

# SOUND OFF!



BULLETIN

THE NEWSLETTER OF VETERANS UNITED FOR TRUTH, INC.

#52

“VETERANS STANDING UP FOR EACH OTHER”

17 NOVEMBER 2011

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## ONLY VETERANS KNOW THIS TRUTH

God and the Soldier, all men adore,  
In time of danger and not before.  
When the danger is passed and all things righted,  
God is forgotten, and the Soldier slighted.

*An unsigned message from a soldier scratched into  
the wall of a sentry box on the Island of Gibraltar.*

Yesterday the judges of the United States Court of Appeals for the Ninth Circuit voted to re-hear our case in response to an appeal from the VA. They removed the 105-page finding from 10 May 2011 from consideration as a precedent, which apparently is normal practice on a re-hearing but which is also frustrating.

The Chief Judge of the Ninth Circuit, Judge Alex Kozinski, was the dissenting judge in the first panel so this is not entirely unexpected, although it is mightily disappointing.

What we won is now set aside and we begin anew.

To recap:

7/23/07	<b>Day 0</b>	Original case filed
6/25/08	<b>Day 358</b>	Judgment in favor of VA
7/31/08	<b>Day 394</b>	VUFT/VCS Appeal
5/10/11	<b>Day 1,407</b>	VUFT/VCS win in part and denial in part (but overall a WIN!)
7/1/11	<b>Day 1,459</b>	VA appeal filed
11/16/11	<b>Day 1,597</b>	9 <sup>th</sup> Circuit withdraws original judgment; schedules <i>en banc</i> hearing.
12/12/11	<b>Day 1,623+</b>	<i>En banc</i> hearing scheduled (some time during the week)

With only 4½ years in the process, at least we have the comfort of knowing that we are getting our day in court a little faster than many veteran's appeals are being processed, although not much faster.

The new appeal is based in large part on the VA's contention that veterans “**lack any due process protection under the Constitution**” entitling them to efficient handling of their treatment and benefit claims.

Of course, the heart of their appeal is the “**doctrine of sovereign immunity**”, which denies citizens the right to sue “the sovereign”, where the US Government and its agencies and departments are now substituted for George III (didn’t we win that one once before?). This claim, in their view, eliminates any role for the courts at all in the workings of the VA or any other government agency.

Where then does the ordinary citizen turn for redress if, as the VA claims, he or she is protected neither by the Constitution nor by the Courts?

The 10 May ruling answered this question by acknowledging that the courts entering into the workings of the department is an unusual step, and one which should normally be taken by the Administration, i.e. the President, or by Congress. The judgment stated that those agencies had “so completely and chronically failed” to respect veterans’ rights to their benefits that the step was necessary, and that the court had to interpose itself on behalf of veterans by intervening in the workings of the VA.

In the words of our Chief Counsel, Gordon Erspamer, the government’s positions “threaten all veterans and their families and the enforceability of all veterans’ benefits, not only service-connected disability and death compensation, but also education, medical care, burial and every type of statutory entitlement.”

My layman’s feeling is that veterans are being denied both due process and equal protection—protection that is granted as a matter of course and of established law to many other groups as recognized classes such as various minorities, whether racial, cultural, or social.

We’ll keep you posted ~ check the home page of our website <http://www.vuft.org> for updates on the hearing.

**PS: We are going to have some heavier expenses connected with preparing for and attending this next round of hearings.**

**If you can find your way to help us out, please make a contribution using a credit card or PayPal at <http://www.vuft.org/donate.html> or by mailing a check to PO Box 4476, Santa Barbara, CA 93140**

**PPS** I am also tempted to wonder where the President and individual Congresspersons stand on this issue. They have just spent the last weekend bloviating to everyone who would listen how wonderful veterans are and how much the nation should support them. Did they mean it? Or, was it just business as usual to garner contributions and votes. **[Ed.]**

"Tommy Atkins" [last 1½ verses]

...

While it's Tommy this, an' Tommy that, an' "Tommy, fall be'ind",  
But it's "Please to walk in front, sir", when there's trouble in the wind,  
There's trouble in the wind, my boys, there's trouble in the wind,  
O it's "Please to walk in front, sir", when there's trouble in the wind.

You talk o' better food for us, an' schools, an' fires, an' all:  
We'll wait for extry rations if you treat us rational.  
Don't mess about the cook-room slops, but prove it to our face  
The Widow's Uniform is not the soldier-man's disgrace.  
For it's Tommy this, an' Tommy that, an' "Chuck him out, the brute!"  
But it's "Saviour of 'is country" when the guns begin to shoot;  
An' it's Tommy this, an' Tommy that, an' anything you please;  
An' Tommy ain't a bloomin' fool -- you bet that Tommy sees!

Rudyard Kipling