the VA is obviously fascinated by their own forms, they are often are confusing and require intrusive information that is not material to the claim. Although the forms are available to those who can navigate the VA web site, many veterans cannot. Older veterans and those suffering from PTS/TBI have difficulties with some forms and the inane requests and bureaucratise cause confusion and frustration. While MVA supports having **sample** forms, their mandatory use is unnecessary. As long as basic contact information is provided, the VA employee needs only to pick up the phone to secure additional information.

Notices of Disagreement

The proposal requires notices of disagreement to be mailed within a year. There should be a provision to allow submission by fax and e-mail.

MVA is also very concerned about the requirement that the veteran must affirmatively request a hearing or the right to submit additional evidence. The right to a hearing and to submit

evidence should be the default. Many veterans are unrepresented at the time they submit the initial notice of agreement. Flexibility is required to ensure that they do not unconsciously waive their rights or bind future representatives to that waiver, as happened in the illustrative case of WS discussed above. For the same reason, the notice of disagreement should not be the vehicle to limit factual and legal issues. Attorneys may develop additional issues not known by the veteran at the time the Notice of Disagreement is submitted. The requirement to define issues should be fixed at a later time in the process.

Nor should the veteran be required to identify all errors of fact or law at the notice of disagreement stage. Most veterans cannot provide such detailed information, especially at such an early stage in the proceeding. The VA seems to be trying to hold the veteran to the standards expected of an attorney by applying requirements that exceed those found in judicial proceedings. This process was designed to be non-adversarial but the VA is trying to adopt strict technical rules that hamper the veteran's ability to present his or her case. Given the lack of discovery, factual and legal issues may be developed after the notice of disagreement is filed.

HR 5083 also deprives the veteran of the opportunity to have a hearing or submit supplemental evidence. Under this bill a veteran must affirmatively request a hearing and the right to submit additional evidence. This proposal is contrary to the "pro-veteran" approach that Congress has always required. VA forms are often technical and confusing to the veteran and to some service officers. Too often, veterans may fail to request a hearing or the right to submit additional evidence because of a lack of understanding of the form. Waiver through inattention or misunderstanding should never be allowed and the default should be in favor of a hearing and the ability to submit additional evidence. While an affirmative waiver should be allowed for both the hearing and additional evidence, the waiver should be knowing and voluntary.

Waivers should not be required in the notice of disagreement. It is too early in the process. The veteran may well have not secured legal help at that point, additional issues may not have been developed and additional evidence may not have been discovered or constructed. Often attorneys will be able to secure affidavits in support of claims or identify additional issues. A premature waiver would severely limit the attorney or other representative in pursuing the appeal. If a veteran presented to an attorney after waiving his right to a hearing or to submit additional evidence, it is unlikely that the attorney will take the case. If appellate rights are waived in the notice of disagreement, then attorneys must be allowed to charge a fair fee at the initial claim stage.

A veteran should never be deprived of the right to submit additional evidence to the higher level review at the Agency of Original Jurisdiction. Once the initial denial has been made the veteran may choose to hire an attorney. At this point a significant amount of evidence may be generated. As an example, MVA has a large library of evidence on the Blue Water Navy issue. Additionally, MVA routinely obtains affidavits from the veteran's family and friends to establish the nexus between the disability and military service. Often that information is missing from the original claim. Trained attorneys often develop supplemental evidence that could

change the decision. Finally, the proposal would seem to run afoul of the notice and hearing requirements of the due process clause. Under no circumstances should the veteran be deprived of this right.

While MVA has no objection to the dual docket approach, a case should not be assigned to the non-hearing docket unless and until the veteran makes a knowing and voluntary waiver. The waiver form should encourage the veteran to consult with legal counsel. Additionally, transfers between dockets should be liberally granted.

