



National Veterans Legal Services Program

Impact Report

We Have a Uniform Code:
To Serve Those Who Have Served Us



More than \$5.2 billion dollars awarded
in disability, death, and medical benefits to

hundreds of thousands of veterans, service members, and their families



50,000
COPIES OF NVLSP'S VETERANS
BENEFITS MANUAL SOLD



1991 NVLSP publishes the *Veterans Benefits Manual*, the nation's first treatise on veterans benefits law, in an effort to increase the pool of effective advocates available to veterans seeking VA benefits.

1992 Congress begins funding the Veterans Consortium Pro Bono Program (established by NVLSP, Disabled Veterans of America, The American Legion, and Paralyzed Veterans of America) to recruit, train, and mentor private bar attorneys to provide free representation to the many veterans who appeal to the U.S. Court of Appeals for Veterans Claims without a representative. Congressional funding of this program continues to this day.

1993 In a class action lawsuit funded by the Commonwealth of Puerto Rico, NVLSP forces the VA to pay more than \$60 million in retroactive compensation and tens of millions of dollars in prospective compensation to more than 600 Puerto Rican veterans whose total (100 percent) disability ratings for their service-connected mental disorders were reduced as a result of illegal rules applied by VA in Puerto Rico, but nowhere else.

1999 NVLSP joins forces with Lexis Law Publishing to produce annually revised editions of the nation's leading treatise on veterans law—NVLSP's *Veterans Benefits Manual*—in both print and electronic form. Since 1999, nearly 50,000 copies have been sold.



2016 NVLSP convinces the U.S. Court of Appeals for Veterans Claims to strike down as contrary to statute, the VA regulation denying reimbursement to veterans for any part of the emergency medical expenses they incur at a non-VA facility simply because the veteran has health insurance that covers part of the expenses incurred, in *Staab v. Shulkin*—NVLSP's precedential victory. The VA estimates that as a result of NVLSP's victory, it will be forced to readjudicate over 370,000 reimbursement claims.

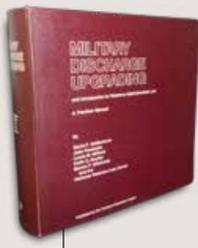
2017 NVLSP creates a first-of-its-kind app, the *VA Benefit Identifier App*, to help veterans determine the specific VA benefits to which they are entitled. NVLSP makes the App available in English and Spanish. To protect privacy, no data or personal information is retained.

2018 NVLSP secures a landmark victory for veterans by persuading the Court of Appeals for the Federal Circuit to overturn a 19-year old lower court precedent that prohibited the VA from awarding disability benefits to a veteran for disabling pain related to military service if the pain is not linked to a medical diagnosis.

2018 The Department of Veterans Affairs (VA) finalized a rule in January that, despite NVLSP's court victory in the 2016 *Staab v. Shulkin*, prohibits the VA from reimbursing veterans for almost all of their non-VA emergency medical expenses. In October NVLSP files another class action, *Wolfe v. Wilkie*, challenging the VA's January rule.

1980s

7,000
VIETNAM VETERANS
WITH DEROGATORY
DISCHARGES GET
UPGRADE TO HONORABLE



1980 NVLSP's predecessor—the National Veterans Law Center—wins class action lawsuit requiring the Army to upgrade to “honorable” the derogatory discharges illegally issued to 7,000 Vietnam veterans.

1980 NVLSP predecessor publishes the *Military Discharge Upgrade Manual*, the nation's first treatise for advocates representing veterans seeking an upgrade of a less than honorable discharge.

1981 NVLSP, successor to the National Military Discharge Review Project and National Veterans Law Center, is incorporated as a nonprofit.

1984 Vietnam Veterans of America (VVA) hires NVLSP to create a VVA representation program by training, accrediting, and supervising non-lawyer advocates to represent veterans and their survivors nationwide on claims for VA benefits.

1987 NVLSP attorneys obtain a court injunction prohibiting the VA from beginning a planned phase-out of Vet Centers—the dozens of counseling centers that still help veterans in need readjust to civilian life.

1980–88 NVLSP attorneys join the VVA to lobby Congress for repeal of the long-standing ban on court review of VA decision-making. Almost all other veterans service organizations oppose.



1988 Congress repeals the long-standing ban on court review of VA decision-making and creates the U.S. Court of Appeals for Veterans Claims (CAVC) to review VA decisions denying benefits.

1989 NVLSP persuades a U.S. district court that the VA failed to use the pro-claimant process required by Congress when it promulgated regulations calling for the denial of claims based on exposure to Agent Orange. The Court voids nearly 30,000 VA decisions denying claims and requires the VA to promulgate new rules using the process Congress intended. The VA does not appeal.

1990s



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COPIES OF NVLSP'S VETERANS
BENEFITS MANUAL SOLD



Nehmer Class Action member
Richard G., U.S. Army,
1966–1968

1991 NVLSP and the VA sign a consent decree in the Agent Orange class action, requiring the VA to pay more than \$4.6 billion in retroactive compensation from 1991 to 2017 to hundreds of thousands of Vietnam veterans and their survivors for numerous types of diseases related to Agent Orange exposure.

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2000s

NVLSP SECURES
\$10 Million
FOR 14,000 VIETNAM VETERANS
SUFFERING FROM TYPE 2 DIABETES



Iraq: 2nd Brigade Combat
Team, 101st Airborne Division
(AA) Public Affairs 2



Iraq: 332nd Air
Expeditionary Wing



2000 NVLSP develops partnerships with several veterans service organizations, and launches in-person training programs in veterans benefits law for non-lawyer advocates who are accredited to represent VA claimants. This builds the pool of educated veterans' representatives.

