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December 21, 1983

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Mr. Edwin Pfeiffer
Vice-President/General Manager
Station WDVM-TV
4001 Brandywine Street, N.W.
Washington, D.C. 20016

Dear Mr. Pfeiffer:

Enclosed is a memorandum responding to the WDVM-TV series, Vietnam Memorial: A Broken Promise, which ran on Channel Nine's 6:00 p.m. and 11:00 p.m. news broadcasts on November 7 through 10, 1983.

This series, by former WDVM-TV agent and employee, Carlton Sherwood, contained significant libelous material and did serious damage to the Vietnam Veterans Memorial Fund ("VVMF") and its officers and directors. It was presented by a reporter who has demonstrated repeatedly an intense bias against VVMF. In addition to being defamatory, it constituted a personal attack relating to a controversial issue of public importance on the honesty, character and integrity of VVMF and its leaders. The evidence shows that it was done with actual malice.

Among the falsehoods and distortions propagated by the series are the following:

- Failure to disclose VVMF's extensive and favorable audits;
- False claims that the Memorial is complete;
- Gross distortion of VVMF's book-keeping and disbursements;

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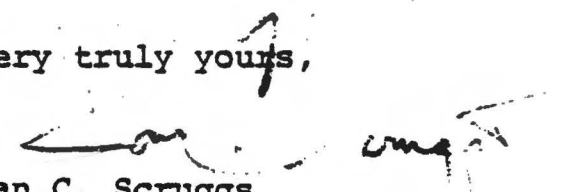
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rved in Vietnam

Mr. Edwin Pfeiffer
December 21, 1983
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- False statements regarding actual cost of the Memorial;
- Serious misstatements of fact concerning the Independent Audit Committee;
- False report that VVMF failed to meet Better Business Bureau standards;
- Deceitful claim of a "broken promise" to contribute to a Boston veterans memorial;
- Misrepresentation of facts concerning the New Mexico Chapel;
- False claim that VVMF turned down a \$1 million grant to avoid an audit;
- Misrepresentation of H. Ross Perot's relationship with VVMF;
- False statements regarding fundraising expenses;
- Deceitful charge that VVMF misled Congress;
- Inaccurate report regarding consulting fees;
- Misleading personal attack against VVMF Chairman, John P. Wheeler;
- Failure to disclose that Sherwood's key witnesses are long-standing opponents of the Memorial.

VVMF is determined to obtain redress for these wrongs. The manner in which that is accomplished will depend on WDVN-TV's response to this letter. We are prepared to meet with you.

Very truly yours,


Jan C. Scruggs
President

**CARLTON SHERWOOD'S SERIES ON THE VIETNAM MEMORIAL:
A MISCARRIAGE OF INVESTIGATIVE JOURNALISM**

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CARLTON SHERWOOD'S SERIES ON THE VIETNAM MEMORIAL:
A MISCARRIAGE OF INVESTIGATIVE JOURNALISM

I. INTRODUCTION -- THE NEED TO SET THE RECORD STRAIGHT

The purpose of this memorandum is to rebut the falsehoods and distortions propagated by the television series, Vietnam Memorial: A Broken Promise. This series was prepared and presented by reporter Carlton Sherwood on WDVM-TV, Channel 9, on November 7, 8, 9 and 10, 1983. In it, Sherwood grossly misrepresented the financial affairs of the Vietnam Veterans Memorial Fund ("VVMF"), made many significant, factual errors, and routinely engaged in innuendo and half-truths for the purpose of inflicting maximum possible injury on VVMF, certain of its officers and directors and the Memorial itself.

After setting forth the falsehoods, distortions and calculated half-truths, the memorandum provides the explanation for the low level of this journalism: Sherwood, himself, harbors and has exhibited an intense bias against the work of VVMF and at least two persons who made the Memorial a reality. Moreover, he enlisted in his vilification effort certain intensely biased interviewees, without telling the TV audience that they, too, had been outspoken opponents of the work of VVMF.

It may come as a surprise to those who watched the series that WDVM-TV News Director, David Pearce, has admitted that "[w]e're not intimating anywhere in the story that they put any money in their pockets." (The Washington Post, p. D.2,

11/8/83) Since the station concedes that it has no evidence of fraud or illegality, what then compelled Sherwood to devote the extensive time and effort to produce this TV attack? Sherwood's ally and ardent Memorial critic, Milton Copulos, provided the answer as well as anyone can:

The only way to resolve the issue once and for all, however, appears to be through congressional action. It may take time, but time is now less of a problem It would seem a small matter to ensure that the permanent flag and statue are placed properly, since they will always be there. Although VVMF probably is satisfied with the current situation, they might well remember: It won't be over until both sides say it is.

("Background to Betrayal," Copulos, Soldier of Fortune Magazine, May, 1983, p. 88) In short, the TV series was, in our view, part of a continuing effort by those who abhor the product of VVMF's work to prompt congressional action that could ultimately lead to modification of the Memorial design.

Sherwood's series has hurt VVMF and its officers, directors, volunteers and contributors. It did so with intent and actual malice. It reflected a preconceived thesis. But far more significantly, this unfair presentation has damaged the Memorial itself and the millions of veterans, living and deceased, whom the Memorial honors. In the end, it is the Memorial, the veterans and their families who are the real casualties of Sherwood's malicious and abusive journalism. We cannot permit this reckless travesty to go unanswered. This memorandum is a

partial fulfillment of our moral, ethical and legal duty to set the record straight.

II. THE VIETNAM VETERANS MEMORIAL FUND

VVMF was founded to erect a permanent national memorial to approximately 2.7 million American veterans, living and deceased, who served their country in the Vietnam War. It is a private, charitable organization incorporated in April, 1979 under the provisions of the District of Columbia Nonprofit Corporation Act and is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code.

Currently, VVMF has a salaried staff of four, headed by the VVMF President and founder, Jan Scruggs, a veteran wounded in the Vietnam War. The Board of Directors consists of seven veterans who, without compensation, have devoted thousands of hours to the project. An Independent Audit Committee comprised of distinguished citizens has provided guidance on financial and audit matters.

After the President signed into law on July 1, 1980 an authority to build a memorial on the Mall honoring Vietnam veterans, VVMF sponsored the largest design competition ever conducted in the United States or Europe. From approximately 1,420 design entries submitted, the competition jury unanimously selected the design of Maya Ying Lin, a Yale University undergraduate student. From that moment on, a small group of intense and persistent critics have attacked the designer, her design,

the Memorial, and VVMF. Members of this same core group that led this attack have now become the central "witnesses" Sherwood chose to use in his series on VVMF's finances.

Despite the concerted efforts of these antagonists to reverse the results of the design competition, to halt groundbreaking, to block construction, and to scuttle the National Salute to Veterans, the VVMF pressed on. It conducted a successful fundraising campaign in which several hundred thousand persons, veterans organizations, corporations, unions, foundations and community groups participated. No government funds were involved. The Memorial is now near completion. The VVMF expects to close its doors in 1984 following the statue installation and acceptance of the Memorial by the National Park Service.

III. REBUTTAL OF THE SHERWOOD SERIES

1. Sherwood Intentionally Misled The Viewing Audience By Failing To Tell It That VVMF Had Been Audited Extensively And That VVMF Had Voluntarily Supplied Sherwood With Copies Of VVMF's Audits.

VVMF, acting through its President, Jan Scruggs, furnished Sherwood with copies of the following materials: (1) VVMF financial statements and audit reports prepared by Peat, Marwick, Mitchell & Co. for each of VVMF's fiscal years (1980-1983); and (2) reports prepared by Peat, Marwick, Mitchell & Co. on VVMF's accounting procedures and on VVMF's internal accounting controls.

Sherwood did not disclose the results of these audits and the favorable conclusions of the auditors because that would

undermine the plain intent of Sherwood's effort -- to disparage the credibility of VVMF. Accordingly, Sherwood chose to conceal these facts from the viewer. He also failed to disclose to the viewing audience that VVMF had been audited extensively by the IRS and that the results of that audit were satisfactory, as well. Finally, Sherwood failed to disclose that VVMF's books and records were, and are, open to any member of the Independent Audit Committee and to the appropriate governmental agencies.

Instead of acknowledging that VVMF voluntarily supplied him with these audit reports, Sherwood dissembled by referring obliquely to "financial records obtained by Eyewitness News" (Sherwood Series, 11-7-83, Tr. p. 1; see also 11-7-83, Tr. p. 3),^{*/} thereby insinuating that they were obtained against VVMF's wishes through his own investigative skills. This innuendo was furthered by Sherwood's publication of statements from H. Ross Perot stating that "nobody can look at the money" (Sherwood Series, 11-9-83, Tr. p. 2); from John Fales asserting that "[t]he only thing we asked for was to look at their books" (Sherwood Series, 11-9-83, Tr. p. 2); and from Tom Carhart inquiring "why not show the books?" (Sherwood Series, 11-9-83, Tr. p. 3). Sherwood's obvious purpose was to create the impression of a financially irresponsible and secretive

^{*/} "Sherwood Series Tr." refers to the transcript prepared by the Radio-TV Monitoring Service, Inc. of WDVM-TV's "Eyewitness News," November 7, 8, 9 and 10, 1983.

organization which had permitted absolutely no one to review its books and records.

In order to set the record straight, the following is a list of the audits performed upon VVMF's books and records:

- Peat, Marwick, Mitchell & Co. audit as of March 31, 1980
- Peat, Marwick, Mitchell & Co. audit as of March 31, 1981
- Peat, Marwick, Mitchell & Co. audit as of March 31, 1982
- Peat, Marwick, Mitchell & Co. audit as of March 31, 1983
- Peat, Marwick, Mitchell & Co. audit of VVMF's accounting procedures, dated September 10, 1982
- Peat, Marwick, Mitchell & Co. review of VVMF disbursements of over \$500, dated November 2, 1982
- Peat, Marwick, Mitchell & Co. review of VVMF disbursements in any amount to officers, directors and employees of VVMF dated November 2, 1982
- Peat, Marwick, Mitchell & Co. evaluation of VVMF's system of internal auditing controls, dated November 2, 1982
- IRS audit of VVMF's activities and financial records for 1980, 1981 and 1982, concluding with the issuance of a letter dated February 4, 1983, accepting all tax returns as filed and continuing VVMF's tax exempt status
- Internal audit to insure against conflicts of interest, completed April 28, 1983
- Certification by each officer and director that the disbursement schedules identified above contain no improper,

unauthorized or inaccurate entries and that no disbursement requires further examination, completed April 28, 1983.

2. Sherwood Falsely Asserted That The Construction Of The Memorial Is Complete.

Sherwood's television series fundamentally misled the viewing audience by asserting falsely that the Memorial project has been completed. (Sherwood Series, 11-7-83, Tr. p. 1; 11-8-83, Tr. pp. 1, 3, 4, 8; 11-9-83, Tr. p. 1) Sherwood consistently failed to inform the viewer that significant expenditures are still being incurred by the Memorial Fund in order to complete the Memorial. Sherwood thereby created the false impression that the 2 million dollars in the VVMF bank account as of March 31, 1983 was surplus.

