

**THE TWENTY-THIRD CHARLES L. DECKER LECTURE IN
ADMINISTRATIVE AND CIVIL LAW***

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How many of you have seen the movie “Good Morning, Vietnam?” Well, that certainly does wonders for my ego—probably doesn’t hurt my bank balance either! It’s been an interesting experience having a film based ever-so-loosely upon my experiences in Vietnam. Possibly because a lot of people know my name, but very few people know my face, which leads to some interesting things happening. For example, not

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Mr. Cronauer served for four years in the U.S. Air Force. Between 1965-1966, his “Dawn Buster” radio program aired in Vietnam entertaining thousands of soldiers, sailors, marines and airmen. Based on his experiences, Mr. Cronauer co-authored the original story for the major motion picture, “*Good Morning, Vietnam!*” In that film, Mr. Cronauer was portrayed—loosely—by Robin Williams whose performance was subsequently nominated for an Academy Award. In addition to “*Good Morning, Vietnam!*” Mr. Cronauer has authored a textbook which is widely used in universities throughout the United States.

After leaving the Air Force, Mr. Cronauer worked in broadcasting for several years. He then returned to school and obtained his Doctor of Laws degree from the University of Pennsylvania, where he was Special Projects Editor of the University of Pennsylvania Law Review. He also holds a masters degree in Media Studies from the New School for Social Research in New York City; his undergraduate studies were at the University of Pittsburgh and the American University in Washington, D.C. He clerked at the Federal Communications Commission and was honored with the FCC’s Special Service Award. Mr. Cronauer’s law practice concentrated in information and communications law. He was a member of the Editorial Advisory Board of the Federal Communications Law Journal and has published numerous scholarly articles.

too long ago, I was at a reception in Washington and whenever you go to these receptions, they give you a little sticky tag with your name on it to wear. My wife calls them “nerd” tags. As I passed a group of people, someone noticed the name; I heard him say, “That’s the guy they made that movie about, ‘Good Morning, Vietnam!’” Another person said, “No, that can’t be him, that guy doesn’t look a bit like Robin Williams!” If that weren’t bad enough, another person said, “Of course not, that’s Judge Bork!”

But because of the ubiquity of the film on late night cable, my fifteen minutes of fame have stretched into fifteen years now, and over this period, I’ve learned that there are certain things people always want to know. So before I get into the substance of my talk, I might as well answer the number one question which is: “How much of that movie is real?” Well, you’re in the military. You know that if I did half the stuff he did in that movie, I’d still be in Leavenworth instead of in Charlottesville this morning. There’s a lot of Hollywood exaggeration and outright imagination in that film. I’ll go through a very, very quick, abbreviated list.

Let’s see, yes, I was a disc jockey in Vietnam. Let’s see, anything else? Yes, I did teach English during my off-duty time; no, I did not teach my class how to swear and use New York street slang; and no, I was not teaching because I was trying to meet this particular, beautiful Vietnamese girl. At least not one particular, beautiful Vietnamese girl. None of the characters in the film are based on actual people for legal reasons like invasion of privacy and slander; they’re all stereotypes. As is true of any good stereotype, though, you could name any character in the film, and I’d probably be able to think of at least a half-dozen people I knew during my four years in the Air Force who fit that stereotype.

The film was never intended to be a point-by-point accurate biography; it was intended to be a piece of entertainment. And it certainly was that. Robin was nominated for an Academy Award.

I take a lot of pride in “Good Morning, Vietnam!” because of the number of people who have told me it was the first film that began to show Americans as they really were in Vietnam rather than murderers and rapists and baby killers and dope addicts and psychotics. Of course, personally, the film has been a boon to me; it’s opened a lot of doors. It also paid for law school—and *you* know how important that is!

It also has allowed me to use my name recognition to do things I believe in. I spent two terms as a trustee of the Virginia War Memorial and I'm still on the board, as I have been for about a dozen years now, of an organization called the Citizens Flag Alliance which is a coalition of about 120 different groups—civic, fraternal, veterans, religious, patriotic—all trying to pass a constitutional amendment to protect the American flag from being burned, spit upon, or otherwise physically desecrated.