2001 NVLSP obtains a court order in *Liesegang v. Secretary of Veterans Affairs* to require the VA to assign May 8, 2001, rather than July 9, 2001, as the effective date for an award of benefits under the VA's Agent Orange diabetes regulation. This ruling secures over \$10 million for 14,000 Vietnam veterans suffering from type 2 diabetes.

2002–06 NVLSP challenges a range of legal issues to secure unlawfully denied benefits for veterans on several fronts, including *Gutierrez v. Principi*. This case establishes binding court precedent to allow disability compensation for undiagnosed illnesses. Specifically, veterans of the Persian Gulf and Iraq wars do not need to prove that the medical illness is connected to service.

2007 NVLSP launches the national pro bono program, Lawyers Serving Warriors®. NVLSP has screened the claims of up to 400 veterans each year, placing them with private law firms and corporate legal departments for representation at no cost to veterans.

2009 NVLSP obtains a court order invalidating the 2007 VA rule that required VA regional offices to (a) withhold from veterans any decision awarding a large amount of retroactive compensation and (b) give VA officials in Washington, D.C., time to review and modify the large award without the knowledge or participation of the veteran.

2010s

NVLSP'S CLASS ACTION COURT ORDER INCREASES THE MILITARY DISABILITY RATING FOR
2,200
VETERANS MEDICALLY SEPARATED FOR POST-TRAUMATIC STRESS DISORDER

NVLSP SECURES REFUNDS OF UNLAWFULLY WITHHELD TAXES FOR
133,000
DISABLED VETERANS



2011 In the landmark *Sabo v. U.S.* lawsuit, NVLSP obtains a class action court order requiring an increase in the military disability rating assigned to more than 2,200 veterans who served in Iraq or Afghanistan and were medically separated for post-traumatic stress disorder (PTSD) without the military disability benefits to which they were lawfully entitled. As a result, more than 1,100 of these veterans receive permanent disability retirement benefits, including lifetime military health care for both the veteran and his or her spouse, and their minor children.

2014 NVLSP discovers that for over 30 years the Department of Defense has erroneously withheld taxes from 133,000 disabled veterans' disability severance payments, which are supposed to be tax-free. NVLSP obtains the sponsorship and leadership of Senator John Boozman (R-AR), Senator Mark Warner (D-VA), and Congressman David Rouzer (R-NC), and the “Combat-Injured Veterans Tax Fairness Act of 2016” was passed, providing eligible veterans the right to seek a refund of taxes they may have paid on their Disability Severance Pay.



2016 NVLSP convinces the U.S. Court of Appeals for Veterans Claims to strike down as contrary to statute, the VA regulation denying reimbursement to veterans for any part of the emergency medical expenses they incur at a non-VA facility simply because the veteran has health insurance that covers part of the expenses incurred, in *Staab v. Shulkin*—NVLSP's precedential victory. The VA estimates that as a result of NVLSP's victory, it will be forced to readjudicate over 370,000 reimbursement claims.

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Contents

INSIDE COVER

Timeline of Achievement

4

In an Ideal World, We Shouldn't Need to Exist

7

A Message from Our Executive Director

8

Policing the Promise

11

Empowering Through Education

14 PRO BONO PROGRAM

Lawyers Serving Warriors®

18 VETERAN PROFILE

Wes Carter: Mission Driven

22 VETERAN PROFILE

Rita Maldonado: Road to Restitution

26 VETERAN PROFILE

Perla Bortel: Ensuring a Secure Future

32 VETERAN PROFILE

Royce Estes: Winning a 10-Year Fight for Tara

36

Our People

Executive Team

Staff

Board of Directors

IN AN IDEAL WORLD, WE SHOULDN'T NEED TO EXIST.

There shouldn't be much need for an organization dedicated to ensuring that our nation keeps its promise to care for those who served our country in the Armed Forces. There's an established and generous disability benefit and health care system, as well as a uniquely pro-veteran process for deciding benefit claims, and the Department of Veterans Affairs (VA) and military departments successfully kept this promise to the millions of men and women who served in World War II.

But ever since the Vietnam War, the VA and the military have badly stumbled. Time and again, they have erected barriers that prevent our nation's disabled veterans and their families from getting what they need and deserve.

That's why we exist: to make sure that we as a nation live up to that promise.

DELAY. Veterans have had to endure long waiting lists for VA medical treatment and a six-year backlog for deciding the 400,000 VA benefit claims that are pending on appeal.

DENIAL. For decades, the VA denied tens of thousands of disability claims from Vietnam veterans over the harmful effects of their exposure to Agent Orange, denying that this toxin caused anything other than a skin condition. Then, years later, when the VA was finally forced to recognize that Agent Orange caused numerous cancers and other diseases, the VA wrongly refused to make payments unless the veteran expressly used the magic words "Agent Orange" on the claim.

For decades, the military departments denied the existence of rampant military sexual trauma, resulting in broken lives and denial of the VA benefit claims the survivors filed for the mental disorders that resulted from their assaults and trauma.

OBSTACLES. For many years, the VA fought paying claims for post-traumatic stress disorder (PTSD) by requiring contemporaneous evidence corroborating the in-service stressors, which often didn't exist. In other cases, VA adjudicators operated under the unwritten rule that if a veteran testifies to an in-service event that isn't reflected in the military records, it didn't happen.

CARELESSNESS. For the last 20 years, the Board of Veterans' Appeals (BVA) has had to send back nearly 50 percent of the cases it receives because the VA failed to obtain the evidence needed to properly decide the benefits claim. During this same period, in over 70 percent of the BVA decisions appealed to court, the court has sent the case back to the BVA to correct one or more errors.

LAWLESSNESS. For decades, the military departments denied lifetime disability retirement benefits and health care to thousands of soldiers, marines, sailors, and airmen separated for disability by refusing to use the favorable benefits criteria required by statute.

From 1991 to 2016, the Department of Defense withheld taxes from the lump-sum severance payments it made to 133,000 disabled veterans, despite the law making these payments tax-free, depriving veterans of hundreds of millions of dollars.

