S. HRG. 109–715

BENEFITS LEGISLATIVE INITIATIVES CURRENTLY PENDING BEFORE THE U.S. SENATE COMMITTEE ON VETERANS' AFFAIRS

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

JUNE 8, 2006

Printed for the use of the Committee on Veterans' Affairs

Available via the World Wide Web: http://www.access.gpo.gov/congress/senate

U.S. GOVERNMENT PRINTING OFFICE
28-755 PDF WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
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JUNE 8, 2006

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BENEFITS LEGISLATIVE INITIATIVES CURRENTLY PENDING BEFORE THE U.S. SENATE COMMITTEE ON VETERANS' AFFAIRS

THURSDAY, JUNE 8, 2006

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SR–418, Russell Senate Office Building, Hon. Larry E. Craig, Chairman of the Committee, presiding.

Present: Senators Craig, Graham, Thune, Isakson, Murray, and Salazar.

OPENING STATEMENT OF HON. LARRY E. CRAIG, CHAIRMAN, U.S. SENATOR FROM IDAHO

Chairman CRAIG. Good morning, ladies and gentlemen. The Committee on Veterans' Affairs will now come to order today. The Committee will hear testimony on pending legislation affecting veterans' benefits. The six bills on our agenda address a wide array of issues, including housing, compensation, educational benefits, veterans' cemeteries, and representation.

At the outset, I would like to comment on two of those bills that I have introduced. The first, S. 2562, which will provide a cost of living adjustment to the rates of compensation provided to over 2.8 million veterans and nearly 350,000 survivors. The end of the year adjustment is expected to be at 2.2 percent, which would result in an estimated payout of $530 million.

As you know, Congressional budget rules do not require an offset in spending to pay for these increases, given the importance of these annual adjustments in protecting against the erosive effects of inflation.

The next bill I would like to comment on is S. 2694, the Veterans' Choice of Representation Act. This bill would provide veterans with the option, let me repeat, with the option of hiring lawyers to help them navigate VA's administrative process, a process that has become increasingly long and complex in recent years. The law prohibiting veterans from hiring lawyers flows from a Civil War era policy, let me repeat that, a Civil War era policy intended to protect veterans from unscrupulous lawyers.

This 150-year-old policy arose at a time, unlike today, when attending law school was not required to become a lawyer, and there was no effective professional oversight of lawyers. Although I know that some will still warn that lawyers are not to be trusted, I

would like to ask them to consider the simple question posited in a recent editorial—I know, Mark is one. Thanks, Conrad.

[Laughter.]

Chairman CRAIG. We will not forgive him for that, either.

But this editorial put it this way, if America's soldiers are mature and responsible enough to choose to risk their lives for their country, should they not be considered competent to hire a lawyer? To me, the obvious answer to that question is yes, particularly for veterans of today's all-volunteer force. The paternalistic law is completely outdated.

These highly trained, highly skilled veterans have the ability, and should have the right, to decide for themselves whether to hire a lawyer. Having said that, I want to be clear that, although I believe veterans should have a choice for representation, they should not be discouraged from using the valuable free services provided by many of our Veterans Service Organizations.

In fact, if quality, free services are available from VSOs, I would expect that most veterans would conclude that it is a better deal than paying an attorney, but I do not think we should make the judgment for the veterans by limiting their options. In recent months it has become abundantly clear that many veterans and their survivors do want the option of hiring an attorney.

A host of individuals and organizations have expressed their support for changing the current policy, including the Vietnam Veterans of America, the Wounded Warrior Project, the Paralyzed Veterans of America, the Gold Star Wives of America, Inc., the National Association of Letter Carriers, the American GI Forum, judges from the Court of Appeals for Veterans Claims, law professors and bar associations.

There also is bipartisan and bicameral support in the Congress for changing this law. In addition to S. 2694, which is cosponsored by Senators Graham, Hutchison, Jeffords, Chambliss, and Murkowski, there are now two bills pending in the House that would provide veterans with a choice of representation. One was introduced by Congressman Lane Evans and Congresswoman Shelley Berkley, and the other was just recently introduced by Congressman Jeff Miller.

