

VETERANS LAW JOURNAL

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WINTER 2014-15

Moot Court Competition Draws Record Number of Participating Schools

by Megan C. Kral



The final round teams

On November 15 and 16, 2014, the U.S. Court of Appeals for Veterans Claims (CAVC), the CAVC Bar Association, and The George Washington University Law School co-sponsored the sixth annual National Veterans Law Moot Court Competition (NVL MCC). This year, the NVLMCC drew 20 teams from a record breaking 14 law schools. The two-person teams addressed two issues in the fictional case of *Earhart v. McDonald* before the Supreme Court.

The issues were: (1) does a claimant waive the right to raise an issue on appeal to the U.S. Court of Appeals for Veterans Claims when the claimant did not argue the issue during the proceedings at the Department of Veterans Affairs and it was not reasonably raised by the record? And (2) does the

evidentiary presumption of 38 U.S.C. § 1154(b), which affords combat veterans the ability to establish an in-service injury or disease on the basis of lay evidence alone, apply to operators of aerial drones?

Ultimately, the Chicago-Kent College of Law team of Lyal Fox III and Jared Reynolds were named champions, defeating the team of Frances Denizard and Alexander Gilewicz from the Florida Coastal School of Law. In the final round of competition, these two teams argued before Judges William Moorman, Margaret Bartley, and William Greene of the CAVC.

The other two semifinal teams comprised Lindsay Johnson and Emily Suhr from Pepperdine University School of Law and Ethan Singleton and John King from Widener University School of Law. The semifinal rounds were judged by Gregory Block, Clerk of the CAVC; Mary Ann Flynn, VA Assistant General Counsel for Professional Staff Group VII; and Louis George, Director of Outreach and Education Components for the Veterans Consortium Pro Bono Program and Director of Training and Publications for the National Veterans Legal Services Program.

Moot Court Competition, *continued on page 5.*



COURT OF APPEALS
FOR VETERANS CLAIMS
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Message from the President

It is an honor to serve as the CAVC Bar Association President for the upcoming year. Our goals for this year are to further strengthen our existing membership and relationships, as well as develop new partnerships that will lead to a greater understanding in the legal community of the CAVC and of veterans law in general.

As a veteran myself, I am encouraged by your continued service to the veteran community. I am optimistic that my experience as a judge advocate for the U.S. Marine Corps, a clerk for the Honorable Robert N. Davis, a private practitioner at Bergmann & Moore, LLC, and now as a professor and attorney at The Lewis B. Puller Jr. Veterans Benefits Clinic at The College of William & Mary Law School, will allow me to relate to the various needs of our diverse membership. Having served as a representative of the government, judiciary, veteran, and now of academia, I know that each role comes with its unique challenges. For that reason, I encourage you to feel free to communicate what you would like to see the Bar Association provide that will advance your professional career.

Thank you to everyone who responded to the recent membership survey, which is still available on our website if you would like to participate and have not had the chance yet. The Board of Governors and I have taken your input very seriously and are using it to develop programs and events for the upcoming year. If you ever have any suggestions for programs or events, please feel free to e-mail us at cavcbarassoc@cavcbar.net. We value your input greatly and are always looking for fresh ideas!

I look forward to working with each of you over the next year and to continuing the great work that my predecessor, Bradley Hennings, accomplished last year.

Aniela Szymanski
President, CAVC Bar Association



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A Message from the Chief Judge

By Hon. Bruce E. Kasold



Dear Bar Association Members,

First, let me thank new President, Aniela Szymanski, and the newly empaneled Board of Governors for agreeing to serve your fellow members and for the countless hours you will devote to making this year just as successful as last year. And, on that note, we should all congratulate last year's President, Brad Hennings, and the entire Board of Governors, for an extremely successful FY 2014. From CLE and educational programs, to philanthropic opportunities, to networking occasions, you provided a wealth of events where members came together both in person and remotely – well done! The vitality of the Bar Association depends on individuals stepping up and serving, and the willingness of these members to do so is truly appreciated.

As most of you know, the Board of Veterans' Appeals substantially increased the number of decisions it issued last fiscal year. What should be no surprise then is that the number of cases appealed to the Court is also increasing, with the Court having received more than 350 appeals in four of the last five months. At the same time, only 25-35% of appeals filed at the Court are being initiated by appellants without legal representation. That is a significant drop from the near-60% pro se filing rate of ten years ago. Moreover, less than 20% of appellants remain pro se through the time of disposition. Clearly, you all are part of a vibrant and active group.

This Fall we held oral arguments at the law schools of the University of Pittsburgh, Catholic University, and George Washington University. Twenty teams of students from fourteen different law schools participated in the sixth annual National Veterans Law Moot Court Competition. I also presented the Charles L. Decker Lecture in Administrative and Civil Law at the Army's Judge Advocate General's School, co-located with the University of Virginia Law School. Interest in Veterans Law continues to grow every year, with opportunities to learn about and represent veterans expanding at law schools, and the Army JAG Corps considering extending legal assistance to include helping veterans with their claims.

The Court's bar is growing, as is the number of those learning about veterans law, and the Bar Association has played a significant role in both of these developments. You should all be proud of your Association's many achievements. I know I am!

Regards,

Chief Judge Kasold

Meet Your 2014-15 Board of Governors

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Mulling Mooting: the Legal Writing Institute's Inaugural Moot Court Conference

by Jonathan M. Gaffney

Earlier this year, I received an email advertising a first-of-its-kind conference on moot court programs, co-sponsored by Marquette Law School and the Legal Writing Institute's Moot Court Committee. Given my role as director of the National Veterans Law Moot Court Program (NVLMMCC), I jumped at the chance to pick the brains of other moot court organizers and to learn best practices in the field. I submitted a presentation proposal that was ultimately accepted, and the Bar Association generously agreed to sponsor my trip as part of its outreach and education efforts.

The event, held at Marquette University in Milwaukee on October 25, drew more than 50 attendees from around the country and featured a choice of 29 different seminars and presentations throughout the day. My session was titled "Making Specialized Competitions Accessible to General Audiences" and used examples from the NVLMCC to demonstrate how to help students approach a new legal field.

Although the conference was geared primarily toward law school advisors and coaches, I learned several things that I plan to integrate into the NVLMCC moving forward, including new guidance for coaches, scoring policies, and ideas for integrating multimedia sources into the competition problem. In addition, several attendees reaffirmed the importance of what I've long known to be the NVLMCC's greatest strength: its practitioner judges. Having volunteers who know the underlying law not only makes the questions more authentic, it gives students a taste of actual practice in the field and contributes to the success of the competition.

Thanks to the Bar Association for the opportunity to attend the conference, and a huge thank you to the volunteer practitioners who make the NVLMCC possible every year. I look forward to working with you next year to put some of the new ideas from the conference into practice!

Jon Gaffney is the director of the NVLMCC and is a law clerk to the Hon. Alan G. Lance, Sr., of the U. S. Court of Appeals for Veterans Claims.

Moot Court Competition, continued from front page.

Best Petitioner's Brief was awarded to Frances Denizard and Alexander Gilewicz from the Florida Coastal School of Law. Mr. Gilewicz was also named Best Oral Advocate. Lindsay Johnson and Emily Suhr from Pepperdine University School of Law won Runner Up Petitioner's Brief, and Ms. Suhr was named Runner Up Oral Advocate.

For the Respondents, Christopher Ferlito and Jennifer Richards from the University of Detroit Mercy School of Law won Best Brief, with the team of Ethan Singleton and John King from Widener University School of Law winning Runner Up Respondent's Brief.

