

Ronald Reagan Presidential Library Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Blackwell, Morton: Files
Folder Title: Veterans Due Process
Box: 49

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

Point of View

Due Process

By Phillip E. Cushman
Executive Director, Veterans For Due Process
P.O. Box 68237
Portland, Oregon 97268

Veterans injured in the defense of the Constitution of the United States are denied the Constitutionally guaranteed right to DUE PROCESS OF LAW by the above referenced laws within Title 38 U.S. Code.

Reference A. closes the doors of every court in America to veterans who have been injured in combat, should they disagree with any final decision of the Veterans Administration concerning their battle injuries.

Reference B. effectively denies veterans the right to counsel, by imposing a \$10.00 limitation on attorneys' fees.

It seems strange indeed that American citizens who have been injured defending the Constitutional rights of all Americans should be rewarded for their sacrifices by having their own Constitutional rights concerning those injuries taken away from them.

Such veterans are now totally at the mercy of the Veterans Administration, a Federal agency which is accountable for its action

to no one. A bureaucratic error, computer error, personality conflict, etc., can easily deny a veteran justice and fair treatment by the VA.

VA decisions can be arbitrary, capricious and/or unlawful because VA decision makers have total impunity. Veterans are not protected by actions of the VA, which are in conflict with provisions of the Constitution, because the courts are not allowed to determine the Constitutionality of VA actions.

Veterans Due Process, a nationwide veterans' organization, together with veterans of all eras, and many concerned Americans, seeks to restore access to the courts to injured veterans, and also their right to hire an attorney to represent them concerning their VA cases.

We do not seek preferential treatment under the law (Constitution) for veterans, just simple equality. Just the same rights enjoyed now by murderers, rapists, thieves, and others who violate the rights of

society.

Injured veterans should not be second class citizens in the eyes of the law, in the country they fought to defend. Judicial Review should be for veterans too. This tragic miscarriage of justice has gone on for long enough!

Veterans Due Process is aware of historic and current legislation which has been introduced before the Senate and the House of Representatives Veterans' Affairs Committees, which would restore access to the courts and the right to counsel—DUE PROCESS OF LAW—to America's veterans.

We are also aware of the fate of the earlier Bills in previous sessions of Congress, and activity to date in the 97th Congress on S.B. 349, H.R. 748, and H.R. 1331.

Please advise your personal position concerning restoring access to the courts and the right to counsel to war injured veterans. Do you support or oppose the concept of Judicial Review of veterans' cases?★

Reference A: 38 U.S.C. 211a
B: 38 U.S.C. 3404c

Veterans Due Process

TO: MARTIN BLACKWELL
P.O. BOX 68237 PORTLAND, OREGON 97268-0237
(503) 659-9912

5-24-82

SOB LETTER REQUESTING APPOINTMENT
WITH PRESIDENT SEVERAL WEEKS AGO,
WILL CALL YOU CONCERNING THAT—
May 21, 1982

Phil Collins

To: The 97th Congress

Approximately 50 years ago, Congress closed the doors of every court of law in America, to citizens who are injured in the defense of the Constitution of the United States. (38 U.S.C. §211(a)--see opposite side of this page).

Approximately 110 years ago, Congress placed a \$10.00 limitation on attorneys fees for veterans claims, which remains unchanged today. The law was originally passed in order to protect veterans from unscrupulous attorneys, but now effectively denies veterans the Constitutionally guaranteed right to counsel which they fought to protect. (38 U.S.C. §3404(c)--see opposite side of this page).

It is incredible that battle-injured veterans, who are injured defending the rights and freedoms of every American, are rewarded for their sacrifice by being denied access to the courts and the right to counsel (DUE PROCESS OF LAW) when citizens who violate the rights of society (murderers, rapists, thieves, etc.) have their Constitutional right to Due Process of Law, JUDICIOUSLY protected.

Veterans Due Process is asking every member of Congress to familiarize yourself with this tragic miscarriage of justice, and to discuss this matter with your constituents, in order to determine if your constituents believe that the Constitutionally guaranteed right to Due Process of Law, should be restored to battle-injured veterans who were injured defending that right for all Americans. You will readily discover that your constituents are under the illusion that said veterans never lost those basic rights. It is our experience that the American people are shocked when they learn of this matter.

Veterans Due Process strongly believes that the entire Congress, once fully apprised of the extent of this injustice, and mockery of our Constitution which the situation constitutes, will support the current legislation before Congress to restore Due Process of Law to America's battle-injured veterans.(S. 349, H.R. 748, and H.R. 1331).