Conclusion

MVA cannot in good conscience support HR 5083 and asks that the Senate incorporate the recommendations provided herein. Frankly, MVA is amazed at the fact that some Veterans Service Organization support the legislation. MVA takes no position on that support but as an organization designed to defend the veterans against the VA we must most strongly disagree with supporting comments. Perhaps more than anything, this underlines the need for attorneys to begin paid representation at the initial claim level.

Military Residency Choice Act

Military-Veterans Advocacy supports the discussion draft of this bill as it will correct a long inequity that has affected military families. Military-Veterans Advocacy would recommend that the bill be modified to include adult children of military families who are attending an institution of higher learning or until they reach the age of 23.

HR 3216 Veterans Emergency Treatment Act

Military-Veterans Advocacy supports HR 3216 in principle, however believes that the bill should clarify the financial responsibility of the Department in the event of transfer.

HR 4150 Department of Veterans Affairs Emergency Medical Staffing Recruitment and Retention Act

Military-Veterans Advocacy strongly supports HR 4150. This will allow for flexible scheduling of medical professionals without affecting the total hours worked over a 12 month period.

HR 4764 Puppies Assisting Wounded Servicemembers (PAWS) Act of 2016

Military-Veterans Advocacy strongly supports HR 4764. Service dogs have been shown to have a positive effect on those suffering from PTS. Programs such as this may actually work to reducing the veterans suicide rate which still remains at epidemic proportions.

HR 5047 Protecting Veterans Educational Choice Act of 2016

Military-Veterans Advocacy supports HR 5047 with the following modifications. The Secretary should be providing this information automatically not just upon request. Military-Veterans Advocacy would like to see the bill expanded to require the Secretary to include whether or not disbarment procedures against the institution are ongoing. Finally, Military-Veterans Advocacy would recommend that the Secretary, by regulation, provide a listing of criteria the Secretary considers to approve the institution of higher learning and the institution's compliance with that criteria.

HR 5162 Vet Connect Act of 2016

Military-Veterans Advocacy supports HR 5162 but recommends the following addition:

“Section 7332(b)(2) of title 38, United States Code, is amended by adding at the end the following new sub-paragraph: (I) To the veteran, the veteran's representative or attorney and the Court of Appeals for Veterans Claims upon the filing of a notice of appeal and docketing of such appeal by or on behalf of a veteran in the Court of Appeals for Veterans Claims.”

This paragraph is necessary to help expedite appeals at the Court of Appeals for Veterans Claims. A delay of two to three weeks is common while veterans representatives send the VA generated waiver form to the veteran for execution and re-submission to the Secretary. It should be generally accepted that when the veteran files his or her notice of appeal, that he grants permission to disclose the pertinent record to the court and to his or her representative and this bill should reflect that acceptance.

HR 5166 Working to Integrate Networks Guaranteeing Member Access Now Act

Military-Veterans Advocacy strongly recommends the adoption of this bill. Congressional representatives and their staffs should have access to the case-tracking systems to promote oversight and constituent services.

HR 5392 No Veterans Crisis Line Call Should Go Unanswered Act

Military-Veterans Advocacy strongly supports this legislation, however believes that it should be modified to require an annual report detailing the effectiveness of the plan to include

disciplinary actions taken against those employees who through negligence or intent allow calls to go unanswered.

HR 5407

Military-Veterans Advocacy supports this legislation to provide priority services to homeless veterans with dependent children. This is a common sense requirement that should have been adopted by the Secretary by regulation.

HR 5416

Military-Veterans Advocacy supports this legislation to provide burial services who die while receiving medical services under the Choice Program.

HR 5420

Military-Veterans Advocacy takes no position on the authorization for the American Battlefields Commission to acquire operate and maintain a memorial in France. The “no position” stance is due to a lack of familiarity with the program and a lack of a cost estimate.

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EDUCATION:

Duquesne University School of Law, Pittsburgh Pa. J. D. conferred June, 1994, Activities: *Duquesne Law Review*, *Duquesne Business Law Journal*, **Juris Magazine**.

Prospective Commanding Officer's School, Commander Naval Reserve Force, New Orleans, LA, December 1989.