The other participating schools included: the Sandra Day O'Connor College of Law at Arizona State University; the George Washington University Law School; the Maurice A. Deane School of Law at Hofstra University; the John Marshall Law School; the University of Missouri School of Law; the Cumberland School of Law at Samford University; the Stetson University College of Law; the Texas A&M University School of Law; and the William & Mary School of Law.

As in years past, the NVLMCC was made possible by the extraordinary efforts of dozens of members of the CAVC, the CAVC Bar Association, and The George Washington University Law School. Over 50 attorneys from the CAVC, VA, and the private bar volunteered their time and expertise to draft the competition problem or judge the competitor's briefs and oral arguments. Special thanks to Jon Gaffney, this year's competition director, for all his hard work and dedication in facilitating this successful and well-received competition

Megan C. Kral is associate counsel at the Board of Veterans' Appeals.

Summary of the VA Regulation Rewrite Project

by Zachary M. Stolz

William F. Russo, the Deputy Director of Regulations Management for VA updated participants at the June 6, 2014, CAVC Bar Association's CLE event on the progress of the regulation rewrite project.



Mr. Russo provided background of the project to rewrite 38 C.F.R. Part 3 and the necessity to provide clearer guidance to VA personnel as well as to the nation's veterans. Mr. Russo explained that under an Executive Order from President Obama, agencies are to improve regulatory review by making regulations "accessible, consistent, written in plain language, and easy to understand."

VA undertook this major operation and has, to date, contributed thousands of hours to its completion and has solicited review and commenting from the private bar and from the country's veterans service organizations. The rewrite will result in a new Part 5 to 38 C.F.R. and will not change how VA develops, adjudicates, or pays claims. But the new Part 5 is designed to make it easier to find, read, understand, and apply VA regulations. This will result in faster claims processing, more efficient employee training, and a more logical layout for the regulatory framework.

According to Mr. Russo, the next steps in the process are: drafting responses to public comments for the final rule, fixing citation errors in the distribution and derivation tables, and once the backlog is sufficiently reduced, implement Part 5.

Zachary M. Stolz is an attorney at Chisholm, Chisholm & Kilpatrick.

For More information about the project:
http://www.va.gov/ORPM/Regulation_Rewrite_Project.asp

How Much Deference is to be Afforded VA in its Interpretation of the Law?

by Nicholas L. Phinney

Reporting on *Pacheco v. Gibson*, 27 Vet.App. 21 (2014), and *Johnson v. McDonald*, 762 F.3d 1362 (Fed. Cir. 2014).

It is a long-held tenet of administrative law that an agency which is responsible for enforcing or applying a particular law is entitled to great deference in how it interprets such a law. *See Auer v. Robbins*, 519 U.S. 452, 457 (1997); *see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). Recently, however, judges serving on both the U.S. Court of Appeals for Veterans Claims and the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) have questioned both how and whether this rule should apply in the veterans benefits system.

How Much Deference, *continued on next page.*

CONTRIBUTORS WANTED

The publications committee is looking for contributions to upcoming editions of the *Veterans Law Journal*. Participants do not need to be located in the Washington, DC area. Please contact Megan Kral at: Megan.Kral@va.gov for more information.

How Much Deference, *continued from page 6.*

In *Pacheco v. Gibson*, an en banc CAVC considered VA's interpretation of 38 C.F.R. § 3.157(b) (2014). VA read the regulation to mean that the date of an outpatient or hospital examination or the date of an admission to a VA or uniformed services hospital could not serve as a request to reopen a claim for service connection and compensation because the previous disallowance of such a claim had not been based on the noncompensative nature of a service-connected disability. *Pacheco*, 27 Vet.App. at 25. In a *per curiam* decision, the majority found VA's interpretation of the regulation to be reasonable and upheld it accordingly. *Id.* at 29.

In a separate opinion, Judge Davis, joined by several of his colleagues, opined that VA's interpretation of the regulation was not entitled to deference because VA is required to resolve interpretive doubt in favor of veterans. *Id.* at 42 (Davis, J., concurring in part and dissenting in part). In a separate opinion, Judge Greenberg agreed with Judge Davis's approach regarding application of the benefit of the doubt. *Id.* at 42-45 (Greenberg, J., concurring in part and dissenting in part). He continued: "In the matter of deference, I would not reward the Secretary for writing an ambiguous, and unintelligible, regulation." *Id.* at 43.

More recently, in *Johnson v. McDonald*, the Federal Circuit considered the scope of 38 C.F.R. § 3.321(b) (2014). The Court held that the plain language of the regulation demonstrated that, in considering the need for an extraschedular referral, VA must not only consider each service-connected disability individually but must also consider the combined effects of a claimant's conditions. *Id.* at 1365.

In a concurring opinion, Judge O'Malley expressed the opinion that, were the regulation not so unambiguous, the case would present the opportunity for continued application of the rule of agency deference. *Id.* at 1366-67 (O'Malley, J., concurring). She noted how several Supreme Court Justices have recently indicated that it may be time to revisit the question of whether administrative agencies should receive such wide latitude in their application of the law. *Id.* at 1367. In particular, she agreed with Justice Scalia's view that "deferring to an

agency's interpretation of its own rule encourages the agency to enact vague rules which give it the power, in future adjudications, to do what it pleases. This frustrates the notice and predictability purposes of rulemaking, and promotes arbitrary government." *Id.* (citing *Talk Am., Inc. v. Mich. Bell Tel. Co.*, ___ U.S. ___, 131 S.Ct. 2254, 2266 (2011) (Scalia, J., concurring)). She also seemed to agree with the view of Judge Davis and Judge Greenberg expressed in *Pacheco* that the benefit of the doubt trumps agency deference.

Given the tension between the deference principles of *Auer* and *Chevron* and the reasonable doubt to be afforded to veterans, deference to agency interpretation may lose its place among the principles of veterans benefits law if it does not lose its place in administrative law altogether before then.

Nicholas L. Phinney is an attorney at Chisholm, Chisholm, and Kilpatrick, LTD.

Federal Circuit Clarifies Role of a Clemency Discharge on Veterans' Benefits Determinations

by Lauren Meyer

Reporting on *Robertson v. Gibson*, 759 F.3d 1351 (Fed. Cir. 2014)

On July 21, 2014, the Federal Circuit held that a veteran's receipt of a presidential pardon under President Ford's "Program for the Return of Vietnam Era Draft Evaders and Military Deserters" did not preclude the VA from considering the claimant-appellant's underlying conduct and subsequent discharge when determining whether he was entitled to veterans' benefits.

In 1963, claimant-appellant, Tony W. Robertson, voluntarily enlisted in the Army. During his service, he went absent without leave (AWOL) on two

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Robertson, *continued from page 7.*

occasions. First, Robertson failed to report to his duty station for 39 days in 1964. Then, he went AWOL for 313 days until the military apprehended him in 1966. In July 1967, the Army convicted Robertson of a second AWOL offense and discharged him "Under Conditions Other Than Honorable." In January 1974, Robertson filed a claim for veterans benefits. The VA denied his claim, noting that the circumstances surrounding his discharge precluded any VA benefits. In July 1976, Robertson received a clemency discharge and pardon under President Ford's "Program for the Return of Vietnam Era Draft Evaders and Military Deserters."

Robertson reapplied for veterans benefits in late 1976, and the VA again denied the claim based on the circumstances surrounding his discharge. He reapplied for benefits numerous times over the next 25 years with the same result; he did not appeal these decisions. In November 2007, Robertson again renewed the claim and received another denial. He subsequently appealed the decision to the Board of Veterans' Appeals. The Board denied Robertson's claim, and the CAVC affirmed. Robertson appealed the CAVC's decision.