Even with the very broad spectrum of support, I know that some have concerns about trusting veterans with a choice of representation. In fact, you will hear today about VA's concerns that, if veterans are given a choice, they may end up wasting their money. You will hear about VA's concerns that attorneys could change the nature of their bureaucracy.

We will discuss today these issues. I have serious questions about whether those concerns are warranted because I strongly believe in the principle of individual liberty and personal responsibility. I cannot agree that abridging the personal rights of all veterans is an acceptable means of dealing with these concerns. Rather, I believe we should take steps, as this bill would do, to minimize any potential problems while ensuring that our Nation's veterans will have the right to decide for themselves whether to hire lawyers. This is a right that is not denied to individuals seeking any other benefits from our Government.

And I could go on, but let me just simply say this, now enemy combatants have the right to an attorney. And I would suggest that our veterans should have the same right.

With that, let me turn to our colleagues who have joined us for opening comments prior to turning to our first panel.

STATEMENT OF HON. LINDSEY O. GRAHAM,
U.S. SENATOR FROM SOUTH CAROLINA

Senator GRAHAM. Mr. Chairman, I would just like to echo your sentiment. I have joined with you on the bill to allow veterans to have legal representation if they choose. Being a lawyer, I understand that it is not the most popular profession in the world until you need one.

And when you need one, you try to find the best one available, and I am proud to have provided for what legal services I have provided in the military. To be honest with you, Mr. Chairman, in the Social Security Administration, there is a non-adversarial aspect of it, but legal representation there does help people. Our veteran community is getting involved in a new system that is ever changing for the better and I do not know if I understand it.

There are some people out there who will dedicate their legal profession to understanding veterans benefits and rights, and if a veteran would like to be represented, I think they should be. When it comes to excessive fees, just like the Social Security Administration, there is a procedure to deal with that—and those lawyers who take advantage of veterans, I hope they get disbarred.

If there is a lawyer willing to help a veteran and the veteran needs the help, I hope we can allow that to happen, too.

Thank you.

Chairman CRAIG. Senator Graham, thank you.

Mr. Isakson.

STATEMENT OF HON. JOHNNY ISAKSON,
U.S. SENATOR FROM GEORGIA

Senator ISAKSON. Mr. Chairman, I would like to echo the words of Senator Graham and commend you on the legislation, Mr. Chairman.

Chairman CRAIG. Thank you.

Let me say, before I turn to our first panel, Senator Akaka regrets that he is unable to be here today. I believe he is on the floor with a piece of legislation right now. So, I ask unanimous consent that his opening statements appear in the record at this point.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT OF HON. DANIEL K. AKAKA, RANKING MEMBER,
U.S. SENATOR FROM HAWAII

Thank you, Chairman Craig. This legislative hearing was originally scheduled for an earlier date, but was postponed so the Committee could address the troubling revelation that there was a theft involving the private data of millions of veterans. That hearing was very important to our veterans. I look forward to working with the Chairman and others as we continue to respond to that situation.

Mr. Chairman, we have a full schedule today, so I will take this time to briefly discuss my legislation on the agenda. S. 2659, the proposed Native American Veterans Cemetery Act of 2006, would provide tribal organizations eligibility for Department of Veterans Affairs' grants to establish veterans cemeteries on trust lands. Currently, VA's authority to make grants for the establishment of veterans ceme-

teries other than by VA itself is limited to grants to states. This precludes making grants to tribal organizations.

Native American veterans have a long and proud history of military service on behalf of this Nation. On a per capita basis, Native Americans have the highest percentage of people serving in the United States Armed Forces. After completion of their service, many Native American veterans return to their communities on trust lands. Passage of this legislation would provide the option of burial in a veterans cemetery location convenient for their families and loved ones.

Throughout my time in Congress, I have fought for the rights of our indigenous peoples. Recently, with the passage of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, the Native American Home Loan program was made permanent. I authored the legislation that created the pilot program that granted Native American veterans living on tribal lands access to VA home loans. I am thrilled that this program is now permanent. I view the proposed Native American Veterans Cemetery Act of 2006 as another step in helping native peoples and urge my colleagues to support it.

I thank the witnesses from VA and other organizations for coming today to share their views. Thank you, Mr. Chairman, and I look forward to hearing the testimony before us today.