Prospective Executive Officer's School, Surface Warfare Officer's School Command, Newport RI, October-December 1987.

Nuclear Weapons Employment, Fleet Training Center, North Island CA, May 1981.

Sealed Authentication System School, Fleet Training Center, North Island CA, May 1981.

Department Head School, Surface Warfare Officer's School Command Newport RI, Sep 1980-April 1981.

Amphibious Warfare Planning, Amphibious Warfare School, Little Creek VA, October 1976.

Introduction to Amphibious Warfare, Amphibious Warfare School, Little Creek VA, October 1976.

Basic Anti Submarine Warfare, ASW School, Newport RI, August 1976.

Combat Information Center Officer School, Fleet Combat Direction Training Center, Dam Neck VA, March 1975.

1200 psi Main Propulsion Assistant School, Navy Destroyer School, Newport RI, April/June 1974.

Boiler Feed Water Test and Treatment Certification/Recertification, Navy

Destroyer School, Newport RI, 1974 and 1976, Fleet Training Center Pearl Harbor HI 1982, Fleet Training Center, Norfolk VA 1987.

Navy Officer Candidate School, Newport RI 1972-1973.

Sangamon State University, Springfield, Ill., B. A. Degree conferred March, 1973

Lincoln Land Community College, Springfield, Ill., No degree 1969-1971.

EMPLOYMENT HISTORY

2013 - Present. Executive Director, Military-Veterans Advocacy, Inc. A non-profit 501(c)(3) organization dedicated to advocating for active duty and military members. This organization provides legal services, education and defense to members of the armed forces, counseling, education and assistance to veterans in obtaining veterans benefits and advocating for legislation on the federal, state and local level to benefit veterans. The organization also defends the religious rights of members of the armed forces. Met with various Congressional staffs on legislation beneficial to service members and veterans. Advocated for the adoption of HR 969/S681 the Blue Water Navy Vietnam Veterans Act and HR 1769/S 901 the Toxic Exposure Research Act. Completed an analysis of the proposed Military Justice Act of 2016 for Congressional committees. Prepared analysis on the Veterans Affairs appellate backlog problem. Worked with other veterans groups to promote awareness of military and veterans issues. Initiated federal court litigation to protect the rights of those who serve or have served in the armed forces. Conducted fundraising drives and addressed interested groups on matter concerning the organizations' goals. Frequent interviewee on radio, television and in the print media. Testified before the Veterans Affairs Committee of the United States Senate.

2010 - 2013. As pro bono Director of Legal and Legislative Affairs for the Blue Water Navy Vietnam Veterans Association, a 501(c)(3) non profit corporation, reviewed all legal documents on behalf of the Association and recommends appropriate action to the Executive Director. Works with the corporate board to develop strategies for federal legislation to promote veterans coverage of Agent Orange exposure by Navy veterans during the Vietnam War. Represented the Association in personal contacts with United States Senators, Members of Congress and their staffs in drafting and encouraging the adoption of appropriate legislation. Met with the permanent majority and minority Veterans Affairs Committee staffs in both Houses of Congress to advance legislation. Worked with various staffs to draft and introduce S. 1629 and HR 3612 in the 112th Congress and HR 543 and HR 1494 in the 113th Congress. Represented the Association in meetings with the Department of Veterans Affairs and various veterans groups including the American Legion, The Military Coalition and Fleet Reserve Association. Testified before the Institute of Medicine, the House Veterans Affairs

Committee and provided presentations on the Blue Water Navy Vietnam Veterans Association and other veterans issues to numerous groups including events sponsored by the Louisiana Bar Associations and the John Marshall School of Law.

1994 - present. Sole practitioner in the Law Office of John B. Wells based in Slidell, Louisiana. Represents military clients of all services in courts-martial trials and before administrative bodies including records correction boards and veterans courts. Counsel for military members and veterans in various federal courts. Also defended clients before state courts in St. Tammany, St. Bernard, Washington and Jefferson Parish. Member of the Conflicts Panel for the 22nd Judicial District Court Indigent Defender Office pre-Katrina. Operates a successful civil and criminal practice in the 22nd and 24th Judicial Circuit and the Civil District Court as well as federal courts with emphasis on employment law, personal injury, civil rights and federal tort claims.