Robertson argued that the case concerned the meaning of a pardon, urging that his receipt of a full pardon and clemency discharge meant that the VA could not consider his AWOL offense in reviewing his application for veterans benefits. The Federal Circuit rejected this broad view of what his pardon meant, asserting that the case was instead about Robertson's "specific pardon" in "this specific context of veterans' benefits." Reviewing the terms of the pardon in context, the Federal Circuit held that Robertson's pardon bestowed limited clemency and restored limited privileges that did not preclude the VA from considering his AWOL offense.

The court first examined the origins of the presidential pardon program, started by President Ford in the aftermath of the Vietnam War. In September 1974, he announced the clemency program and established the Presidential Clemency Board (PCB) to advise and administer the program. Several "core principles" guided the PCB,

including the notion that the President was granting "clemency, not amnesty, and that clemency was to be determined on a case-by-case basis, not through a categorical approach."

As part of the program, the President pardoned qualified applicants convicted of AWOL offenses. However, a pardon under the clemency program was "no more than a partial restoration of an applicant's records and rights, blotting out neither the fact nor the record of his conviction." Stated benefits of a pardon included restoration of the right to vote, holding office, holding trade licenses, and "enjoying other rights lost or impaired by a felony conviction." The President also upgraded qualified applicants' discharge status to a new status of "clemency discharge." The clemency program aimed to reduce the social stigma of a "bad paper" discharge and improve employability for veterans. It did not confer or preclude veterans benefits; it was a neutral discharge, and applicants remained eligible to seek veterans benefits from the Department of Veterans Affairs.

President Ford's pardon program specifically granted veterans benefits in about eighty "particularly meritorious AWOL cases," comprising only 0.6% of all AWOL cases. These tended to be extreme situations where the applicant had one or more tours in Vietnam, suffered combat-related wounds or disabilities, or had absences that "could be excused in light of extraordinary emotional trauma experienced during combat."

Relying on reports from the PCB, the court stressed that "[f]or the vast majority of applicants . . . the President did not anticipate that the clemency discharge and presidential pardon would provide entitlement to veterans' benefits." The court then considered the plain language of Robertson's discharge, which granted a "full pardon." Though this language was broad when viewed in isolation, the court noted two limiting phrases that applied to the "full pardon" -- "pursuant to an executive grant of conditional clemency" and "grant of executive clemency." These two limiting phrases "strongly

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Robertson, *continued from page 8*.

suggest that Mr. Robertson's 'full pardon' must be read in the context of the clemency program described by Presidential Proclamation 4313." The court refused to "read the pardon in a vacuum, as Mr. Robertson suggests," stating, "there can be little doubt that Mr. Robertson's pardon was intended to have limited effect with respect to his entitlement for veterans benefits."

The court cited to PCB hearings and reports indicating that the President had cleared the way to veterans benefits for clemency program applicants under very narrow circumstances involving "decorated soldiers who had been wounded, disabled, or traumatized in combat . . . Mr. Robertson was not such an applicant and did not receive veterans' benefits." The court stressed PCB language indicating that a pardon "d[id] not change history" or "compensate for any rights or benefits, legal or economic, that the individual had already lost." Robertson had not earned or acquired a right to veterans benefits at the time of his pardon. The court also noted that Robertson had a year remaining on his term of service at the time of his discharge, leaving his eligibility for veterans benefits even absent the 1967 AWOL conviction "entirely speculative."

The court rejected Robertson's position because it "would effectively turn President Ford's clemency program on its head," as "entitlement to benefits . . . would have been the rule, not the exception." "Most applicants would have been entitled to veterans' benefits because, if not for their AWOL offenses, their service records generally would not have justified a negative character of discharge determination that would have supported a denial of benefits." Had the President intended the clemency discharge to pave the way to benefits, he "would not have singled out particularly deserving applicants to receive veterans' benefits under his clemency program."

In sum, the mere fact that a veteran receives a "full pardon" for his less than honorable discharge from military service does not preclude the VA from considering the circumstances of discharge when determining eligibility for veterans benefits. A

presidential pardon should be analyzed within the context of the executive program establishing its basis. A pardon, without more, does not automatically establish a veteran's eligibility for benefits.

Lauren Meyer is an Attorney-Advisor at the Social Security Administration, Office of Disability Adjudication and Review.

Interplay Between 38 C.F.R. § 3.156(b) and Implicit Denial

by James Drysdale

Reporting on *Beraud v. McDonald*, 766 F.3d 1402 (Fed. Cir. 2014)

The Federal Circuit (Judges Lourie (dissenting), O'Malley (writing), and Chen), considered whether VA's failure to make a finding under 38 C.F.R. § 3.156(b) as to whether evidence submitted within the one-year appeal period of a RO's decision was new and material evidence prevented that decision from becoming final, notwithstanding a subsequent RO denial of an identical claim. In 1985, the RO informed the Veteran that it was having trouble getting his service medical records. After the RO denied his claim, but within the one-year appeal period, the Veteran sent a letter to VA identifying his reserve units and the location of his service medical records. He did not, however, appeal the RO's denial. In 1990, his claim was reopened and denied on the merits. Ultimately, the Veteran was granted service connection with the effective date of August 27, 2004, the date of his informal claim for compensation. The CAVC found that even if the Veteran's 1985 claim remained pending because VA had failed to make the required determination under 38 C.F.R. § 3.156(b), the 1990 denial of an identical claim nevertheless terminated the pendency of that claim and, therefore, there was no basis for an earlier effective date. *See Beraud v.*

Beraud, continued on next page.

Beraud, *continued from page 9.*

Shinseki, 26 Vet.App. 313, 320 (2013) (relying on *Williams v. Peake*, 521 F.3d 1348, 1351 (Fed. Cir. 2008)).

The Federal Circuit reversed and remanded the CAVC panel decision and emphasized that VA was under an express regulatory obligation to make a determination regarding the character of the new evidence submitted within the one-year appeal period, but had not done so. *Beraud*, 766 F.3d at 1406 (citing its decision in *Bond v. Shinseki*, 659 F.3d 1362, 1367 (Fed. Cir. 2011)). The Federal Circuit explained that the CAVC was incorrect to presume that VA considered all relevant evidence in making its 1990 decision, to include the service medical records the Veteran referenced in 1985, given that VA never obtained those records. Therefore, the Court held that until VA makes "a determination that is directly responsive to the new submission" the Veteran's 1985 claim remains open, notwithstanding the subsequent 1990 denial of an identical claim.

In a dissenting opinion, Judge Lourie wrote that he would have affirmed the decision of the CAVC because he viewed *Williams*, 521 F.3d 1348, as controlling. *Williams* held that an initial claim remained pending due to a lack of notice that the claim was disallowed, but that final adjudication of an identical second claim terminated the initial claim. *Williams*, 521 F.3d at 1349-50. The opinion disagreed with the majority that *Bond*, 659 F.3d at 1367, was controlling, since *Bond* did not carve out an exception to *Williams*. Judge Lourie reasoned that unlike *Williams*, *Bond* did not include a later claim whose resolution terminated the initial claim. He found that where there was a subsequent final adjudication of an identical second claim, a presumption that VA considered and rejected evidence submitted by a veteran could be applied, since adjudication of the second claim would allow a veteran to raise the issue of evidence that was not previously considered.

James Drysdale is an *Appellate Attorney in the Department of Veterans Affairs Office of General Counsel, Staff Group VII*

VA Must Ask Service Department to Verify Service of WWII Filipino Soldier

by David E. Boelzner

Reporting on *Tagupa v. McDonald*, No. 11-3575, ___ Vet. App. ___ (August 26, 2014).

