

1 JUDITH Z. GOLD (State Bar No. 97098)  
JEFFREY A. FINUCANE (State Bar No 244930)  
2 DEREK KNERR (State Bar No. 252746)  
HELLER EHRMAN LLP  
3 333 Bush Street  
San Francisco, CA 94104-2878  
4 Telephone: (415) 772-6000  
Facsimile: (415) 772-6268  
5 E-mail: judith.gold@hellerehrman.com

6 Attorneys for *Amicus Curiae*  
Swords to Plowshares and Vietnam Veterans of America, Inc.

7

8

UNITED STATES DISTRICT COURT

9

NORTHERN DISTRICT OF CALIFORNIA

10 VETERANS FOR COMMON SENSE, a District of  
Columbia Nonprofit Organization; and VETERANS  
11 UNITED FOR TRUTH, INC., a California Nonprofit  
Organization, representing their members and a class  
12 of all veterans similarly situated,

13

Plaintiffs,

14

v.

15

JAMES B. PEAKE, M.D., Secretary of Department of  
Veterans Affairs; et al.,

16

Defendants.

17

18

19

20

21

22

23

24

25

26

27

28

Case No.: C 07-3758 SC

**APPLICATION OF SWORDS TO  
PLOWSHARES AND VIETNAM  
VETERANS OF AMERICA FOR  
LEAVE TO FILE JOINT AMICUS  
BRIEF**

Heller  
Ehrman LLP

1 **I. INTRODUCTION**

2 Two not-for-profit organizations that have been serving American veterans of the United  
3 States military and their families for over thirty years -- Swords to Plowshares (“Swords”), and  
4 Vietnam Veterans of America, Inc. (“VVA”), both have expertise and experience with the matters in  
5 this case, and a compelling interest in its outcome. In the hope that a succinct presentation of their  
6 perspectives will be helpful to the Court, Swords and VVA respectfully request that they be allowed  
7 to file this joint brief as *amicus curiae*.

8 **II. THE INTERESTS OF THE PROPOSED AMICI**

9 Both Swords and VVA were founded in the 1970s to serve some of the pressing needs of  
10 Vietnam War veterans. Returning from an unpopular war, many Vietnam veterans found themselves  
11 shunned by large segments of our society and virtually abandoned by the VA and other governmental  
12 institutions. In tens of thousands of cases, these veterans suffered from disabling psychological and  
13 neurological after-effects of their combat service, but Post Traumatic Stress Disorder (“PTSD”) had  
14 yet to be widely recognized by the medical community. Many Vietnam veterans suffering from  
15 PTSD and similar disorders were left to fend for themselves, and wound up struggling to survive on  
16 subsistence wages, indigent, homeless, or dead from suicide. As Vietnam veterans grow older, these  
17 problems have become more and more serious.

18 Swords and VVA suggest that it is time to apply the lessons that this history teaches us. We  
19 now know, based upon the Vietnam experience, that neglecting the needs of returning veterans will  
20 ultimately create an enormous drain on the public purse, costing local, state, and federal taxpayers far  
21 more in the long run than it would cost to meet our obligations promptly. Now, in contrast to the  
22 Vietnam era, there is also a widely-shared consensus that we simply owe at least minimal economic  
23 support, and timely, adequate health care, to men and women who have been injured while serving  
24 our nation in combat. As a new wave of tens of thousands of injured veterans returns from the  
25 Middle East, it has become clear that the Court’s intervention is urgently needed. The evidence is  
26 clear that without it, defendants will repeat the mistakes of the 1960s and 1970s, with tragic  
27 consequences.

28 Swords and VVA serve veterans who will be directly affected by the outcome of this case in

1 different ways. In the Bay Area community, Swords provides direct services and support to veterans  
2 with PTSD and other injuries. VVA focuses on policy and legislation relating primarily to the  
3 Vietnam veteran, as well as the newest generation of wartime veterans, and functions as a resource  
4 center and information clearinghouse. We provide further detail below.

5 **A. Swords To Plowshares**

6 Swords to Plowshares is a San Francisco community-based, not-for-profit organization, that  
7 was founded in 1974 by recently-returned veterans of the combat in Vietnam. In many ways, its  
8 founders and current staff consider Swords to be a partner with the VA, able to provide community-  
9 based case management, employment training, housing, legal assistance and other kinds of support  
10 that the VA may not be able to provide. Annually, Swords provides such support to more than 1,500  
11 homeless and low-income veterans, most of whom live in the San Francisco Bay Area.