1989-1994. Commanding Officer of the Navy and Marine Corps Reserve Readiness Center. Pittsburgh PA and during 1992-1993 also the Commanding Officer of the Naval Reserve Center McKeesport, PA. Responsible for the training and administrative support for over 1000 reservists including the development of tactical and propulsion engineering courses. Provided training support to four smaller “feeder” Reserve Centers. Oversaw construction of new Center and consolidation with the McKeesport Center. Acted as contracting officer for small purchases. Rank: Commander (O-5).

1987-1989. Executive Officer of the *USS Puget Sound* (AD-38), a Combat Logistics Force ship responsible for the repair and maintenance of other ships. While onboard, completed shipyard overhaul and refresher training. Deployed to the North Atlantic as part of a NATO exercise. During this two month deployment was responsible for interfacing the ship with both United States and allied Navies and providing maintenance support for ships from national and allied Navies. The ship also deployed to the Mediterranean, the Indian Ocean and the Persian Gulf. Supervised 40 officers and approximately 1150 enlisted personnel. Rank: Commander (O-5).

1987. Main Propulsion Assistant and for several months Acting Chief Engineer for the Precommissioning crew of *USS Wisconsin*, (BB-64), a reactivated Battleship. Responsible for ship’s force training and the monitoring of the engineering rehabilitation of the Battleship. Transferred upon selection to Commander (O-5). Rank: Lieutenant Commander (O-4).

1984-1987. Naval Reserve Force Ship Coordinator for Commander Naval Surface Reserve Force. Responsible for the operation and scheduling of nineteen ships of the Naval Reserve Force. Monitored manpower and training requirements and provided support as needed. Rank: Lieutenant Commander (O-4).

1982-1984. Chief Engineer of the *USS Worden* (CG-18), a missile cruiser. Responsible for the operation and maintenance of the ship's propulsion system, electrical distribution system, water distribution, damage control and auxiliary equipment (including the ship's distilling system). Deployed to the Western Pacific, Indian Ocean and North Arabian Sea. Supervised five officers and approximately 140 enlisted personnel. Rank: Lieutenant Commander (O-4).

1982. Chief Engineer of the *USS Badger* (FF-1071), a frigate. Appointed Chief Engineer when predecessor detached for cause several weeks before the scheduled "Light Off Exam." Responsible for the operation and maintenance of the ship's propulsion system, electrical distribution system, water distribution, damage control and auxiliary equipment (including the ship's distilling system). Guided ship through successful "Light Off Exam" and "Operational Propulsion Plant Examination." Supervised three officers and approximately 80 enlisted personnel. Rank: Lieutenant Commander (O-4).

1981-1982. Operations Officer, of the *USS Badger* (FF-1071), a frigate. Prior to the shipyard overhaul co-ordinated the ship's operations and training schedule including operations and exercises with allied ships as part of the RIMPAC exercises and later with ships of the Royal Australian Navy. During the ship's overhaul acted as the ship's coordinator and responsible for the repair and rehabilitation of all equipment including propulsion engineering, auxiliary and combat systems. Supervised two officers and 40 enlisted personnel. Rank: Lieutenant (O3)/Lieutenant Commander (O-4).

1978-1980. Commanding Officer, of Naval Reserve Center, Huntington VA. Responsible for the training and administrative support for over 200 reservists including the development of tactical and propulsion engineering courses. Acted as contracting officer for small purchases. Rank: Lieutenant (O-3).

1977-1978. Assistant Operations Officer, of the *USS Coronado* (LPD-11), an Amphibious Transport Dock. Responsible for assisting the Operations Officer in the support of amphibious operations and the scheduling of ship's exercises. Participated in national and NATO exercises during a Mediterranean deployment. Rank: Lieutenant (O-3).