Juliet Tagupa's late husband claimed to have fought on behalf of U.S. forces during the Japanese Army's occupation of the Philippine Islands. U.S. law recognizes for veterans benefits purposes the service of such soldiers if they served with actual U.S. military units, with guerrilla groups recognized as having served allied interests, or in certain circumstances with unrecognized guerrilla groups (e.g. if led by a former U.S. or Philippine Commonwealth Army officer). Mr. Tagupa served with a group called the Anderson Fil-American Guerrillas, which claimed to have been recognized by the U.S. Government.

VA directed its routine request for service verification to the National Personnel Records Center (NPRC), which responded that Mr. Tagupa had no service in the Philippine Commonwealth Army or the recognized guerrillas. The primary issue on appeal was whether this inquiry satisfied 38 C.F.R. § 3.203(c), which states that, if no documentation supplied by the claimant is acceptable and probative of qualifying service under subsection (a) of section 3.203, VA "shall request verification of service from the service department."

Mrs. Tagupa contended that the NPRC was not the service department and that nothing established it as an agent of the service department for purposes of verifying service. VA argued that NPRC had been delegated authority to respond to service verification requests through a Memorandum of Agreement (MOA) executed by the Army and NPRC's parent, the National Archives and Records

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Tagupa, *continued from page 10.*

Administration, in 1998, under which NPRC would provide "reference service" on its collection of Philippine Army files and archival holdings.

A frustration for the CAVC and the parties was that facts necessary to resolve the issue of NPRC's authority and role were not of record. VA had routinely sought verification from NPRC, just as it would in the case of a U.S. service-member, and the Board had considered neither NPRC's authority nor the MOA concerning verification of a Filipino soldier's service. After oral argument in the case, the CAVC initially sought to remand for the limited purpose of having the Board address the MOA and VA's procedures for verifying service. But after the VA raised some concerns about the effects of asking the Board for such a determination, the CAVC revoked its order and decided the case on the record it had.

The CAVC did ultimately take judicial notice of the existence of the MOA, but it found the MOA insufficiently clear about whether NPRC was delegated authority to make service determinations. (In his dissent, Chief Judge Kasold expressed his view that the MOA quite clearly did not delegate such authority. The Court refused to take judicial notice of the content of government web sites cited by the parties, or of a report published in a White House blog stating that NPRC did not make service determinations.) Accordingly, because nothing in the record clearly established that the Army had delegated its authority to determine nature and character of service, the Court held that the plain language of § 3.203(c) required remand for the VA to seek verification of service by the Army. Slip op. at 8.

The Court sustained Mrs. Tagupa's allegation that the Board had erred in failing to consider unrecognized guerrilla service. And the Court noted, but held it premature to address, the issue of whether VA would have an additional duty of assistance, by seeking alternative means of verification, if the Army responded with a negative verification.

Appellant had also argued that the Board failed to properly determine whether the ID card issued by the allegedly U.S.-authorized Anderson Fil-American Guerrillas constituted, in effect, a U.S. service document satisfying subsection (a) of 3.203. The majority upheld this reasons-and-bases argument, with Chief Judge Kasold dissenting.

The decision establishes that, absent some future determination that the MOA or other authority delegated to the NPRC the service department's responsibility for verifying service, VA must seek verification from the military department. It remains to be seen whether the service departments will undertake to make these determinations, given the difficulty of sifting through evidence.

David E. Boelzner of Goodman, Allen & Filetti represents veterans and was counsel for Mrs. Tagupa.

CAVC Denies Motion to Substitute Based on Lack of Standing

by Selket Nicole Cottle

Reporting on *Suguitan v. McDonald*, __ Vet.App. __, 2014 WL 5463947 (Oct. 29, 2014) (per curiam).

On October 29, 2014, the U.S. Court of Appeals for Veterans Claims (CAVC) held in *Suguitan v. McDonald* that appellant's son lacked standing to pursue her appeal of a Board of Veterans' Appeals (Board) decision denying her a one-time payment from the Filipino Veterans Equity Compensation Fund (FVECF).

The appellant, Simona Suguitan, was married to Filipino veteran Luis S. Suguitan, who died in October 1996. In November 2009, she filed a claim for a payment from the FVECF. The Board denied her claim because the veteran, who died prior to the enactment of the American Recovery and Reinvestment Act of 2009 (ARRA), which established the FVECF, had (obviously) not filed a

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claim thereunder. Appellant appealed but, while her claim was pending at the CAVC, she died.

In April 2014, appellant's son, Benedicto Suguitan, filed a motion to substitute, arguing that it would be appropriate for the CAVC to issue a nunc pro tunc order reversing the Board's denial of appellant's claim for an FVECF payment, i.e. dating the decision prior to her death. He contended that such an order would allow her estate to collect the payment owed to her at the time of her death and that he would benefit as a beneficiary to her estate.

The CAVC first addressed whether appellant's son had standing to be substituted in the appeal as a result of his status as an accrued benefits beneficiary under 38 U.S.C. § 5121. It held that he lacked standing because statutory section 5121 applies only to "periodic" monetary payments, which exclude one-time payments such as those awarded under the FVECF. *Id.* at *3.

The CAVC then addressed appellant's standing under the line of cases, including *Padgett v. Nicholson*, 473 F.3d 1364 (Fed. Cir. 2007), granting nunc pro tunc relief. Such cases establish three prerequisites for nunc pro tunc relief: (1) the appellant died after the case was submitted to the Court for decision; (2) substitution is appropriate because the person seeking substitution has standing; and (3) considerations of justice and fairness have been satisfied. The CAVC held that appellant's son failed to satisfy the second of these elements. *Id.* at *4.

The CAVC noted that to establish standing, appellant's son must show that he could benefit from a nunc pro tunc order addressing entitlement to an FVECF payment. However, where a nunc pro tunc order could not positively impact the son's request to recover the FVECF benefit, "substitution is properly denied for lack of standing." *Id.* at *5.

In examining the language of ARRA § 1002, the CAVC noted that the statute provides that the only eligible recipients of FVECF payments are (1) a veteran with qualifying service who filed a claim within the relevant time period and (2) a surviving

spouse of a veteran who had properly filed a claim that was pending at the veteran's death. The CAVC thus held that because appellant was the spouse of a veteran who had not filed a claim for an FVECF payment before his death, she was ineligible to recover payment under the statute. *Id.* at *7. It followed, then, that appellant's son, as the putative beneficiary of her estate "has not been adversely affected by the Board's decision and he lacks standing to be substituted on this appeal." *Id.* The CAVC therefore denied the son's motion to substitute due to lack of standing.

The CAVC acknowledged the son's notice that, if substituted, he would pursue his mother's argument that ARRA § 1002 failed to afford equal protection to surviving spouses of veterans who died before the creation of the FVECF. But the Court held that, because he lacked standing to substitute for appellant, the Court could not reach the merits of her appeal. *Id.* at 8. The CAVC vacated the Board decision and dismissed appellant's appeal.

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- Attorney Fee Structure Panel
- VA Administrative Appeals and Part V Rewrite Project
- Statutory and Regulatory Construction
- Evidence Gathering and Assessment Panel
- The Honorable Evan J. Wallach, Speech
- Practical Ethical Considerations

Book Review:***THE GOOD SPY: THE LIFE AND DEATH OF ROBERT AMES***

Kai Bird

Crown, New York City, NY, 2014, 430 PP.