Senate Bill 3392, 94th Congress, which appears on the opposite side of this page, would have simply allowed veterans an equal measure of Judicial Review as available to all other Americans in their dealings with other agencies of the Federal Government, such as Social Security, etc. Proposed legislation in subsequent sessions of Congress, increasingly limit the scope of review, to a level less than that enjoyed by other Americans in judicial reviews of decisions of other agencies of the Federal Government. Should battle-injured veterans have that same measure of judicial review? We believe so, they EARNED it.

S.3392 would also have simply repealed the \$10.00 limitation on attorneys fees and left "unscrupulous attorneys" to be dealt with by the Bar Associations of the various states. Proposed legislation in subsequent sessions of Congress, places limitations on many aspects of attorney involvement and fees. Should battle-injured veterans be allowed to hire an attorney to represent them whenever they feel the need to protect their rights and the interest of justice, as other Americans can in their dealings with other federal agencies? We believe so, they have earned the right to counsel.

The following quotes from a Senator and two Congressmen leave no doubt as to the need for the restoration of Due Process of Law to America's veterans:

" . . . THE FUNDAMENTAL ISSUE IN THIS LEGISLATION IS SIMPLE JUSTICE FOR OUR VETERANS. TO DENY ANY CITIZEN ACCESS TO AN ATTORNEY, TO ISOLATE A FEDERAL AGENCY FROM JUDICIAL REVIEW AND DENY JUDICIAL OVERSIGHT OF RULES AND REGULATIONS PROMULGATED BY A FEDERAL AGENCY GOES AGAINST THE VERY PRINCIPLES OF OUR CONSTITUTIONAL SYSTEM. . . "

Senator Gary Hart, Colorado

" . . . IT IS UNCONSCIONABLE FOR AMERICAN CITIZENS WHO HAVE BEEN INJURED IN BATTLE DEFENDING THE IDEALS AND CONSTITUTIONAL RIGHTS OF THEIR COUNTRYMEN TO BE DENIED A PROCESS WHICH IS ACCORDED VIRTUALLY EVERY OTHER AMERICAN SEEKING REDRESS IN THE COURTS. . . "

Congressman Tom Daschle, South Dakota

" . . . THERE IS NO EXCUSE FOR AMERICA TAKING ADVANTAGE OF ITS VETERANS THE WAY IT HAS. WE HEAR THAT THE ALL VOLUNTEER

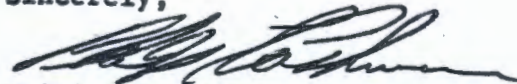
(over)

ARMY IS NOT WORKING, YET WE CONTINUE TO HEAR HORROR STORIES OF MISTREATED VETERANS. IF WE ARE TO HAVE A WORTHY VOLUNTEER SERVICE, WE MUST TAKE AN INTEREST IN OUR VETERANS SO THAT OTHERS WILL NOT BE DETERRED FROM ENLISTING FOR FEAR OF THE TREATMENT THEY MIGHT RECEIVE AS VETERANS . . . VETERANS MUST HAVE THE RIGHT TO THE COURTS IN CASES OF APPEAL. . ."

Congressman Ron Wyden, Oregon

We ask the members of Congress to support legislation to restore Due Process of law to veterans. IT IS TIME FOR A CHANGE.

Sincerely,



Philip E. Cushman
Executive Director

PEC:fm

1. VETERANS DENIED ACCESS TO THE COURTS OF AMERICA. (38 U.S.C. § 211(a) 1970)

Section 211(a)

" . . . the decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise."
(Emphasis added).

2. VETERANS EFFECTIVELY DENIED THE RIGHT TO AN ATTORNEY. (38 U.S.C. § 3404(c))

Section 3404(c)

"(c) The Administrator shall determine and pay fees to agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by the Veterans' Administration. Such fees -- . . . (2) shall not exceed \$10 with respect to any one claim;" (Emphasis added).

3. NO EFFECTIVE REDRESS OF GRIEVANCES.

Section 4004(c)

" . . . (c) The Board (of Veterans Appeals) shall be bound in its decisions by the regulations of the Veterans Administration, [and] instructions of the Administrator. . . . (Emphasis added).