ARBITRARINESS. Since 9/11, the military has discharged thousands of soldiers, sailors, and marines for a personality or adjustment disorder without any disability benefits, even though they were diagnosed while in the military with PTSD and other mental disorders that qualify for disability benefits.

OPPOSING VETERANS' RIGHTS. From 1978 to 1988, the VA fought legislation allowing veterans to obtain court review of a VA decision denying benefits. Ever since losing this battle, the VA has vigorously opposed a veteran's right to bring a class action against the VA.



Barton F. Stichman
Executive Director

Dear Friends,

Upon entering the military, every service member takes a solemn oath to protect and defend the Constitution of the United States of America. The government at the same time pledges to provide them with certain rights and benefits if they should be injured or become sick due to their military service. We have painfully seen ever since the Vietnam War that too often our government falls tragically short on this pledge.

Since 1981, the National Veterans Legal Services Program (NVLSP), an independent nonprofit organization, has been dedicated to ensuring that our government lives up to that pledge and provides our 22 million veterans and active service members the benefits they have earned due to disabilities resulting from their military service to our country.

NVLSP advances its mission by directly representing individual veterans on disability claims at no cost; bringing class actions and other law reform litigation to remove systemic barriers to justice; recruiting, training, and mentoring thousands of volunteer attorneys and veterans' advocates to represent veterans; providing representation through our Lawyers Serving Warriors® pro bono program; and producing and distributing advocacy and educational materials to enable advocates to assist veterans and their families in securing the benefits they have earned.

We have developed partnerships with many state departments and veteran service organizations to train thousands of their veteran service officers through live trainings and, virtually, through webinars. To empower veterans, we created the NVLSP *VA Benefit Identifier* app, which allows veterans to determine for themselves the specific Department of Veterans Affairs (VA) benefits that they are likely entitled to receive.

At NVLSP, we have adopted the uniform code to serve our nation's veterans with the same vigor and dedication that they have demonstrated in their service to our country. We are determined to use our legal expertise to remove the barriers the government has placed between disabled veterans and the benefits they need and deserve.

As you read this Impact Report, you will discover the many ways we ensure that our nation's veterans and their families get the benefits to which they are entitled and why our mission must continue.

Sincerely,

Policing the Promise

NVLSP provides free legal services to help veterans, service members, and their families secure disability benefits from the Department of Veterans Affairs and the United States Armed Forces. NVLSP's individual representation services include class actions and appeals to the U.S. Court of Appeals for Veterans Claims (CAVC).

PERSEVERANCE PAYS OFF

Class Actions

When the government fails to keep its promise to disabled veterans, it is often due to systemic shortcomings that impact a large number of veterans. The source of the systemic problem can usually be traced to a rule or practice of the Department of Veterans Affairs or a military department.

The most successful tool NVLSP has used to force the government to correct systemic barriers to justice is federal court litigation against the government. Many of these successes have come in class actions on behalf of thousands, even hundreds of thousands, of veterans and their survivors. One of these triumphs — NVLSP's Agent Orange class action — is detailed below.

Decades of Forcing the VA to Comply with NVLSP's Legal Victory on Agent Orange

By 1991, NVLSP thought it had achieved its greatest litigation victory. Two years earlier, the U.S. district court in NVLSP's *Nehmer v. U.S. Veterans Administration* class action lawsuit invalidated the VA rule calling for the denial of nearly all claims filed by Vietnam veterans and their survivors based on exposure to the herbicide Agent Orange. The court agreed with NVLSP that the VA had unlawfully stacked the deck in its rulemaking by insisting that benefits could not be paid unless the scientific evidence showed a strict cause-and-effect relationship between herbicide exposure and the disease in question — an unlawfully high standard of proof.

The court ordered the VA to promulgate new rules using the lower standard of proof that Congress intended. The Agent Orange Act was then enacted to require the VA, before finalizing its new rules, to consider periodic reports analyzing the scientific evidence prepared by the independent National Academy of Sciences (NAS). Finally, in 1991, the court approved a historic consent decree in the *Nehmer* class action.

It required that whenever the VA recognized that an additional disease was related to herbicides under the Agent Orange Act, the VA had to:

- Identify all Vietnam veterans and their survivors who had previously filed a claim based on the newly recognized disease
- Readjudicate the prior claim and pay benefits retroactive to the date the prior claim was filed

As a result of the first NAS report, the VA was forced to recognize that six types of cancer and one other disease were related to Agent Orange. But what we did not realize at the time was that our court victory was only the first of many steps NVLSP would need to take over the next 27 years to ensure that the benefits owed by the VA were actually paid. From 1995 on, the VA “interpreted” the *Nehmer* consent decree — wrongly — in various ways that would have blocked more than 100,000 veterans and their surviving family members from receiving any retroactive benefits.

On four separate occasions, NVLSP had to return to court to enforce the consent decree over the VA's vigorous objection. For example, in response to NVLSP's first enforcement motion, the court overturned a VA directive prohibiting retroactive benefits under the consent decree unless the veteran or survivor had used the magic words “Agent Orange” in the prior claim.

Thereafter, when Congress extended the sunset date of the Agent Orange Act from 2001 to 2015, the VA issued a directive “interpreting” the consent decree to expire in 2001 — so that retroactive benefits would not be paid for any disease recognized by the VA after that year. When NVLSP won its enforcement motion challenging this directive, the VA appealed to the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit unanimously rejected the VA's interpretation in 2007, stating:

What is difficult for us to comprehend is why the [VA], having ... agreed to a consent order some 16 years ago, continues to resist its implementation so vigorously, as well as to resist equally vigorously the payment

of desperately needed benefits to Vietnam war veterans who fought for their country and suffered grievous injury as a result of our government's own conduct. ... Those young Americans who risked their lives in their country's service ... are deserving of better treatment from the [VA] than they are currently receiving. We would hope that ... our government will now respect the legal obligations it undertook in the Consent Decree some 16 years ago, that obstructionist bureaucratic opposition will now cease, and that our veterans will finally receive the benefits to which they are morally and legally entitled.