12 Swords operates several programs that serve indigent veterans with mental health problems.  
13 These include a drop-in center that provides counseling for PTSD and other psychological disorders,  
14 case management, and referrals. Last year alone, Swords' Health and Social Services Unit served  
15 more than 1,000 veterans. Swords also operates transitional and long-term residential programs that  
16 serve over 200 Bay Area veterans with mental health issues at any given time -- many of whom  
17 would likely be homeless without these programs. In these programs, Swords provides intensive  
18 group and individual counseling, as well as other supportive services designed to help residents  
19 become stable and independent.

20 At its Treasure Island residential program, Swords receives *per diem* funding from the VA, of  
21 about \$1 million annually. But Swords is not a medical facility, does not have doctors on staff, and  
22 cannot (for example) prescribe needed medication to the veterans it serves. Swords and the VA both  
23 exist to serve the needs of veterans. They communicate and cooperate effectively with one another  
24 on many projects, but it is the sad fact that for many veterans, the VA simply is not holding up its end  
25 of the partnership.

26 Swords confronts the consequences of the VA's failings for the City of San Francisco, as well  
27 as for veterans and their families, daily. These failings are placing extraordinary burdens on  
28 municipal, county, state, and private institutions that, unlike the VA itself, are in a state of fiscal

1 crisis. Swords receives a grant of about \$500,000 per year from the City and County of San  
2 Francisco, but that is only a small fraction of the costs that are borne by the City. Many indigent  
3 veterans draw General Assistance (a county-funded stipend that is barely sufficient to meet a person's  
4 basic survival needs). Lacking any other viable option, indigent mentally ill veterans seek medical  
5 attention in the emergency rooms of county-funded hospitals. They crowd the city's homeless  
6 shelters and food banks and (because they are often prone to "homelessness offenses" like loitering  
7 and trespassing), they are a drain on law enforcement. Not-for-profit organizations like Swords, with  
8 finite resources, struggle to meet veterans' needs, but the need is overwhelming. Local taxpayers are  
9 in effect funding federal obligations; local public resources are being diverted from other seriously  
10 under-funded activities such as schools, fire and police services.

11 Swords also has first-hand experience with the human costs of the 600,000-plus backlog of  
12 unresolved claims for veterans' benefits, and with the average five-to-seven year wait time for  
13 deciding appeals -- matters that defendants do not dispute. Swords is one of the few organizations in  
14 the country that provides free legal representation to veterans seeking benefits. (Veterans are  
15 prohibited from paying attorneys to represent them before the VA in the initial stages.  
16 38 U.S.C § 5904(c)(1)). Swords' attorneys have more than 60 years of combined experience in  
17 representing veterans and their families before the Department of Veterans' Affairs. In fact, Swords'  
18 Executive Director, Michael Blecker, who served in Vietnam, represented one of the first PTSD  
19 claimants, a Vietnam veteran. Although the VA had denied the existence of PTSD, psychiatric  
20 advances, based largely on the experiences of Vietnam veterans, persuaded the American Psychiatric  
21 Association to add PTSD to its Diagnostic and Statistical Manual of Mental Disorders in 1980, and  
22 the claim was finally sustained.

23 In the year ending June 30, 2007, Swords provided 338 veterans with free legal services; 31  
24 veterans' cases were concluded. Were it not for the virtual paralysis infecting VA's adjudicatory  
25 system, many more cases would have been resolved, many more veterans would be receiving the  
26 income and health care benefits to which they are entitled, and Swords' resources for providing  
27 mental health services and other support to disabled veterans could stretch much further.

1           **B. Vietnam Veterans Of America**

2           Vietnam Veterans of America is a national not-for-profit organization that was founded in  
3 1978. Echoing the soldier's pledge to "leave no man behind" on the battlefield, VVA's motto is  
4 "Never again will one generation of veterans abandon another." VVA is the only national Vietnam  
5 veterans organization that is congressionally chartered and dedicated to Vietnam-era veterans and  
6 their families. It has over 50,000 individual members, 46 state councils, and 630 local chapters.  
7 VVA's purposes include studying, on a non-partisan basis, proposed legislation or regulations that  
8 may affect the welfare of the Vietnam-era veteran; developing public policy proposals designed to  
9 improve the quality of life of the Vietnam-era veteran; and assisting disabled veterans and their  
10 dependents.

11           VVA's PTSD Committee has specifically studied the incidence and effects of PTSD on  
12 soldiers returning from combat service, and the costs and benefits of effective treatment of PTSD by  
13 the VA health centers. This committee has provided legislative testimony on these subjects. It has  
14 also provided veterans with resource guides and self-help materials designed to assist veterans both in  
15 recognizing and finding treatment for service-connected mental health issues, and in presenting their  
16 claims for benefits to the VA.

