LEMUEL C. BRAY
126 Esterbrook Rd
Douglas, WY 82633

November 26, 1994

Board of Veterans' Appeals
810 Vermont Avenue, N.W.
Washington, DC 20420

SUBJ: Statement of the Case in the Appeal of, Lemuel C. BRAY, [redacted], dated May 26, 1994

RE: COURT OF APPEALS FOR THE NINTH CIRCUIT Case No. 93-56582

Dear Sirs;

Please note that I have requested a local hearing at the DVARO in Cheyenne, Wyoming in June of 1994 and have received no communication with respect to my appeal since then.

I reviewed my file at the DVARO in Cheyenne, Wyoming on October 12 -13, 1994.

Among the many errors I noted are the following corrections which I request to be made to the subject Statement of the Case.

1. Please correct the list of Issues to include:

a. If this case should be referred to the Secretary for evaluation of any or all of the issues and reconsideration and/or reopening of the claimants 1976 and 1984 adjudications under TITLE 38, U.S.C, SECTION 210 (c)(2) and 38 CFR 20.1000 (a) & (b).

b. If Veterans who contracted P. falciparum malaria and have since suffered mental disorders should be granted service connection for organic brain disorders.

c. If current DVA medical procedures adequately identify Veterans with organic brain injury.

d. Entitlement to compensation by the Secretary for errors in the separation medical examination and in service treatment of the claimants 1969 head injury.

e. Entitlement to compensation by the Secretary for errors in the claimants 1976 adjudication procedures depriving the claimant of disability benefits.

f. Entitlement to compensation for failure to diagnose for post traumatic stress disorder from the date of discharge through treatment completed in 1990.

g. Entitlement to compensation and service connection for failure to diagnose treat basilor vertebral insufficiency from neck injuries suffered in the 1969 accident.

h. Entitlement to compensation for 38 CFR 4.29 for hospitalizations August 12, 1971 to. January 15, 1992 and including a 5 day telemetry in February 18 to 24 of 1992; May 8 to June 10, 1993; and July 7 to August 10, 1993 under diagnostic code 8045, 8045-9405, 8045-8914 (non epileptiform seizures, transient ischemic attacks, emanating from deep tissue and demonstrable by surface EEG abnormal tracings lasting from a few seconds to two to three hours.)

i. The claimants right to represent Henry Black, Jr. [redacted] before DVA Rating and Appeal Boards.

j. If DVARO Los Angeles adequately assisted the claimant in his attempt to obtain documents for Henry Black, Jr. from the custody of the Archivist of the United States, presumably held at the Personnel Records Center, (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO, as required by TITLE 38, U.S.C., SECTION 3006.

k. If DVARO Los Angeles, CA failed to comply fully with the FREEDOM OF INFORMATION ACT by supplying Claimant BRAY and Claimant BLACK with conformed copies of their DVA files, both administrative and compensation.

l. The compliance of the DVA REGIONAL MEDICAL AND RESEARCH CENTER, 11301 WILSHIRE BOULEVARD, LOS ANGELES, CA 90073 with the outpatient and admission priorities outlined in 38 CFR 17.47; 17.49; 17.60; & 17.60g.

m. The compliance of the DVA REGIONAL MEDICAL AND RESEARCH CENTER, 11301 WILSHIRE BOULEVARD, LOS ANGELES, CA 90073; both the Wadsworth and Brentwood divisions; with the Patients Rights outlined in 38 CFR 17.34a.

n. The appropriateness of the General Service Administration's intervention in the First Amendment right of a VETERAN to picket the DVA without costly large photographic prints of intended picket signs. (Interdicts the poor's First Amendment rights)

o. The adequacy of the representation of the claimant's claims by the Disabled American Veterans and The American Legion.

p. The existence of an informal organization that has acted vindictively against the Claimant because of his continuing insistent effort to obtain treatment and compensation benefits for himself and Henry BLACK , Jr. through such means as writing to his congressman, contacting the VA Western Region Medical Office in San Francisco and writing to the Director of the VA and the Secretary of the DVA and to newspapers.

2. Please correct the contentions to include:

a. The physician who signed the release of claimant BRAY from hospitalization at USNH OAKLAND in 1969 erred in not ordering a neurological follow-up with an EEG because of the severity of the head injury, the approximately 56 hours of unconsciousness, the admission diagnosis of R/O post concussion syndrome and the "stuporus" episodes recorded in the nursing notes and the claimants loss of sensitivity of the left face and back of the left forearm and hand.

b. The physician who treated Claimant BRAY for injuries from the October 21, 1971 auto accident at USNH GUAM erred by the failure to order a neurological follow-up, because of the

reported circumstances of the accident, the claimants continued loss of sensitivity of the left face and back of the left forearm and hand and previous history of head injury.

c. The physician who examined Claimant BRAY for release from active duty in July of 1974 erred in not ordering an EEG and neuro-psychological testing as a part of the examination because of the persistent the claimant's loss of sensitivity of the left face and back of the left forearm and hand.

d. The VA adjudicator and rating board who reviewed Claimant BRAY's service connected conditions in 1974, 1975 & 1976 erred in not ordering a neurological follow-up with an EEG because of the severity of the 1969 head injury, the approximately 56 hours of unconsciousness and the "stuporus" episodes recorded in the nursing notes and the claimants loss of sensitivity of the left face and back of the left forearm and hand and the circumstances of the 1971 auto accident.

