As well as each of the previous volumes, Reveille has come to signify something that can be found in abundance time and again among our Section members and leadership—dependability.

Member Spotlight: Ernie Lee

By Charles R. Raphun

In many ways, the role of North Carolina’s prosecutors reflects the intersection of implementing legal principles and navigating the practical realities of protecting the public. One public servant who exemplifies this is Ernest R. (“Ernie”) Lee—District Attorney for the Fourth Prosecutorial District—a four-county district covering Duplin, Jones, Onslow and Sampson Counties. Ernie’s dedication to supporting the rule of law and promoting the rights of crime victims and the public is remarkable. His military career as an Army Reserve Judge Advocate officer mirrors his civilian legal career and his skill at understanding the unique needs and concerns of the military is a model for North Carolina attorneys striving to support service personnel, veterans and their families.

Ernie is a 1982 graduate of Atlantic Christian College (now Barton College) in Wilson, N.C., where he majored in political science and, during the course of his undergraduate program, served in the Legislative Intern program through North Carolina State University in Raleigh. After college he attended law school at Campbell University where he graduated in 1985. His first job in the law was in Windsor, N.C., where he worked for the firm of Pritchett, Cooke & Burch, serving with attorneys whose primary practice was real estate as well as civil appeal cases. In reflecting on that time in his life, Ernie mentions the strong mentoring that he benefitted from at the firm, and noted how much it helped him in later years.

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The Chair’s Comments, continued from the front page

a larger pool of volunteer attorneys and increase the value of participation for all involved. The move memorializes a partnership between MVLS, the NC Pro Bono Resource Center, and the UNC School of Law Veterans Legal Assistance Project to host servicemember and veteran legal clinics, the next being April 13, 2018 at the Durham VA Medical Center. All Section members are heavily encouraged to inquire about this and future events (or assist with planning future events) and to volunteer to provide on-site advice and counsel. These clinics are being developed based on data specific to the needs of the area and population of servicemembers or veterans that they serve. Many of our members, including Vice-Chair Brentley Tanner, of Sullivan & Tanner, have answered the call and stepped up to volunteer when these specific clinics began in 2017.

Finally, speaking of clinics, our Legislative Chair Robert Davis, of the Charlotte Center for Legal Advocacy, remains optimistic we may see another kind of expansion of legal services for homeless and at-risk veterans in North Carolina and across the nation. For some years, Robert has helped supervise regular monthly legal clinics at VA medical centers in Charlotte and Salisbury. Legislation at the national level like Senate Bill 1072 could provide funding for such efforts and thanks to Robert’s updates, MVLS was one of 10,000 signatories amassed in less than a week’s time urging quick passage by Congress.

2018 is shaping up to be another banner year for the MVLS and I remain honored to be playing a leadership role among some of our profession’s most inspiring leaders.
Ernie Lee, continued from the front page

He joined the District Attorney’s Office in the Fourth Prosecutorial District as an Assistant DA in January 1987 and has served in various capacities there ever since. After a successful 24-year stint, he sought and won election as the District Attorney in 2010 and took office on January 1, 2011. He was re-elected in 2014 and will run again for this post this year. In that district, which encompasses Camp Lejeune, Ernie oversees many cases involving military personnel and their families – as defendants and as victims – that end up in his office. He has observed an increase in violent crimes involving military personnel over the last 10-15 years and sees it as part of his duty to act wisely and promptly in order to contain such crime. Overcoming an environment of fear and criminal expansion is essential to protecting the military communities in his district, and Ernie sees his role as essential to keeping good and successful civil-military relations in his part of the state.

Ernie grew up in a military family. His father, Phillip E. Lee, retired in 1977 after a successful Air Force career and provided a role model for serving the public. His brother, who also retired recently from the Air Force after serving as a missile launch technician, provided further inspiration to Ernie. It was their examples that, in many ways, led Ernie to public service while also devoting himself to the military. Some of his early inspirations for becoming an attorney came from his childhood experiences (in Tucson, Arizona while his father was stationed at nearby Davis-Monthan AFB). He fondly remembers how his fifth grade teacher so impressed him with her knowledge and enthusiasm for civics and the rule of law that he knew that a legal career was in his future. A few years later he began to see himself as a prosecutor for his life’s work, noting that the prosecutor is the main government official with the duty and authority to best consider the rights and interests of the victims of crime. Being a prosecutor is a job that he knew he could really make a difference. In many ways, this concept of duty has been a guidepost for him in his civilian legal career.