94TH CONGRESS
2D SESSION

S. 3392

IN THE SENATE OF THE UNITED STATES

MAR 6, 1976

Mr. GARY HART introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To provide for judicial review of administrative determinations made by the Administrator of the Veterans' Administration.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That this Act may be cited as the "Veterans' Administration*
4 *Review Act".*

5 SEC. 2. Section 211 (a) of title 38, United States Code,
6 is amended by striking out after "shall be" all that follows
7 through the end of such subsection and inserting in lieu there-
8 of the following: "subject to judicial review as provided in
9 chapter 7 of title 5."

10 SEC. 3. Section 3404 (c) of title 38, United States Code,
11 is hereby repealed.

VETERANS DENIED DUE PROCESS OF LAW BY THE FOLLOWING

1. VETERANS DENIED ACCESS TO THE COURTS OF AMERICA. (38 U.S.C. § 211(a) 1970)

Section 211(a)

". . . the decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise."

(Emphasis added).

2. VETERANS EFFECTIVELY DENIED THE RIGHT TO AN ATTORNEY. (38 U.S.C. § 3404(c))

Section 3404(c)

"(c) The Administrator shall determine and pay fees to agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by the Veterans' Administration. Such fees -- . . . (2) shall not exceed \$10 with respect to any one claim; (Emphasis added).

3. NO EFFECTIVE REDRESS OF GRIEVANCES.

Section 4004(c)

". . .(c) The Board (of Veterans Appeals) shall be bound in its decisions by the regulations of the Veterans Administration, [and] instructions of the Administrator. . . . (Emphasis added).

THESE STATUTES MAKE VETERANS SECOND CLASS CITIZENS IN THE EYES OF THE LAW. ATOMIC VETERANS, AGENT ORANGE VETERANS, AND THOUSANDS OF OTHERS WHO HAVE BEEN DENIED THEIR RIGHTFUL BENEFITS, ARE ALSO DENIED A DAY IN COURT, WHERE THESE DECISIONS COULD BE LAWFULLY AND JUSTLY CHANGED. YET, SOCIAL SECURITY RECIPIENTS, AND ALL OTHERS GRANTED BENEFITS UNDER FEDERAL LAW, HAVE THE RIGHT TO CHALLENGE, IN A COURT OF LAW, WRONGFUL DECISIONS MADE BY THE BUREAUCRATS WHO ADMINISTER THEIR STATUTES. THE RESULTS -- FAIR TREATMENT, JUST DECISIONS -- VETERANS DESERVE THE SAME.

ATTENTION

ALL VETERANS AND OTHER CONCERNED AMERICAN CITIZENS.

1. EVERY COURT OF LAW IN THE UNITED STATES HAS BEEN CLOSED TO VETERANS CONCERNING ANY FINAL DECISION THAT THE VETERANS ADMINISTRATION MAKES ON THEIR CASE. THE CONSTITUTIONALLY GUARANTEED RIGHT TO "DUE PROCESS OF LAW" THAT VETERANS FOUGHT TO PROTECT FOR ALL AMERICANS, HAS BEEN TAKEN AWAY FROM THEM, BY THE UNITED STATES CONGRESS.
2. THE RIGHT OF A VETERAN TO HIRE AN ATTORNEY TO REPRESENT HIM AT A VETERANS ADMINISTRATION HEARING, HAS BEEN EFFECTIVELY TAKEN AWAY FROM THE VETERAN. THE CONSTITUTIONALLY GUARANTEED RIGHT TO COUNSEL, THAT VETERANS FOUGHT TO PROTECT FOR ALL AMERICANS, IS THUS DENIED TO THE VETERAN.
3. THE ABOVE TRAGIC FACTS REPRESENT A FAILURE IN THE AMERICAN SYSTEM OF JUSTICE, AND MAKE THE VETERANS OF THE UNITED STATES, THE ONLY AMERICAN CITIZENS UNDER PRESENT LAW TOTALLY WITHOUT REDRESS TO A FAIR AND IMPARTIAL COURT OF LAW.

IT IS TIME FOR A CHANGE.

VETERANS UNITE !!

AMERICA, FIGHT FOR YOUR VETERANS'
RIGHTS—THEY FOUGHT TO PROTECT YOURS.

July 4, 1981
(Independence Day)

MY FELLOW AMERICANS

A few years ago I was a student at a local university. I was enjoying life, "doing my own thing," virtually oblivious to the world outside of my academic, job, and social schedule. I had that sense of immortality which is a part of youth.