For example, Sherwood stated that "less than a third of all funds raised to build the Memorial were actually spent on the Memorial itself" (Sherwood Series, 11-8-83, Tr. p. 8), and "less than one-third of the \$9 million raised . . . was used for that purpose" (Sherwood Series, 11-9-93, Tr. p. 1). He also stated that "months after the Memorial had been paid for and dedicated, the audits show, the Memorial Fund had more than two million dollars in cash reserves, surplus funds which, according to the corporation's Internal Revenue Service application, should have gone to other non-profit, charitable veterans' groups" (Sherwood Series, 11-10-83, Tr. p. 4)

In fact, the Memorial will not be completed until the ~~opening~~ of three servicemen is installed. The target date is

Veterans Day, 1984. In the interim, more than 1 million dollars of the remaining 2 million dollars is earmarked for the continuing tasks at the Memorial site: adding names; landscaping; resodding; creating and widening the stone pathways; installing granite insets; fabricating light fixtures; and constructing 70 concrete pads to support the installation of a sophisticated lighting system specially designed to accommodate evening visits to the Memorial. The work remaining also includes: placing a concrete footing for the statue; planting additional trees and shrubs to enhance the backdrop of the statue; and bronze casting and installing five permanent name locators to assist visitors. Finally, VVMF must continue to make progress payments to Fredrick Hart for the sculpture of the three soldiers and to the foundry that will cast and install it.

Sherwood knew the Memorial was not complete and that significant expenditures were ongoing. Jan Scruggs told him this during the interview. In fact, Scruggs used a large chart during the interview that itemized the work still to be done at the site. Sherwood ignored this information and set out to deceive.

3. Sherwood Intentionally And Wrongfully
Suggested That VVMF Could Not Account
For Six Million Dollars.

Perhaps the clearest example of Sherwood's use of vicious innuendo is the question he asked:

[The VVMF] collected at least nine million dollars yet spent less than a third of those contributions for construction of the Memorial itself. So where did the remaining six million dollars go?

(Sherwood Series, 11-7-83, Tr. p. 1) Sherwood knew the answer but he was not interested in sharing it with the public. Instead, he was interested in leaving the strong, negative inference that six million dollars disappeared through either foul play or reckless disregard of VVMF's fiduciary obligations.

Evidence that Sherwood actually did mislead the viewers is demonstrated in the conclusion drawn by Rep. Tom Ridge following Sherwood's sinister suggestion: "Apparently there's six million dollars that seems to be surplus" (Transcript of Press Conference, Rep. Tom Ridge, WDVM-TV, November 8, 1983, 6:00 P.M. EST)

Sherwood examined the four Peat, Marwick, Mitchell & Co. audit reports. Had he been interested in reporting the truth, he would have been able to derive the following answer to his own question:

Vietnam Veterans Memorial Fund, Inc.
Statement of Sources and Uses of Funds
for the Period April 29, 1979 (Date of
Inception) through March 31, 1983

Sources of Revenue:

Contributions	\$8,279,643
Investment Income	490,578
Other Program Income	<u>233,350</u>
Total Sources of Revenue	9,003,571
Fundraising Costs	<u>(2,127,988)</u>
Net Sources of Funds for Memorial Development and Operations	<u>6,875,583</u>

Use of Funds:

Memorial Development and Program Costs	3,909,714
Furniture and Equipment	17,680
Fund Administration	<u>973,537</u>
Net Uses of Funds for Memorial Development and Operations	<u>4,900,931</u>
Reserve for Memorial Completion	<u>\$ 1,974,652</u>

Had Sherwood wished to compile a more detailed breakdown of expenditures, he could have obtained precise figures for the following items, merely by combining the four audit reports which VVMF gave him: salaries; employee benefits; promotional costs; rent; professional services; telephone; postage; delivery; supplies; printing; license fees; travel and entertainment; contract labor; bookkeeping; taxes; depreciation; and equipment rental. He also could have obtained from these same audit reports a detailed breakdown of expenses relative to the National Salute, program expenditures, and fundraising.

In short, Sherwood had the full explanation in his possession for the disposition of the six million dollars, but Sherwood simply did not want the public to know the truth when it stood in the way of his innuendos.

4. Sherwood Deceived The Public By Claiming Repeatedly That The Memorial's Cost Was 2.6 Million Dollars.

The cost of the Memorial itself far exceeds 2.6 million dollars. Sherwood was informed that, inasmuch as the Memorial is

still under construction and bids are still being received for remaining work, it was not yet possible to state a firm, final cost. But VVMF's current estimate already exceeds 4 million dollars. The final cost will likely approach 4.5 million dollars. This cost includes the site selection study, the hard costs of construction paid through the Gilbane Construction Company and related contracts independent of Gilbane: data processing and typesetting for the Memorial name layout; concrete testing; engineering consultation; architecture; landscape architecture; site maintenance; addition of new names to the walls; and the development of the sculpture. Moreover, this estimate does not address VVMF's long-term needs, including establishment of a fund to replace granite panels and to repair the sculpture if damage to the Memorial occurs in the future.

The estimate of 4.5 million dollars relates just to construction, including design, site preparation and maintenance. Other substantial costs incurred by VVMF and associated with the Memorial were just as critical. Since the Memorial was not funded by the government, VVMF had to raise all needed money. The cost of fundraising exceeded 2 million dollars, but still amounted to less than 26% of the total raised. Much of the fundraising was accomplished through direct mail solicitation. This is an expensive means of raising funds, but it was employed in this case because of the difficulty of raising monies for a "Vietnam-related" project, the need to educate the public and the necessity of establishing a financial base for a new organization

which started with no assets. Direct mail fundraising was the only way to encourage nationwide, grass-roots participation.

There were also administrative costs entailed in operating the VVMF for four years. These included office space and supplies for a full-time staff (now, two professionals, one administrative aide and one secretary) and necessary costs associated with other professional assistance. Significant costs were incurred, as well, in steering the project through the necessary government-approval agencies, including the Department of Interior, the Fine Arts Commission and the National Capital Planning Commission.

In addition, VVMF hosted the historic National Salute to Vietnam Veterans last year that brought tens of thousands of Vietnam veterans to Washington for five days of unit reunions, the vigil of names at the National Cathedral, a parade, the dedication ceremony and other activities. Although Sherwood criticized the expenditures associated with the National Salute (Sherwood Series, 11-7-83, Tr. p.3), the VVMF is proud of it. The cost incurred was fully justified by the honor paid to those who participated and to those who are named on the walls of granite.

5. Sherwood Misrepresented Facts Concerning The Operation Of The VVMF Independent Audit Committee.

The VVMF Independent Audit Committee was formed in the spring of 1982 to provide advice on auditing and financial management matters and to deal with demands of H. Ross Perot to

audit VVMF's books and records. The members of the Committee included: Paul Thayer, former Chairman of the Board and Chief Executive Officer of LTV Corporation and currently Deputy Secretary of Defense; Edmund T. Pratt, Chairman of the Board of Pfizer, Inc.; J. Richard Munro, President of Time, Inc.; Lloyd N. Unsell, Executive Vice President, Independent Petroleum Association of America; James Dean, Esq., of the American Legion; Joseph L. Allbritton, Chairman of the Board of Riggs National Bank; Richard E. Radez, VVMF Board Member; and John Morrison, Esq., VVMF Board Member.

Sherwood falsely reported that the Independent Audit Committee never met. (Sherwood Series, 11-9-83, Tr. p. 2) In fact, the Committee met formally via telephone on April 29, 1983, specifically to consider H. Ross Perot's audit demands. (See Section III-10 of this memorandum.) The Independent Audit Committee voted 4-0 to reject Perot's demands and to inform Perot that adequate auditing had already been accomplished. Two additional Committee members, who were unavailable at the time of the meeting, subsequently endorsed this vote. (See Minutes of the April 29, 1983 meeting of the Independent Audit Committee and the memorandum of Jan Scruggs, distributing the minutes to Committee members.) In addition, several meetings were held in person among members of the Independent Audit Committee and one or more VVMF officers and directors.

Sherwood further reported that Paul Thayer, Chairman of the Independent Audit Committee, had had no contact with VVMF

since January, 1983. (Sherwood Series, 11-9-83, Tr. p. 2) In fact, Mr. Thayer conducted the April 29, 1983 meeting, and signed the minutes of that meeting. Mr. Thayer has always been in close touch with VVMF. He spoke at VVMF's 1983 Memorial Day Ceremony and still serves as Chairman of the Independent Audit Committee.

6. Sherwood Misled The TV Audience Regarding
The Better Business Bureau Standards

Sherwood reported that VVMF did not meet three Better Business Bureau ("BBB") standards. (Sherwood Series, 11-7-83, Tr. p. 4) Sherwood failed to report, however, that this was merely a preliminary finding of BBB and, indeed, VVMF had not had an opportunity to respond to BBB's late October letters requesting further information.

In fact, contrary to Sherwood's report, VVMF was in compliance with all BBB standards at the time Sherwood interviewed BBB's representative and at the time he presented the TV series. By letter dated December 2, 1983, BBB stated that "we are pleased to report VVMF's compliance with the standards addressing control over disbursements and substantiation of the application of funds to programs" The letter went on to state, "This information [supplied by VVMF] enables us to report VVMF's full compliance with the CBBB Standards for Charitable Solicitations." (See letter of Elizabeth M. Doherty to Williams & Connolly, December 2, 1983.) In the television series, Sherwood neglected to take into account VVMF construction costs

in computing the percentage of revenues devoted to "programs."
(See pp. 25-26 of this memorandum).

Once again, Sherwood withheld vital information from the TV audience in order to paint a misleading picture of VVMF's financial management.

7. Sherwood Deceived The TV Audience When He Asserted That VVMF Promised To Provide Assistance To Tom Lyons And Later Broke That Promise.

Sherwood, grasping for "broken promises" to fit the title of his series, seized upon and misrepresented a fleeting contact between Tom Lyons and VVMF. Lyons was the moving force behind an effort to build a neighborhood memorial honoring approximately 25 veterans from South Boston who gave their lives in the War. (Herald American, Boston, Massachusetts, article by Peter Gelzinis, 11-18-81) In early 1981, Lyons wrote to Jan Scruggs praising Scruggs and the VVMF for the "great job you are doing." Lyons further stated that the national Memorial was "a project that is long overdue." Lyons then wrote the following:

I would like to bring to your attention a project I have started here in South Boston
Our project is nearly two years old now and is almost completed. We are going to erect a memorial in honor of 25 brave men. The cost for the memorial and day of our dedication will be around \$23,000 and all of it we have raised on our own. We hope to send to you after our dedication a check for \$2,500.00 in honor of our friends. Inside you will find a few things that we have done so far. The article that was in the paper was a great help to our project and we have had a great response from people all over our state. The letter we sent to different people and stores and bars asking for their

help. The decals really went over and put us over the top of our goal. (Emphasis supplied.)

Lyons then concluded his letter with a non-specific request: "If you can help us in any way we would really appreciate it." VVMF never heard from Mr. Lyons again.