Because of Robin Williams' portrayal of me, a lot of people are surprised to learn that I'm a life-long, card-carrying Republican; I have long worked on behalf of Republican candidates and was very active in the Bush/Cheney campaign. I was a National Vice Chairman of Veterans for Bush so, when the new administration came in, they asked if I would like to join them. We had some discussions about what I could do for the administration. One of the suggestions was working at the Prisoner of War and Missing Persons office.

My first reaction was a little lukewarm, but on the evening of 9/11, I was talking with my wife, and I said, "You know, if I were about thirty years younger, I might go back into the military." She said, "Adrian, did it ever occur to you that if you took that job that they're telling you about at the Pentagon, you might be able to make more of a contribution than you ever could in uniform." I thought about it and said, "Yes, she's right." So that's what I've been doing for the past two and a half years. I have a position description that goes for three or four pages. I've read it a dozen times, but still don't know what it says. Down at the bottom, though, it says, "other duties as assigned." So that's what I've been doing, other duties as assigned. In the past two and a half years, I've been to Hanoi, Danang, Saigon, Phnom Penh, Laos. I've been to Hawaii twice, Bangkok twice, Geneva six times, and also to Moscow, Kuwait, Baghdad, and several dozen U.S. cities, working on the issue of accounting for America's missing.

Our office is called the Defense Prisoner of War and Missing Personnel Office. Actually, that's a misnomer, because under United States law, there is no designation of "Prisoner of War." There are categories of missing. You could be "Missing," you could be "Missing Beleaguered," "Missing Besieged," "Missing Detained," "Missing Interned," "Missing in Action," and finally, "Missing Captured." If you are designated as "Missing Captured" then, by operation of international law, under the third Geneva Convention, that is called "Prisoner of War."

But that is only in international law. In United States law, there is no such designation, and that is probably the closest to any legal subject I'm going to discuss today. Instead, for the rest of this talk, I want to give you a broad view of the business of accounting for missing Americans.

I am surprised how little most people know about our government's efforts to account for all of the missing Americans, and we have a lot of them. There are approximately 88,000 missing Americans. About 78,000 of those are from World War II; about 8,000 from the Korean conflict. Around 1,800 are still missing from the Vietnam War, thirty missing from incidents occurring during the Cold War, and one person is still missing from the first Gulf War in 1991—Captain Scott Speicher, you've probably heard of him.

Back in 1789, Benjamin Franklin made an oft-quoted comment. He said, "Nothing is certain in life except death and taxes." Well, I respect and admire Dr. Franklin, but I have to take issue with him. There's at least one other certainty: as long as there are evil people in this world who want to use force to impose their will on others, there will be armed conflicts. As long as there are armed conflicts, war has its own certainties. There will be casualties, and there will be missing people. Some people will be taken prisoner, and it's our job to try and recover them.

We know, of course, we'll never account for everybody, but at our office, we want to achieve the fullest possible accounting. We know we'll never close all our cases, yet we keep trying. Why? Because the U.S. government considers this to be a moral obligation.

A lot of other countries don't understand what they see as our "obsession with dead bones." But it's not with dead bones, it's with people who are missing. We strive to identify their remains and return them to their loved ones. No other country in the history of the world has ever devoted anywhere near the amount of time, effort, money, resources, and personnel as we do to achieve this goal. A lot of countries are highly suspicious of our motives. Many North Koreans, for example, are convinced it's all a sham so we can get in there and spy on them.

My boss, Deputy Assistant Secretary of Defense Jerry Jennings, was in the Middle East about a year ago. At a news conference about the people still missing from 1991's Operation Desert Storm, the Kuwaitis said they have more than 600 persons unaccounted for, the Saudis

reported about thirty still missing. A reporter asked Mr. Jennings, “How many Americans are missing?” He answered, “Just one.” The reporter was astonished. “What?” he said. “You’re going to all this trouble, coming all the way over here, devoting all these resources, just to account for one person?” Mr. Jennings said, “Yes. And what does that tell you about America?”