Seemingly the next thing I knew, I was crouched down in an amphibious landing craft approaching a beach in a distant foreign country that I knew nothing about. It was June, 1965 and I was a member of a Marine Corps Infantry Battalion, and we had all taken an oath to defend the Constitution of the United States. Our government had ordered us on a national purpose and we did not question that purpose.

During the next thirteen months, many of my buddies were killed or were injured, many severely, in combat, and I saw dead Americans stacked like cordwood, all on account of the oath which they took to defend the Constitution. During the next 10 years, millions of Americans became involved in that conflict. Nearly 50,000 of them were killed in battle, and hundreds of thousands were injured. Disease, heat, monsoon rains, and the enemy all shared in that grim reality.

When living such a nightmare, it is important, in the interest of maintaining one's sanity, to be able to associate with it an important purpose, meaning, or justification. The sacred rights and freedoms guaranteed to every American in the Constitution, which we were sworn to defend, do in fact constitute an important purpose and meaning, but an injury which I suffered in Vietnam eventually caused me to learn a startling fact which not only forced me to question the above justification, but more importantly, threatens to destroy the constitutional rights and freedoms of every American citizen. That fact is that CITIZENS INJURED IN BATTLE OR SERVICE, IN THE DEFENSE OF THE CONSTITUTION, HAVE NO CONSTITUTIONAL RIGHTS CONCERNING THOSE INJURIES, IN SPITE OF THE FACT THAT THE CONSTITUTION GUARANTEES RIGHTS TO EVERY AMERICAN.

To be specific, the following constitutional rights and safeguards have been taken away and are denied to American citizens injured in combat or service:

- 1) DUE PROCESS OF LAW (the right of all citizens to a fair and impartial hearing);
- 2) EQUAL PROTECTION OF THE LAW;
- 3) EFFECTIVELY, THE RIGHT TO AN ATTORNEY OF THEIR CHOICE;
- 4) ACCESS TO THE COURTS OF THE UNITED STATES;
- 5) PROTECTION OF THE JUDICIAL REVIEW DOCTRINE.

The American people assume that injured veterans have those rights, but they do not. When I entered the Marine Corps I also assumed that I would have those rights if I was injured, as there was no "disclaimer of liability clause" on the enlistment contract which warned me by saying:

CAUTION, SIGNING THIS CONTRACT MAY CONSTITUTE FORFEITURE OF ANY OR ALL CONSTITUTIONAL RIGHTS CONCERNING ANY INJURIES WHICH YOU MAY SUSTAIN IN THE DEFENSE OF THE CONSTITUTION OF THE UNITED STATES.

Yet that forfeiture is exactly what current enlistment, or draft, may result in; nor is there a constitutional amendment excluding injured veterans from constitutional rights -- the people of this country would not vote for that.

I am a patriotic American citizen, as were the past three generations of my family who were naval officers, graduates of the Naval Academy at Annapolis. I believe that Americans do have a duty to serve their country, and protect it from danger, but I also believe that our government should not relegate those veterans unfortunate enough to be chewed up in the machinery of war to mere cannon fodder, which deprivation of their constitutional rights certainly constitutes. Citizens injured defending the Constitution have earned their rights, and do not seek preferential treatment under the law. They simply want due process of law, and equal protection of the law, which is not a matter of governmental or liberal generosity. It is a matter of simple justice!

I write this letter primarily because when I see young people I cannot help but think that someday they may become entangled in the complex and incredibly effective "web" whose intricate construction is detailed in this letter. Should a citizen become so entangled there is no escape under existing laws. You are at the mercy of the moods or whims of a government agency (the Veterans Administration -- V.A.), whose operation is not subject to the limitations on governmental power specified in the Constitution of the United States. By "law," no court in this country and no official of our government has any power or jurisdiction to even look into what you are sure is a gross miscarriage of justice. One example of what can happen, and often does I am told, is that if you were injured in battle or service, the V.A. can simply tell you that your service medical records were "unfortunately lost" and that consequently your contentions cannot be substantiated, therefore, your request for the help which you earned from your country, is denied. Again, there is no appeal outside the V.A. system of justice, it is not accountable for its actions to anybody. I cannot, in good conscience, allow this blatant violation of the Constitution, and mockery of justice, to continue, as knowledge of it without trying to stop it would make me a party to it, and I will not be that. The only reason that I can perceive to place an agency of government above the law, would be to perpetrate injustice.

