

***The Impediments Standing in the Way of Timely Delivery of Benefits***  
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I frequently am asked the fundamental question of why the benefit and health care delivery systems for veterans administered by the Department of Veterans Affairs (“DVA”) are so dysfunctional. Like many things, there is no simple answer to this question. In many ways, the DVA is like a battleship, with powerful forces of inertia and mass frustrating the ability of administrators to make any meaningful changes. The unfortunate result is that all too often, the well-being of veterans and their families is compromised, and many never received the benefits that Congress intended.

First, a major underlying factor in the present state of affairs is the structural impediments that insulate the DVA from accountability. These include: (1) a statutory prohibition dating back to the Civil War that forbids veterans from paying counsel any money to represent them in any claims for benefits, which effectively eliminates access to counsel for most veterans; (2) the long history of a statutory bar to judicial review of DVA claims decisions, which was finally changed in part in 1990 by the creation and opening of the Court of Appeals for Veterans Claims, a specialty court with very circumscribed powers and authority; and (3) the *Feres* doctrine, emanating from a Supreme Court decision during the Cold War, which in effect immunized the government from any liability to active duty military personnel. These provisions have combined to give the DVA extraordinary latitude to do what it pleases, and to restrict veterans’ access to justice. The DVA supports and clings to these restrictions on veterans’ civil rights, relying on outdated and inaccurate characterizations of its processes as “non-adversarial.” For far too long, the DVA has resisted the rule of law and compliance and enforcement procedure, and required each veteran to repeat the same struggle for justice, which I would liken to that solitary figure in the Myth of Sisyphus, condemned to eternally push a rock up a mountain, only to have it roll down again.

Second, the DVA has never grappled with or solved the major chronic problems that have plagued it for decades, such as the glaring lack of internal controls, the ever-expanding backlogs of claims and appeals, and the long waiting lists for health care. Instead, the DVA simply resets its “goals” to account for further deterioration in timeliness, and the lines just get longer. From the management perspective, the DVA hops from crisis to crisis, sometimes on multiple, simultaneous fronts, acting much like a player in a multi-panel game of “Whack a Mole.” I have witnessed a continuous torrent of these scandals and headlines for over thirty years. Some of the more memorable disclosures keep floating back to my consciousness: “VA Destroys Millions of Pages of Evidence;” “Veteran Commits Suicide After Being Turned Away from VA Hospital,” “VA Supervisor Instructs Doctors to Diagnose Vets with Adjustment Disorders, Not PTSD,” “VA Attorneys Indicted for Destroying Evidence in VA Files,” “VA Terminates Benefits of Veteran Who Gave Critical Interview to TV Station,” “VA Finds Storerooms of Missing VA Claim Files.”

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And most recently, we have seen stories about Inspector General audits of how the DVA “cooks the books” regarding statistical measures such as patient wait times. And even this week I learned that, after extensive litigation and investigations into the DVA’s manipulation of its electronic waiting lists for health care, the DVA in June 2009 quietly redefined what the standard for being placed on a waiting list by requiring that patients have to wait for at least 120 days (rather than 30) before even being placed on the electronic waiting list. For suicidal veterans, we need to acknowledge that a delay in providing care may turn out to be a death sentence. If the DVA’s eye were on the ball of its mission of serving veterans, it would not need to resort to applying the principles of How to Lie With Statistics. And the backlogs of claims and appeals and remands in the DVA adjudications system for death and disability compensation have continued markedly to deteriorate. For example, how can anyone defend a system that requires 5 to 10 years to resolve a veteran’s appeal? This is a cardinal example of how justice delayed is justice denied.

How did the agency whose mission is “To Care for Him Who Shall Have Borne the Battle” come to this? How did veterans come to be in a class by themselves of second class citizens in a country that should revere their service? At bottom, it is probably agency arrogance and a lack of regard and compassion for the veteran; a misplaced interest in protecting the public fisc; looking out for their selfish interests at the expense of the veteran; a virulent strain of bureaucratic ineptitude; a heightened sense of futility; a lack of competence; and probably a host of other contributing causes. And a judicial system that often is all too willing to defer to the agency or find some way to avoid discussing how bad the system really is. A recurring theme is that veterans are part of that mythical class of “little people” as to whom compromises must be made and accepted because of numbers, administrative efficiency, I beg to differ, and/or costs. All I can say is that I have been to far too many funerals of veteran clients, and that one of the worst things I can imagine is to watch someone condemned to a lifetime of disability, and often poverty, without any compensation or to watch someone wither and sometimes die due to lack of proper medical care.

As a nation, we need to rally around our veterans and eradicate the statutes and regulations which have turned them into second-class citizens. And we need to build a first-class health care system, and take measures to insure that all disabled veterans and their survivors actually receive their just benefits from a grateful nation. How did we reach the point where corporations have more constitutional rights than do our veterans? How can we continue to fail them when their sacrifices have been so great?