1977. Chief Engineer of the *USS Coronado* (LPD 11) an Amphibious Transport Dock. Appointed Chief Engineer when predecessor asked to be relieved. Responsible for the operation and maintenance of the ship's propulsion system, electrical distribution system, water distribution, damage control and auxiliary equipment (including the ship's distilling system). Guided ship through successful "Operational Propulsion Plant Examination." Reassigned as Assistant Operations Officer when predecessor's numerical relief reported aboard. Supervised 4 officers and approximately 70 enlisted personnel. Rank: Lieutenant (O-3).

1976-1977. Main Propulsion Assistant of the *USS Coronado* (LPD 11) an Amphibious Transport Dock. Responsible for the operation and maintenance of the ship's propulsion system, water distribution and some auxiliary equipment (including the ship's distilling system). Supervised approximately 70 enlisted personnel. Rank: Lieutenant (Junior Grade) (O-2) /Lieutenant (O-3).

1974-1976. Main Propulsion Assistant of the *USS Holder* (DD 819) a Destroyer. Responsible for the operation and maintenance of the ship's propulsion system, water distribution and some auxiliary equipment (including the ship's distilling system). Supervised approximately 60 enlisted personnel. Rank: Ensign (O-1)/ Lieutenant (Junior Grade) (O-2).

1973-1974. Program Assistant at the Navy Safety Center, Norfolk, VA. Co-ordinated traffic accident reports, analyzed data and traveled in support of shore safety programs. Rank: Ensign (O-1).

1970-1972. Clerical Employee, for the Illinois State Police District #9. Analyzed traffic accident data and provided information to the sworn officers. Co-ordinated the District's Traffic Information Planning System.

MILITARY QUALIFICATIONS

Command at Sea (not assigned)

Navigator

Mechanical Engineering Subspecialist (based on significant experience)

Surface Warfare Officer

Tactical Action Officer

Engineering Officer of the Watch

Officer of the Deck (underway)

Combat Information Center Watch Officer

Command Duty Officer,

SIGNIFICANT PUBLISHED CASES

Milas v. United States, 42 Fed.Cl. 704, (1999).

Reyes v. Sazan, 168 F.3d 158 (5th Cir. 1999).

Lawrence v. McCarthy, 344 F.3d 467, (5th Cir. 2003).

Moody v. United States, 58 Fed. Cl. 522 (Fed. Cl. 2003).

Forbes v. United States, 61 M.J. 354 (C.A.A.F. 2005).

Strickland v. United States, 69 Fed.Cl. 684 (2006)

United States v. McKeel, 63 M.J. 81 (C.A.A.F. 2006)

Williams v. Wynne, 533 F.3d 360 (5th Cir. 2008).

State of Louisiana v. Captain Robert Malone, JA, Louisiana Army National Guard. 28 So.3d 1050, 2009-0060 (La.App. 1 Cir. 9/18/09)

(N G) v. United States, 94 Fed.Cl. 375 (2010).

House v. United States, 99 Fed.Cl. 342 (2011).

Russell v. United States, 102 Fed.Cl. 9 (2011).

Caldbeck v. United States, 109 Fed.Cl. 519, 2013 WL 867879 (2013).

Havens v. Mabus, 759 F.3d 91 (D.C. Cir. 2014)

Klingenschmitt v. United States, 119 Fed. Cl. 163 (2014)

Foster v. Mabus, No. CV 11©1931 (BAH), ___ Fed.Supp.2d ____, 2015 WL 2198851 (D.D.C. May 12, 2015)