17           VVA has extensively studied what works, and does not work, to help veterans suffering from  
18 PTSD. In testimony presented on February 17, 2005, to the VA Veterans Readjustment Committee,  
19 Thomas J. Berger, Ph.D, Chair of VVA's PTSD & Substance Abuse Committee, said:

20           Evidence overwhelmingly supports the need for early intervention and treatment of  
21 PTSD and related mental health disorders not only for active duty troops and veterans  
22 but for their families as well. . . . Many of these men and women cannot be expected  
23 to reintegrate into their communities without access to appropriate mental health  
24 support services. . . . The Vet Centers, operated by the VA Readjustment Counseling  
25 Service (RCS), must obviously be a key player in this response, as only the Vet  
26 Centers have the legal authority to serve the families of veterans, as well as the  
27 acumen to serve [this] population. . . .

28           The VVA is also particularly knowledgeable about the societal costs of allowing the VA's  
claims adjudication and mental health services delivery systems to remain in disrepair, and about the  
relatively low costs and available resources to repair these systems so that veterans can receive the  
benefits to which they are entitled. In a 2005 statement to the House Committee on Veterans Affairs,

1 VVA's National President, Thomas H. Corey, said that investment in the Vet Center program would  
2 "help keep veterans employed, and help keep their families together. . . . [and] have an immediate,  
3 measurable, and very visible impact."

4 VVA is also directly involved in the VA's claims adjudication process. VVA's Veterans  
5 Benefits Program (VBP) provides vitally needed assistance to veterans and their families in pursuit  
6 of VA benefits to which they are entitled. This assistance is delivered by VVA's well-trained and  
7 experienced cadre of 400 plus VA accredited service officers. These service officers represent  
8 claimants for VA benefits before the VA regional offices and before local BVA hearings. VVA  
9 also employs attorneys to represent appellants before the BVA in Washington, DC. In addition, its  
10 legal representation in federal courts has resulted in decisions that have had a significant impact on  
11 veterans benefits law.

12 Both VVA and Swords are vitally interested in this case: the Complaint alleges facts, many of  
13 them undisputed, that they confront every day, facts that are simply intolerable on constitutional,  
14 statutory, moral, and even economic grounds.

15 **C. VVA and Swords Are Appropriate *Amici Curiae***

16 District courts have broad discretion to grant a non-party leave to appear as *amicus curiae* in  
17 the interest of "assisting in a case of general public interest, supplementing the efforts of counsel, and  
18 drawing the court's attention to law that escaped consideration." *Miller-Wohl Co., Inc. v. Comm'r of*  
19 *Labor and Indus., State of Montana*, 694 F.2d 203, 204 (9th Cir. 1982). *Amicus* briefs are particularly  
20 "welcome" in cases "concerning legal issues that have potential ramifications beyond the parties  
21 directly involved or if the *amicus* has 'unique information or perspective that can help the court.'" *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)  
22 (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)); *see also Havens Realty Corp. v.*  
23 *Coleman*, 455 U.S. 363, 379 (1982) (organizational plaintiff could even establish standing to sue as  
24 plaintiff based upon a "drain on its resources" due to the challenged conduct).

25 VVA's and Swords' participation in the case will be minimal; they anticipate that it will be  
26 limited to this brief, unless the Court requests their views in the future. *See Natural Res. Defense*  
27 *Council v. Evans*, 243 F. Supp. 2d 1046, 1047 (N.D. Cal. 2003) (citing Schwarzer *et al. Federal Civil*  
28

1 *Procedure Before Trial* at 7:168 and 170) (*amici* “may file briefs and may possibly participate in oral  
2 argument, but are not entitled to . . . participate at trial”); *NGV Gaming v. Upstream Point Molate*,  
3 355 F. Supp. 2d at 1068 (“*amicus curiae* . . . has no control over the litigation . . . nor can it file any  
4 pleadings or motions”).

5 The matters discussed above clearly give rise to a sufficiently compelling stake in this case to  
6 permit Swords and VVA limited involvement as *amici*.

7 **III. CONCLUSION**

8 For these reasons, Swords to Plowshares and Vietnam Veterans of America respectfully  
9 request that they be permitted to file the Joint *Amicus* Brief submitted herewith.

10  
11 May 1, 2008

Respectfully submitted,  
HELLER EHRMAN LLP

12 By \_\_\_\_\_/s/\_\_\_\_\_  
13 Judith Z. Gold

14 Attorneys for *Amici Curiae*: Swords to Plowshares and  
15 Vietnam Veterans of America