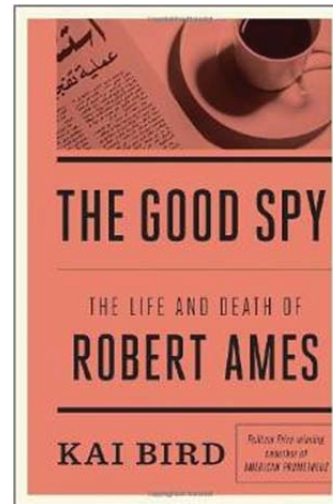
Reviewed by Alice A. Booher

If author Kai Bird's name rings a bell, that is because he has earned a reputation for excellence in reporting and myriad prestigious awards for his writing skills,¹ has had sufficient success, backing and fellowships to permit a certain freedom to be thorough,² and sustains a pragmatic track record of never disappointing. This most recent book culminates an extraordinary research effort and obvious personal commitment to the subject, and results in quite simply a (not to say in any way simple) masterpiece.

¹ Kai Bird coauthored *American Prometheus: The Triumph And Tragedy Of J. Robert Oppenheimer* (2005) with Martin J. Sherwin, for which they won the Pulitzer Prize (biography), as well as the National Book Critics Circle Award for Biography and the Duff Cooper Prize for History in London. His *Crossing Mandelbaum Gate: Coming Of Age Between The Arabs And Israelis, 1956-1078* (2010) was a Finalist for both the 2011 National Book Critics Circle Award and the 2011 Dayton Literary Peace Prize. He wrote *The Chairman: John J. McCloy; The Making Of The American Establishment* (1992); and *The Color Of Truth: McGeorge Bundy And William Bundy, Brothers In Arms* (1998). With Lawrence Lifschultz, he was coeditor of *Hiroshima's Shadow: Writings On The Denial Of History And The Smithsonian Controversy* (1998).

² He utilized fellowships from the John Simon Guggenheim Memorial Foundation, the Alicia Patterson Foundation, the John D. and Catherine MacArthur Foundation, the Thomas J. Watson Foundation, the German Marshall Fund, the Rockefeller's Foundation's Study Center (Bellagio, Italy), and the Woodrow Wilson International Center for Scholars in Washington, D.C. He is a contributing editor of *The Nation* and an elected fellow of the Society of American Historians. See also www.kaibird.com.

It is probably wise to eliminate any potential confusion from the outset: the remarkable and honorable Central Intelligence Agency (CIA) man with the surname "Ames" about whom this book is written is Robert (Bob) Clayton Ames. It is not the less-than-honorable Aldrich Ames.³ They are unrelated, in name or anything else.



Bird is a writer who knows and uses words like fine-tuned lasers and just as targeted. Thus, his use of the term "Good" in his title, one of a handful of words in English that can convey a hundred meanings, as adverb, adjective or noun, is both intended and accurate in as many ways. Bob Ames fulfilled many definitions of "good" in the sense that he conformed to a high standard; he usually acted on sound reasoning and judgment; he was likeable and logical; he held a firm allegiance; and he exhibited such exceptional knowledge, skill of endeavors and experience as to be "the best" in what he did in a wide spectrum over his tragically shortened but exemplary life.

Ames and his wife Yvonne had been next-door Saudi

The Good Spy, continued on next page.

³ Aldrich (Rick) Hazen Ames worked for CIA as a counterintelligence officer and analyst and as a KGB mole; he was convicted in 1994 of espionage, spying for the Soviet Union and Russia and compromising many CIA assets, was found guilty of espionage under 18 U.S.C. § 794(c), and is imprisoned for life without parole.

The Good Spy, *continued from page 13.*

Arabia⁴ neighbors of the then-12-year-old Bird, whose dad was a foreign service officer. The book, however, is not from the author's personal observations, but from hundreds of interviews, generally absent official CIA cooperation, but with obvious and insightful collaboration of intelligence operatives, clandestine and analytical, American, Israeli, Palestinian, as well as members of Ames' family and friends. Not coincidentally, one would be hard-pressed to find another book so revealing and providing relatively candid viewpoints of important historical incidents in recent Middle Eastern history from all of the salient ops players, from CIA/NSA/State/FBI and the White House to senior Mossad (with whom Ames liaised, if that can be the proper phrase), and Iranian leadership, to powerful individuals such as PLO Chairman Arafat and his inner circle.

Bird assists the reader in navigation of the world of history and espionage as best he can by distinguishing yet identifying players and informants by their real names when possible, often by *pseudonyms* (printed in italics), sometimes by aliases or by code names, nicknames, cryptonyms, and occasionally simply by what they call themselves, self-monikers which may be none of the above. It sounds confusing, but the system works well in the context and certainly annotates the information given.

As if the book were a stage play, up front there is a practical yet limited "Cast of Characters," which helps sort the players. The setting of the scenes and locales is also skillfully smooth to the point of perfection.⁵ Bird is particularly adept at describing pivotal characters, many of whom are already well known to the point of notoriety; in the context of

⁴ 1962-1965, CIA and Foreign Service lived alike in the small U.S. consulate compound in Saudi Arabia as in many other locations; Bird did not know that the Ameses were CIA at the time.

⁵ One such example is Bird's dead-on visual, analytical and scholarly description of The Farm, the CIA training grounds between Williamsburg and Richmond, VA about which many authors talk but few actually explain (probably because so few have ever actually been there).

the Ames' story, Bird brings special deft nuances in their personalities.⁶

The author provides a methodical examination of the end-facts by developing the actions and relationships from all sides; because he is describing some of the most pivotal events in recent history, the impact is enormous.

Robert Ames completed his Army service, accepted a proffered CIA job in 1960, and entered the yearlong Ops Course-11. On the rolls as Foreign Service Reserve Officers, their job was recruitment of foreign agents and collection of covert intel from foreign sources. In a rather extraordinary coincidence of timing, soon after their arrival they received insider briefings on the CIA-supported landing at the Bay of Pigs, Cuba. Ames did exceedingly well in practical ops and volunteered for Panamanian jungle training. He expressed early interest in the Middle East, voraciously studied Arabic and history, and loved all of it; he and his family were sent to Dhahran, Saudi Arabia,⁷ where he was one of only two CIA officers. Ames' business placed him proximate to royalty but he also developed a personal penchant for wandering the desert in his jeep, developing genuine rapport among the Bedouins. This mode and manner of involvement and commitment expanded and developed with postings to Yemen and Lebanon. It was just this sort of duality of interest and breadth of immersion that would be the measure of his career.

Bird discusses Ames in such a manner that it becomes clear that integral to his extraordinary success was his personal character, almost an aura

The Good Spy, *continued on next page.*

⁶ One such example is Clair George, a man who wore many CIA hats over the years, one of which was as Beirut Station Chief, and whose personal observations the author quotes in pithy context.

⁷ Located because of its proximity to the oil, and considered a "hardship post," it was then so small that it was not considered a station but a base; Ames' cover was as a commercial officer, and his pseudonym for signing cables back to Langley was Orrin W. Biedenkopf, which he carried the rest of his life.

The Good Spy, *continued from page 14.*

about him coupled with exceptional intellect and earnest veracity that gained him the trust and candor of and from many sources. Not the least of these were Ali Hassan Salameh,⁸ who supervised Arafat's personal bodyguards (among many other things, proved and unproved), and Mustafa Zein,⁹ the eventual head of Arafat's budding intelligence bureau, Force-17. Perhaps more astounding, regardless of where Ames was posted at a given time, whether in Beirut, Tehran, Kuwait or CONUS (where he was head for Near East and South Asia), he actively cultivated and maintained these often seemingly contradictory contacts. Bob Ames' working professional and personal relationships included an idiosyncratic batch of people, meeting for a "greater good and understanding" within the umbrella of timing of the Munich Olympics massacre in 1972; creation and development of groups such as Abu Nidal, Black September and other Palestinian terrorist groups; the Lebanese civil war in 1975; the overthrow of the Iranian Shah in 1979; Israel's ongoing relationship/invasions with and into Lebanon starting in 1982; the massacres in Sabra and Shatila outside Beirut by Lebanese Christian militias in 1982; to the birth of Hezbollah. The panoply of events in which he was, at the very least, in some manner an intimate witness, is quite extraordinary.