For years I have tried to understand, and to resolve this issue; and have talked and/or corresponded with numerous people, many of whom realize its true significance, gravity,

and danger. The true danger is the PRECEDENT which was set in taking constitutional rights away from any American citizen. The fact that it is veterans injured in our country's wars who have lost their rights, tragic and ludicrous as that is, is enough, but is not the point. The point is, "WHO IS NEXT?" Every American citizen should, in the interest of being realistic, think seriously about that. The precedent is clear! Will aged Social Security recipients be the next to lose their access to the courts of the United States?

I am asking that each of my fellow Americans join with the many citizens and organizations which are trying to correct this injustice. Your letters to our government, requesting that the legislation presently before the Congress (Senator Hart's Bill #349 -- discussed later in this letter) be passed into law will bring the necessary change.

The remainder of this letter, regrettably, but necessarily, lengthy as it is, will convey the laws and facts of this matter, efforts to resolve it, and the importance that you do not assume that others will correct the problem. It has taken seven years to compile the knowledge which I have of this issue, some of which is conveyed to you in this letter. I ask that you please take a few minutes of your time to read it, as this is both a problem and a serious threat to every American.

-- IMPORTANT DETAILS --

A basic understanding of the Constitution and the present V.A. system of justice is essential in order to understand this problem. The Constitution is a contract between "we the people" and our government, which specifies what powers we give to the government and what limits are placed on those powers. When our government passed laws which took away the constitutional rights of citizens injured in defense of the Constitution, it exceeded the limits of its power, and violated its contract with the people. The laws which deny constitutional rights to veterans can be found in Title 38 U.S. Code, (Veterans Administration Law) Section 211 (a), Section 3404 (c), and Section 4004 (c), which are as follows:

Section 211 (a)

" . . . the decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise."

(Emphasis added).

Section 3404 (c)

"(c) The Administrator shall determine and pay fees to agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by the Veterans' Administration. Such fees -- . . . (2) shall not exceed \$10 with respect to any one claim; (Emphasis added).

Section 4004 (c)

" . . . (c) The Board (of Veterans Appeals) shall be bound in its decisions by the regulations of the Veterans Administration, instructions of the Administrator, and the precedent opinions of the chief law officer. (Emphasis added).

The Veterans Administration would have Americans believe that it is, under the law, an all-knowing and all-just body of people who, upon being confronted with any veteran's situation, can provide that veteran just and consistently administered relief -- a body, therefore, not requiring any checks and balances. That presumption is often contrary to the facts. In all too many cases, the V.A.'s relief is not just, is not consistent (as permitted by Section 4004 (c) above, which often supersedes the demands of justice) and, most sadly, in those circumstances, is not subject to any appeal outside of the confines of an "interested" (versus disinterested) V.A. appeal board. Absolutely no effective appeal of any V.A. finding is allowable because of the "legal" constraints which preclude such a review. This deplorable revocation of American constitutional rights is the "de facto" purpose of laws enacted by our congress -- laws "presumably" harmonious with, instead of contrary to our Constitution. Every American should have the right of appeal to a fair and impartial court of law.

The V.A. calls proceedings which come before it "EX PARTE IN NATURE" (38 U.S.C. 3.103 CFR), which means "from one side only" -- in other words -- NONADVERSARY PROCEEDINGS, as opposed to ADVERSARY PROCEEDINGS, which exist as the basis of the actual system of litigation in the United States. In a book entitled "The Rights of Veterans," an ACLU publication, an explanation of NONADVERSARY V.A. proceedings can be found on pages 164-165. The following is from that explanation:

" . . . the VA pretends that there are no disagreements; there are no opposed or adverse parties. You are supposed to believe that the whole VA bureaucracy is doing its best to help you, and is cutting through the procedural rigmarole of adversary proceedings by holding informal hearings where your side is the only side that has an opportunity to present evidence and the evidence is not limited to highly technical rules -- all of which is just fine if they grant you the benefits you claim. But if they deny your claim, the 'nonadversary' system will prevent you from questioning the other side in order to expose its weaknesses. . .

. . . Nonadversary proceedings are usually justified on the grounds that they are inexpensive and flexible. The problem is that they generally tend to become shams. Facts are found before the proceeding starts, and the factfinders are able to conceal their biases

and their errors with bureaucratic jargon. Thus, good intentions often do not suffice when legal rights are disputed."

Other complicating factors for the injured veteran are that conclusions reached in individual veteran cases will not be followed as precedents in other cases which are similar (38 U.S.C. 3.101-CFR); and that strict rules of evidence do not apply to V.A. proceedings.