We have a number of different offices, both in the United States and abroad, over which we have policy oversight and which we supervise. First, each service has a casualty office which is the unit that deals directly with family members of those who are missing. There used to be something that was called “Joint Task Force for Full Accounting.” Established in 1992, it is the organization that sends out the teams to excavate crash locations and burial sites to find American remains. They bring the remains back to Hawaii where they’re turned over to the Army’s Central Identification Laboratory, the acronym is “CILHI.” Last October, the Joint Task Force and the Central Identification Laboratory merged and became JPAC, the Joint POW-MIA Accounting Command.

There’s also a unit called the Armed Forces DNA Identification Laboratory which is located in Rockville, Maryland. Whenever someone enters the military now, part of the in-processing involves taking a piece of blotting paper about the size of a post-card and putting two drops of the subject’s blood on it. Identification information is written on the card, it’s vacuum-sealed in foil and kept in a gigantic three-story refrigerator at about thirty degrees below zero. By now, they have more than 4,000,000 samples. You may have read about how, in 1991, through circumstantial evidence, it became suspected who the Vietnam Unknown Soldier might be. So they exhumed his remains, and through DNA testing, they were able to identify him. I suspect we will not have any more unknown soldiers because of the work of the DNA Lab. Back on 9/11, when the plane crashed into the Pentagon, the DNA Lab was able to identify almost every single set of remains. There were only five that they could not identify, because the remains were so thoroughly burned they were unable to get any usable DNA.

There’s an organization down at San Antonio, at Brooks City Base, called the Life Sciences Equipment Laboratory. These people are experts at identifying things like flight suits and parachutes and ejection seats. You can go in, hand them what looks like a dirt-encrusted, rusty, hunk of metal and one of their analysts will look at it and say, “Oh yes, that is a buckle from such and such model parachute, that was used in

southeast Asia from 1968-1971. Oh, and here's what it looks like, new." You look at it, and son-of-a-gun, they are absolutely correct!

There's an organization called Stony Beach which is part of the Defense Intelligence Agency (DIA). They go throughout, mostly, the Southeast Asian area collecting oral histories, and following up on reports of last sightings. The oral histories are important, because we talk to people who had fought on the other side and now we're saying, "you were in such and such a place at such and such a time, and you shot down a plane. Where was that? Was there anybody rescued from the wreckage? Did somebody die? Did you bury them? Where did you bury them? Can you show us where?" These oral histories give us a lot of information and incidentally, we do this among American veterans as well. We go to veterans reunions and take oral histories.

We also do that in Russia at an organization called the U.S.-Russian Joint Commission on POW/MIAs. Back in 1991, Boris Yeltsin and the first President Bush, made an agreement that they would set up a joint commission between the United States and Russia designed to account for our missing and theirs, or as many as we can. The support directorate for that commission on the U.S. side is part of our office. We have a team in Moscow, consisting of two full-time American civilian employees, three Russian employees, and two long term military TDY. They go through documents in the Russian archives that have been declassified, looking for hints of what might have happened to Americans from World War II, Korea, and Vietnam. They also travel throughout Russia and many of the other Balkan states looking for veterans to give us their oral histories.

We have about 600 people throughout the world who are employed by these units and who devote all their time and effort simply to account for missing Americans. Since July 12, 1993, we at DPMO have been the designated authority under the office of the Secretary of Defense to supervise all U.S. accounting policy. We have over 120 people in our Arlington, Virginia, office to coordinate all these activities throughout the world, and to set a single harmonized policy. We engage in research and analysis, we develop policy and we develop and maintain both paper and electronic databases, which include information such as names, geographic areas of the loss, branch of service, and so forth. Right now, we are working on the database for World War II losses.

I must tell you, that in the two and a half years I've been working at DPMO, I have been thoroughly impressed with the people I work with. About a little less than half are active duty military, and the rest are either retired military, veterans, or someone who has some other connection to the military. These are highly-educated, highly-intelligent people, who certainly could be making a lot more money doing something else. But they do what they do because they *believe* in it. They believe it's important to do this work and, I suspect, at least some are thinking, "there but for the grace of God, go I."