Ernie joined the U.S. Army Reserve as a Judge Advocate General’s Corps officer in 1992. He recently retired after 22 years of federal service. While he undertook numerous assignments, he is most grateful for the opportunity to serve as a defense counsel for dozens of Soldiers facing administrative separations boards. Although separation boards are not by doctrine designed to be punitive in nature, their outcomes can have lifelong effects on the Soldiers involved, including unfavorable discharge status and denial of veterans benefits. So Ernie undertook those duties with enthusiasm and professionalism, thereby not only serving his clients well, but also ensuring the fair and impartial nature of the boards that he appeared before. Ernie found his work in the Army Reserve extremely satisfying – both personally and professionally. Ernie elaborated, “...Before joining the Army, I never would have imagined the wide range of attorneys and the great leadership that I would have encountered in the Reserve. We had attorneys from all areas of legal practice – federal and state litigators, general practice attorneys, judges from all across the country, as well as public officials, legislative and Congressional staffers. So many sharp, thoughtful individuals serving in the JAG Corps of all branches. It was both inspiring and humbling. I gained so much experience and perspective having served.”

When asked what is most needed to improve the legal system to better support military and veterans, Ernie points to the need for better understanding by attorneys when listening to and interacting with veterans and service personnel. “One of the attributes that an attorney with prior military experience often has is the ability to understand the nature of the veteran’s problems, what he or she is talking about, and comprehending the issues that the military establishment/bureaucracy, by its nature, creates. Those dimensions can be imposing obstacles to an attorney or paralegal trying to help, counsel, or even considering prosecuting a military person or their family members. Sometimes, being able to make sense out of a given scenario being told to a counselor can set the stage for better legal or judicial actions, and better outcomes go a long way toward better military relations with the civilian communities nearby.”

Ernie is married to his wife of 27 years – Misti C. Lee. Misti is a respected journalist and author in her own right – freelancing for many years, while also having frequently penned stories and columns in Our State magazine, the Marine Corps Times, the New York Times, The Wilmington Morning Star and the Jacksonville Daily News. The Lee’s are blessed with three children as well: one in high school, one in middle school and one in elementary school.

Ernie’s commitment to the legal profession is solid. Although being an attorney can be very demanding, he has never regretted it and, as he describes it, he has been “blessed beyond measure” in his civilian and military legal careers. We are grateful to have public servants such as Ernie Lee counted among our State’s profession.

Charles R. Raphun is in-house counsel for Genband US LLC, a multi-national telecommunications solutions provider, where he provides legal counsel for software development, technology licensing and regulatory affairs. He is also a retired Colonel in the Army Judge Advocate General’s Corps and deployed to Iraq in 2003 in support of OIF I. He lives in Raleigh.
Protector Servicemembers and Veterans From Predatory For-Profit Schools

By Jason Pikler

On June 30, 2008, President George W. Bush signed into law the Post-9/11 Veterans Educational Assistance Act of 2008, otherwise known as the Post-9/11 G.I. Bill. The Act sought to replicate the success of the original G.I. Bill, which enabled 2.2 million returning World War II veterans to attend colleges and universities and contributed to the country's post-war economic growth.

The Post-9/11 G.I. Bill provides generous education benefits to all servicemembers who serve a minimum of 90 days active duty after September 10, 2001: up to 36 months of funds for tuition and fees, including full tuition and fees for veterans attending public schools as in-state students. Since the law went into effect in 2009, U.S. taxpayers have spent billions of dollars to fund the Post-9/11 G.I. Bill. Unfortunately, that well-deserved investment in our troops has failed to provide positive outcomes for thousands of veterans who have squandered their educational benefits at predatory for-profit schools.

The scope of the problem is alarming:

- Forty percent of Post-9/11 G.I. Bill benefits—more than $8 billion—has flowed to for-profit schools.
- Although for-profit colleges enroll only 8% of all U.S. students, they enroll 30% of the 1.4 million veterans who have used the Post-9/11 G.I. Bill benefits.
- In 2014, eight of the top 10 recipients of Post-9/11 G.I. Bill money were large, publicly-traded companies that operate for-profit colleges.
- Seven of those eight companies are under investigation or have been sued by state attorneys general or federal agencies for deceptive and misleading recruiting or other violations of federal law.
- Two of the eight companies (Corinthian Colleges and ITT Technical Institute) have completely shut down in the wake of federal and state lawsuits and regulatory actions and numerous allegations of fraud and predatory and deceptive practices.
- The University of Phoenix (operated by the Apollo Group), by far the largest recipient of Post-9/11 G.I. Bill funds, was investigated by the Department of Education and Justice Department and briefly barred from recruiting on military bases for alleged recruiting violations.