For years I was curious to learn how such "laws," which conflict with the "Supreme Law of the Land" -- the Constitution -- could exist in America. I finally found an answer while researching the problem at a law library, in the case of Johnson vs. Robison (415 U.S. 361, 1974). Johnson (Administrator of Veterans Affairs) identified a primary purpose for Section 211 -- the "NO REVIEW CLAUSE" (page 370), which is as follows:

"(1) to ensure that veterans' benefits claims will not burden the courts and the Veterans Administration with expensive and time-consuming litigation . . . (Emphasis added).

Why is "expensive and time-consuming litigation" a meaningful factor or rationale to justify depriving constitutional rights to ANY citizen? All litigation in every area of law in the United States, whether it be criminal, constitutional, etc., is expensive and time-consuming. CONTINUING THAT PRECEDENT TO ITS LOGICAL CONCLUSION, SHOULD ALL THE COURTS IN THE UNITED STATES BE CLOSED, AND THE CONSTITUTIONAL RIGHTS OF EVERY AMERICAN TAKEN FROM THEM, BECAUSE OF MONETARY AND TIME CONSIDERATIONS? I cringe at the thought of what life under such a legal system would be -- unthinkable!

In reading the book "The Discarded Army: Veterans After Vietnam" by Paul Starr, I learned the reason why this problem has persisted for decades. Page 50 reads in part as follows

"The field of veterans affairs is run largely by a limited, inter-locking network formed by the leading veterans' organizations, the Veterans Administration, and the House Veterans' Affairs Committee. There is a continual exchange of personnel among these three centers of influence. . . . This sort of internal cohesiveness no doubt fosters the best of relations among those concerned with setting policy. But it also raises questions about the potential for feedback and adaptation. Perhaps it is time someone outside 'the family' had a look at veterans' benefits." (Emphasis added).

Mr. Starr also affirms on that page that: "The combination of no judicial review, plus no legal counsel at Veterans Administration hearings, effectively seals off the agency's proceedings."

Having learned of this situation and of its history and stated "justifications," I could not understand how such laws survived the constitutional doctrine of Judicial Review which is the distinctive characteristic of American law, and gives the Supreme Court the power to abolish or repeal any legislative or executive acts which it declares to be unconstitutional and thus legally null and void. It is one of the important checks and balances of the Constitution. I am not an attorney, but reading further into the case Johnson vs. Robison (page 373), I learned that the Supreme Court did review the legislative history of Section 211 and concluded that:

"NEITHER THE TEXT NOR THE SCANT LEGISLATIVE HISTORY OF SECTION 211
(a) PROVIDE THE CLEAR AND CONVINCING EVIDENCE OF CONGRESSIONAL
INTENT REQUIRED BY THIS COURT BEFORE A STATUTE WILL BE CONSTRUED TO
RESTRICT ACCESS TO JUDICIAL REVIEW." (Emphasis added).

Why there is "scant legislative history" of Section 211 (a) seems obvious, as no court or official of the United States has the power or jurisdiction to review decisions of the V.A., but I cannot understand how "Scant legislative history" can be construed as an indicator as to the merit or constitutionality of a law which seemingly precludes the possibility of anything more than a "scant legislative history."

A member of the American Bar Association in testifying at hearings before the Senate Committee on Veterans Affairs (95th Congress, page 54 of that Senate record) concerning Senate Bill 364, made the following statement:

"In summary, the data we have gathered over the past 2½ years indicates that many determinations made by the Veterans' Administration involve complex issues which lay service personnel [not attorneys] from the various military service organizations [American Legion, Disabled American Veterans, Veterans of Foreign Wars, etc.] are ill suited for dealing with effectively, either because of a lack of training or because of inadequate resources. Moreover, lay service personnel often do not present their cases to the VA in the most effective way. This is highlighted by their failure to gather and present evidence to the VA Appeals Board. Also, for whatever reason, it appears that a number of veterans have not been afforded a full and fair hearing with a just result by the VA and the service organizations have been quite ineffective in preventing such abuses. An attorney can be particularly effective because of his training and experience in protecting and promoting the rights of VA claimants. More fundamentally, a VA claimant certainly should not be denied the opportunity to avail himself of an attorney's services. Yet he is effectively denied this opportunity by the existing unreasonable restriction on attorneys' fees."

Again -- good intentions often do not suffice when legal rights are disputed). [Added for clarification] (Emphasis added).