As a direct result of this ruling, the VA has since paid more than \$4.6 billion in retroactive benefits to more than 100,000 veterans and their survivors. But the VA's "obstructionist bureaucratic opposition" did not end with the Ninth Circuit's ruling. Over the last 11 years, NVLSP has caught the VA violating the consent decree in many additional ways, forcing the VA to pay 4,000 veterans and their survivors a total of \$97 million in additional retroactive benefits.

In other cases, NVLSP's litigation victories have involved a challenge to the legality of a VA or military department rule that adversely affects veterans seeking benefits. NVLSP's most important successes in both class actions and challenges to government rules are chronicled in the Timeline of Achievement section of this report.

"We hope our government will now respect [its] legal obligations [and] that obstructionist bureaucratic opposition will now cease, and our veterans will finally receive the benefits to which they are morally and legally entitled."

— U.S. Court of Appeals for the Ninth Circuit

Individual Representation for CAVC work

Another pathway we have used to remedy systemic government wrongdoing is through an individual lawsuit challenging the denial of a veteran's particular benefits claim. NVLSP files more than 600 individual appeals each year in the U.S. Court of Appeals for Veterans Claims (CAVC) on behalf of a veteran or survivor denied benefits by the Board of Veterans' Appeals (BVA). Some of these denials are due to a systemic practice of dubious legality.

For example, we noticed that the BVA based its denial of disability benefits to one of NVLSP's clients on the fact that even though the veteran had suffered from the claimed disability for years after the claim was filed, the disability had resolved itself by the time — many years later — the BVA decided the veteran's appeal. Because we knew the BVA often used this rationale to deny claims pending for many years, we asked the court to issue a precedential decision outlawing this practice. The court agreed, ruling that for any of our nation's veterans to be eligible for disability benefits, the veteran need only suffer from the claimed disability during some part of the multi-year period between the date the claim was filed and the date the VA was ready to issue a final decision on the claim.

A major development should expand NVLSP's ability to challenge systemic government wrongdoing. In 1991, the newly created CAVC denied NVLSP's petition that it adopt class action rules on the grounds that Congress had not provided it with authority to decide class actions. Twenty-five years later, in 2016, the Court of Appeals for the Federal Circuit ruled that the CAVC's long-standing position was wrong; it has class action authority. NVLSP wasted no time in leveraging this important ruling by filing three different class actions challenging systemic VA rules and practices that violate the promise the government has made to disabled veterans.

Empowering Through Education

From the very beginning, one of NVLSP's core goals has been to equip attorneys and advocates to help America's veterans secure their benefits. We continue to act as a force multiplier through in-person and webinar trainings, as well as the annually updated and published *Veterans Benefits Manual*.

KEEPING CURRENT

NVLSP Publications & Educational Tools

As publishers of the nation's leading guide to veterans law, the *Veterans Benefits Manual*, NVLSP staff attorneys devote significant time to updating the 2,000-page publication annually. NVLSP attorneys review and edit the manual to keep it current with developments impacting VA disability benefits. The manual is distributed electronically and in print formats. Since 1999, nearly 50,000 copies have been sold.



The *Veterans Benefits Manual* helps lawyers and advocates build cases for their veterans and navigate the tricky waters of veterans law. "NVLSP's *Veterans Benefits Manual* is a lifesaver. I'm new to this area of law, and it was like wading through mud," said Eva Wohn, an attorney volunteering to assist a veteran in obtaining disability benefits.

"With the manual, I was able to map out a strategy for the case in 45 minutes. The people who put this together really know their stuff and want to make sure that veterans are taken care of," said Wohn. "Because of this manual, I know I will volunteer again to help another veteran, because I have the tools to be an effective and efficient advocate."

"I don't know how many thousands of hours have gone into this manual, but the people who put this together really know their stuff."

—Eva Wohn, Volunteer Attorney

EDUCATING A NETWORK

NVLSP Training Programs

Our webinar and in-person training programs educate veterans service officers, attorneys, and claims agents about the latest court decisions and best practices in veterans law. Our trainers share their knowledge and expertise with a broad audience, helping to build up an advocacy network that assists veterans and their families.



Webinars

Our webinar programs conducted in 2018 trained more than 1,000 veterans service officers, attorneys, and claims agents. Topics included advocacy strategies for service-connected disability claims based on military sexual trauma, disability pension, combat-related special compensation, common VA errors, and court updates.



VA Benefit Identifier App

NVLSP's *VA Benefit Identifier* is a first-of-its-kind app that aids service members and veterans in determining the specific VA benefits to which they may be entitled. Available in English and Spanish, the app is available through the NVLSP website, Apple's App Store, and the Google Play Store. To protect privacy, no data or personal information is retained.

In-Person Training of Veterans Service Officers

Many disability benefit claims originate with veterans service officers who work for county or state government offices, or on behalf of regional or national veterans service organizations. By building up the knowledge base of these service officers, we help improve the quality of the VA disability benefits applications that are filed, which ultimately helps veterans avoid delays and denials.

Nationally, we provided training to service officers with America's top veterans organizations, including Vietnam Veterans of America and the Military Order of the Purple Heart.

At the state level, we conducted in-person training for 450 veterans service officers for the Texas Veterans Commission. We also conducted



NVLSP Training Resources

Webinars & Basic Training on Veterans Benefits

<https://productsbynvlsp.org/>

Webinar topics have included:

- TDIU & Protected Employment
- Common VA Errors: Lessons Learned from NVLSP Cases That Can Help Veterans Advocates
- Advocacy Strategies for Service Connection Claims based on Military Sexual Trauma
- Discharge Upgrades

VA Benefit Identifier App

www.nvlsp.org/va-app/

This first-of-its-kind app aids service members and veterans in determining the specific VA benefits to which they are entitled.

in-person training for the Oregon Department of Veterans' Affairs and its 120 state and county veterans service officers.