Accordingly, far from seeking financial help from the VVMF, Lyons plainly stated that his project was near completion, that he had the necessary funds on hand, and that he anticipated a surplus which he would share with VVMF. Lyons' participation in Sherwood's series was prompted, perhaps, by his association with Tom Carhart (see p. 31 of this memorandum) and his long-standing criticism of the Memorial. (Herald American, Boston Massachusetts, article by Peter Gelzinis, 11-18-81)

Once again, Sherwood set out to deceive when he said VVMF broke its promise to Tom Lyons and the South Boston memorial. (Sherwood Series, 11-10-83, Tr. p. 4)

The facts are clear. There was no promise to break, apparent or otherwise.

8. Sherwood Misrepresented The Facts And Circumstances Surrounding VVMF's Plans To Contribute To The New Mexico Chapel.

Sherwood accused the VVMF of reneging on a firm commitment to donate \$100,000 to Victor Westphall's Peace and Brotherhood Chapel near Eagle Nest, New Mexico. Sherwood severely criticized the VVMF for breaking this alleged "promise." (Sherwood Series, 11-7-83, Tr. pp. 1-2; 11-10-83, Tr. pp. 2-4) In presenting this material, Sherwood unjustly blended fact

and fiction in order to heap ridicule on VVMF. In so doing, he misrepresented the facts surrounding VVMF's involvement with Dr. Westphall's project.

When VVMF was incorporated in 1979, one of its goals (subordinate to the primary goal of planning, designing and constructing a Memorial in Washington, D. C.) was to contribute to the New Mexico Chapel. This intention was repeated as a concept and a plan (but not as a fact) in the original application to the IRS. It was also mentioned in some of the very early fundraising literature. Significant developments, however, led to modification of VVMF's plans. Some background information is in order.

In 1969, following his son's death in Vietnam, Dr. Westphall commenced work on The Peace and Brotherhood Chapel. Dr. Westphall had serious difficulty in raising funds to construct and maintain the Chapel. Numerous legislative efforts to designate the Chapel as a national memorial failed. By late 1979, after VVMF had announced its intention to support the Chapel, articles began to appear stating that the Chapel was dedicated to all victims on both sides of the Vietnam conflict, and not just American Veterans. (Parade Magazine, article by Michael Satchell, 11-4-79) Dr. Westphall's viewpoint became clear:

The monument honors everyone who fell in the War. If I could find the soldier who killed my son, and that soldier had been killed himself, I would not hesitate to put his photograph along side the one of David.

(Newspaper Enterprise Association, article by Tom Tiede quoting Dr. Westphall)

Setting aside moral or ethical considerations, this goal conflicted with the purpose of the VVMF, which was to honor American veterans of the Vietnam War. The proposal to honor enemy dead became a matter of concern to the VVMF. VVMF eventually concluded that its contributors had never intended to participate in a project that would honor the North Vietnamese or the Viet Cong. It was inconsistent with Public Law 96-297 which spoke only of "men and women of the Armed Forces of the United States who served in the Vietnam war." It was also inconsistent with VVMF's corporate Charter, which limits VVMF to honoring "American Veterans of the Vietnam War."

In the Chapel's September, 1980 Bulletin, W.D. Westphall, Chairman of the Chapel's trustees, reported that

as many of you know by now, the President recently signed Public Law 96-297 which sets aside acreage in the District of Columbia for the construction of a publicly created, governmentally perpetuated Vietnam War memorial Senators Pete Domenici and Harrison Schmidt of New Mexico tried earnestly to have included in that law provisions which could have led to government support for the Chapel. However, as a result of decisions made by other government officials, the Domenici/Schmidt provisions were deleted. . . . In general we do not believe that they [the VVMF] have given due respect and recognition to the Chapel. It appears they have, wittingly or unwittingly, represented their recent memorial effort as the only nationally significant Vietnam War memorial effort. (Vietnam Veterans Chapel Bulletin, September, 1980, p. 1)

In December, 1980 W.D. Westphall's criticism of the Federal Government and VVMF became more pointed. He accused Congress of relying upon "totally outrageous and spurious reasons" to eliminate the portions of Public Law 96-297 dealing with the Chapel and lamented that the "continued rejection of the Chapel" was an "example of the arrogance and ineptitude of some elements of the federal bureaucracy." (Vietnam Veterans Chapel Bulletin, December, 1980) W.D. Westphall further asserted that "we have evidence that the VVMF has represented their memorial effort as the first really significant Vietnam War memorial effort" and noted that he "find[s] such a misrepresentation of reality exceedingly offensive." W. D. Westphall withdrew his endorsement of the VVMF effort and urged all Americans to do the same "until such time as justice has been achieved for the Chapel as well as for those of us who have sacrificed much to bring it into being." (Vietnam Veterans Chapel Bulletin, December, 1980)

Concurrent with these developments, it became apparent to the VVMF that it did not have, at that time, ample funds to make any donations to any project. Indeed, it would require an extremely aggressive effort to raise enough money to insure construction of the Memorial in Washington. The Washington Memorial was VVMF's priority, the priority of its contributors, and the priority of Congress.

To avoid confusion, VVMF wrote to numerous prospective Chapel contributors suggesting that they send their donations directly to the Chapel. Copies of some of those letters were

sent to W.D. Westphall. VVMF also forwarded to the Chapel contributions from donors who had earmarked monies for that purpose. In addition, VVMF was in touch with W.D. Westphall by telephone periodically to discuss these matters.

Sherwood's assertion that Jan Scruggs visited the Chapel is false. (Sherwood Series, 11-10-83, Tr. p. 2) Scruggs has never been there. VVMF believes Sherwood knew that. Sherwood's assertion that those involved with the Chapel had not heard from the VVMF since 1979 is equally false. (Sherwood Series, 11-7-83, Tr. pp. 1-2) As noted previously, VVMF had corresponded frequently with the Westphalls.

Finally, VVMF had informed the Disabled American Veterans, ("DAV") which has adopted the Chapel as a project, that the question whether there can be a substantial VVMF donation will be considered by VVMF's Board after the Memorial is completed and a long-term maintenance fund is established. (Now that DAV is involved, there is no longer any concern that the Chapel will honor enemy veterans.) Sherwood was aware that VVMF may make such a contribution, but failed to report it.

9. Sherwood Dissembled When He Stated That VVMF Turned Down A One Million Dollar Grant From The DAV In Order To Avoid An Audit Of VVMF's Books.

Sherwood's assertion that the VVMF turned down a one million dollar grant from the DAV in order to avoid an audit of VVMF's books is one of the most malicious and harmful falsehoods

in the entire series. (Sherwood Series, 11-7-83, Tr. pp. 2-3; 11-9-83, Tr. pp. 2-3) DAV officials have strongly and repeatedly denied it. Although DAV has understandably sought to avoid publicly embroiling itself in this controversy, it has shown no reluctance to set the record straight privately, to deny that Sherwood's spokesman, John Fales, had authority to speak on behalf of DAV, and to verify that what Fales said is false. (Fales was an early and vigorous critic of the Memorial. He is now associated with the Vietnam Veterans Leadership Program.)

The facts are as follows: In the summer of 1981, VVMF had a series of meetings with DAV to request financial assistance. DAV was generally supportive and indicated a willingness to assist in VVMF's fundraising. VVMF furnished DAV with fundraising information and financial reports. Sandie Fauriol, who was in charge of VVMF fundraising, gave the DAV representative a full briefing. DAV, however, requested additional information that was not then available -- the precise construction cost of the Memorial. Although VVMF had contracted with a construction management firm, the required data relating to construction costs did not become available until January, 1982. The delays in compiling this information were primarily due to uncertainties inherent in the project, such as the cost of engraving more than 57,000 names on the granite slabs. This task involved a new artistic process and unprecedented technical problems. Moreover, solicitation of bids on this task did not commence until December 22, 1981.

When VVMF finally had preliminary construction figures available, fundraising efforts had progressed beyond expectation and were nearly at an end. There was, therefore, no need to request further fundraising assistance from DAV. Moreover, DAV had made it clear to VVMF at the outset that it would only consider a contribution if and when VVMF truly needed it to complete the Memorial. By January, 1982 it was apparent that VVMF would soon reach its goal through its own continuing fundraising efforts.

The issue of a DAV audit of VVMF's records was never raised during the meetings with DAV in 1981. Contrary to Sherwood's assertion, the DAV never asked permission to perform such an audit; VVMF never denied such a request from the DAV. This is another Sherwood deception.

10. Sherwood Misrepresented H. Ross Perot's Involvement In VVMF'S Affairs And The Nature Of Perot's Demands For An Audit.

After the panel of competition judges unanimously chose Maya Ying Lin's design, H. Ross Perot became an outspoken critic of the Memorial. He led the effort to modify the design. He participated personally in the debate. He intervened with government authorities including Secretary of Interior, James Watt, who had approval authority over the Memorial groundbreaking and construction. He opposed the Memorial groundbreaking and subsequently tried to deter VVMF from going forward with the National Salute.

By the time he first requested access to VVMF's books and records in May, 1982, the relationship with Perot had become extremely strained. Perot's pressure mounted. He involved EDS employee, Richard Shlakman, and engaged various attorneys, including Roy Cohn to press his demands for an audit. VVMF became suspicious of his intentions, however, when it was unable to obtain specifics from Perot as to any allegation he had of financial misconduct. Repeatedly, the Independent Audit Committee offered to investigate any allegations he wished to make. None were forthcoming. Accordingly, upon the advice of the Independent Audit Committee, VVMF rejected Perot's demands.

Sherwood further misled the public by leading it to believe that the VVMF wasted money by hiring its own auditors paid from donations rather than agreeing to a "free" audit by Perot. (Sherwood Series, 11-9-83, Tr. p. 2) In fact, when Perot first made his offer to perform an audit, VVMF's outside auditors, Peat, Marwick, Mitchell & Co., were within days of publishing their audit report for fiscal year 1982, and had already performed almost all of the field work necessary to complete it. This was Peat, Marwick, Mitchell & Co.'s third annual audit of VVMF.

11. Sherwood Misrepresented VVMF's Record
In Direct Mail Fundraising.

Sherwood asserted that VVMF, in its direct mail campaign, spent one dollar to make one dollar. (Sherwood Series, 11-8-83, Tr. p. 5) This charge of waste is false. VVMF netted

over 1 million dollars on direct mail. These funds were critical to the early growth and development of VVMF. Moreover, success in direct mail, and the general awareness which resulted from that effort, put the VVMF in a position to make a successful appeal to corporations, Veterans organizations and other sources of contributions.

Sherwood further misled the TV audience by suggesting that overall fundraising costs exceeded 60% of total contributions. (Sherwood Series, 11-8-83 Tr. p. 5) Sherwood had reviewed the Report to Congress and knew, or should have known, that the 60% figure was inaccurate. VVMF's fundraising costs were 2.1 million dollars -- 25.8% of the total contributions. This performance easily meets the Better Business Bureau standard that, on an annual basis, fundraising costs should not exceed 35% of amounts contributed.

12. Sherwood Misled The Viewing Public By
Falsely Alleging That VVMF's Report To
Congress Contained Misstatements Of Fact.

During the broadcast of November 8, 1983, Carlton Sherwood alleged that the VVMF Report to Congress contained several misstatements of fact. (Sherwood Series, 11-8-83, Tr. pp 4-5) Each allegation he raised to support this charge is false.