For-profit Schools Are a Bad Investment for Veterans and U.S. Taxpayers.

The goal of a for-profit school, like any for-profit business, is to make money. To maximize their profits, for-profit schools devote a considerable portion of their revenues to marketing and recruitment efforts in comparison to that spent on student instruction and services. So too, the lack of spending on instruction and services has not prevented for-profit schools from charging a premium to their students. A 2014 report by the U.S. Senate found that taxpayers pay twice as much on average to send a veteran to a for-profit college for a year compared to the cost at a public college or university ($7,972 versus $3,914).

The disparity in cost would not be as much of a concern if the performance of for-profit schools was not so dismal. A December 2017 report by the Center on Budget Policies and Priorities compiled the following list of damning reports on the performance of for-profit schools (Spiros Protopsaltis and Libby Masiuk, “Protecting Students and Taxpayers: Why the Trump Administration Should Heed History of Bipartisan Efforts,” Center for Budget Policies and Priorities, December 1, 2017, https://www.cbpp.org/sites/default/files/atoms/files/12-1-17bud.pdf):

- A 2011 Government Accountability Office report found that for-profit schools had lower student outcomes, compared to public and nonprofit schools, including that only 3 percent of low-income students who started at for-profit schools completed a bachelor’s degree, compared to 49 percent at four-year public schools and 13 percent at two-year public schools. (“Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools,” U.S. Government Accountability Office, December 2011, http://www.gao.gov/assets/590/586738.pdf)
- A 2012 National Bureau of Economic Research study of students' earnings after graduation found “no evidence that students gain from obtaining any certificate or degree from a for-profit institution,” in contrast to significant benefits from an associate's degree at public and nonprofit schools, and concluded that “students at for-profit institutions do not benefit more and often benefit less from their education than apparently similar students at not-for-profit and public institutions.” (Kevin Lang and Russell Weinstein, "Evaluating Student Outcomes at For-profit Colleges," NBER Working Paper No. 18201, June 2012, http://www.nber.org/papers/w18201.pdf)
- A 2016 National Bureau of Economic Research study of the impact of a for-profit college education on the employment and earnings of over 1.4 million students found that “associate’s and bachelor’s degree students experience a decline in earnings after attendance, relative to their own earnings in years prior to attendance,” while for certificate students, “despite the much higher costs of attendance, earnings effects are smaller in the for-profit sector relative to the effects for comparable students in public community colleges.” (Stephanie Riegg Cellini and Nicholas Turner, “Gainfully
For-Profit Schools Target Servicemembers and Veterans

For-profit schools aggressively market to and recruit servicemembers and veterans. Internal company documents obtained during a U.S. Senate investigation revealed that ITT Tech planned to hire recruiters from every branch of the military and “target the largest [military] installations first.” (Chris Kirkham and Alan Zarembo, “For-profit colleges are using the GI Bill to make money off veterans,” August 18, 2015, http://www.latimes.com/business/la-fi-for-profit-colleges-gi-bill-20150809-story.html). Federal regulatory agencies and state attorneys general have brought numerous actions against for-profit schools for deceptive recruiting and other predatory practices.

Servicemembers and veterans are attractive targets for for-profit schools for a number of reasons. They are typically non-traditional students who are impatient to get started with their careers—for-profit schools cater to these students by making it easy to enroll in degree programs throughout the year. In return, servicemembers and veterans provide for-profit schools with billions of dollars of G.I. Bill and Tuition Assistance funds and, even more critically, make it possible for for-profit schools to comply with the “90/10 Rule.” Under this Rule, schools must derive at least 10 percent of their revenues from sources other than federal financial aid funds in order to stay eligible for these funds. The rationale for the rule was that any institution that could only survive off the largesse of U.S. taxpayers was presumptively lacking in quality; a truly worthy institution could find students willing to pay the tuition from their own funds. For-profit schools, however, have exploited a giant loophole: Post-9/11 G.I. Bill funds (as well as other military educational benefits) are not treated as federal financial aid and thus count toward the 10 percent of funds that must derive from private sources. As a result of this loophole, for-profit schools have a huge incentive to enroll recipients of military educational benefits.

As United States Senator Tom Harkin put it, “For-profit schools see our active-duty military and veterans as a cash cow, an untapped profit resource. It is both a rip-off of the taxpayer and a slap in the face to the people who have risked their lives for our country.”