Veterans Consortium Pro Bono Program

Founded in 1992, this program operates a pro bono program on behalf of the U.S. Court of Appeals for Veterans Claims to represent veterans unjustly denied VA benefits. Each year, hundreds of veterans place themselves at a disadvantage by appealing to this court without representation.

As a founding member of the Veterans Consortium (alongside America's other leading veterans service organizations), NVLSP shares its expertise by providing training, mentoring, and our *Veterans Benefits Manual* to the lawyers volunteering to represent veterans before the court.

Lawyers Serving Warriors®

NVLSP's Lawyers Serving Warriors® (LSW) is a model pro bono program. LSW offers free legal help to veterans and service members on a number of benefits issues; cases are placed with volunteer attorneys from law firms and corporate legal departments nationwide. Each volunteer receives training and guidance from NVLSP's team of expert attorneys, ensuring that every veteran receives top-notch legal representation.



LSW clinic with pro bono attorneys held at DAV Chapter 47 offices in Petersburg, Va.

PRO BONO PROGRAM

Lawyers Serving Warriors®

Founded in 2007, Lawyers Serving Warriors® (LSW), NVLSP's pro bono program, offers free legal assistance to veterans and active duty military personnel of all eras through a national network of volunteer attorneys from private law firms and corporate legal departments. The program provides legal representation in cases before military administrative discharge review agencies, VA regional offices, the Board of Veterans' Appeals, and the courts that review the decisions of these agencies.

NVLSP staff attorneys use their expertise in veterans' law to screen the medical and personnel records of service members and veterans, and to identify meritorious cases. NVLSP attorneys then train and mentor volunteer lawyers to ensure successful advocacy. This program allows NVLSP to act as a multiplier and help a far greater number of veterans and service members than we could alone. LSW and pro bono partners also leverage their combined knowledge and experience to produce several training manuals to help volunteer attorneys quickly come up to speed. These manuals address important topics such as service connection claims for survivors of military sexual trauma and the correction of wrongful military discharges for personality and adjustment disorders.

Over the years, LSW has assisted over 3,000 veterans and active duty personnel in their efforts to receive the benefits they deserve. In 2018, the program placed over 400 individual cases for full representation and further provided advice and brief services to over 200 individuals at clinics. With veterans' growing need for legal assistance, LSW has recently forged new partnerships to help serve more veterans. Some of the 2018 clinic partners include the Community Care Unit WTB-Fort Belvoir, Va.; DAV Chapter 47, Petersburg, Va.; District of Columbia Mayor's Office of Veterans Affairs, Fayetteville Vet Center, N.C.; Senior Law Center, Pa.; Soldier & Family Assistance Center (SFAC) Walter Reed Military Medical Center; National Association of Black Veterans (NABVETS); Prince George's Community College of Veterans Services, Md.; and Prince George's County Office of Veterans Affairs, Md.



Lawyers Serving Warriors® assists with the following types of claims:

Appeals

LSW attorneys represent veterans at the Board of Veterans' Appeals (BVA) and the U.S. Court of Appeals for Veterans Claims (CAVC). Common issues include service-connected disabilities related to military service, earlier effective date for benefits, and higher disability ratings

Military Sexual Trauma (MST)

Assistance with VA claims for service connection for mental disorders due to military sexual trauma

Combat-Related Special Compensation (CRSC)

Assistance with applying for Combat-Related Special Compensation, which is a tax-free benefit provided to qualified military retirees



Lawyers Serving Warriors®

2018 Participants

Akin Gump Strauss Hauer & Feld LLP
Amazon.com
Ballard Spahr LLP
Buckley Sandler LLP
Cadwalader LLP
Covington & Burling LLP
Cozen O'Connor LLP
Crowell & Moring LLP
Dechert LLP
DLA Piper LLP
Exelon Corporation
Faegre Baker Daniels LLP
Fannie Mae
Finnegan, Henderson, Farabow,
Garrett & Dunner, LLP
Hewlett Packard Enterprise
HP Inc.
Hogan Lovells LLP

Holland & Hart LLP
Holland & Knight LLP
Hunton Andrews Kurth LLP
Intel Corporation
Jones Day
K & L Gates LLP
Katten Muchin Rosenman LLP
Kilpatrick Townsend & Stockton LLP
King & Spalding LLP
Kirkland & Ellis LLP
Latham & Watkins LLP
Linklaters LLP
McDermott Will & Emory
Merck & Co., Inc.
Miller & Chevalier
Morgan, Lewis & Bockius LLP
Nixon Peabody LLP
Orrick, Herrington & Sutcliffe LLP

Paul Hastings LLP
Paul, Weiss, Rifkind,
Wharton & Garrison LLP
Perkins Coie LLP
Pfizer Inc
Reed Smith LLP
Sidley Austin LLP
Skadden, Arps, Slate, Meagher
& Flom LLP
Steptoe & Johnson LLP
Troutman Sanders
Verizon
Vinson & Elkins LLP
White & Case LLP
Williams & Connolly LLP
WilmerHale LLP
Winston & Strawn LLP

Military Medical Retirement

Offer representation on:

- Military medical separation processing for active service members
- Corrections of military records to grant medical retirement, including for a misdiagnosed personality disorder or adjustment disorder
- Physical Disability Board of Review rating increases for Post-9/11 veterans

Discharge Upgrades

Offer assistance in:

- Upgrading less than honorable discharges. The majority of the clients served through this project have Post-Traumatic Stress Disorder (PTSD), traumatic brain injuries (TBI), or other mental health conditions that are related to military service
- Removing the stigmatizing label of personality or adjustment disorders from the discharge certificate for veterans who were suffering from a service-incurred mental disability, such as PTSD, TBI, or a similar disorder

Veteran Profiles

The benefits that NVLSP has secured for veterans and their families stemming from medical retirement, military sexual trauma, and Agent Orange exposure have been life-changing.