First, Sherwood alleged that the figure for Memorial development cost contained in the VVMF Report to Congress was inconsistent with the amount represented by Jan Scruggs:

"[m]emorial development cost, according to the Report, suddenly skyrocketed to nearly five million dollars, that compared with 2.6 million dollars, which Scruggs admitted to previously."

(Sherwood Series, 11-8-83, Tr. p. 4)

But the Report to Congress stated that VVMF, at that time, had spent only \$3,909,714 -- not "nearly five million dollars" -- for development and program costs combined. Scrugg's statement is completely consistent with the amount stated in VVMF's Report.

Sherwood's baseless allegation stems from his own misreading of the clear words of the Report to Congress. He apparently cited as the cost of construction the sum of all funds expended, including some plainly identified in the Report as spent on "Furniture and Equipment Acquisitions" and on "Fund Administration." While Sherwood acknowledged his mistake, and issued a retraction, during the November 9, 1983 broadcast, he gave an inadequate and disingenuous explanation for his mistake, refusing to acknowledge full responsibility for the error. Thus, he stated that the allegation of discrepancy "was a result of [VVMF's] including other costs [in] their report to Congress. . . ." (Sherwood Series, 11-9-83, Tr. p. 4) This alleged lack of clarity in the Report is unfounded, since it presents the relevant figures separately and clearly.

Second, Sherwood alleged that the amount of collected funds set forth in the Report to Congress was inconsistent with

the amount identified in VVMF's audit report. Specifically, he alleged that the Report to Congress had indicated 6.8 million dollars raised, whereas the audit report indicated 9 million dollars. (Sherwood Series, 11-8-83, Tr. p. 4). In fact, there is no such discrepancy. The Report to Congress plainly shows the gross sources of funds, the cost of fundraising, and net funds of approximately 6.8 million dollars. These figures are completely consistent with VVMF's audit report. In his November 9, 1983 broadcast, Sherwood acknowledged that he had erred and that this allegation was baseless. Yet, again, he failed clearly to explain the reason for his mistake. He claimed that "confusion resulted over the use of the word gross and net amounts in the different reports." (Sherwood Series, 11-9-83, Tr. p. 4) The confusion, however, was Sherwood's. VVMF doubts that Sherwood's "confusion" was unintentional.

Third, and most importantly, Sherwood challenged as "the most misleading information in the Report" the statement that VVMF expenses had satisfied the cost-benefit standards set by the Better Business Bureau ("BBB"). (Sherwood Series, 11-8-83, Tr. p. 4). But it should have been clear to Sherwood from the documents he reviewed that this statement is true.

Sherwood first contended that the VVMF failed to meet BBB standards because the ratio of fundraising expenses to contributions was about 1 to 1, while the BBB standard calls for a ratio of .35 to 1. (Sherwood Series, 11-8-83, Tr. p. 5) Yet the

BBB standard was clearly set forth in VVMF's own Report, and, as that Report clearly indicated, the ratio of fundraising costs to total contributions made was well below the 35% guideline. VVMF has not represented in its Report to Congress, or anywhere else, that fundraising costs constituted less than 35% of funds that can be indisputably attributed to direct mail efforts. There is, therefore, no basis for Sherwood's allegation that the Report to Congress is misleading.

Sherwood also charged that VVMF failed to meet BBB standards because it did not spend 50% of its total income on programs. (Sherwood Series, 11-8-83, Tr. p. 4) It is true, as the audit reports available to Sherwood make clear, that the National Salute and Programs, listed as fiscal year 1983 expenses, by themselves do represent an expenditure of 48% of VVMF's total fiscal year income. But this computation does not include the amount spent during that year on construction of the Memorial -- an amount clearly and separately identified in the audit report. When this amount is taken into account, as BBB acknowledges it must be, VVMF spent in fiscal year 1983 253.35% of its total fiscal year income on programs, a figure which exceeds the BBB guidelines by a factor of 5. Thus, in fiscal year 1983, VVMF spent on programs more than two-and-one-half times the amount it raised in fiscal year 1983. This is so because of the heavy construction costs incurred then.

In sum, each of the allegations Sherwood made about misleading statements in the Report to Congress is, itself, misleading or unfounded and is yet another example of Sherwood's bias and distortion.

13. Sherwood Falsely Reported That VVMF Offered Milton Copulos An Open-Ended Fifty Dollar
• An Hour Consulting Agreement.

Sherwood and Milton Copulos falsely reported that the VVMF offered Copulos an open-ended consulting contract at the rate of \$50 per hour. (Sherwood Series, 11-7-83, Tr. p. 3; 11-8-83, Tr. pp. 6-7)

Copulos was never offered \$50 per hour by the VVMF. He was never offered any open-ended consulting contract. He was asked to serve on the sculpture panel with three other individuals for the purpose of selecting a sculpture to add to the Memorial. For this limited task, and because it was anticipated that it would require time away from his job, he, along with other members of the panel, were offered \$80 per half-day, or \$20 an hour, plus reasonable out-of-pocket expenses. This amount is documented in VVMF records and was specifically approved by the VVMF Board of Directors. No other amounts were offered or approved by VVMF.

14. Sherwood Engaged In A Vindictive, Personal
Attack Upon VVMF Chairman John Wheeler.

Following through on a threat to "get" and "nail" VVMF Board Chairman, John Wheeler (see pp. 35-36 of this memorandum), Sherwood engaged in a personal attack against Wheeler that had

nothing to do with the subject matter of his TV series and was intended solely to injure Mr. Wheeler's reputation and to damage VVMF. Sherwood's attack consisted of a substantially incomplete and misleading report about an incident that occurred 14 years ago. Sherwood's report was based on military personnel records apparently obtained in violation of the Privacy Act, 5 USC § 552(a).

Sherwood reported that John Wheeler "became the subject of disciplinary action for misappropriation of government property"; that he was "cited for conduct totally unbecoming an officer"; that "in 1971, with the Vietnam War at its height, he resigned his commission from the Army"; and that "as Chairman of the Memorial Fund, he can authorize expenditures up to \$5,000.00." (Sherwood Series, 11-8-83, Tr. p. 1)

With defamatory innuendo, Sherwood led the average viewer to believe that John Wheeler stole government property, resigned from the Army because of it, and is now stealing VVMF assets.

The facts are these: In 1969, shortly after he arrived in Vietnam, Wheeler was reprimanded administratively for using a jeep for official business that was not assigned to his unit's motor pool. Wheeler was unaware that the jeep in question was not part of his motor pool. Afterwards, his duties and assignment in Vietnam remained unchanged. His performance in Vietnam was exemplary, and, at the completion of his tour, he was recommended for a sensitive staff assignment at the Pentagon. He resigned from the

Army in 1971, after service at the Pentagon. He received an honorable discharge. His resignation had nothing to do with his Vietnam service. In fact, his military superiors urged him to remain in the Army and, upon his departure, he received the Joint Service Commendation Medal.

Sherwood's handling of this matter is actionable. It is consistent with his handling of the entire series. It proves actual malice both in the legal and personal sense.

15. Sherwood Failed To Disclose That He And Each Of The Key Critics Who Appeared In The Series Have Been Vigorous Opponents Of The Work Of The Memorial Fund.

Sherwood's series relies heavily on statements made by opponents of the Memorial, including Sherwood himself. But the series withheld from the viewing audience the fact that Sherwood and each of the chief witnesses he assembled to prosecute VVMF had been long-standing, bitter enemies of VVMF.

It is ironic, in light of the fact that these individuals are now criticizing the manner in which VVMF expended funds, that their efforts to modify the Memorial design have cost VVMF hundreds of thousands of dollars. These costs include a statue which will exceed four hundred thousand dollars, an entrance plaza to house the flagpole and sculpture which has already cost over two hundred thousand dollars, and extensive expenses associated with presentations to government-approval agencies.

The following discussion documents the bias of Sherwood and those who collaborated with him.

A. Tom Carhart

For approximately three years, Tom Carhart has been one of the most vocal and ardent critics of the design of the Memorial and the work of the VVMF. He was a leader in the crusade to block and/or modify the Memorial. It was Carhart who wrote that the Memorial is "the final insult" -- a "black gash of shame and sorrow, hacked into the national visage that is the Mall". He called it "a black hole" (Houston Chronicle, article by Carhart, 10-28-81) and a "ditch that does not recognize or honor those who served." (The Huntington Herald-Press, Huntington, Indiana, quoting a UPI story, 12-8-81) Carhart has announced his own long-range plans for the Memorial: "[W]e must fill the trench in, then plant flowers on top and install the flag and statue." (The Washington Times, article by Carhart, 10-12-82). Milton Copulos, another outspoken critic of the Memorial, credits Carhart as being the catalyst in energizing and coordinating the opposition to the Memorial ("Background to Betrayal", Milton Copulos, Soldier of Fortune Magazine, May, 1983).

Carhart was himself an unsuccessful entrant in the Memorial design competition. With regard to the winning design, Carhart has asserted that "it's more a memorial to Jane Fonda than to the Vietnam Veterans" (Times News, Twin Falls, Idaho, UPI article quoting Carhart, 12-8-81). In his own words, Carhart

"spent over a year slugging this out [with the VVMF]." (The Washington Times, Carhart letter to Editor, 10-6-82) He threatened a lawsuit to block construction of the Memorial. (The Army Times, article by Laurie Parker, quoting Carhart, 1-18-82)

During Sherwood's series, Carhart could not surpress his intensity. He accused the VVMF of having "lied and dissembled and used us in a very dishonorable, insulting, dirty way." He suggested that the VVMF was comprised of "slimy, treacherous, dishonorable, dirty people," and theatened: "I won't rest until I see that things have been righted." (Sherwood Series, 11-9-83, Tr. pp. 3-4) Carhart, who is now employed by the Vietnam Veterans Leadership Program, cited no facts, incidents or proof for any of his accusations.

B. Milton Copulos

Copulos, too, aggressively criticized the design and assisted in efforts to generate a movement at the Department of Interior and in Congress to block construction of the Memorial. (Huntington Herald-Press, Huntington, Indiana, quoting a UPI story, 12-8-81; Mail, Catskill, N.Y., 12-23-81; Chronicle, Centralia, Washington, article by Copulos, 12-16-81) Copulos labeled it a "tombstone" (The Federal Times, article by Laurie Parker, quoting Copulos, 12-28-81). He, along with Perot and others, participated in what Copulos terms the "heated debates" over the design and helped draw up the "lines of attack" which led to a "flurry of activity," including resort to "media

outlets," a "search of congressional support" and an effort to influence "contacts within the Reagan administration." ("Background to Betrayal", Copulos, Soldier of Fortune Magazine, May, 1983) Copulos' name has appeared frequently in the press, along with the names of other individuals featured prominently in Sherwood's series, as members of the core group of anti-Memorial activists. Copulos, as Director of Energy Studies at the Heritage Foundation, used his influence and access to intervene against the Memorial with Secretary Watt and his staff at the Department of Interior. He denounced the religious services of reconciliation that were part of the National Salute to Veterans. (Washington Times, article by Copulos, November 12, 1982)

Copulos, too, has threatened that the fight over the Memorial is not over and indicated that he and others will continue to seek a legislative modification of the Memorial design. ("Background to Betrayal", Copulos, Soldier of Fortune Magazine, May, 1983, p. 88)

C. H. Ross Perot

Perot, a Texan of great wealth, was an early and generous supporter of the VVMF efforts to build the Memorial. He helped to fund the design competition, but he would not accept the results of the contest. (The Dispatch, Moline, Ill., article by Patrick Buchanan, 12-27-81) As soon as Maya Ying Lin's design was chosen, he became a sharp and vigorous critic of the Memorial

and VVMF. He fought hard to reverse the result. He intervened with Secretary Watt and opposed Memorial groundbreaking. He led the effort to modify the design. He assigned employees of his company, Electronic Data Systems (EDS) to help fight the VVMF.