Protecting Veterans From Misleading and Deceptive Ads and Recruiters

The best way we can help protect servicemembers and veterans from falling prey to predatory for-profit schools is to encourage them to look into other, lower-priced and higher-quality options before they make the costly decision to enroll. The following resources can be used to research schools and compare options:

- “College Scorecard” by the U.S. Education Department (https://collegescorecard.ed.gov/) (allows comparison of colleges and searches by the program you want or region of the country; includes information regarding average earnings after graduation and average debt load)

For those students who believe they have been deceived by a for-profit school, the nonprofit Veterans Education Success (https://veteranseducationsuccess.org/) encourages them to take action by reporting the school’s misconduct to the Department of Veterans Affairs (or to the Defense Department if they used Tuition Assistance or MyCAA), by calling the VA Office of the Inspector General hotline (1-800-488-8244), and by submitting complaints to the Department of Education and North Carolina Attorney General. Veterans Education Success also attempts to match servicemembers and veterans with free legal assistance.

Unfortunately, the problem of for-profit schools commandeering the educational benefits of our country’s troops will get worse before it gets better. The Obama Administration had begun to imple-
ment standards and protections—including "gainful employment" rules—that the Trump Administration is systemically dismantling. This means that the VA and Defense Department, state regulators, and private attorneys—not to mention servicemembers and veterans themselves—will need to be even more vigilant if the Post-9/11 G.I. Bill is going to have its intended effect—to arm our nation's troops with higher degrees and vocational skills, rather than saddling them with student debt.

Jason Pikler has been a Staff Attorney at the North Carolina Justice Center in Raleigh since 2014, focusing on consumer rights and housing issues. Jason helped to create the North Carolina Justice Center's Predatory For-Profit School Project, which has worked to educate students and the general public about deceptive and predatory practices in the for-profit school industry and to provide legal assistance to affected individuals in North Carolina. Jason has presented on issues regarding for-profit schools and student-loan debt to various audiences across the state.

Prior to joining the Justice Center, Jason obtained extensive complex litigation experience at private law firms in San Francisco. Jason received his BA from Haverford College, an MA in English literature from the University of Virginia, and his law degree from the University of Texas School of Law.

The TOP 10 REASONS to join the NCBA's Military & Veterans Law (MVL) Section

1. Professional Camaraderie | MVL presents one of the best forums for North Carolina military and veteran affiliated attorneys, law students and professionals to come together under the common purpose of serving veterans and coordinating advocacy to the benefit of North Carolina's veterans and servicemembers.

2. Networking | You will meet other professionals who are veterans or currently serving or who seek to advocate for North Carolina servicemembers and veterans.

3. CLE | MVL tailors its CLE to meet the needs of attorneys who serve veterans and servicemembers as clients. CLE participants may be trained to represent clients before the U.S. Department of Veterans Affairs or become trained to navigate Veterans Treatment Courts.

4. Newsletter | The MVL newsletter, Reveille, enables attorneys and professionals to stay current with veteran- and military-focused legal issues.

5. Legislative Contribution | MVL serves as a liaison with the NCBA Office of Governmental Affairs, which enables section members to contribute to legislation regarding veterans and servicemembers of North Carolina.

6. ListManager | The ListManager provides section members a direct and exclusive opportunity to discuss questions or concerns with other members.

7. Website | The MVL Section maintains a website (ncbar.org/members/sections/military-veterans-law), which informs members of major events, upcoming meetings and facilitates client referral.

8. NCBA | Membership allows a connection with your bar association while also concentrating on military and veteran issues.

9. Participation | MVL members are on the front lines of the fight to serve veterans and increase benefits to service members.

10. Leadership | The MVL Section provides opportunities to lead North Carolina in its effort to remain the most military-friendly state in the country.

Whether you seek to represent veteran clients, to refer veteran clients or to contribute to veterans issues generally, the NCBA Military & Veterans Law Section is a great way to meet other professionals in your field!

Who is eligible to join the MVL Section?
Any member of the NCBA who wishes to advocate for North Carolina's service members and veterans. Affiliate membership is open to non-lawyers active in the field of military and veterans law and may serve on the MVL leadership council. Affiliate members only pay the section dues; they are not required to pay the NCBA dues.

What if I am already a member of another section of the North Carolina Bar Association?
You will find that membership in the Military & Veterans Law Section complements involvement in related sections such as Administrative Law or Family Law. An NCBA member may find that his or her individual practice needs are best served by membership in two or more sections, and as annual dues are modest, this can be beneficial.