MISSION DRIVEN

WES CARTER U.S. Air Force

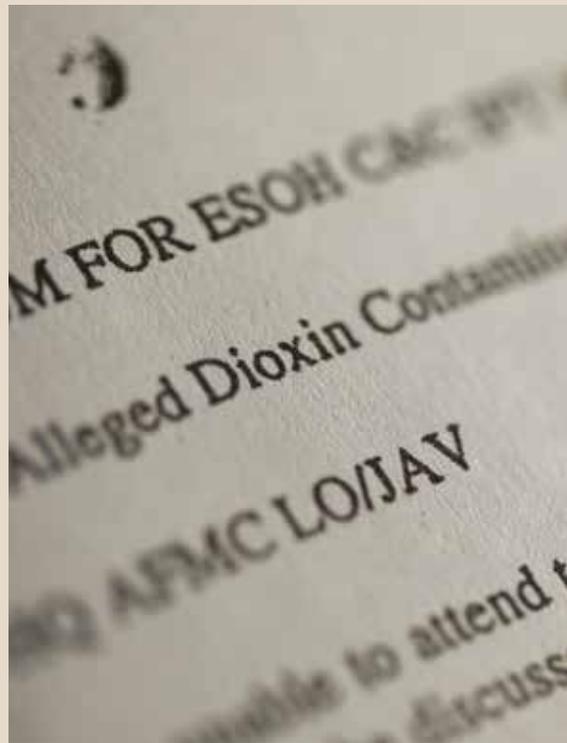
Retired Air Force Major Wes Carter flew C-123s from 1974 to 1980 with the 74th Aeromedical Evacuation Squadron at Westover Air Reserve Base. He was among 2,100 reservists and National Guard service members who flew training and assigned missions on C-123s that a decade earlier had sprayed the toxic herbicide Agent Orange during the Vietnam War.

In 2011, Carter was diagnosed with potentially lethal prostate cancer, and he suspected there was a link between his cancer and the C-123s he had flown more than 20 years earlier. For one thing, one of the planes, nicknamed “Patches,” had such a heavy chemical stench that the crew often felt nauseated after flying it. For another thing, Carter had heard from a number of reservists who had flown C-123s with him that they too had one of the types of cancer, like prostate cancer, that the Department of Veterans Affairs (VA) recognized as associated with Agent Orange.

Carter filed a disability claim with the VA for prostate cancer and sent the Air Force numerous Freedom of Information Act requests trying to find out whether the government knew anything about the presence of toxins in the planes he and so many others flew.

Carter found a smoking gun. Memos showed that in 1994 during a restoration attempt of the planes, Air Force staff toxicologists concluded that aircraft samples were “highly contaminated” with the dioxin TCDD — the toxic contaminant contained in Agent Orange.

Other memos confirmed that the Air Force had not notified any of the former crew about this discovery. Instead, it quarantined the planes in a storage facility known as “the Boneyard” and finally destroyed the planes in 2010 — one year before Carter’s diagnosis. Carter showed the memos to his VA doctor, who told VA adjudicators that Carter’s cancer is “likely related to exposure to Agent Orange.” Nonetheless, the VA denied Carter’s claim and those of the other sick C-123 veterans.



“You discover that they care and that it’s their mission to advocate and to employ the weapons that were not part of the arsenal we were trained in.”

Carter wasn’t about to give up. He helped form the C-123 Veterans Association, and he and other members traveled to Washington, D.C., to present the Air Force evidence to VA officials. The VA was unmoved. So Carter continued to make trips from his home in Colorado to meet with members of Congress for support.

Thanks to Congressional intervention, in 2014, the VA requested that the nonpartisan Institute of Medicine (IOM) conduct an investigation into the likelihood that post-war contamination of Agent Orange on C-123s had sickened so many veterans. After considering evidence from the Air Force, the VA, and Carter, in February 2015, the IOM confirmed that C-123 veterans were likely exposed to significant levels of dioxin.

Finally, in June 2015, the VA issued a regulation granting Air Force reservists who served on board C-123 aircraft a presumption of Agent Orange exposure, which entitled them to disability benefits for the many cancers and other diseases that the VA recognizes as associated with such exposure.

But his fight was not over yet. The VA refused to give its regulation retroactive effect, meaning that none of the reservists could receive disability benefits for the period prior to June 2015. This cost Carter four years’ worth of benefits for his 2011 claim.

NVLSP and pro-bono attorneys at Faegre Baker Daniels LLP teamed up to seek full benefits for Carter retroactive to 2011, when he filed his initial claim. They filed an appeal with the Board of Veterans’ Appeals (BVA) and wrote a brief providing evidence that Carter met the criteria for exposure to

a toxin as an injury. The BVA agreed to expedite the appeal due to Carter’s terminal illness. In October 2017, the Board agreed to pay Carter benefits back to 2011 because the evidence assembled by Carter’s lawyers showed that he was exposed to Agent Orange while a reservist without the need to rely on the 2015 regulation.

Now a seasoned advocate, Carter says help from his attorneys was pivotal. “It’s probably better to use the laws as they exist now, and the only people who can swing that bat are attorneys. You find out there’s an organization like NVLSP, and you discover that they care and that it’s their mission to advocate and to employ the weapons that were not part of the arsenal we were trained in.”

Advocates are using this Board decision to achieve consistent rulings on behalf of other C-123 reservists. The decision should have a broad impact for many of the 2,100 Air Force personnel who trained and served in the contaminated planes and now suffer from life-threatening illnesses.