The DPMO takes a three-pronged approach to our policy formation. First, we want to prepare American forces before they go into combat. Second, we're involved with recovering isolated Americans, hopefully before they're captured and, finally, we want to retrieve and identify the remains of those who were killed in hostile action.

The advanced preparation—we develop policies concerning Code of Conduct training and we ensure that our personnel receive adequate escape and evasion training. Next, we want to make sure that everybody has the best possible survival and evasion equipment. For example, we've recently approved some new radio equipment for people who find themselves behind enemy lines, so that they can be more easily located.

Then there's the subject of live sightings: these we take very, very seriously. Since the fall of Saigon in 1975, the U.S. government has received nearly 22,000 reports that relate to live Americans in Southeast Asia alone. We have alleged first-hand live sightings, we have hearsay reports of sightings, we have reports on possible crashes or gravesites, and we have dog tags that people find. Here are some figures, and, when I give you figures, they are approximations because they're constantly changing. We'll find out new things about people who weren't originally missing or might now be considered missing. We have all sorts of reasons why the figures are less than totally precise. But for purposes of today's discussion, let's say we have 1,911 different reports received since 1975. Ninety-nine percent of those have been resolved. If you break them down, sixty-nine percent proved to be Americans already accounted for, about two percent were sightings made of military before 1975, twenty-eight percent turned out to be outright fabrications. We have fourteen cases remaining, thirteen prior to 1976, and one remaining in the 1976 through 1980 period that hasn't been resolved yet. All live sighting reports after 1980 have been resolved.

The dog tags are a big problem, because when we left Vietnam, we left a lot of equipment there, including machines to make dog tags and a lot of blanks. Also, when people were making dog tags, if they made a typo, they'd just throw the bad one away and make a new one. Vietnamese people have found some of these dog tags that were erroneous and turned it into a minor industry—mostly of trying to sell these tags to Americans, tourists and other people in Vietnam. But the search for missing Americans does continue, and will always continue until all of the cases have been resolved.

Now to North Korea: we've had several reports of American POWs. We know of four defectors from the 1960's—not during the Korean War itself, but later. These four made propaganda films for North Korea, so we know who they are, we've seen the films. Every person who is able to escape or otherwise leaves North Korea is interviewed.

The bottom line, so far, is that there is absolutely no credible evidence of any American serviceperson being held against their will, anywhere. Nonetheless, we still continue to investigate every single report of a live sighting anywhere in the world.

To give you an idea of what we're able to accomplish, it's slow work, it's tedious work, and the work is enormous in volume. Many times it's a situation you could analogize to having to do a jigsaw puzzle. But there's no picture on the box. Furthermore, you don't know for sure that all of the pieces in that box are from the same puzzle. So it takes a long time, but we do make progress.

In Southeast Asia, the communists took over all of Vietnam in 1975. At that point, there were 2,585 persons unaccounted for. By now that number has been whittled down to 1,865. That means, since 1973, a total of 718 individuals have been found, repatriated, identified, returned to their families, and buried with full military honors. Recently—just this past February—remains were returned from both Cambodia and Laos. Back in January, we had remains returned from three locations in Vietnam. Last November, we got three sets of remains from Laos.

In Korea, we have about 8,100 Americans still unaccounted for, most of them in the north. The U.S.-North Korean Joint Recovery Operations began in 1996, and it took a lot of work because the North Koreans weren't being very cooperative. It took a long time to set this up as a humanitarian effort—plus the fact that the weather limits our time to

about a half a year that we can get in there; the rest of the time the ground is so frozen, you can't even dig. And we have to, every year, negotiate with the North Koreans about the terms and conditions under which we will go into their country, because in their perspective, we are still at war. And, I've got to tell you about negotiating with these people. They are frustrating, infuriating, illogical, irrational, and those are their good points. It is terribly frustrating to do the job of negotiating with them, but we do it because the job is that important. We will not let them draw us into discussions of other issues. We say, "No, this is a humanitarian effort and this and only this is what we will talk about." And already, we've had twenty-seven different searches and retrieved 186 sets of remains. Of those, so far, we've only been able to positively identify fourteen, and return them to the families. But many more are still in the final stages of being identified. The first Joint Recovery Operation for this year, 2004, is scheduled to begin on 24 April, and we'll be searching in the Chosin reservoir area. There were nearly 1,000 Americans lost just in that area alone; and last October 8th, we had eight sets of remains returned from our last Joint Recovery Operation of 2003.