For more information about or to join the Military & Veterans Law Section, please call 1.800.662.7407 or visit ncbar.org/members/sections/military-veterans-law
When I returned home from Iraq and exited the Marine Corps, like most Veterans, I was unsure what to expect and where I would fit in to my community. Looking to get married, buy a home and find a job (much less a career) was in my future, but I knew nothing about the benefits for which I was eligible. As I stumbled around working to find my place I also had immediate and long-term goals. It wasn’t until another Veteran informed me about the VA Home Loan that I ‘Googled’ VA benefits and walked into a Veteran Service Office. From there I utilized the VA home loan program, received some VA disability, and healthcare at the Asheville VAMC, secured college scholarships already for my two young daughters and entered into my career field and my place in my community. I was lucky and fortunate to have a community of stakeholders at all levels to include local, non-profit, state and federal that helped me navigate all these benefits. This process continues and has lasted several years. 

Author and war-journalist Sebastian Junger speaks of the “tribe” that the Military community thrives in and are able to complete impossible tasks and missions that our nation asks. They do this as a team and as a close knit community that embodies the Military Culture but, more importantly, creates an environment for success for each individual and the overall mission. AmericaServes understands this importance not only for the success of community but the individual and implements this model with these exciting new markets.

**Background**

AmericaServes is the first community-based, coordinated network of services and care for our nation’s military-connected members and their families, with 14 Networks launched across 9 states and over 600 providers.

“Our mission is that every service member, Veteran, and their family can easily access the full range of comprehensive services required to achieve their unique goals, and to provide first-class service experience to match service-member and Veterans’ first class military service.”

AmericaServes receives support from companies such as the Walmart Foundation, Leon Levine Foundation, Heinz Endowment, and Cannon Foundations. Allowing state of the art technology matched with uniquely skilled staff and community partners allows this model to be successful.

**How It Works**

The network leverages resources and providers in each local community allowing each to keep their spear sharp. This is accomplished by a web-based platform designed by Unite US in partnership with Syracuse University’s Institute of Veterans and Military Families. This platform is shared with providers in the community and is directed by a coordination center. This allows every provider who is assisting a Veteran, Service Member or family member/caregiver to see what other services have been rendered by the network, thus creating a warm handoff and breaking down lengthy discussions and unnecessary work. The coordination center’s job is to identify these needs and make an appropriate referral to a provider as quickly and efficiently as possible. When a provider accepts the referral, they have taken ownership of this particular need. Bottom line: a Veteran, Service Member, or family member/caregiver never gets told ‘No’ and gets needs met in better collaboration. In addition, the community is able to work together in parallel with different needs in order to create a better environment for success and works to empower each client to continue his/her transition. In a nutshell this type of network has changed service coordination for the better. *Note these networks assist with all human service needs regardless of discharge status as well as serves family members.

**Value Proposition**

By utilizing this network and the capabilities of the Unite Us platform, the community has visibility on various data. This aggregate data provides basic demographics to detailed service needs and the health of each community. The Coordination Center tracks these needs from each individual, organization and county. By using these analytics we are able to better assess gaps in services, barriers to success and create action plans to address these areas.

**The Carolinas**

With North Carolina having the fourth-largest veteran population in the United States, NCServes spans across the state with four markets. NCServes Coastal (Community Action Partnership), NCServes Central (USO of NC), NCServes Metrolina (Veterans Bridge Home) and NCServes Western (Asheville Buncombe Christian Community Ministry – ABCCM). In addition, South Carolina has one market, SCServe (Augusta Warrior Project). Each market is unique to their population, yet works collectively to identify gaps and barriers with not only our Veteran community but with the technology as well. This is accomplished with a Community of Practice that brings together both market leads and providers.

- 2 States
- 71 out of 146 Counties
- 5 Networks
- 253 Providers
- 790 Users

Often just identifying purpose and mission can clear the way for this population to transition smoothly and become successful. These communities and networks can now work in partnership to create an environment conducive to this type of transition and support of our nation’s warriors. We all must continue to work together with and for each other in order to honor our nation’s veterans, service members and families.

For more information or to join the fight, visit AmericaServes.org or NCServes.org.

Brandon Wilson (Brandon.wilson@abccm.org) is a North Carolina native and Marine Corps veteran, having served in Operation Iraqi Freedom. He is the Network Director for NCServes Western.
Additional Evidence to Support Service-Connected Disability Claims

By Tod M. Leaven

Some of the best advice a veteran representative or attorney can give to a veteran, who is filing a claim for a new disability or a claim to increase the rating of a current service-connected disability, is to journal. Journaling will (1) help the veteran remember his or her conditions, the severity of his or her conditions, and the limitations his or her conditions set; (2) help the veteran record and remember dates of flare-ups; (3) help the veteran accurately record sleep; (4) help the veteran precisely and efficiently convey this information to his or her primary care provider so that this information makes it into the veteran’s health records; and (5) help the veteran’s representative or attorney better understand the complete picture and look for potentially compensable secondary disabilities.