“So back to the attorneys—those are the shot in the shell you need when you’re in a battle,” said Carter. “I want to emphasize the importance of NVLSP. The phone calls for advice, the leadership that NVLSP offers, the threat to the VA when they see NVLSP on the legal papers that are filed... I owe a lot to NVLSP.” ★



ROAD TO RESTITUTION

RITA MALDONADO

U.S. Army

Fresh out of Army basic training and thousands of miles from home in Germany, 19-year-old Rita Maldonado was trapped in a nightmare. She was sexually assaulted by her superior officer within a week of arriving at her first duty station.

When she reported the assault to her unit, she was met with disparagement and ridicule. “My attacker said I was a lying malingerer and that I should get an Article 15 [a non-judicial punishment]. His superior officer accepted his account of the incident and dismissed me from his office.”

Maldonado succeeded in getting a change of duty assignment and finished her four-year enlistment. But starting after her discharge in 1981, she experienced panic attacks, severe depression, and insomnia, which drove her to abuse drugs and alcohol. “I was broken, but somehow couldn’t figure out why,” said Maldonado. She was unable to work, and the drugs and alcohol only mitigated symptoms of post-traumatic stress disorder (PTSD)—they didn’t make it go away.

After more than two decades of suffering, she finally went to a psychologist, who diagnosed her with PTSD and major depressive disorder related to the in-service sexual assault. Maldonado, now in her mid-40s, applied for VA disability benefits for PTSD in 2009. The VA denied the claim because it didn’t believe that the sexual assault had occurred. Maldonado appealed, adding detailed descriptions of the in-service stressor. After a VA medical examination, the VA reviewed the case again in 2014. This time the VA conceded that the sexual assault had occurred, but denied the PTSD claim based on the VA examiner’s opinion that Maldonado had a borderline personality disorder that was unrelated to the in-service trauma.

Within months of Maldonado’s 2014 denial, NVLSP initiated a signature project piloted through its pro bono program—Lawyers Serving Warriors®—to assist survivors of military sexual trauma (MST), like Maldonado. Maldonado asked NVLSP to take her case. NVLSP placed her

It's a marathon—it's not a sprint. The long process can be extremely draining for a veteran.

case with Lily North, an attorney with law firm Dechert LLP. NVLSP worked with North to secure the services of two mental health specialists. The two put Maldonado through an intensive, comprehensive psychological evaluation, interviewed three of Maldonado's siblings and her current therapist, and reviewed her extensive military and prior mental health records. They then authored a 13-page, single-spaced, psychological evaluation report that, contrary to the 2014 VA examiner's opinion, concluded that Maldonado suffered from PTSD and major depressive disorder due to the in-service sexual assault.

North then perfected Maldonado's appeal to the Board of Veterans' Appeals by filing a detailed brief along with the psychological evaluation report. She argued that the overwhelming weight of the medical evidence demonstrated that the claim should be granted. In 2016, however, the Board disagreed. The Board sent the case back for another VA medical examination.



The new VA medical examiner sided with the report and Maldonado's other private psychologists, and eight years after the claim was filed, the VA finally awarded service connection for PTSD with major depressive disorder, and she was rated 70 percent disabled. She received disability payments from the date of her initial claim filing in 2009, which amounted to a sizable award.

But North didn't stop there. She appealed Maldonado's disability rating and filed a supplemental brief. Maldonado's award was upgraded to a 100 percent disability rating in January 2018—confirming her inability to maintain employment, and netting additional disability benefits to help Maldonado.

"Perseverance is a lot of the battle," said North. "For veterans like Maldonado, it's a marathon—it's not a sprint. The long process can be extremely draining for a veteran."

"It's a long road to restitution," said Maldonado. "It has taken 37 years, but I'm finally able to leave behind the military betrayal I felt from the sexual assault, the way I was treated by my unit after the assault, and by the VA when I first filed my claim and was denied."

For this veteran, the fight is finally over. ★

"It has taken 37 years, but I'm finally able to leave behind the betrayal I felt from the military, my unit, and the VA."



ENSURING A SECURE FUTURE

PERLA BORTEL

U.S. Army

When Perla Bortel decided to enlist in the Army, she aspired to a long and fulfilling military career. Her dream was to serve her country as well as her fellow soldiers, so she joined as a combat medic specialist. She served in the elite military police unit and rose to the rank of sergeant.

By definition, the role of a combat medic specialist is a physically and emotionally demanding one. It requires 10 weeks of basic training as well as 16 weeks of advanced individual training. The combat medic specialist is often the first contact for service members upon injury on the front lines. They offer not only health care but also emotional support and, if required, evacuation from battlefield or point of injury. Bortel embraced the opportunity to serve as a combat medic. She was especially proud to serve in the distinguished military police unit.

She proudly deployed to the combat zone of Iraq as well as to Germany, Hungary, and Romania to serve her fellow service members.

But, slowly but surely, the numerous injuries that she incurred while performing military duties began to seriously impede her ability to perform as a combat medic specialist. During basic training, Bortel had an accident and injured her shoulder. This injury led to several other debilitating conditions that ultimately resulted in several surgeries. Unfortunately, the surgeries were not successful and led to other complications, including adhesive capsulitis. Then, during nighttime training to obtain an expert medical field badge, Bortel suffered a devastating injury, tearing three tendons in her ankle. Undeterred, she continued to serve despite excruciating pain in her ankle. In an attempt to rid herself of ankle pain, she underwent multiple surgeries.