As the considered top specialist in Arab affairs, and with the blessing of many at the CIA and/or Department of State if not elsewhere, Ames had a

⁸ Salameh's wide-spectrum career evolving to Chief of Force-17 is well described, including his second marriage in 1977 to Georgina Rizik, Miss Lebanon and Miss Universe (1971). Salameh would also recruit the infamous Imad Mughniyeh, another Shi'ite Lebanese, into the PLO's Force 17; Mughniyeh would become associated with a long list of work including kidnappings, air hijackings and car bombings.

⁹ Zein, is a complicated Shi'ite Lebanese businessman who became an intermediary in Ames' relationship with Salameh; both Zein and Salameh have been justifiably credited by many with much evil, but according to Bird, in several documented incidences, both men affirmatively acted as Ames' friends, and in Zein's case, personally intervened to assist in the return of the bodies of 8 U.S. servicemen after the failed Desert One rescue mission.

remarkable legacy of having dealt, with facility and honesty (apparently mostly mutual), with those that others would or could not touch, including PLO. Bob Ames was integral to the story of these events, all of which are monumental in recent history. He was a man at the top of his game, with access to all of the important players and venues, including the Reagan White House, and in January 1983 received the CIA's highest honor under the Senior Intelligence Service.¹⁰

Ames last met with President Reagan at the White House on March 17, 1983, after having decided to again visit the Middle East. Ames had not been there for 5 years or so and wanted to get an on-the-ground feel for how things were going; he planned to stop and see old Mossad contacts in Tel Aviv and then, at the last minute, added Beirut to his trip. He wanted to see Zein who had cabled that he had urgent business to discuss and wanted Ames to meet with Lebanon's new president Amin Gemayel, brother of the assassinated Bashir Gemayel. At lunch with an old friend at the CIA before leaving, Ames commented that he had no plans to conduct other official Embassy business but might go into the CIA station to be collegial. He had some last briefings with old cohorts, who were all concerned at the deterioration in the dangerous situation.¹¹

The Good Spy, *continued on next page.*

CONTRIBUTION IDEAS?

Please contact Megan Kral at Megan.Kral@VA.gov for more information.

¹⁰ The Distinguished Intelligence Certificate was presented personally to him by Director Casey along with a stipend of \$20,000. At about the same time, Ames saw legendary CIA veteran Clair George, whom Casey had appointed as CIA's liaison to Congress and who thought Ames overly optimistic and naive about the Arab-Israeli conflict solutions.

¹¹ Specifically, it seemed unrealistic that the US and Israelis could impose a Maronite government on the Shi'ites; a few months earlier a car bomb had destroyed an Israeli interrogation and prison facility in Tyre, the second time this had happened; the first had been a truck bomb that had destroyed the Iraqi embassy in Beirut.

The Good Spy, *continued from page 15.*

Having said his goodbyes at Langley,¹² Ames arrived in Beirut on Sunday, April 17, 1983.

Author Bird goes to great pains to discuss all of the pertinent members of the Embassy present at that time, both permanent and those there temporarily, including some new CIA employees, and when applicable, to discuss the exchanges and interactions they had with each other and Ames while he was present on that visit. They constituted a remarkable group of Americans, including some of both the CIA's most experienced and promising operatives. Bird's detailed discussion of the contributions made by these men and women is a unique tribute to all of them, perhaps the most complete outside unavailable sources, and alone well worth the book.

On the night of Ames' arrival, there were two parties, one at the home of the Jim and Monique Lewis¹³ (which Ames attended)--guests included the complete CIA station, a tight knit group of friends, coworkers and a few newcomers--and the other at the apartment of USAID employee Tish Butler, who had invited the off-duty U.S. Marine Corps guards including young LCpl Bobby McMaugh, whose dad was a career DIA employee. By all accounts, both social events were successes but attendees were aware of the seriousness of their circumstances and that was reflected in their conversations. As Bird puts it, everyone there knew that the guest of honor, Ames, was the "ghostwriter of the Reagan peace initiative" and met regularly with the President as well as Secretary of State Schultz.

¹² At the ops center, he ran into Thomas Braman, then serving as Director Casey's intel officer; having worked together recently in Iran, they had met at The Farm 23 years earlier. Braman had been captured in February 1979 at the Tehran embassy and roughed up by Revolutionary Guards; ever since, when one of them went on a trip, the other would jokingly say: "keep your head down;" his parting words to Ames were that mantra.

¹³ Jim Lewis, Deputy CIA Station Chief, Beirut, was one of the CIA's most experienced covert operatives; he had been one of the last POWs released from North Vietnam in 1975; his Vietnamese born, naturalized American citizen, pharmacology-trained wife Monique Nuet Lewis, was on her first day as a CIA administrative officer on April 18, 1983.

In the morning, Ames had breakfast with Zein, then went to the Embassy for what became a contentious morning-long CIA station meeting; Zein briefly followed Ames to talk about a possible luncheon, and when Ames said he was too busy, opted for a dinner and Zein reluctantly left. Station Chief Ken Haas called his wife to ask her to bring his lunch sandwich early, but soon sent her away so as to deal with a bothersome cable; she dallied but many Embassy offices were closed so she left at 1255 hours; at 1304 she got out of their car at home to the sound of a massive explosion behind her. Bird adeptly catches others in their "where were you" moments, for both those who survived¹⁴ and the horrific numbers who did not.¹⁵

A heavily laden battered GMC pickup truck, driven by a young Shi'ite Lebanese man, turned into the Embassy's exit driveway and accelerated down some steps and into the glass doors; at 1304 he detonated his cargo and the explosion ripped through the salmon colored building. It took an inordinate time

The Good Spy, *continued on next page.*

¹⁴ One of these was David Ignatius, a reporter and son of a former SecNav. He had had an interview in the Embassy building and left about 1300, picking up his passport at the Marine Guard station on the way out. He was about a mile away when he heard the explosion and ran back down the cornice, where he viewed the hideous carnage of blown-away building with dangling bodies. Zein was driving to the meeting with Gemayel and saw the plume of smoke and could only wait with anxiety. Since then, Pulitzer Prize-winning Ignatius, who specializes in spy novels among other articles and is now associate editor with *The Washington Post*, has worked with author Kai Bird to present the story to spellbound audiences and to introduce folks to Bob Ames and those who died with him.

¹⁵ Including Deborah Hixon, a 30-year CIA officer in Beirut on a TDY assignment; William Sheil, former Green Beret special forces and CIA contract interrogator; Dr. Ken Haas, Station Chief, considered a young rising star; Frank Johnston, veteran CIA operative; Phyllis Faraci, a single woman who had turned her CIA secretarial career into adventure including South Vietnam where she was one of the final 4 to be evacuated in April 1975.

The Good Spy, *continued from page 16.*

to clear the scene and find everyone. Ames was eventually found in a stairwell, without a mark on him.¹⁶ A total of 63 people died and some 120 people were wounded, many with lifelong injuries.



Seventeen Americans were killed, of whom 8 were CIA officers, an unprecedented number then or since, a U.S. Marine and 4 other American servicemen, three USAID officials, Janet Lee Steven (a freelance American reporter)¹⁷ and 46 Lebanese civilians.¹⁸



¹⁶ Ames' death certificate showed cause of death as "fractures, burns, wounds, internal hemorrhage as a result of the explosion."