ADMITTED TO PRACTICE BEFORE THE FOLLOWING COURTS

Supreme Court of the United States

Supreme Court of the State of Louisiana

Supreme Court of the Commonwealth of Pennsylvania

Court of Appeals of the District of Columbia
United States Court of Appeals for the Fifth Circuit
United States Court of Appeals for the Federal Circuit
United States Court of Appeals for the District of Columbia Circuit
United States Court of Appeals for the Armed Forces
United States Navy-Marine Corps Court of Criminal Appeals
United States Army Court of Criminal Appeals
United States Air Force Court of Criminal Appeals
United States Court of Appeals for Veterans Claims
Department of Veterans Affairs
United States Court of Federal Claims
United States District Court for the Western District of Pennsylvania
United States District Court for the Western District of Louisiana
United States District Court for the Middle District of Louisiana
United States District Court for the Eastern District of Louisiana
United States District Court for the Northern District of Texas
United States District Court for the Southern District of Texas
United States District Court for the District of Columbia

PRESENTATIONS

Military Commissions, Slidell Rotary Club, Slidell, LA June 2004.

Servicemember's Civil Relief Act, Slidell Bar Association, Slidell, LA August 4, 2004.

Veterans Law, Louisiana State Bar Association, Disability Benefits Seminar, Baton Rouge, LA February 18, 2005.

Nuclear Weapons 101 (Unclas) Jericho Convention, Oakley Kansas September 15, 2007.

Veterans Law, Louisiana State Bar Association Disability Law Seminar, Baton Rouge LA March 12, 2008.

Veterans Rights: The Rights of the Military Veteran, Telecast by National Business Institute, March 12, 2008.

Blue Water Navy Issues. Institute of Medicine (IOM) Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (Seventh Biennial Update), San Antonio TX June 19, 2008.

Freedom of Expression, Rights and Remedies, Foundation of Christian Military Ministries, Ft. Benning, Georgia, March 30, 2010.

Blue Water Navy Vietnam Veterans and Agent Orange Exposure Institute of Medicine, Board on the Health of Select Populations, Washington, D.C., May 3, 2010.

Health Effects of the Vietnam War - The Aftermath, United States Congress, House Committee on Veterans Affairs, Washington D.C., May 5, 2010.

Agent Orange Benefits for Navy Veterans, Bon Homme Richard Reunion, Baton Rouge, LA, September 10, 2010.

Fighting for the Veteran: Understanding Service Connected and Non Service Connected VA Claims Louisiana State Bar Association Navigating the Ocean of Disability Law, April 1, 2011.

Blue Water Navy Update, John Marshall Law School Veterans Legal Support Center & Clinic, Military Service and the Law: Issues of Justice and Dignity at Home and Abroad, June 4, 2011.

The Future of the Blue Water Navy Legislation, American Legion Legislative Committee, American Legion Convention, Minneapolis, MN, August 27, 2011.

Veterans Day Celebration, St. Tammany Parish Veterans Memorial, November 11, 2012.

Review of VA Responsiveness to Veterans, Kiwanis Club, Mandeville, LA
November 13, 2012.

VA Claims Backlog, Interview, Fox and Friends, Fox News Channel, April 2,
2013.

Are US vets dying while waiting for benefits, Fox and Friends, Fox News
Channel, April 6, 2013, <http://video.foxnews.com/v/2281927482001/are-us-vets-dying-while-waiting-for-benefits/>.

Soldier punished for political beliefs, Fox and Friends, Fox News Channel, June
9, 2013, <http://video.foxnews.com/v/2464941001001/soldier-punished-for-politics/>.

Interview by Sean Hannity, Hannity Show, Fox News Channel, June
10, 2013, <http://video.foxnews.com/v/2470020153001/fnc-video/>

Interview by Mike Huckabee, Huckabee Radio Show, Media fire.com June 12,
2013, http://www.mikehuckabee.com/_cache/files/cedf51d4-e702-45db-9909-7591992c1477/John%20Wells.mp3

Interview by Mike Huckabee, Huckabee Radio Show, Media fire.com, July
14, 2013 http://www.mikehuckabee.com/_cache/files/862c9e1f-68f0-41ec-be6797df915a7b2c/John%20Wells%207%2014%2013.mp3

Interview by Mike Huckabee, Huckabee Radio Show, Media fire.com, August 21,
2013, http://www.mikehuckabee.com/_cache/files/8cb1febf-931f-4050-931185e964b81c83/John%20Wells%208%2021%2013.mp3

Comments on the Navy Yard Shooter, Fox and Friends, September 18, 2013.