We are still retrieving remains of people from World War II. Approximately 290 have been identified so far. Just so far this year, we have retrieved one set of remains from Burma, two from China, one from Europe, and two from the Pacific Islands. Last fall, seven sets of remains were discovered in Burma and, just a week ago, were finally retrieved and returned to the Central Identification Lab in Hawaii. Last year, thirteen of nineteen World War II Marine Raiders, killed in action in the Makin Atoll, were laid to rest in Arlington Cemetery, to include the first Medal of Honor recipient in World War II. And this coming Memorial Day, the World War II Memorial will be dedicated in Washington, and our goal is to have our complete database, electronic database, with all 78,000 names of the missing entered into it by then. All of those statistics, I think give you the flavor of the enormity of the job we are doing.

And this job is not without risk to us either. Back in 1973, we had an American die in an accident in Vietnam. On 7 April 2001, seven Americans died in a helicopter crash in Vietnam, and also in that chopper were nine Vietnamese as well. We had one Australian die just last year on a recovery operation.

In Russia, we've had nineteen sets of remains returned from Russia, eleven from a C-130 in Armenia, one Cold War loss in the Yuri Islands.

In the summer of 2000, the Russians located a Navy aircraft crash on the Kamchatka peninsula, which is in far Eastern Russia. And that's tough work because the summer there only lasts for five weeks.

We're taking our oral histories in the Ukraine, Czech Republic, Hungary, and Belarus. From those oral histories, we've been able to have one person make ten trips in less than three years which resulted in the retrieval of about 150 American remains, almost all from the Korean War. In Saint Petersburg, we've just arranged for access to their military hospital archives, and we're hoping to get a lot of good information from transfer records, death certificates, and burial locations. We've already, in Russia, determined the fate of 263 missing Americans. All of this is very important work, yet some of it is dry and plodding.

The most rewarding part of my job is what we call Family Updates. About eight or nine times a year, on a Saturday, we will go to a major urban area in the United States and rent a hotel ballroom. Anyone who lives within 300 miles of that city who is related to someone still missing is invited to come in, and we spend the morning giving them a briefing on our office and all of the other units around the world and what they do. We bring people in from Hawaii, from the DNA laboratory, and from Texas. They do a PowerPoint presentation so that the family members know what we are doing in our accounting efforts. We let the family members ask questions, and we give them a printout of whatever information we might have on their particular loved one. Then we let them talk to an area expert. If their loved one is missing from Vietnam, they can talk to a Vietnam analyst, if from Korea, a Korean analyst. For some of these people, this is the first thing they've heard in decades so even if you're only able to give them just a small amount of information, if it can help them move just a little ways toward closure, they are so grateful, and it means so much to them, and therefore, it means a lot to us to see that reaction; to know why we are doing what we are doing; because we are trying to help these families.

When I went into the Air Force, I went through basic training, and in one of the classes in basic training they said to us, "You are now a member of the United States Air Force. The military takes care of its own. If you happen to find yourself caught behind enemy lines, we will do everything we can to retrieve you before the enemy gets there. If you are taken captive, we will do everything humanly possible to get you released and returned to us. And if, God forbid, you are captured and die in enemy hands, we will not cease in our efforts to retrieve your remains

and bring them back home to your loved ones for an honorable, hero's burial in American soil. That is your government's promise to you." Two and a half years ago when I first went into DPMO, I looked at the door, and thereon was a copy of our logo with a picture of a torch and beneath it, a ribbon. On the ribbon is our motto, "Keeping the Promise." So that's what we do, we are keeping the promise. That's the message I bring you today. Thank you.