¹⁷ Stevens, then pregnant, was working on a story of the Sabra and Shatila massacres and was scheduled to fly the next day to Cyprus to see her friend, author David Cornwell, a/k/a John le Carré, who released his book *The Little Drummer Girl* in March 1983, the title based on the name used for Janet in the Palestinian refugee camps.

¹⁸ Three CIA officers survived, one having lunch outside in Sidon, one inspecting a Persian carpet on his lunch hour, and another avoiding the Embassy as he was in Lebanon under deep cover.

On April 23, President and Mrs. Reagan met a cargo plane carrying 16 coffins at Andrews Air Force Base¹⁹; it had been just a month since he had met with Ames. The CIA wept in the long line of black limos and bluebird buses from Foggy Bottom, Langley and The Farm winding up the Hill where Ames (and some other Beirut casualties) would be buried at Arlington National Cemetery. Zein flew in from Beirut and rode with the family behind the caisson and the U.S. Marine leading the riderless horse. At the time, Ames' was the only gravestone to identify a clandestine officer of the CIA. Two days later there was a service for 3,000 diplomats and other citizens at Washington National Cathedral attended by Vice President George H.W. Bush and Defense Secretary Weinberger. The funeral, described in detail by Bird, had been painful. Casey said of Ames at the memorial service at Langley: "He was the closest thing to an irreplaceable man . . . They did not die in vain."

Perhaps more profound was what would happen on September 13, 1993, while Israeli minister Yitzhak Rabin and Yasir Arafat, Chairman of the PLO, were about to sign a peace accord at the White House, witnessed by President Bill Clinton and others on the South Lawn. Led by Frank Anderson, the CIA's ranking clandestine officer in the Arab world, and in deference to Ames' work and memory, during the signing many of his old friends and new associates climbed back onto the bluebird buses and went back to Arlington. The extraordinary tribute to the fallen hero who had given his life to make it happen took place at the moment that Israeli and Palestinian officials shook hands after signing a Declaration of Principles on Palestine.

Since then, immediately and long-term, there has been much anger and discussion about who was to blame for the 1983 bombing. Justice for those who died in Beirut may not come conclusively if ever. In an unusually detailed analysis by author Bird, the

The Good Spy, continued on next page.

¹⁹ One of the Americans killed, Albert Votaw, a USAID officer, was cremated in Beirut at the wishes of his family.

The Good Spy, *continued from page 17.*

relative potential impact of one suspect, a very young Hezbollah member, Imad Mughniyeh,²⁰ is assessed, as are others, as well as they can be from all perspectives. Veteran CIA hands can only sum up that the Beirut embassy operation was "directed and guided by the Iranian Revolutionary Guard Corps and carried out by Hezbollah."

Ames' widow lives in North Carolina; their six children went to college, married and have kids of their own. They all cooperated with Bird in telling the story of the remarkable Bob Ames, even if it had to be 30 years after his death.²¹

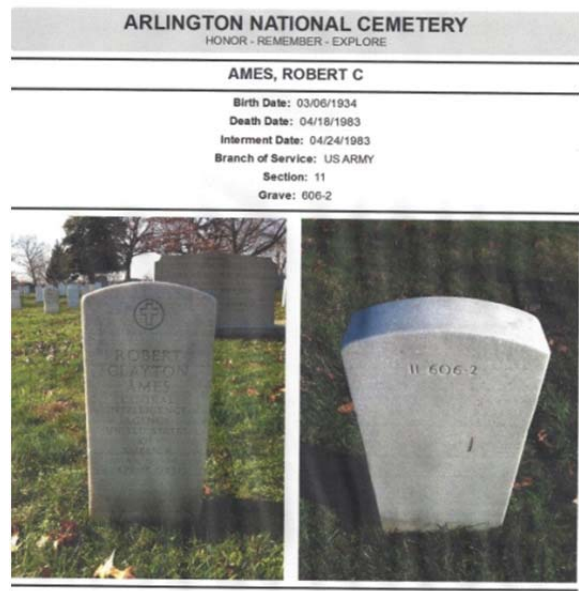
Many orators and politicians have quoted Abraham Lincoln as saying: "Whatever you are, be a good one". Whether Lincoln actually said it or not, the admonition undeniably applied to Bob Ames, who was and did just that, whatever definition one uses for "good." Robert Ames lived and died an extraordinary story; Kai Bird has told it exceedingly well.

Do you have a viewpoint to share?

Please contact Megan Kral at Megan.Kral@VA.gov for more information.

²⁰ If one counts all embassy bombings and Marine Corps barracks attacks, Mughniyeh is accountable for more deaths than anyone until September 11, 2001; he was involved but whether he was the mastermind of the 1983 attack is perhaps not quite so certain. Mughniyeh was known to and worked with Zein. Zein would later serve to try to negotiate a release after the kidnapping of CIA Beirut chief William Buckley in March 1984. In February 2008, Mughniyeh died in a SUV explosion in Damascus. The stories of others, such as Ali Reza Asgari, who defected to the West in 2007, may be suitable for another book and later day.

²¹ Bird says that Zein too has been obsessed with Ames' life and death and has spent much of the last decades methodically investigating the Beirut embassy bombing, even writing his unpublished memoirs, and at great personal risk, interviewing Syrian intel officers; Bird says that Zein remains convinced that Asgari, now purportedly living CONUS, was responsible.



Alice A. Booher, B.A., L.L.B., J.D., is a former Foreign Service Officer and Counsel, Department of Veterans Affairs, Board of Veterans Appeals (1969-2011). She has written extensively for decades on various veteran-related topics and has been published in national media including Stars & Stripes, American ExPOW Bulletin, The Pentagon, Naval Institute Proceedings, Naval History, Army History Foundation's On Point, The Military Advocate, Joint Force Quarterly and others.

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Audio from the CAVC Bar Association's **May 6, 2014, "Best Practices and Common Pitfalls at the Court of Appeals for Veterans Claims: "**

As the community of veterans law attorneys grows, it is more crucial than ever to understand how to effectively handle cases at the Court. Please join us for a program that will look at some of the current challenges facing practitioners at the Court, including recent rule issues, conferencing, interacting with the Court and opposing counsel and more.

Book Review:

Over Here, Edward Humes (Harcourt, 2006), 336 p.p.

Reviewed by Aaron Moshiashwili

I grew up in a cozy suburb, in a mass-produced house my middle-class parents were able to buy, not rent. I went to a high-quality local school, staffed with college graduates, many holding advanced degrees. After high school, college was the expectation.

To anyone who grew up in my generation, or even the previous one, this is just normal life in America. And yet, fifty years before I was born, not a single element of that list would have been the case. Fifty years before I was born:

- Modern suburbs didn't exist;
- The middle class was tiny;
- Home ownership was out of reach for most;
- "High school teacher" was an unskilled job;
- Colleges were bastions of conservatism and only the elite could attend.

(In fact, my university had more students than the entire college population of the U.S. in 1925.)

The changes between then and now aren't due to random chance or evolution over time. These massive social shifts were planned. They were implemented in a bill considered, at the time, so important that its authors called it a new Bill of Rights.

Today, we don't call it the GI Bill of Rights. We just call it the GI Bill. And in that change, we harm our own understanding of just how much this monumental piece of legislation has affected the country we live in today. As we pass the bill's 70th anniversary, we live in a country that has benefitted enormously from the "238,000 teachers, 91,000 scientists, 67,000 doctors, 450,000 engineers, 240,000 accountants, 17,000 journalists, 22,000

dentists - along with a million lawyers, nurses, businessmen, artists, actors, writers, pilots, and others" the Bill educated.