e. The physicians who examined Claimant BRAY for service connected conditions in 1975 erred in not ordering a neurological follow-up with an EEG because of the severity of the 1969 head injury, the approximately 56 hours of unconsciousness and the "stuporus" episodes recorded in the nursing notes, the admission diagnosis of R/O post concussion syndrome and the claimants loss of sensitivity of the left face and back of the left forearm and hand and the circumstances of the 1971 auto accident.

f. The VA & DVA physicians who presented the ankylosis of Claimant BRAY's left thumb for a 10% rating under diagnostic code 5224 as prescribed by 38 CFR 4.71a, Multiple Fingers: Unfavorable ankylosis; "In classifying the severity of ankylosis and limitation of motion of single digits and combinations of digits the following rules will be observed:...(4); 4.71a, 5224.

g. The rating board erred in not reopening Claimant BRAY's 1974 claim and original rating decision of February 25, 1976 for benefits as required by TITLE 38, U.S.C., SECTION 3008.

h. The DVARO Los Angeles, CA, refused to add related issues as they come up to adjudications as is warranted when evidence becomes available to give new understanding of the issues involved.

i. The rating decision of May 14, 1987 is in error because of the use of a collective diagnosis as a sub diagnosis of a collective diagnosis without further specification depriving the claimant hospitalization compensation benefits for the diagnosis of depression and post traumatic stress disorder.

j. There are many errors of fact recorded in the medical histories of the claimant adversely affecting disability ratings for the claimant.

k. That following the September 20, 1990 auto accident, after being advised by a DVA physician not to wear the band for rib pain to prevent pneumonia, he wore the elastic velcro band given him, for at least two months continuously and periodically through the extreme exacerbation in April of 1991, as a lumbar back support and continued to take Ibuprofen for back pain and wrist pain.

l. That the MRI's of the lumbar and cervical spine taken at the West Los Angeles Regional Medical and Research Center in April and August of 1991, having left side fragments, are consistent with a blow from the left side such as the one that fractured the ribs in the September of 1990 auto accident.

f The Los Angeles DVA Outpatient Clinic receives inadequate cooperation and support from The West Los Angeles Medical Center in providing diagnostic procedures not available at the Outpatient Clinic.

h. The DVARO Los Angeles, CA, failed to take appropriate actions with respect to communications from the claimant.

i There exists an informal organization at DVARO Los Angeles and the Los Angeles DVA Medical Facilities which has taken vindictive action against the Claimant by such acts as getting physicians to record inaccurate histories and diagnoses, losing inpatient treatment summaries, losing an entire medical record, losing relevant medical reports and Claimant requests so they would not be available to the adjudicator responsible for writing the Statement of the Case, falsely informing Claimant BRAY that he could not represent Claimant BLACK before the DVA rating boards and the BOARD OF VETERANS APPEALS.

3. Please correct the **SUMMARY OF EVIDENCE AND ADJUDICATIVE ACTIONS** as follows:

a. **Date of Birth:** to May [redacted]

b. **January 22, 1992:** Please note that the Claimant disagrees totally with the history noted and thus the conclusions from the neurological examinations and Los Angeles VA Outpatient Clinic treatment notes by Dr. Kumar because of the misinterpretation of the Claimant's statement that he had many intermittent episodes of generalized muscular weakness such that he had to make a conscious effort to hold his head erect. Dr. Kumar started the misinterpretation as relating intermittent episodes of drowsiness. The Claimant has never complained of "intermittent drowsiness" and has never felt as though awakening when returning from a state of unawareness but rather has a feeling of mild to extreme muscular fatigue as though having just finished a physical exercise. The Claimant had a couple of occasions of severe episodes lasting an hour or more and followed by drowsiness and lapse into sleep because of a couple of stressful periods and periods of minimal sleep and the ineffectiveness of Prozac for the Claimant. The drowsiness and sleepiness in these episodes were a normal reaction to a lack of sleep.

The claimant complained of infrequent transient episodes of slurred speech and more frequent episodes of a feeling of being thick lipped and because of this slowing his speech and having to direct a greater consciousness to word formation in order to not slur speech.

The Claimant never complained of "falling asleep driving." The Claimant did attribute several accidents and many near accidents to episodes of unawareness after turning his head and, for example pulling out from a stop sign in front of an on coming vehicle believing the way to be clear because of an unawareness of a lapse of time from the time he looked for on coming traffic until he pulled out from the stop sign. The Claimant made this determination, (and turned in his driver's license) following the September 20, 1990 accident using Gestalt techniques taught to him during psychiatric therapy and recognizing the similarity of the October of 1971 accident, (and

several other fender benders and many near accidents) particularly in suddenly finding himself in an accident situation without being aware of how the situation occurred without any cognition of its development.

c. Subsequent to **August 31, 1992:** The original complaint was filed in District Court and served on DVARO by CERTIFIED MAIL in October of 1992. There is an APPEAL from the District Court Order in October of 1993 and an APPEAL from DVA adjudications in March of 1994 to the COURT OF APPEALS FOR THE NINTH CIRCUIT Case No. 93-56582 which is still before the COURT.

4. Please locate and include the items missing from my file for the hearing.

LEMUEL C. BRAY

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DEC 13 1994
VETERAN'S ADMINISTRATION
ADJUDICATION DIV.
CHEYENNE, WY.
82301

RECEIVED
NOV 30 1994
Receipt & Dispatch To
VA Reg Office
Los Angeles CA