Ever since he mounted his attack on the Memorial, Perot has been critical of VVMF. When he demanded another audit of VVMF's books and records (see pp. 22 and 23 of this memorandum), his motivations were viewed with suspicion by the VVMF. VVMF finally and reluctantly, concluded that Perot was willing to go to great lengths and expense to impose his will on the organization. A lawyer who represented Perot in making his demand for a special audit described him as the proverbial "800 pound gorilla" who is accustomed to getting his way.

When Perot demanded access to VVMF's books and records, he suggested he knew of financial improprieties within the VVMF. He repeatedly declined, however, to identify any such improprieties to VVMF's Independent Audit Committee, which committed itself to investigate any such allegation. It was no surprise to observers of the Memorial design controversy and to those who may have seen him on "Sixty Minutes" or "Nightline" to see Perot featured prominently in the Sherwood series, again raising non-specific allegations against VVMF.

D. Carlton Sherwood

During the course of Sherwood's work on the TV series, the VVMF heard of truly shocking conduct by this purportedly unbiased reporter. The VVMF gave WDVM-TV a copy of an affidavit from a highly decorated and credible Vietnam veteran that reports the substance of several conversations between the veteran and Sherwood:

(1) In 1981 Sherwood had vigorously criticized the Memorial and told the veteran that he was on the "wrong team"; Sherwood inquired how the veteran could support a Memorial designed by a "fucking gook"; Sherwood referred to the Memorial as a "black gash" and a "liberal memorial" and said that groundbreaking would never occur.

(2) During recent conversations, Sherwood had stated that he was going to "nail" and "get" John Wheeler, the Chairman of the VVMF, who he falsely referred to as a "thief"; Sherwood described the work of the VVMF as a "left wing statement" and said that he was going to expose it as such; Sherwood falsely asserted that VVMF had paid Congressman Don Bailey \$5,000 to silence his criticism of the Memorial and had paid Maya Ying Lin substantial monies to win her support; Sherwood had threatened to put Jan Scruggs' name on the Memorial; and in an incredible act of journalistic impropriety, Sherwood offered to "kill" the story on VVMF in exchange for an admission by VVMF officials that VVMF had misspent monies and made mistakes.

VVMF argued to WDVM-TV that the station should, at least, disclose to the viewing public that Sherwood had strong biases against VVMF and its leaders. The station responded by making no disclosure to the public.

E. James Webb

James Webb, like the others relied upon in Sherwood's series, has been an active critic of the work of VVMF. In December, 1981 he wrote that "the Memorial chosen through the recent design competition, as other detractors have maintained, is a nihilistic statement that does not render honor to those who served." (Wall Street Journal, article by Webb, 12-18-81) In the same article, Webb referred to the Memorial as a "travesty" and an "unwinnable paradox." He asked pointedly, "[a]t what point does a piece of architecture cease being a memorial to service and instead become a mockery of that service, a wailing wall for future anti-draft and anti-nuclear demonstrators." In the same article Webb commends Perot for opposing the Memorial and asserts that the Memorial is "a place to go and be depressed" which honors only the dead. In that article, he went so far as to report, with approval, comments likening the Memorial to the "ovens at Dachau." Webb endeavored for months to persuade VVMF not to construct the Memorial in a manner consistent with the competition winning design. (Federal Times, article by Laurie Parker, 12-28-81) He participated in a press conference just before the National Salute to Veterans to criticize the

Memorial. Webb also retained an attorney and threatened to sue VVMF. In December, 1982, Webb, Perot, Copulos, Carhart and Rep. Duncan Hunter met with Secretary Watt to block the plans for the Memorial's entry plaza. Understandably, Milton Copulos, in his article on the history of the opposition to the Memorial, includes Webb, along with Carhart and Perot, in the core group of Memorial opponents.

IV. CONCLUSION

The television series presented by former WDVM-TV agent and employee, Carlton Sherwood, contains significant, libelous material. It has done serious damage to VVMF, its officers, directors and contributors. It has injured the Memorial and those honored there. It has undermined much of the good will created by the Memorial and the National Salute to Veterans. It was presented by a reporter who has repeatedly demonstrated an intense bias against VVMF.

In addition to being defamatory, the series constitutes a personal attack against the honesty, character and integrity of VVMF, John Wheeler, Jan Scruggs and others associated with VVMF. It deals in a disgraceful manner with a controversial issue of public importance. The evidence shows it was done with actual malice. That malice is aggravated by the fact that prior to broadcasting the series, WDVM-TV was put on notice, in writing, of the inaccuracy of several items ultimately contained in the series.

RADIO-TV MONITORING SERVICE, INC.

3408 WISCONSIN AVENUE, N.W.

WASHINGTON, D.C. 20016

244-1901

PROGRAM: EYEWITNESS NEWS	DATE: MON., NOV. 7, 1983
STATION OR NETWORK: WDVM TELEVISION	TIME: 6:00 PM

CONTROVERSY OVER THE VIETNAM MEMORIAL

GORDON PETERSON, EYEWITNESS NEWS: Like the Vietnam War itself, the National Memorial honoring the 58,000 men and women who gave their lives in Southeast Asia is no stranger to controversy.

(FILM SHOWN)

Earlier disputes centered on the design itself, a black granite monolith devoid of flags, statues or inscriptions, things we've come to associate with memorials to other wars. Some hailed the simple design as a stroke of genius, while others, mostly Vietnam veterans themselves who had been excluded from the selection process, called it a national disgrace, a final insult.

Eyewitness News investigative reporter Carlton Sherwood has just completed a five month examination of the Vietnam Veterans Memorial Fund. He found that even while those arguments over the design raged on publicly, more intensely serious problems were developing behind closed doors, problems which had nothing to do with esoterics or architecture, but dealt instead with things such as promises made and broken, accountability, and, at the center of it all, money.

CARLTON SHERWOOD, EYEWITNESS NEWS: Financial records obtained by Eyewitness News show that since 1980, the Vietnam Veterans Memorial Fund, a non-profit corporation created to oversee construction and raise funds to complete the memorial, collected at least nine million dollars, yet spent less than a third of those contributions for construction of the memorial itself. So where did the remaining six million dollars go? One place it didn't go was the Peace and Brotherhood Chapel in Eagle's Nest, New Mexico. In 1979, the Memorial Fund promised to give \$100,000.00 to the chapel founder, Dr. Victor Westphall.

Since 1979, you haven't heard or received anything from them in that period of time?

DR. VICTOR WESTPHALL, FOUNDER, MEMORIAL CHAPEL: No, nothing.

SHERWOOD: Another apparent promise to Vietnam veterans involved this memorial in South Boston.

TOM LYONS, MARINE VIETNAM VETERAN: There was no--you know--I doubt in my mind that they were going to come to our aid like the cavalry, but they have left us high and dry like Custer.

SHERWOOD: We'll be talking to Tom Lyons and Dr. Westphall again in subsequent parts of this series. They and other veterans want to know where the Memorial Fund spent more than six million in contributions. When we asked the Memorial Fund to show us, to let us see their books, we were met with this--

JAN SCRUGGS, VIETNAM VETERANS MEMORIAL FUND: We feel that any responsible organization just doesn't open their books to everybody and their brother who comes along.

SHERWOOD: But, as it turned out, others before us, even people who had donated hundreds of thousands of dollars to the memorial had made similar requests.

H.ROSS PEROT, PRESIDENT, TEXAS INSTRUMENTS: A number of veterans called me over the phone and alleged that the money was being misspent. I went to the Vietnam Veterans Memorial Fund, I went to Jan Scruggs privately and quietly and told him that I had received these calls. I suggested to him that I hire a Big Eight accounting firm to do a detailed audit of VVMF's books. VVMF was not willing to allow me to either look at the books personally or have an accounting firm do a detailed audit.

SHERWOOD: Even a veterans organization which wanted to donate to the memorial, but first needed to inspect the corporation's records, was rebuffed.

How much money were they offering to pledge to the memorial fund?

JOHN FALES, MARINE VIETNAM VETERAN: Oh gosh, when the Disabled American Veterans get involved, it's not the money, it's the blood, sweat, tears and it could have been any amount. I would estimate over a million dollars.

SHERWOOD: So essentially, what you're saying is, for a million dollars, the Memorial Fund wouldn't open up their books?

FALES: Well, they haven't given them money, so I guess they haven't shown them the information they requested.

SHERWOOD: While a million dollars couldn't persuade the corporation to disclose how they were spending their funds, Eyewitness News has obtained copies of the organization's internal audit reports. These reports, however, raise even more questions. As of March, 1983, corporation reports show more than two million in surplus funds have been put into investments and used to finance the corporation's continued operations. Costs like this \$200,000.00 in salaries and this \$70,000.00 bill for professional fees. There's a \$45,000.00 tab just for office rent, and a phone bill of over \$11,000.00.

Hundreds of thousands more in contributions were diverted to pay for such things as parade expenses, sale items, knick-knacks and public relations. Even more donations paid the fees of unnamed consultants, in one case \$120,000.00 during a single week period last year, and more than half a million dollars since 1980.

MILT COPULOUS, ARMY VIETNAM VETERAN: They asked me-- explained that salary wasn't important. I have a consulting practice which is a principal source of income. They then offered to hire me as a consultant, and offered me a fairly high rate, \$50.00 an hour, which would be about \$400.00 a day or in excess of \$100,000.00 a year.

JAN SCRUGGS, VIETNAM VETERANS MEM. FUND: If offering people consulting fees to take part in the meetings and so forth, if you don't feel that's right, that's okay. We had to do a job, you know, we did it right, I think.

SHERWOOD: Not so, say the experts. At least not to the extent the Memorial Fund uses its donations.

ARTHUR B. HANSON, MARINE CORPS MEMORIAL: I'm constantly amazed at the desire of people to hustle people, and in my view, any non-profit memorial of any kind that takes more than 25% of its funds for administration, promotion and the like has exceeded the bounds of propriety in this game.

SHERWOOD: Arthur Hanson should know. He headed up the construction of another famous monument to America's war dead: the United States Marine Corps Memorial.

HANSON: If you've been involved in this, you don't need consultants on it, except for a very little bit to make sure that you set your goals properly on what you're trying to raise and so on, and I would think it would be an abuse of the trust that people in this work are involved in to have people paid--

SHERWOOD: Does the Vietnam Veterans Memorial Fund meet minimum B.B.B. standards?

LIZ DOGHERTY, BETTER BUSINESS BUREAU: No they do not. According to our latest evaluation, the Vietnam Veterans Memorial Fund fails to meet three of the B.B.B. standards. One standard calls for a reasonable percentage of public contri--of total income to be spent on program services, and they spent 48% of their total income on programs. We generally look for at least 50% to be spent on programs.