The unbelievable and unconstitutional reality of the existing V.A. statutes is, in my opinion, well summarized in the book "AMERICAN LAW OF VETERANS" from the Lawyers Co-Operative Publishing Company in New York (page 53), in the following sentence:

" . . . THE STATUTES HAVE EVEN BEEN HELD TO PRECLUDE JUDICIAL RELIEF FROM DECISIONS OF THE ADMINISTRATOR (V.A.), WHERE SUCH DECISION IS WHOLLY UNSUPPORTED BY EVIDENCE, WHOLLY DEPENDENT UPON A QUESTION OF LAW, OR CLEARLY ARBITRARY OR CAPRICIOUS."

The fact that nearly 90%* of the cases which come before the Board of Veterans' Appeals are denied is indicative of the truth of that statement (*Reference "The Rights of Veterans"/ACLU handbook, page 147).

For decades, efforts have been made by many concerned citizens in an attempt to restore constitutional rights to veterans. The U.S. Senate is presently considering Senate Bill 349, reintroduced in the 97th Congress by Senator Hart of Colorado. He has been working for years to give injured veterans the right to seek court rulings on cases decided against them by the V.A., but needs your help. His bill would open the administrative decisions and rules of the V.A. to the independent scrutiny of the courts. Every other segment of American society has the opportunity to seek judicial redress from bureaucratic decisions -- every segment but veterans. Judicial review of the V.A. would add a constructive check on the administrative discretion of the agency while giving American veterans an important means of appeal outside the agency (V.A.). To isolate a federal agency from the scrutiny of the courts goes against the very principles of our constitutional system. The bill also would require the V.A. to publish its proposed rules and regulations for public comment, just as other federal agencies are required to do. The existing system constitutes a form of taxation without representation. Further, it would remove the current \$10.00 limit on attorneys' fees, which virtually denies veterans the right to use lawyers of their own choosing.

It should be emphasized that this situation is not the making of the present Congress. They inherited it from some 50 years in the past. During the last session of Congress, under President Carter's administration, the Senate unanimously voted to pass Senator Hart's bill (S.B. 330 -- 96th Congress). That bill also had the "unenthusiastic" endorsement of the Veterans' Administration, and such large veterans' service organizations as the Veterans of Foreign Wars and the Disabled American Veterans. It is my understanding that only the American Legion, per its 1980 Resolution #318, opposed judicial review for veterans' claims. The leaders of the American Legion, must not have informed their membership of the issues here at stake. After the bill passed the Senate it went to the House Veterans' Affairs Committee, which denied the citizens who comprise the House of Representatives the opportunity to vote on that legislation! It is my understanding that the former chairman of the committee was opposed to veterans having equal rights, and that the bill was tabled and allowed to die. The present chairman, Representative G. V. Montgomery, is also, unfortunately, opposed to Judicial Review of veterans' claims, which suggests that perhaps your congressional representatives may once again be denied the opportunity to vote for the restoration of veterans' constitutional rights. The bill may again be tabled and allowed to die as it was in the 96th Congress.

I do not have a reckless regard for the public purse of the United States. Adequate protections have been built into Senator Hart's proposed legislation to curtail abuse, but at the same time, allow meritorious cases to be heard, and, most importantly, for justice to triumph. Were it possible, I believe that the 371,802 American citizens killed in battle since veterans lost the rights discussed in this letter would also unanimously vote to restore the rights of injured veterans. They gave their lives in defense of the Constitution, in order to protect the rights and freedoms of all American citizens, including their own rights.

When we elect our representatives to the Senate and House of Representatives of the United States, our responsibility does not stop there. Our leaders depend on "WE THE PEOPLE" for guidance. It is for us that they work. Without our recommendations and criticisms I suspect that there may be a temptation for them to defer to well financed lobbies and special interest groups, which do not necessarily conform to the desires of their constituency. It is with that thought in mind that I urge you to take action by writing to President Reagan and your Representatives in the Senate and the House of Representatives and request that veterans injured in the defense of the Constitution of the United States have their constitutional rights restored. Ask that they support Senator Hart's Bill #349 and its equivalent in the House, and thereby restore to veterans their equality under the law. I would appreciate a copy of your letters or thoughts concerning this matter if possible.

