

**The Word is Lip-Service: Treatment of American
Veterans Must be More Than That**

by
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With apologies to Stephen Colbert, and without attempting to preempt his next show, let me propose some ideas for defining the word “lip-service.” My definition is drawn from a slice of the real world, that faced by the 1.6 million American veterans returning from fighting the Global War on Terror in Iraq and Afghanistan.

According to a recently released Department of Defense Task Force Report, between one-third and one-half of our Iraq and Afghanistan veterans are likely to experience mental health problems upon their return, most of them in the form of post-traumatic stress disorder. That means that more than 500,000 veterans are likely to experience these symptoms. Yet the Department of Veterans Affairs admitted in 2006 that mental health care is unavailable at many VA facilities, and, even where available, “waiting lists render that care virtually inaccessible,” according to Dr. Frances Murphy, Under Secretary for Health Policy Coordination.

You might logically assume that the federal government has since taken dramatic steps to fine-tune its plans to take care of all these valiant veterans upon their return, veterans that it calls “heroes” in a recent press release. After all, the VA’s motto, drawn from the words of Abraham Lincoln, is: “To care for him who shall have borne the battle and for his widow, and his orphan.”

As a collector of promises, you would like to take heart, I am sure, in this statement from James Nicholson, the Secretary of the VA, after his recent resignation:

“Veterans are entitled to the best this nation has to offer, and at VA, we’re constantly redefining the meaning of best.”

You might similarly find comfort in this statement by President George W. Bush, from a speech made earlier this year:

“We have an obligation, we have a moral obligation to provide the best possible care and treatment to the men and women who have served our country. They deserve it, and they’re going to get it.”

But these platitudes are belied by such embarrassing incidents as the health care scandal at Walter Reed Hospital; the suicides of veterans at Fort Carson awaiting psychiatric exams; and, as reported by Joshua Kors in *Nation* magazine, the Army’s discharge of thousands of Iraq war troops suffering from PTSD and traumatic brain injury based upon alleged pre-existing “personality disorders,” thereby depriving them of eligibility for VA medical care and disability payments.

And then you might start to dwell on statistical reports about the state of affairs at the VA. The backlog of disability claims at the VA has already risen from slightly over 300,000 in

2002 to over 600,000 in 2006, with an expected increase to 950,000 claims in 2008. The Chairman of the Board of Veterans Appeals, James P. Terry, believes that its ability to decide veterans' appeals on a timely basis will be "challenged" by the expected influx of Iraq and Afghanistan appeals. It's legitimate to ask what that means for an agency that already takes an average of 971 days to decide an appeal. The Chairman of the Court of Appeals for Veterans Claims is also warning of unprecedented increases in the CAVC's workload in a court that already takes an average of 1,226 days to resolve an appeal from the BVA.

Even the Federal Circuit, which receives a very small percentage of appeals, is, according to its Chief Judge, Paul R. Michel, seeing "ominous signs" that its swelling docket may "swamp this court before year's end," and cause a "catastrophic" impact on the court. Why does that old John Donne line suddenly pop into my head? "...Never send me to know for whom the bell tolls; it tolls for thee."

And then you learn, as revealed by the Government Accountability Office in a recent report, that the VA's budget for the fiscal years 2005 and 2006 was fashioned by using pre-Iraq war assumptions from 2002. The resulting multi-billion dollar deficits arise from the simple fact that there wasn't enough money to pay for the health care costs and death and disability compensation for so many returning veterans. Gulp.

The deluge is not over yet. Days later, you see press reports that the Bush Administration is threatening to veto any bill that increases the VA budget approved by Congress, saying it is \$3.8 billion too high. Will you, as do I, suddenly perceive a looming catastrophe, the fueling of a national embarrassment?

Having spent more than a decade of my youth in court or at the VA seeking justice for the 500,000 "atomic veterans;" having tried for years to pave the way for judicial review of VA benefits, culminating in the creation of the Court of Appeals for Veterans' Claims in 1989; having witnessed my own mother's claim being the first case to be argued in the newly created veterans' court in 1990, a claim that had been pending for eleven years (*Erspamer v. Derwinski*, 1 Vet. App. 3)—I, for one, have built up at least a modicum of cynicism.

And perhaps counter-intuitively, the inspiring words of the VA Secretary and the President serve for me only to trigger a flashback to my more than decade-long due process case against the VA brought by Morrison & Foerster on behalf of atomic veterans, *NARS v. Walters*, in which the VA shredded millions of pages of documents sought in discovery, intimidated witnesses, and made false statements in discovery responses—acts for which they were repeatedly sanctioned. After all, this is the same VA we are talking about.

Having embarked this month on a new civil rights case on behalf of veterans against the VA, which seeks to eliminate institutional forms of discrimination, address protracted delays in adjudicating claims, and end the widespread failures to provide health care for veterans with PTSD (*Veterans for Common Sense v. Nicholson*), I have a more robust understanding of the word "lip-service." Lip-service to fallen heroes, to battles, to widows and widowers. Lip-service to freedom, and to sowing the seeds of democracy. There is a fine line between such lip-service and hypocrisy. For our brave and suffering veterans, I hope you will agree that the VA should be keeping its word; we cannot allow "lip-service" to be the last word.