Unfortunately, despite her desire to serve, the Army referred her to its Disability Evaluation Process, where the Physical Evaluation Board (PEB) determined that Bortel's shoulder disability rendered her unfit for continued service. She could no longer expect to help other injured soldiers. To have her dream of a military career cut short was difficult. But even worse, she realized that when she ultimately had to transition into civilian life, her serious chronic medical conditions would block her from being employed as a nurse—which had been her ultimate goal. Moreover, to Bortel's dismay, the PEB failed to find her ankle disability unfitting, denying her a disability retirement. Disability retirement status provides lifetime military medical care for her and her spouse, lifetime retirement pay, and access to military bases and commissary privileges. Instead, the PEB's decision entitled her to only a one-time severance payment and no ongoing military benefits.

Bortel was told that she could appeal the PEB's decision and attempted to navigate the appeals process herself, but she was overwhelmed. "It was so complicated and full of terms I could not understand," said Bortel. "The process itself is really stressful. Just picture that your life is going to change completely. And you haven't planned on that. All your goals and dreams no more." Desperate for assistance, Bortel reached out to NVLSP and asked us to take her case. "NVLSP is something that people like me need. They know everything," said Bortel. "They make you feel better going through a tough process."

Though she was stationed in Germany, NVLSP was able to assist her. NVLSP placed her case with Latham & Watkins attorneys Allen Gardner and Justin Kirschner. With less than a month to prepare for an appeal to the Formal Physical Evaluation Board, Gardner and Kirschner had their work cut out for them in a compressed time frame. Gardner and Kirschner, with the assistance of NVLSP staff attorney Esther Leibfarth, prepared a top-notch legal defense to add Bortel's ankle disability as unfitting and to secure Bortel the necessary 30 percent disability rating to qualify for permanent medical retirement based on her extensive ankle and shoulder injuries.

According to Bortel, "NVLSP was amazing." She credits Gardner and Kirschner, her pro-bono attorneys, with giving her back her confidence about her future. "Justin answered all the questions I had. He was on top of things.

"I felt really confident about the future and the process. I didn't have the stress about what was going to happen later. They already told me how everything was going to be laid out. They told me how they were going to be presenting. They prepared me really well.

"They knew everything about the process. It was not difficult for me to trust them." Bortel concluded, "If not for NVLSP, right now I would be totally devastated." ★

"If not for NVLSP, right now I would be totally devastated."





WINNING A 10-YEAR FIGHT FOR TARA

ROYCE ESTES

U.S. Army

More than a decade ago, Vietnam veteran Robert Estes filed a claim for VA benefits for his daughter, Tara. Children of Vietnam veterans who have spina bifida or certain other birth defects can receive disability benefits from the U.S. Court of Appeals, including monetary compensation and health care, because scientific studies indicate that there's a link between these birth defects and a parent's Agent Orange exposure while serving in Vietnam. Tara was born with encephalocele, a birth defect that causes a hernia of part of the brain and the membranes that envelop the brain and spinal cord through a cranial defect. As a result, Tara suffers from profound mental retardation, an inability to walk, incontinence, and an inability to communicate verbally. She is now in her forties, but still needs around-the-clock care and lives with her parents.

Estes contacted the VA about Tara's condition in the 1980s, as a doctor had told him her condition was related to spina bifida, but he was told nothing could be done. It was defeating for the veteran. "There was nothing I could do," said Estes. "They were just washing their hands of it."

But starting in 1990, the VA was forced to recognize that scientific studies show that many types of cancer and other diseases are the result of Agent Orange exposure. Estes began to receive service-connected benefits for himself at the 100 percent disability level due to illnesses and conditions that the VA linked to his exposure to Agent Orange while serving in Vietnam. In 1996, Congress expanded the law to provide for VA disability benefits for children of Vietnam veterans who are born with any "form or manifestation" of spina bifida. So Tara's condition should have qualified her for benefits.

The family was not aware of the new law until 2007, when Estes filed a claim with the VA for benefits for Tara. His claim was denied, and then he appealed. The claim was remanded by the Board of Veterans' Appeals (BVA) for additional evidence, and in 2011, a VA examiner opined that Tara's condition was not spina bifida. Their claim for VA benefits for Tara was denied.

Then NVLSP called him and said, "Estes, we believe you have a case here." NVLSP appealed the case to the U.S. Court for Veterans Claims.

NVLSP's research showed that in a 2002 precedential decision, *Jones v. Principi*, the Court overturned a BVA decision denying benefits to a child of a Vietnam veteran born with encephalocele and sent the case back to the Board to obtain a medical opinion addressing whether encephalocele is a "form or manifestation" of spina bifida under the 1996 statute. NVLSP cited this case in their appeal, and in 2013, the Court invalidated the Board decision and sent the case back for the Board to obtain the same type of medical opinion that it had required in the *Jones* case.



"I don't know what we would have done without you all."

But NVLSP did not stop there. NVLSP sent a Freedom of Information Act request to the VA for a copy of the medical opinion that the VA ultimately obtained in the *Jones* case. This move struck pay dirt. The medical opinion disclosed to NVLSP by the VA stated that encephalocele is indeed a "form or manifestation" of spina bifida. Moreover, the VA had granted benefits in the *Jones* case based on that medical opinion.

NVLSP turned around and submitted these documents to the Board on behalf of Estes, along with a legal brief and a second favorable medical opinion that NVLSP had obtained. Still, the BVA was not convinced.

In January 2014 and again in November 2014, the BVA remanded the case for still more medical opinions. But NVLSP and the Estes family did not give up.

Finally, in February 2017, the BVA granted the claim for disability compensation for Tara.

A decade after their claim was filed—the Estes family received retroactive disability compensation to the date of their initial claim in 2007 (10 years of back payments of monthly disability checks). Tara qualifies for additional health care and future disability compensation from the VA.

Her parents are relieved. "I don't know what we would have done without you all," said Estes. ★

Helping veterans since 1981

Since the beginning, the National Veterans Legal Services Program (NVLSP) has worked to ensure that the government delivers to our nation's 22 million veterans and active duty personnel the benefits to which they are entitled because of disabilities resulting from their military service to our country.



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