

APRIL 19, 2011, 11:10 AM ET

## 'We Don't Have Jurisdiction,' Court Rules Three Decades Later

The wheels of justice keep on turning; they just don't turn all that speedily all the time.

Five Vietnam veterans have found that lesson out the hard way. More than 30 years after they sued the Veterans' Administration over injuries sustained from Agent Orange exposure, the U.S. Court of Appeals for the Federal Circuit has dismissed the petition for lack of jurisdiction. Click [here](#) for the National Law Journal story.

According to the NLJ, after their disability claims were denied, five veterans in 1979 filed a challenge to a 1978 Veterans' Administration publication suggesting that only limited claims could be brought over Agent Orange exposure.

The Federal Circuit ruled that it lacked jurisdiction because there was no court avenue for procedural challenges to Department of Veterans Affairs regulations until the 1988 Veterans' Judicial Review Act.

The NLJ has done a nice job tracing the legal and procedural history of the case. But if you attempt to take the story or, heaven forbid, the opinion, on, look out for a bunch of language that reads like this:

---

*Thus, this court lacks jurisdiction over the petition in this case unless the limitations period was tolled, either equitably or legally, by the earlier filing in the district court. And because no court had jurisdiction over the petitioners' procedural challenge to the Agent Orange Program Guide, the district court filing could not toll the running of the limitations period under any theory of legal or equitable tolling to which the petitioners have directed us.*

---

Stan Panikowski, a partner in the San Diego office of DLA Piper who represented the petitioners, did not respond to the NLJ's requests for comment.

The Justice Department, which represented the Veterans Affairs department in the case, declined to comment. Veterans Affairs did not return a call for comment.

**Law Blog Editorial note:** We continue to have trouble with the comments section of the blog. We've been assured that our tech folks are working on it and we'll be up and running as soon as possible.

Copyright 2008 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our [Subscriber Agreement](#) and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit [www.djreprints.com](http://www.djreprints.com)