Most veterans suffer from a common malady – their disabilities are hardly ever at their worse during the 5 minutes the veteran is in front of his or her primary care provider. If the veteran has more than one condition, he or she usually only focuses on either the most persistent complaint or the one that has inflicted him or her most recently. When the doctor asks the veteran how he or she is doing, the usual response is something like “well, right now I am not too bad.” Accordingly, the doctor puts in the veteran’s medical records “The veteran has no complaints.” When the veteran applies for a service-connected disability a year down the road, he or she gets denied because the veteran’s medical records do not show a continuous or chronic condition. Despite the veteran’s insistence that he or she has had continuous back pain since service, the VA responds that the proof is just not in his or her medical records. The best way around this is a veteran’s journal.

Every time the veteran visits his or her primary care provider, he or she should quickly review with the doctor all of the veteran’s conditions, the severity of each condition (use a scale of 1 – 10), the frequency of each condition, whether the condition affects the veteran’s sleep, and any limitations that the condition places upon the veteran’s livelihood. The more detailed and comprehensive the journal is, the better it will serve the veteran. If the veteran is on My HealtheVet, which he or she should be, then the veteran needs to send via secure messaging a status update to his or her primary care provider on every condition the veteran writes down in his or her journal at least once every 6 months.

Each journal entry should have the date, times, and length of the occurrence. If the occurrence includes pain, the veteran should list:

- a detailed description of where the pain is;
- a rating from 1-10 of the pain's intensity;
- what the pain feels like – sharp, stabbing, throbbing, dull, etc.;
- if the pain is worse or better than the last occurrence;
- what potentially caused or aggravated the pain – climbing stairs, rolling over, lifting, etc.;
- anything that helped relieve the pain;
- what the pain prevented the veteran from doing; and
- any depression or mental health consequences of the occurrence.

If the occurrence involves a mental health issue, the veteran should list:

- what triggered or aggravated the episode;
- a rating from 1-10 of how debilitating the episode was;
- if the episode involved thoughts of suicide, self-harm, or harming others; and
- anything that helped ease the intensity of the episode.

If the occurrence involved any incapacitation or lack of mobility, the veteran should list:

- what the veteran was unable to do;
- what extra steps, if any, the veteran has to do to mitigate a re-occurrence of the episode;
- what triggered or aggravated the episode; and
- what helped relieve or lessen the effects of the episode.

If the veteran is taking any medication, the veteran should list any side effects the veteran experienced due to the medication – dizziness, nausea, constipation, etc. The veteran should also list any restrictions the medication places upon the veteran – unable to drive or operate machinery, avoid the sun, etc. The veteran should also list the times he or she went to bed, when he or she actually fell asleep, anytime he or she woke up, and the causes and duration of any sleep disturbances.

The best journal cannot fully serve the veteran unless the veteran actually conveys the information to his or her primary care provider. The veteran should update his or her primary care provider on all of his or her conditions every 6 months through the secure messaging function of My HealtheVet. These updates will become part of the veteran’s medical records. Before any appointments with the veteran’s primary care provider, the veteran should summarize as briefly as possible all of the conditions since his or her last update and review this summary with the doctor.

Additional ways a journal can serve the veteran include recording potential future witnesses. If a veteran’s knee gives out and he or she requires the restaurant’s hostess to assist him or her in order to sit down or stand up, the veteran should record the hostess’s name, the name of the restaurant, and the time and date of the incident in case the veteran may need to come back in the future and request a lay statement from the hostess regarding the facts of the incident. Likewise, if a veteran has a seizure while in a taxicab, the veteran or his or her companion should take down the driver’s name, the name of the cab company, the cab number, the location of the cab, either the driver’s or the cab company’s contact information, and the time and date of the incident so he or she can potentially obtain a lay statement in the future. A journal can also help the veteran or his or her representative or attorney help link seemingly non-related conditions to a service-connected condition.

It would be difficult to find a claim that could not be helped by the addition of a veteran’s journal. With its relatively low burden upon the veteran, a journal can help by delivering a wealth of additional and often necessary evidence to help substantiate a veteran’s claim for service-connected disability.