SHERWOOD: So who decides how the Memorial Fund will use its donations? We'll answer that question tomorrow, and show you how corporation officials explain their fund-raising and spending practices.

(END OF FILM)

MAUREEN BUNYAN, EYEWITNESS NEWS: This series will continue throughout the week, and we also have a related story. Investigative reporter Carlton Sherwood was charged this weekend with illegally taping a conversation with John Wheeler, the board chairman of the Vietnam Veterans Memorial Fund. A December 9th trial date has been set in Montgomery County. If found guilty, Sherwood could face up to five years in jail or a \$10,000.00 fine. Kent Jarrell reports.

(FILM SHOWN)

KENT JARRELL, EYEWITNESS NEWS: On Saturday, Sherwood, who is a Pulitzer Prize and Peabody Award winner was released on his own recognizance. On Friday, Sherwood went to Wheeler's Bethesda home to ask him questions for the Vietnam Memorial series. Wheeler initiated the court complaint, charging Sherwood illegally recorded his conversation without his permission. Sherwood says he was wearing this microphone in his tie. It was attached to this transmitter on his belt. A WDVN camera crew was outside the house in a car recording the transmissions, but WDVN says the recording was stopped just after Sherwood entered the house. Moments later, Wheeler noticed the microphone and indicated he did not want to be taped. Sherwood said he put the microphone and the transmitter into his jacket pocket and the jacket was placed in another room by Wheeler for the duration of the interview. The tape used that day was erased and put back into circulation on Friday, because it was deemed unimportant.

John Wheeler would not comment on the case today, saying "it's now a matter before a criminal court". But Wheeler did say "the important thing this week is the memorial. It's beautiful and I hope people visit it". The president of the Vietnam Veterans Memorial Fund has tried to get Sherwood taken off the story.

JAN SCRUGGS, VIETNAM VET. MEMORIAL FUND: We feel that he is biased against the memorial, he has been actively involved since 1981 in the effort against it. At that time, he referred to the young designer, according--from this affidavit as a "gook".

JARRELL: Sherwood has strongly denied those allegations to WDVN news director Dave Pearce who says no illegal action was taken Friday.

DAVE PEARCE, WDVN NEWS DIRECTOR: There was no question in my mind that we violated anything that would bother me in terms of fairness. There was no concealed interview, we didn't walk in with a concealed microphone in an attempt to get him to say something that we could use against him later. There was nothing concealed.

JARRELL: Pearce also says Sherwood went to Wheeler's home as a last resort to try to get Wheeler's side of the story. Memorial Fund officials have also charged that documents in their office disappeared on September 8th when Sherwood was there for an interview. A complaint was filed with D.C. police, but no action was taken, because of insufficient information. I'm Kent Jarrell, Eyewitness News.

(END OF FILM)

GORDON PETERSON: Once again, a reminder. Carlton Sherwood will have part two of his series tomorrow.

The founder and executive director of the Vietnam Veterans of America today told his fellow members they must serve as the conscience of America. Thirty-eight-year-old Robert Muller, a former Marine officer who is confined to a wheelchair because of his wounds says Vietnam veterans must make sure that the nation never forgets that war. Said Muller, "I think we have an obligation to make sure succeeding generations understand there is a lot more to war than political rhetoric". Among the top priorities of the VVA is passage of a bill to provide compensation for illnesses suspected of having been caused by the defoliant Agent Orange.

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"VIETNAM: A BROKEN PROMISE"

GORDON PETERSON, EYEWITNESS NEWS: Tonight on Eyewitness News, investigative reporter Carlton Sherwood continues his report on funding for the Vietnam Veterans Memorial. As Carlton reported last night, the non-profit corporation set up to build the memorial raised nine million dollars. One third of that amount was spent on the actual construction. Tonight, Carlton examines how the contributions were spent, with a look at the man responsible for the funding operation.

(FILM SHOWN)

CARLTON SHERWOOD, EYEWITNESS NEWS: At the helm of the Vietnam Veterans Memorial Fund is this man, John Wheeler. Since 1979, Wheeler has served as the organization's chairman. A West Point, Yale Law School, and Harvard Business School graduate and currently special counsel to the chairman of the Securities and Exchange Commission. Wheeler's commentaries on his war experiences have been published in some of the country's most prestigious newspapers, and he's been one of the nation's leading spokesmen for Vietnam veterans.

Army records show that after Wheeler graduated from West Point in 1966, he asked to be sent not to Vietnam where 10 percent of his classmates gave their lives, but to Harvard, where he earned a master's degree in business. Records also show that he never served in combat, but was assigned to Army Division Headquarters at Long Bend as an administrative officer.

Within several weeks of arriving in Vietnam in 1969, Captain John Wheeler became the subject of disciplinary action for misappropriation of government property. He was cited "for conduct totally unbecoming an officer". In 1971, with the Vietnam War at its height, he resigned his commission from the Army. As the chairman of the Memorial Fund, Wheeler can authorize expenditures up to \$5,000.00. According to the corporation's charter,

he has a responsibility to the fund's day-to-day operations. In the past, Wheeler has been a more than willing spokesman, but when we made repeated requests for interviews, he refused to even come to the phone. Only after we sent several telegrams to his office and home did he respond in this letter, appointing the corporation's president, Jan Scruggs, as the official spokesman. Scruggs, he said, was completely knowledgeable concerning the funds operation and would answer any of our questions.

After three postponed interviews, Scruggs agreed to see us. A little more than halfway through the interview, both Scruggs and his attorney walked out. They had another appointment, they said, and would get back to us later, possibly to continue the interview, but definitely to answer any questions we had.

JAN SCRUGGS, PRES., VIETNAM VETERANS MEMORIAL FUND:
I'll give you a call tomorrow and let you know, okay?

SHERWOOD: Well, you're going to give me a call tomorrow and let me know, but I'll tell you right now, there's about--you know, just so we have this for the record, there's approximately one third of the questions I have to ask that you have not answered, and out of the questions I have asked, okay, there's about a third out of those that you have to supply me--or you say you'll supply me with information on.

SCRUGGS: Sure, sure. We'll do that.

TERRENCE O'DONNELL, MEMORIAL FUND ATTORNEY: We'll get you the answers to the questions he couldn't answer and he's going to let you know about continuing the interview, but he's not going to stay here at six, seven o'clock at night to finish it tonight.

SHERWOOD: That was on September eighth. Since then, Scruggs has refused to answer any questions. As for the questions Scruggs did respond to, simple inquiries like how much has the Memorial Fund raised, it went like this--

SCRUGGS: Well, I guess you've had an opportunity to review our audit reports and so forth, so you should know. How much did we raise?

SHERWOOD: We have your audit figures which show between nine and ten million dollars, depending on how you want to adjust the figures--we'll use your own black and white figures, between nine and ten million dollars--you've raised between nine and ten million dollars.

SCRUGGS: In terms of the net sources of funds for the memorial, we've raised 6.875 million dollars.

SHERWOOD: And in fact, you've raised in excess of nine million dollars to construct that memorial, is that not correct?

SCRUGGS: We've raised not in excess of nine million, now, about nine million.

SHERWOOD: The responses were much the same when we asked how much had been spent on the memorial itself.

SCRUGGS: By our accounting, all the money that the organization has spent has been for the memorial.

SHERWOOD: Okay, how much did you actually pay Gilbane for the memorial?

SCRUGGS: The actual construction cost, yours was about 3.3 million dollars--

SHERWOOD: According to your own records, the construction cost of the memorial is 2.6 million dollars. Is that correct?

SCRUGGS: As of that fiscal year for actual construction, that's right.

SHERWOOD: For 1983?

SCRUGGS: Up to 1983--2.6 million dollars was the cost of the memorial--the actual cost of the construction. It has nothing at all to do with administration or competition or anything else; it was 2.6 million.

SHERWOOD: By your own accounting?

SCRUGGS: That's what it says in the audit report and that's correct.

SHERWOOD: And it's paid for, is it not? The memorial--I'm talking about the memorial itself. Do you have a mortgage or something on it that we're not aware of?

SCRUGGS: A mortgage on the memorial?

SHERWOOD: Um-hmm.

SCRUGGS: The two walls have indeed been paid for, that is correct.

SHERWOOD: Then there is this financial report released to Congress by the Memorial Fund just four days after our interview. Memorial development cost, according to the report, suddenly skyrocketed to nearly five million dollars, that compared with 2.6 million, which Scruggs admitted to previously. As for the bottom line on funds collected, Congress was told that 6.8 million had been raised, not the nine million confirmed in the Memorial Fund's own audit reports. But perhaps the most misleading information in the report was this statement: "The Memorial Fund's expenses have been substantial, but they have fallen far below the cost-benefit standards set by the Better Business Bureau."

SHERWOOD: When was the last time you heard from the Vietnam Veterans Memorial Fund, up until this--most recently?

LIZ DOGHERTY, BETTER BUSINESS BUREAU: I believe the last time was in 1982 when they told us that they were not doing any more fund-raising. That was in August of '82.

SHERWOOD: And the fact that they were closing down?

DOGHERTY: Yes, that they were closing down, the memorial was complete, and they would no longer be operating.

SHERWOOD: Were you surprised to find out that the Memorial Fund was still in operation?

DOGHERTY: Yes, and we wrote to them for new information and obtained that, and this evaluation that we're talking about is based on that new information.

SHERWOOD: Does the Vietnam Veterans Memorial Fund meet minimum B.B.B. standards?

DOGHERTY: No, it doesn't. Specifically, they do not meet the standard that calls for a reasonable percentage of total income to be applied to the programs. They spent 48 percent of their total income on programs, and our guidelines call for at least 50 percent to be spent on programs.

SHERWOOD: One of the major reasons the Memorial Fund failed to pass muster at the Better Business Bureau is because of its enormous expenses. Since 1980, for example, the fund spent 2.1 million dollars, mostly all for direct mail fund-raising. Corporation records show, and Scruggs even admitted that 25 percent of all contributions resulted from fund-raising. If that's true and nine million dollars had been raised, simple math indicates the effort would have been a barely break-even situation. Scruggs, however, sees it differently.

SCRUGGS: Sure, direct mail costs a lot of money and we spent a lot of money raising funds through direct mail, but we had a job to do, and that job was to build the Vietnam Veterans Memorial. We built it, we raised sufficient funds to build it.

SHERWOOD: You just said to me that you spent 25 percent of your gross for mass-mailing. You spent it, and you gained--you expected, you know, you expected--you tell me 2.1 million dollars. Okay, if you're telling me you only made nine million dollars, you spent 25 percent easy. And you're telling me you only gained 25 percent of your gross, so it seems to me that what you did is, you paid somebody one dollar to raise one dollar for you. Now, you explain that one to me, because I haven't figured that one out yet.

SCRUGGS: The off-hand figure that I recall is it cost about sixty cents to raise a dollar through direct mail. It's not great, but it's pretty much in line with what any organization would--

SHERWOOD: No sir, it's not. It is not. Sixty cents on the dollar is not, by all the experts.

