

# SOUND OFF!



BULLETIN

#23

THE NEWSLETTER OF VETERANS UNITED FOR TRUTH, INC.

*"VETERANS STANDING UP FOR EACH OTHER"*

26 JUNE 2008

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**THE JUDGE HAS SPOKEN. WE'RE GONNA KEEP ON TRUCKIN'**

June 25, 2008

## MEDIA ADVISORY

### JUDGE RULES THAT VETS IN PTSD CASE SHOULD SEEK RELIEF FROM CONGRESS — VETS RESOLVE TO APPEAL

WHAT: Decision After Trial—*VCS, et al. v. Peake, et al.*

JUDGE Senior Judge Samuel Conti, United States District Court, Northern District of California.

PRESS CONFERENCE: 2:30 p.m. PST, June 25, 2008, Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105, 11<sup>th</sup> Floor, check in with building security first and go to the 11<sup>th</sup> Floor; or dial in to listen to the conference: 1-800-755-6634

Senior Federal District Court Judge Samuel Conti has issued his decision in the landmark case brought on behalf of veterans suffering from PTSD and traumatic brain injury in July of 2007. The trial was conducted from April 21-30, 2008, and included a week of testimony in early March. The trial focused on the Department of Veterans Affairs (VA) health care and adjudication systems for disabled veterans. The trial included testimony from the heads of national veterans' organizations, top VA officials and some of the leading experts in the country on the widespread failings of the VA system.

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In his decision, Judge Conti held that it is “clear to the Court” that “the VA may not be meeting all of the needs of the nation’s veterans.” He agreed with, and explicitly adopted, many of the factual assertions made by the veterans. Those include the following:

- “The suicide rate among veterans is significantly higher than that of the general population,” and there is “a strong connection between PTSD and suicide.”
- “One out of every three soldiers returning from Iraq was seen in the VA for a mental health visit within a year of their return” with PTSD being a “leading diagnosis.”
- “The high rates of PTSD among Iraq veterans are the result of various factors, including multiple deployments, the inability to identify the enemy, the lack of real safe zones, and the inadvertent killing of innocent civilians,” as top VA officials admitted.
- “Initiatives such as screening veterans at risk, a suicide prevention database, emerging best practices for treatment, and education programs were all still at the ‘Pilot Stage’ three years” after VA’s Mental Health Strategic Plan was adopted.
- “It is beyond doubt that disability benefits are critical to many veterans and any delay in receiving these benefits can result in substantial and severe adverse consequences.”
- The VA’s track record with respect to delays in processing veterans’ appeals “is troubling.” It is taking veterans on average 4.4 years to adjudicate a benefits claim at the first two levels in the VA benefits system.

Nonetheless, Judge Conti concluded that the power to remedy this crisis lies with the other branches of government, including Congress and the Secretary of the Department of Veterans Affairs, holding VA’s failures to meet veterans’ needs are “beyond the power of this Court” and would “call for a complete overhaul of the VA system.” Judge Conti’s opinion states that Congress, and not the courts, needs to resolve the crisis facing our nation’s veterans. This underscores the importance of the ongoing congressional hearings that seek to find the truth, and to address the problems faced by our veterans. Now, more than ever, it is critical that Congress act. Plaintiffs very much appreciate Judge Conti’s consideration, but disagree with his legal conclusions. Accordingly, Plaintiffs plan to appeal to the United States Court of Appeals for the Ninth Circuit so that these important legal questions can be addressed by a higher court. The full text of the decision can be found at [www.veteransptsdclassaction.org](http://www.veteransptsdclassaction.org).

Paul Sullivan, Director of Veterans for Common Sense, commented that “This ruling will only cause us to redouble our efforts and our pursuit of justice for our nation’s veterans. We will not rest until our job is finished.” Bob Handy, the Director for Veterans United for Truth, added: “Every time we feel discouraged or need to find our way, we always return to the VA’s motto, ‘To Care for Him Who Hath Borne the Battle, and His Widow and His Orphan,’ and that tells us what we need do.”

“The decision, if upheld on appeal, would suggest that veterans have no enforceable rights in America, and the Constitution does not apply to veterans. For all Americans, the implications of this decision are profoundly disturbing,” remarked the lead counsel for Plaintiffs, Gordon Erspamer. “Our fight on behalf of our veterans will continue.” Sid Wolinsky added, “I know that we will not rest until victory has been achieved and the suffering of our veterans ceases.”

Tragically, the VA has been neglecting wounded veterans returning from service in Iraq and Afghanistan who are in desperate need of ongoing care and support, including medical treatment and disability payments for living expenses. Among those suffering the most are returning veterans with mental disabilities such as post-traumatic stress disorder (PTSD). Veteran suicides have reached an epidemic level, with over 120 veterans taking their own lives every week, and 1,000 suicide attempts per month amongst veterans under VA care. This lawsuit was unprecedented in directly challenging the VA's 600,000 case backlog in handling claims, appellate delays of five to ten years, the waiting lists that veterans face before receiving health care, and the inadequacy of VA care for PTSD.

The trial brought to light many critical facts that the VA had tried to conceal or downplay. An internal e-mail from the VA's head of mental health, Dr. Ira Katz, surfaced during the trial. At a time when the VA was reporting only 790 veteran suicide attempts in all of 2007, Katz wrote, "Shh!...Our suicide prevention coordinators are identifying about 1,000 suicide attempts per month...Is this something we should (carefully) address...before someone stumbles on it?" At trial it was also disclosed that the suicide rate of veterans is at least three times the national suicide rate and in 2005, the suicide rate for veterans 18-24 years old was three to four times higher than non-veterans.

We are grateful to Judge Conti for hearing our case and for allowing a public display of VA's enormous systemic failures.

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