Tod M. Leaven is a service-connected veteran of the United States Army and a partner at the law firm of Grimes Teich Anderson, LLP, in charge of the firm’s Veterans Law section. His firm has offices in North and South Carolina, and his veterans practice is national.
Wake Forest Veterans Legal Clinic

By Chris Salemme

The Wake Forest Veterans Legal Clinic provides pro bono legal representation to veterans who received a "bad paper" discharge despite having Post-Traumatic Stress Disorder ("PTSD"), Traumatic Brain Injury ("TBI"), or another mental health condition. The clinic also represents veterans who unjustly received a "bad paper" discharge and now have a remedy as a result of a change in the law.

The Veterans Legal Clinic was founded by Brandon Heffinger when he was a law student at Wake Forest, and with the assistance of a founding partner, Professor Steve Virgil, the law school launched the program in 2015. As the newest clinical program at Wake Forest, the clinic continues to grow and expand its reach to veterans throughout North Carolina. Heffinger, a captain in the U.S. Marine Corps Reserves, now serves as the director of the Veterans Legal Clinic and an adjunct faculty member, and Chris Salemme, a first lieutenant in the U.S. Army, is serving as the clinical fellow.

One of the clinic's clients, Kevin Webb, a Navy veteran, describes its services as a God-send. "For several years I have tried to get my legal matters resolved with the VA (Veterans Administration) to no avail," Webb says. "But once I was accepted into the program at Wake Forest Law, I have been thoroughly pleased with the entire process. I am now optimistic about my situation being resolved."

Heffinger says Webb is not alone. "Approximately 125,000 post-2001 veterans cannot access basic VA services. For most of these veterans, a bad-paper discharge is the roadblock."

Because some discharges are improperly or unfairly classified, the military allows former service members to apply for a discharge upgrade. Each branch of the military has both a Discharge Review Board and a Board for Correction of Military (or Naval) Records. Former service members can assemble applications and attempt to convince a review board that their discharge characterization meets the legal standard to be considered "inequitable" or "improper" and should be upgraded. This is a complicated process, and an applicant's chances of success increase significantly if they are assisted by an attorney.

Students enrolled in the clinic work directly with veteran-clients to prepare extensive legal briefs in support of their clients’ discharge upgrade petitions to submit to the appropriate boards. Additionally, students learn about a variety of military and veteran law issues throughout the semester from expert guest lecturers.

Veterans seeking assistance with a discharge upgrade should complete and submit an Application for Legal Services and a copy of their DD-214 to the Clinic. Prospective clients may contact the clinic, Monday through Friday, at (336) 758-2431.

The Veterans Legal Clinic is also seeking assistance from the North Carolina legal and veteran communities. Because its practice is limited to only discharge upgrade cases, the clinic is continuously looking for attorneys to whom veterans can be referred for other legal issues on a pro bono basis. Additionally, the clinic is always looking to expand its ability to assist veterans. Those in the veteran community are encouraged to help spread the word about what the Wake Forest Veterans Legal Clinic does and how veterans can benefit from its services.

Chris Salemme serves as the clinical fellow for the Wake Forest Veterans Legal Clinic. He earned his juris doctorate in 2017 from Wake Forest University School of Law and a bachelor of arts in political science from Furman University in 2014. An officer in the United States Army, Chris will begin active duty service in the Army Judge Advocate General’s Corps in May 2018.

Carolina Law: The Veterans Legal Assistance Project

By Jessica Marsden

The Veterans Legal Assistance Project at Carolina Law launched in 2016 and enrolled its first students in spring 2017. The project is led by Jessica Marsden, an Equal Justice Works fellow sponsored by Raytheon Co. and Kirkland & Ellis LLP. Students primarily represent veterans seeking discharge upgrades from the Discharge Review Boards and Boards for Correction of Military/Naval Records. Students have also worked on federal litigation in the Western District of North Carolina and the Court of Appeals for Veterans Claims. In addition, UNC has collaborated with Sylvia Novinsky and the North Carolina Pro Bono Resource Center to run in-person advice-and-counsel clinics at VA medical facilities in Fayetteville and Durham.

A successful discharge upgrade application can change a veteran's life. In fall 2017, the clinic secured a discharge upgrade for an indigent Vietnam veteran from central North Carolina. The client had been promised a general discharge when he left the Navy, and agreed to forego an administrative hearing on that basis. Instead, he received an Undesirable discharge that disqualified him from VA benefits. Multiple prior discharge reviews failed to correct this glaring procedural error. Thanks to the clinic's representation, the client is now eligible for VA health care and disability benefits, finally rectifying a 40-year-old injustice.

The need for pro bono representation in discharge upgrade cases far outstrips the clinic's resources. North Carolina attorneys could fill this access-to-justice gap if they volunteered to be trained in preparing discharge upgrade applications and agreed to accept pre-screened cases from the clinic or another source.