DOGHERTY: Our guidelines say that you should spend no more than thirty-five cents of each dollar you receive on fund-raising costs. In other words, your efforts to generate those funds should not exceed thirty-five percent of the funds you receive.

SHERWOOD: In your experience, what is the average, nationwide, of these legitimate groups that meet your standards?

DOGHERTY: The vast majority of organizations we report on do meet our standards.

SHERWOOD: They've come way in below, or just around the edge?

DOGHERTY: Most of them come way in below.

SHERWOOD: For instance, can you just throw out a figure?

DOGHERTY: This is purely off the top of my head: somewhere in the 20 percent to 30 percent range is where most of them fall, I would say.

SHERWOOD: How much money did you make from direct mail? You must have a breakdown there.

SCRUGGS: No, I don't. I can get the information for you and certainly will.

SHERWOOD: Among the fund's expenses were tens of thousands of dollars to pay for such things as a political lobbyist--\$5,000.00 in one case--for a few weeks' work.

SCRUGGS: Oh, I think he has to have meetings with people, I think he has to attend meetings, I think he has to give advice, and that's kind of what he did.

SHERWOOD: And an all expense-paid weekend at a Washington hotel for a group of non-veteran men and their wives. It was an educational seminar, Scruggs said.

SCRUGGS: We felt that it was a good seminar, we felt that it did what we wanted it to do. It just did not turn out to be the fund-raising opportunity that we hoped it would be.

SHERWOOD: And travel expenses for apparently whomever the corporation officers decided to fly into town.

SCRUGGS: We have flown people into Washington to attend press conferences.

SHERWOOD: Like who?

SCRUGGS: A singer from Nashville whose name was Jan Howard, and the father of a Vietnam casualty from San Francisco, a retired general named Mr. Hayes. We flew them in to take part in a press conference. Yes, if there was a specific reason that we needed someone here to help us get the job done, sure, we would bring them into town.

SHERWOOD: Another large expense: hundreds of thousands of dollars in contributions paid to unnamed consultants.

MILT COPULOUS, ARMY VIETNAM VETERAN: They then offered to hire me as a consultant and offered me a fairly high rate, fifty dollars an hour, which would be about \$400.00 a day or in excess of \$100,000.00 a year.

SHERWOOD: Wait a minute, now let me get this straight. This is--Mr. Wheeler offered you \$50.00 an hour, \$400.00 a day on an open-ended contract?

COPULOUS: Yes.

SHERWOOD: For what?

COPULOUS: To consult with--I never was--I didn't pursue it, so we never really got down to the details; it wasn't very clear. My impression was that, rightly or wrongly, as much as anything else, was that that was for my cooperation. They felt that I would be a point of contact with a number of organizations that were critics and that by having me on the panel, that would give them a voice.

SHERWOOD: In your opinion, they would be paying you \$400.00 a day for what, realistically?

COPULOUS: Realistically, to insure my cooperation is the only thing I could--

SHERWOOD: That and the cooperation of other people who may be critical?

COPULOUS: And who I might be in a position to influence.

SHERWOOD: What was the average fee paid to an individual consultant, per hour, per day?

SCRUGGS: The average fee? I'm not sure that was ever broken down into an average.

SHERWOOD: What's the most? You must have some idea. Twenty dollars an hour? Twenty-five dollars an hour? A hundred dollars a day? What?

SCRUGGS: I don't know, exactly. I just don't know.

SHERWOOD: Later on, Scruggs' response was different.

What's the maximum limit you think you would ever pay on consultant fees to someone for any aspect of this, that you have paid, or offered to pay?

SCRUGGS: Oh, I would say, just from my recollection, maybe \$500.00 a day.

SHERWOOD: Jim Webb is a highly decorated Marine veteran and author of the best-selling Vietnam War novel, Fields of Fire. Like Milt Copulous, he turned down their offers.

JIM WEBB, MARINE VIETNAM VETERAN: This isn't the kind of thing you do for money. I think that--I don't want to speak for everyone personally, you know; for me to do this in a way hopefully to honor the people who served, it would sort of soil my motivations if I were to take money to do it.

SHERWOOD: Again, the bottom line: less than a third of all the funds raised to build the Vietnam Veterans Memorial were actually spent on the memorial itself.

Scruggs has no second thoughts, or, apparently, regrets.

SCRUGGS: We have been involved in some very unusual situations that we had to deal with in order to get this project finished, in order to get the Vietnam Veterans Memorial built. We did it, we did it right, we're proud of it, we're proud of what we did for our country, we're proud of what we did for Vietnam veterans, and we think it's great.

(END OF FILM)

SHERWOOD: Now, we aren't the only ones who have questioned the way the memorial funds were handled. Others before us have asked many of the same questions, and asked to see the corporation's records. Tomorrow, we'll take a look at the people in charge of the memorial funds and how they answered those requests. I'm Carlton Sherwood for Eyewitness News.

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"VIETNAM MEMORIAL: A BROKEN PROMISE, PART III"

MAUREEN BUNYAN: Tonight on Eyewitness News, investigative reporter Carlton Sherwood continues his series on the financial practices of the men in charge of the Vietnam Veterans Memorial Fund. In part three of his series, Carlton looks at the organization's record when it comes to financial disclosures.

(FILM SHOWN)

CARLTON SHERWOOD: It may come as a shock to some that less than one third of the \$9 million raised to build the Vietnam veterans memorial was used for that purpose, but not these men--John Fales, a disabled Marine combat veteran; the other, one of the memorial's earliest and largest benefactors.

In 1981, Jan Scruggs, the president of the then newly created Vietnam Veterans Memorial Fund, called Texas computer magnate H. Ross Perot, looking for financial assistance. The same day, Perot issued a check for \$160,000. One year later, Scruggs and Perot talked again on the phone, and once more money was the subject.

When did you first get any indication that there might be something not quite right with the financial arrangements with the fund, and what did you do about it?

H. ROSS PEROT, ELEC. DATA SYSTEMS: Well, a number of veterans called me over the phone and alleged that the money was being misspent. I went to the Vietnam Veterans Memorial Fund, I went to Jan Scruggs privately and quietly and told him that I had received these calls.

I suggested to him that I hire a Big Eight accounting firm to do a detailed audit of VVMF's books, and that assuming that this audit came out that they had managed their affairs properly, then I would be their face to the world and assure anyone who was concerned that the money had been handled properly.

SHERWOOD: The Memorial Fund's response to both the request and the offer?

PEROT: VVMF was not willing to allow me to either look at the books personally or have an accounting firm do a detailed audit. I think this same arrogance that causes the fellows not to let anybody see their books caused them to build-- it's a non-profit corporation that is self-perpetuating where the Vietnam veteran has no voice, no vote in the selection of the directors, and these fellows, in effect, have locked themselves in.

(They) basically were recruited as a non-profit organization, raised millions of dollars, got everything locked inside the tent, and nobody can get in, nobody can replace the directors and nobody can look at the money, and on a tax exempt operation, that's pretty unique in my experience.

SHERWOOD: The Memorial Fund officers did more than just deny a large contributor access to their books. They retained one of the country's leading criminal law firms, headed by Edward Bennett Williams, to fend off all attempts to examine their records. Despite Perot's offer, the fund hired their own accountants, paid with donations, to perform internal audits. They also announced the appointment of a blue ribbon panel of businessmen to serve as an independent audit committee.

We called those listed on the committee. The few that did respond admitted the committee has never met, much less conducted firsthand inspections of the fund's books. Through a spokesman, Paul Thayer, now deputy secretary of defense, said he was under the impression that the audit panel had disbanded, and the Memorial Fund closed. He said he hadn't heard from the organization since last January.

Joseph Allbritton, president of Riggs Bank, also refused to discuss the memorial, even on the phone. Through a spokesman, however, Albritton informed us he resigned from the committee last June and no longer had any contact with the corporation.

PEROT: I've never been able to get over to these fellows that they are the custodians of other people's money, that they have a sacred trust, that every penny of this money must be spent carefully, must be accounted for, that you can't give your friends subcontracts, you can't give people consulting fees that don't do anything and so on and so forth--all these allegations that are being made.

JOHN FALES, MARINE VIETNAM VET.: The representatives from the Disabled American Veterans, they said, geez, we want to give them all the assistance we can monetarily, having our own individual fundraisers come and work very closely with them. The only thing that we asked for was to look at their books.

SHERWOOD: John Fales is a Marine combat veteran, who was blinded in 1967 while fighting in Vietnam's demilitarized

zone. He's a member of the Disabled American Veterans, considered by many to be the most prestigious of all such national organizations, if only because its members, like Fales, are men who were wounded in combat. The DAV's credo is a simple one--if I cannot speak good of my comrade, I will not speak ill of him.

True to their motto, DAV officials declined on-camera interviews when asked to discuss their past dealings with the Memorial Fund. Privately, however, they confirmed that in 1981 they offered the Memorial Corporation a minimum \$1 million cash donation and unlimited professional assistance, but there was a catch.

Because of their own charter and strict rules of accountability, the DAV insisted upon frequent and independent examinations of the fund's records. That offer was rejected.

FALES: When they give us the information that we require by our charter, we'll be happy to help them in any way, the same way we have assisted all Vietnam veterans in all viable causes.

SHERWOOD: We had no better luck at persuading Memorial Fund officials to let us or an independent accountant, paid by Channel Nine, to look at their books.

Is there any reason why, you can see, or you can explain why your books should not be opened to the public? Indeed, you are a non-profit, charitable organization--there's is nothing confidential in there, I would assume, unless you think there is--why your books, why your receipts ought not to be a matter of public record?

JAN SCRUGGS, VIETNAM VET, MEMORIAL FUND: Well, we think they are a matter of public record, we think we've been audited extensively, we've had enough people look at the books to satisfy, I think, any reasonable person that our organization is clean.

SHERWOOD: That opinion isn't necessarily shared by others--veterans like Tom Carhart, a highly decorated, twice-wounded Army officer.

TOM CARHART, ARMY VIETNAM VET.: If they've done nothing wrong, why not show the books? I don't understand--they can get money from Mary Smith in Norman, Oklahoma, who's a widow with three hungry mouths, and she sends her ten bucks in, and if they're misusing it, that should be made known. I don't know what they're hiding, given the nature, as you said, of their organization. What's in the books? Show us the books, that's all we ask.

SHERWOOD: Carhart once helped advise tens of thousands

of dollars for the memorial during its early stages, but fast became disillusioned with how the corporation's officers treated him and others.

CARHART: I went into this with my mind and my heart open and fully committed to the concept, and I still am--to the concept. I feel, however, that the individuals have lied and dissembled and used us in a very dishonorable, insulting, dirty way. That's before anything about money.

If it comes out that they also misused money given by widows and orphans and people who were hard up, and they used it in ways other than they were legally allowed to use it, then I will feel that they have been slimy, treacherous, dishonorable, dirty people, and I won't rest until I see that things have been righted.

(END OF FILM)

SHERWOOD: Now, we want to clarify something in last night's report concerning the dollar amounts collected and spent by the Vietnam Memorial Fund. During our interview with Mr. Scruggs we asked how much the committee had raised. He said \$6.875 million net.

Later, Scruggs agreed that a total of over \$9 million had been collected. Then, we showed you a copy of the committee's report to Congress, noting that \$6.875 million figure as the amount collected, adding that the committee's own report said over \$9 million.