In school, I spent hours learning historical trivial like the Teapot Dome scandal and carpetbagging during the post-Civil War era. Total time spent on the law that literally created the entire world around me? Zero. The more I learn more about the post-WWII GI Bill, the more I consider this the single greatest failure of my education.

Over Here, by Edward Humes, not only corrects this failure, it does so thoughtfully and comprehensively, wrapped in a package that is a joy to read. Humes leaves the reader with a wealth of knowledge about the bill and a desire to learn more about the people and events he writes about.

Humes splits his book into nine chapters, each discussing a different aspect of the GI Bill - housing, education, the arts, medicine, technology, etc. Each chapter is anchored by the story of a living (as of 2006, when the book was written) WWII veteran whose life was altered by that particular aspect of the bill. Humes interviewed each subject and quotes them extensively. This does a fantastic job of adding human depth, emotion, and even a bit of war-story excitement to what could easily be a dry, academic book.

Some of these people were decorated for their service while some served quietly stateside. The book features two senators (Dole and McGovern) as well as the doctor who ended PKU (a childhood disease) and a Nobel-prize winning physicist, Leon Lederman. Lederman gives a key quote about the bill's impact when he says that prior to the war and the bill, his mother hoped that if the stars aligned right, her son might manage to become a dentist. *Over Here* also talks about teachers, cops, and the whole spectrum of post-war experience. If anything, Humes glosses over the stories of the celebrated and powerful to talk about the ordinary people touched by the bill. The book is much richer for it.

Over Here, continued on next page.

Over Here, *continued from page 19.*

So let me jump back a moment. When I say that the book made me "desire to learn more," what I mean is that the book made me want to write fan letters to these veterans. It made me want to say thank you, not only for their service but for their bravery and perseverance through the trials of their lives after the war. This book made me proud to be part of the country that these people lived in, and proud to be part of a country that helped make their lives better. And yet, this is not a hagiography of the Greatest Generation - in fact, one of the interviewees explicitly rejects that label as just a media creation, and Humes quotes Sen. McGovern (a B-24 pilot) claiming that if they *were* the "greatest generation" it was because of the GI Bill, not the war.

Humes' focus on the bill's triumphs doesn't cause him to lose sight of its flaws. Two chapters towards the end discuss racial and gender disparities in the GI Bill. Racism was baked into the bill from the start - the chair of the House Veterans Committee at the time was Representative John Rankin of Mississippi, a man who used racial slurs on the House floor and did his best to protect Nazi war criminals from prosecution after the war. Almost unique among benefits legislation, the GI Bill was ostensibly colorblind - veteran status alone triggered benefits. This meant that black veterans could use it to go to college, buy houses, etc.

Rankin and others responded to this threat to the carefully cultivated racial segregation in the South by granting a huge amount of power to local bureaucrats. As veterans throughout history have

known, Congress may *call* it a right, but if you still need some local official to stamp your paper

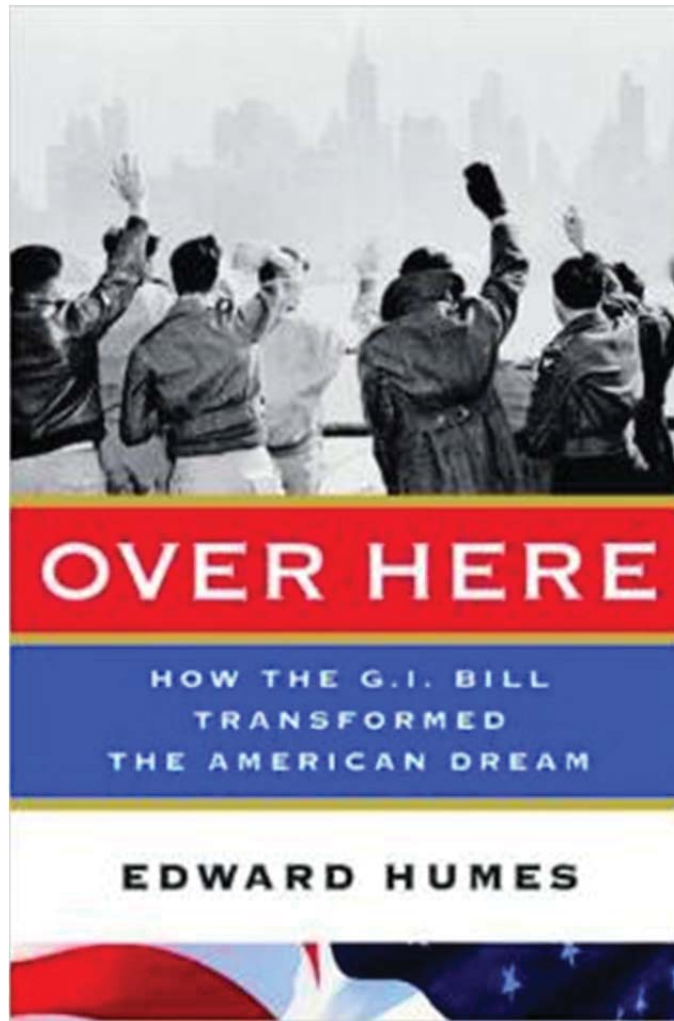
"approved," nothing is guaranteed. In Chicago, Monte Posey (whose point of view is used for this particular chapter) could argue his way past the obvious displeasure of a VA administrator who thought the black veteran wasn't suited for college, only trade school. In the south, black veterans had almost no chance to use the benefits they had earned.

Women didn't have it much better; in some ways the condescending paternalism they faced could be more corrosive than the overt discrimination against non-white veterans. Thousands of women doing vital wartime jobs stateside - test-piloting aircraft, for instance - had their jobs retroactively declared civilian. Enormous social pressure was levied against

women who wanted to serve; after the war, the same pressures were levied against women who wanted to keep some of the gains made through their contributions to the war effort.

On the off chance I haven't said it strongly enough yet, I highly recommend that you read *Over Here*. I will be lending and gifting it furiously. Its contents shed light on not only the politics of veterans and the WWII era, but how our country got where it is today - and that light illuminates some of the most important policy discussions of *our* time. None too subtly, Humes features many of the veterans helped by the bill musing that something like it would be as helpful today as it was seventy years ago.

Over Here, continued on next page.



Over Here, *continued from page 20.*

But if you're going to read it, you need to know - is it an engaging and fun? Well, one of the early passages is about a literal race against time to get the bill passed. It involves a congressman in a sickbed in Georgia racing (with military escort) through a rainstorm to a plane chartered by the American Legion before just barely making it in time to cast the tie-breaking vote to get the bill out of committee. How can you pass that up?

You can't, and you shouldn't. Every American concerned with our country's history - or future - should know about how the GI Bill helped make the country we live in today. And most importantly, *Over Here* should be required reading in public school, if for no other reason than so the students understand how the GI Bill made those schools what they are today.

Aaron Moshiashwili is hoping his twins will start sleeping through the night soon.



On August 17, 2014, CAVC Bar Association members met on the National Mall to wash the Vietnam Veterans Memorial



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A Message from the VETERANS LAW REVIEW

Volume 7 will be published in early Spring 2015. Submissions for Volume 8 will be accepted beginning January 1st through May 1st. The VLR seeks submissions from attorneys, veterans' service organizations, veterans, and other experts with content focusing on veteran specific issues. Authors will be notified of selection in mid-May. Submissions should conform to the current edition of the *Blue Book: A Uniform System of Citation*. Authors are invited to discuss potential submissions with the current VLR Managing Editor by email at BVAVeteransLawReviewEditor@va.gov.