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Evidence for VA Disability Claims

By Tod M. Leaven

When submitting a claim to the Department of Veterans Affairs, it is always highly encouraged that you also submit additional evidence which can support your claim. The problem is that the VA is not always clear as to what evidence would be the most helpful and how that evidence should be arranged. The law states that the VA must “consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits” and that each disabling condition for which a veteran seeks service connection “must be considered on the basis of...all pertinent medical and lay evidence.” 38 U.S.C. §5107(B); 38 C.F.R. §3.303(a). This means that the VA cannot deny a claim without first considering both the lay and medical evidence, if submitted. Though the VA uses the term “Medical Evidence,” it would be more appropriate to use the term “Expert Evidence” since often the evidence needed does not come from a doctor but rather from a counselor, social worker, or someone else with particular and pertinent expertise. Not only must the VA consider this evidence, but it also must specify in its decision which evidence it finds to be persuasive or unpersuasive and why.

Competent lay evidence is evidence that does not require specialized education, training, or experience to observe and describe and is being reported by any person who has actual knowledge of the facts or circumstances being reported. 38 C.F.R 3.159 (a)(2). For example, a spouse typically cannot state as competent lay evidence that her husband has Lyme's Disease. This is a complex and sophisticated condition requiring specialized education, training, or experience to diagnose. Usually, a medical doctor would need to diagnose this condition and it would be admitted into the file as Medical or Expert Evidence. However, a spouse can state as competent lay evidence that her husband's doctor told her that he had Lyme's Disease. She could also list the physical symptoms that she personally observed on her husband and when she witnessed these symptoms. The difference is that she is not making a diagnosis (which usually requires training) but rather she is simply stating what she personally observed, either the doctor's statement or what she witnessed on her husband. Lay statements regarding medical symptoms may not be rejected simply because they are not accompanied by contemporaneous medical records. Under certain circumstances, all a veteran might need to submit is lay evidence for the VA to grant his or her claim.

The courts have held that “[l]ay evidence can be competent and sufficient to establish a diagnosis of a condition when (1) a layperson is competent to identify the medical condition, (2) the layperson is reporting a contemporaneous medical diagnosis, or (3) lay testimony describing symptoms at the time supports a later diagnosis by a medical professional.” Jandreau v. Nicholson, 492 F.3d 1372, 1377 (Fed. Cir. 2007). Lay evidence can also be used to support a nexus between the current disability and an in-service event – in other words, lay evidence can support that a current disability was caused by or aggravated by something that happened while in service. A frequently relied upon example of when lay evidence can be used to show service-connection of a disease or injury is found in 38 U.S.C. § 1154(b) and includes the following:

In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service-satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran.

Competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions.” 38 C.F.R. § 3.159 (a)(1). This includes "statements conveying sound medical principles found in medical treatises" and "statements contained in authoritative writings such as medical and scientific articles and research reports or analyses." If the VA rejects medical evidence which supports a veteran's claim, it must account for and explain its reasons. This includes when the veteran is a medical professional and offers a medical opinion supporting his or her own claim. This required explanation has to include an evaluation of credibility and probative value. Medical, or expert, opinions must meet certain thresholds to be credible and probative. The biggest three deficiencies which can invalidate a medical opinion (regardless if it's an opinion supporting or attacking the veteran's claim) are (1) the expert relied on inaccurate facts, (2) the expert did not address all legal theories of entitlement to service connection, and most commonly (3) the expert failed to provide a rationale for his or her conclusion.

A classic example of this first deficiency, relying on false facts, is when the VA conducts a C&P examination and the physician performs an incomplete records review. If the physician wrongly concludes that a veteran was not treated for an injury that he or she actually was treated for, the physician's opinion would be based upon inaccurate facts. A classic example of a physician not addressing all legal theories of entitlement to service connection often occurs when a veteran files a claim for a condition and then raises multiple legal theories of causation. If a veteran files a claim for depression and lays out a claim for direct causation and a claim for secondary causation due to an in-service injury, a physician must opine on both theories. The most common failing is when a physician fails to provide a rationale for a conclusion. The Court is very clear that a medical examination report must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two. Stef v. Nicholson, 21 Vet. App. 120, 124 (2007). “Neither a VA medical examination report nor a private medical opinion is entitled to any weight in a service-connection or rating context if it contains only data and conclusions.” Nieves-Rodriguez v. Peake, 22 Vet. App. 295, 304 (2008).

Regardless if the evidence is lay or expert, the VA must include in its decisions the precise basis for that decision, including a response to the various arguments advanced by the veteran.

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