Admissibility of Polygraphs in State and Federal Courts of Louisiana, Slidell Bar Association, January 2, 2014.

Veterans Benefits Lag Behind Welfare, Fox and Friends Weekend, February 8,
2014, <http://video.foxnews.com/v/3170986100001/veterans-benefits-lag-behind-welfarepayments/#sp=show-clips>

Will vets and their families ever get justice? Fox & Friends Weekend, May 18,
2014, <http://video.foxnews.com/v/3574118312001/will-vets-and-their-families-ever-get-justice/?#sp=show-clips>

Interview with J. D. Hayworth, America's Forum, on *Gray v. McDonald*, April 27,
2015,

<http://www.newsmaxtv.com/live/show/AmericasForum/archive/?oid=ppMDlydDpYOUcVFg9QBut1m34srRO5jr> .

Blue Water Navy Update, USS Ponchatula Reunion, Ponchatula LA, May 15, 2015.

Status of Blue Water Navy Legislation, United States Navy Memorial, Washington, DC, May 23, 2015.

Interview with J. D. Hayworth, *Newsman Prime on Blue Water Navy*, June 24, 2015, <http://www.newsmaxtv.com/shows/Newsman-prime/archive/?oid=dkbWt1dTq1hCI96Waw7zqbZjev1mWDwt>.

Webinar sponsored by Hill and Pontoon, *Will the VA Now Admit that You Were in Brown Water?* September 10, 2015, <http://www.hillandpontoon.com/blue-water-and-agent-orange/>

Testimony before the United States Senate Veterans Affairs Committee,
Examining the Impact of Exposure to Toxic Chemicals on Veterans and the VA's Response, September 29, 2015, <http://www.veterans.senate.gov/hearings/exposures09292015>

Webinar sponsored by the Federal Bar Association, *Veterans Law Update*, November 12, 2015.

Interview by Ed Berliner, *Problems with VA*, The Hard Line, Newsman TV, June 8, 2016, <http://www.newsmaxtv.com/shows/the-hard-line/archive/vid/BmeTUwNDE6D2bqFc5wJo5yvOMswgm4up/>

ORGANIZATIONS

St. Tammany Republican Party Executive Committee (2016-Present)

Military Officers Association of America (Life Member).

Judge Advocate's Association (Life Member).

American Legion Post 374, Slidell LA (2003-present).

Fleet Reserve Association (Life member).

Veterans of Foreign Wars Ozone Post 5735, Slidell, LA (Life Member).

United States Naval Institute (Life Member).

Vietnam Veterans of America (Life Member).

Association of the United States Navy (Life Member).

St. Tammany Parish Government, New Direction 2025, Chairperson of the Implementation Committee. 1999-2001.

St. Tammany Parish Chapter Alliance for Good Government 1999-2013. Chapter Vice President 2001, President 2007-2011.

St. Tammany Parish Right to Life 2005-present. Vice President 2008-2011. President 2011-2015.

East St. Tammany Parish Chamber of Commerce Public Policy Committee 1997-present.

Veterans Association of Sailors of the Vietnam War co-founder and Permanent Trustee 2009-2010.

American Bar Association 1994-2009.

Pennsylvania Bar Association 1995-2013.

Louisiana State Bar Association 1995-present.

Federal Bar Association 1996-present.

St. Tammany Parish Government, St. Tammany Veterans and Military Advisory Council, Legal Advisor 2012-present.

Statement Disclosing the Amount and Source (By Agency and Program) of Any Federal Grant or Contract (Relevant to the Subject Matter of Their Testimony) Received During the Current or Previous Two Fiscal Years by the Witness or by the Organization the Witness Represents:

NONE