The cumulative enrollment of the hundreds of college and universities receiving this letter is in excess of four million students. The essence of this letter should be printed in the student newspapers on every college campus. I make a special appeal to young Americans, as it is you who are vulnerable and stand to be injured, God forbid, in any future defense of the Constitution. It is in your best interest to write letters, as suggested above, and to sustain this effort until successful. Please copy and pass on this letter to other interested citizens, asking their involvement. Each recipient of this letter can see the 1776 recipients as they appear on the attached listing.

I appeal to President Reagan and to the Congress to stop this travesty of justice, by swiftly passing Senator Hart's Bill #349. Hopefully, President Reagan will guide and follow the proposed legislation to its just conclusion.

I urge the media, in the name of the Constitution, and the protection and preservation of the rights of every American, to do that which our free and unrestrained press does so well, and is so needed in this regard -- to enlighten the minds of the American people -- concerning this matter. A well informed public that will "get involved" is the best solution to this problem. In a free society such as ours, the people are entitled to know, and knowledge does impart responsibility.

I ask all veterans and veterans organizations, regardless of war or branch of service, to work together toward the restoration of our constitutional rights. We all wore the uniform of the United States, served the same country, and are Veterans of the United States. The existing lack of veterans' unity is largely responsible for this problem, but a unified voice could contribute significantly to its swift solution.

I hope that all of the recipients of this letter feel the same sense of responsibility and duty that I do to our country and the Constitution, as the principles involved in this matter concern us all. If we, as Americans, either deliberately or through apathy, allow the constitutional rights of any other citizen to be taken away, that action or inaction does, in fact, place the rights of every citizen in jeopardy, including our own.

Additional insight into problems caused by the V.A.'s total freedom from the scrutiny of the legislative, executive and judicial functions of the government, and therefore unaccountable for its actions to anybody, can be gained from a recent book entitled "Wounded Men, Broken Promises" by Robert Klein. Literature advertising it describes its contents as follows:

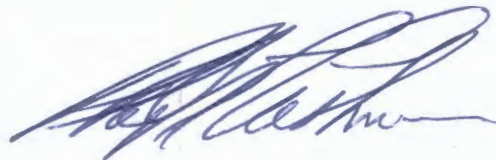
"Uncle Sam Wants You -- Until You Come Back Wounded. They call it the Veterans Administration -- but it isn't. It's the Bureaucracy Administration -- clogged with fraud, neglect, greed, and everything but honest concern for the veterans it is supposed to serve. How the Veterans Administration betrays yesterday's heroes."

The date of this letter and its purpose are significant as it was 205 years ago that Mr. Thomas Jefferson wrote our Declaration of Independence which is not merely a document written at a particular point in time for a specific purpose. The principles apply equally as much today as then, and the responsibilities which it places on every American to protect and preserve our rights and freedoms, and even our country, are very clear. Every American should study that document, not just for its historical significance, but in order to learn of our responsibilities, rights and duties as American citizens. Eternal vigilance is the duty of every citizen, and is the high price which we must pay if we are to keep our rights and freedom. That eternal vigilance includes a watchful eye for any form of our government which becomes destructive of the ends for which it was established, and ceases to protect natural rights. It is the right of the people, it is their duty, to alter or abolish such government, preferably through the peaceful processes of democratic government and the ballot, and to establish new safeguards for their future security. It is my fear that if "we the people" are not vigilant with respect to protecting our rights, that we shall, over a period of time, lose them. That is why I consider it my duty to reveal this dangerous malignancy of government to my fellow Americans. The founding fathers made it the duty (often unrealized or ignored) of every citizen.

I apologize for the length of this letter, but there was considerable information to convey in order that you can approach this issue with an informed mind. I ask you to check the facts for yourself. The unbelievable nature of this problem, unfortunately, precludes a brief analysis. I am confident that Mr. Bill Holen, in Senator Hart's office in Denver, Colorado, or Mr. Ron Bitzer at the Center for Veterans' Rights in Los Angeles could answer any additional questions which you might have concerning this matter. I have included my telephone number for the sake of any verifications which you might want to make, or to answer any questions.

The sacrifices which my wife and I have made in our lives over the years, in order to deal with this problem, have been worth the price, as we know that we have done the best job that we know how, consistent with our duty to our country which we love, and its Constitution. We have nothing to gain personally in this matter except the peace of mind which is ours in the knowledge that we have fulfilled that duty through the peaceful process of democratic government. We are private concerned citizens and we do not belong to, nor are we funded by any organization. We believe that only apathy and indifference could cause the failure of this undertaking, but we are betting on the American spirit to win. We all have too much to lose.

Sincerely,



Philip E. Cushman