In fact, the amount the committee reported to Congress, and the amount listed in our own report were the same. The confusion resulted over the use of the word gross and net amounts in the different reports.

Likewise, the discrepancy between the committee's audited cost and the memorial itself and the report to Congress was a result of their own, including other costs and their report to Congress. Again, as we said last night, nowhere in the report to Congress do they mention construction, that is, the construction costs of the memorial itself.

Now, tomorrow we'll continue with part four of this special series, and this will deal with another area of the association and distribution of funds by the Vietnam Veterans Memorial Fund. I'm Carlton Sherwood for Eyewitness News.

BUNYAN: A criminal charge against investigative reporter Carlton Sherwood will be dropped tomorrow. The charge was initiated by the director of the Vietnam Veterans Memorial Fund, who said that Sherwood illegally recorded a conversation with him. Kent Jarrell has more on that.

KENT JARRELL: Maureen, last Friday, Sherwood--with a wireless microphone in his tie--went to the home of John Wheeler, the Memorial Fund's director. Today, a source close to the fund said Wheeler still believes an illegal act occurred, but because the tape used by a WDVm crew was erased, prosecution now makes no sense.

WDVM says very little if any conversation was recorded. Sherwood says tonight he would have preferred an interview with Wheeler instead of having the charge dropped.

Montgomery County deputy state's attorney Lewis Lear confirmed tonight that Wheeler asked the charge be dropped and that it will be formally dropped tomorrow. Also today, the president of the Vietnam Veterans Memorial Fund said WDVm is continuing a smear campaign against him and the memorial.

(FILM SHOWN)

In an appearance before the American University Alumni Association today, Jan Scruggs said every cent the fund raised has been accounted for. He also criticized what he called the half truths and the biases in the WDVm series about the memorial, and Scruggs offered this defense for the allegations aired by WDVm.

SCRUGGS: Anyone can make judgements about how they would do, and play Monday morning quarterback, but our organization has essentially done the impossible by raising the money to build the Vietnam veterans memorial, especially since it was done by a bunch of amateurs, and we've been very, very careful in all the contracts.

JARRELL: On Capitol Hill, a Vietnam veteran who was a strong supporter of the memorial, said the Memorial Fund should completely open its books to the public.

REP. DUNCAN HUNTER, D-CA.: Because the public basically paid for this, and the money is a trust, in essence--they put their trust in the people operating the memorial--I think they have a right to see how their money was spent, and there shouldn't be a controversy around that issue.

(END OF FILM)

JARRELL: WDVm is now charging the Memorial Fund and its law firm, Williams & Connolly, with improper conduct and with attempting to intimidate reporter Sherwood. Williams & Connolly, in a written reply today, denied those charges and said its criticism of Sherwood was within First Amendment rights. Maureen?

BUNYAN: Thank you, Kent.

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INVESTIGATION INTO VIETNAM MEMORIAL FUND CONTINUES

MAUREEN BUNYAN: The Vietnam Veterans Memorial Fund announced today it is opening its financial records to an independent accounting firm to be hired by WDVM-TV. WDVM has been running a series this week which questions the fund-raising activities of the memorial. WDVM is accepting the memorial fund's offer. Kent Jarrell reports.

(FILM SHOWN)

KENT JARRELL: At a news conference, the president of the fund said audits by an outside firm had been conducted annually and by the Internal Revenue Service, and Jan Scruggs explained why the fund is now, for the first time, opening the books completely.

JAN SCRUGGS (PRES., MEMORIAL FUND): Our policy, like all nonprofit organizations, has been not to open our books to the general public, and this policy was never questioned until recently. Now access to the books has become an issue, and to eliminate any question as to what those books show, we have decided to open the memorial fund's books for review.

JARRELL: Also at the press conference, a statement supporting the fund released today by Sen. Mathias, Republican of Maryland, was read. The Mathias statement said, "One hundred members of the U.S. Senate supported the effort of the fund. Our confidence was strengthened by the prudent business methods employed by the fund."

A meeting is expected between WDVM and the memorial fund in the next few days to work out details of the audit. WDVM news director Dave Pierce said today he was delighted with the fund's offer to open its books, that it had been the station's intention all along to get answers to some questions. Pierce said WDVM will make a full disclosure of its findings. I'm Kent Jarrell, Eyewitness News.

(END FILM)

BUNYAN: Tonight on Eyewitness News, investigative reporter Carlton Sherwood continues his special report on the Vietnam Veterans Memorial Fund. In part four, Carlton examines how the nonprofit fund-raising group was created and some of the promises it made to others.

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CARLTON SHERWOOD: This is where it all began. The very concept of a national memorial to Vietnam veterans was born at the Peace and Brotherhood Chapel, located near New Mexico's mountainous northern border at Eagle Nest. Following the death of his son David, a Marine Corps officer killed in Vietnam, Dr. Victor Westphall built the little chapel brick by brick, with his own hands and money.

To his own surprise, the memorial drew widespread national attention during the 1970s, if only because it was the only such monument dedicated specifically to those who died in Vietnam. Each week thousands of visitors traveled to the remote ski resort town to visit the chapel, among them Jan Scruggs, the president and founder of the Vietnam Veterans Memorial Fund.

DR. VICTOR WESTPHALL (FOUNDER, MEMORIAL CHAPEL): He was definitely impressed, because that's the purpose of his call, to tell me that this had made a big impression on him, and he wanted to incorporate the idea here with ideas he had back for the memorial in Washington and, at the same time, very definitely expressed the idea of helping the memorial here. Matter of fact, the figure \$100,000 was mentioned early on, right from the beginning, and it has also been in various other things like Stars and Stripes since that time.

SHERWOOD: Was \$100,000 an arbitrary figure? Was it something he threw out, or was it something that you suggested would be needed to maintain --

WESTPHALL: No, by all means, there was no suggestion on my part of any subscription to an amount at all. This was an amount that he threw out as a minimum amount that he hoped to help with the memorial here. That was his idea, pure and simple. I had nothing to do with that concept at all.

SHERWOOD: Scruggs was so impressed with the chapel that when he launched his own plans to build a national memorial in Washington, he promised the first funds raised would go to help support Dr. Westphall's monument.

WESTPHALL: I've learned over the years that about 95 percent of such offers are meaningless. But the five percent that come along are very valuable indeed, and of course I hoped that this was one of the five percent. And I expected, really,

that it would be, because he seemed to be completely and utterly sincere. And being a Vietnam veteran himself made it doubly impressive.

SHERWOOD: There was every reason to believe the memorial fund would come through. In congressional resolutions and even the fund's incorporation papers, the promises of support were clear. Specific amounts were mentioned in Scruggs' own writing, and if that weren't enough, the Vietnam Veterans Memorial Fund's application to the Internal Revenue Service for tax exemption made the offer official: 50 percent of all initial contributions up to \$100,000 would go to Westphall and the chapel. That was in 1979.

Have you ever heard of Victor Westphall?

JAN SCRUGGS (VIETNAM VETERANS MEMORIAL FUND): Sure.

SHERWOOD: What do you think of him?

SCRUGGS: I met him one time; I think he's a fine fellow. He built a memorial in New Mexico to his son which has now been taken over by the Disabled American Veterans. Yes.

SHERWOOD: You think he's an honorable guy, he's a truthful guy?

SCRUGGS: I really don't know him well enough to pass those kind of judgments on him.

SHERWOOD: Do you have any reason to believe his -- you know, to doubt his veracity?

SCRUGGS: Not really.

SHERWOOD: Well, he has reason to doubt your veracity.

SCRUGGS: Fine.

SHERWOOD: He says that you duped him. He says you offered him at first unspecified financial support for his chapel, which he built, and then he said later on you came up with a figure and you even failed to make good on that. What do you say to that?

SCRUGGS: I would say certainly --

SHERWOOD: To one and two -- you got one, you offered him unspecified financial support, and then you came up with a figure, a \$100,000 figure, and then you failed to make good on that.

SCRUGGS: That's correct. I would say indeed that not only -- sure, in our early fund-raising literature we were very interested in helping the Vietnam veterans chapel in New Mexico; we made it very clear. We also, I believe, testified to that effect for some commission, and we are not in any way saying that we will not give him some money. What we are saying to Mr. Westphall is that, sure, you want a contribution for the Vietnam veterans chapel, wait until we get the Vietnam Veterans Memorial built.

SHERWOOD: Since 1979 you haven't heard or received anything from them, in that period of time?

WESTPHALL: No, nothing.

SCRUGGS: We've had a very unfortunate relationship with him.

SHERWOOD: Unfortunate how? Has he been a problem for you, or what?

SCRUGGS: Oh, sure. He had various publications of his chapel newsletter that attacked us frequently. During 1979 there were -- or 1980, he made certain problems for us with regard to our legislative effort, and it's just one of those things.

SHERWOOD: Could the memorial fund have kept its promises? The corporation's financial reports leave little doubt. Months after the memorial had been paid for and dedicated, the audits show, the memorial fund had more than two million dollars in cash reserves, surplus funds which, according to the corporation's Internal Revenue Service application, should have gone to other nonprofit, charitable veterans' groups with similar programs or objectives -- organizations like this veterans' group in South Boston, who had built their own memorial to the local men killed in Vietnam.

TOM LYONS (MARINE VIETNAM VETERAN): I wrote down to the memorial fund, explained to them what we were trying to do, hoping that we could get some kind of financial help from them -- but also, I think, which was probably most important would be the credibility from a much larger group of their size and their stature to kind of help us out, you know, get the ball rolling.

SHERWOOD: The memorial fund offered to supply the Boston veterans with professional and financial assistance, but again, those promises were broken.

Did they ever help out financially?

LYONS: I never heard --

SHERWOOD: Let me ask you this. Did you expect them to help you with those two or three things? Did you expect them to help you organize and did you expect them to at least help subsidize the --

LYONS: Oh, I thought it was only right they help us. There was no doubt in my mind that they were going to come to our aid like the cavalry. But they have left us high and dry like Custer. We were left just to flounder around unless we got together as a group. And we did, thank God.

SHERWOOD: But the way Lyons sees it now, it's just as well the memorial fund didn't come through.

LYONS: I just wish that I had the hindsight to see that they weren't in it for the same reason I was, which was strictly for our Vietnam veterans themselves as a whole.

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SHERWOOD: We originally planned to air part five of our series tomorrow, but because of today's new developments, Channel 9 will hold all further reports until we've had time to examine the fund's financial records. After that, we'll have follow-up reports on what we've found. Maureen?

BUNYAN: Carlton, this has obviously been a very sensitive issue, and some people have expressed concern that your reports may have cast a shadow on the memorial and the Vietnam veterans themselves. Do you have any comments about that?

SHERWOOD: Well, first I'd like to assure our viewers that it was never our intention to criticize either the memorial or the veterans. In fact, if they've followed this series, they know that the entire -- all of our reports were based on finances; in fact, the finances we're talking about are largely the contributions and donations of other Vietnam veterans and families of Vietnam veterans. So it's -- I think, anyway, and not just what I think, but what we've been doing here is trying to get an accounting for them. And certainly they do deserve that accounting.

BUNYAN: All right. And we will keep in touch.