Chairman CRAIG. With that, let us turn to the first panel this morning. Two of our colleagues are with us, Senator Burns of Montana and Senator Pryor.

Let me turn to Conrad Burns, first, and then will turn to Mark. Thank you.

Welcome before the Committee, Senator.

STATEMENT OF HON. CONRAD R. BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. Chairman Craig and Members of this Committee, thank you very much for giving me the opportunity this morning to come before you with a very important issue, and that is the Veterans Employment and Training Act of 2006.

As you know, I have had the privilege of serving as a United States Marine in the Far East and that service instilled in me a great respect for the men and women who serve in our military. The sacrifices of our men and women in uniform can never be overstated, but particularly in these turbulent times.

Sadly, many of these individuals are faced with great hardship when they leave the service. For too many young servicemen and women, the transition to civilian life proves extremely difficult, particular for veterans between the ages of 18 and 24. I do not see how you can be a veteran at 18, but I am trying to figure that out.

Veterans from the age of 20 to 24, though, is a very, very sensitive age, an area where they are coming out of the service. The unemployment rate currently stands at 10.2 percent. This is down slightly, but much higher than the national average. And if you go down to the 18- to 19-year-olds, it goes up to around 26 percent, nearly double the unemployment rate of non-veterans in the same age group. Of course, that is unacceptable to us.

To help rectify this situation, we introduced S. 2416, the Veterans Employment and Training Act of 2006. Under the Montgomery GI Bill, the Veterans' Administration currently provides accelerated benefits to assist servicemen and women in transitioning into a civilian job. Through this program, the VA makes short-term, high cost training programs more attractive to veterans by paying benefits in lump sums covering up to 60 percent of the cost of some of those educational programs. However, this program is

now only available to men and women who seek training in high-tech programs.

I think you know that when we looked at our technology schools and our vocational schools in each of our States we find out that we should be training for the job market that is there and readily available. And we have changed our vocational schools and our technology schools to reflect that.

In order to provide this benefit to more of our men and women of the Armed Forces, the VET Act will expand eligibility for accelerated benefits to include industry sectors identified by the Department of Labor as likely to add large numbers of new jobs or require new job training skills in the coming years. These sectors include construction, hospitality, retail, financial services, energy, homeland security, health care, and, of course, transportation. That is where we have our biggest shortfall, in the transportation area.

A number of these sectors face critical shortages of employees now or in the near future, and want to attract veterans to their professions. For instance, in my State of Montana, we are currently facing a shortage of trained construction workers and, of all things, truck drivers. Nationally, the truck driving industry needs an additional 20,000 drivers today and expects to face a driver shortage of 110,000 drivers by the year 2014.

The modest change that we are proposing today will help provide needed workers to these and other industries. To give you an idea on how this will benefit veterans, take for example a truck driving training program at one of the schools in Montana. This program, a standard for most driving programs, lasts 4 to 5 weeks, and it costs $4,000. Unfortunately, many veterans are unable to afford this training, even with the $1,034 in GI Bill benefits that they may currently receive for this training.

However, under the revised accelerated benefits program called for in the VET Act, the same veteran would be eligible for 60 percent, or $2,400 of the cost of the training. That is the same we give for those going into the high-tech fields.

We have an obligation to make sure that these individuals are not forgotten when they return from service. One step we can take now is to ensure that those who serve have access to every educational opportunity possible. By expanding eligibility for accelerated GI benefits, we will give many of these veterans a new opportunity to get training and find work in some of the fastest growing sectors of our economy. This will keep our country moving on the right track and open up more opportunities for our men and women in uniform. We owe it to those individuals to act quickly to provide them with this expanded benefit.

And I just want to bring up something else, as far as these kinds of training programs are concerned. In Billings, Montana, we have three oil refineries. They looked at their human resource list, and every one of those refineries was going to lose half of their workforce in 5 years to retirement. Who do we replace those folks with who are trained and ready to go in and start to work in a refinery? That is a very, very sensitive work. You turn a valve the wrong way and you have got big problems. Safety is number one around a refinery, because you are working with volatile materials.

So, we retooled our vocational school in Billings and we built a model about the size of one of these tables, I guess, of a refinery. We now offer a 2-year certificate program in the operations of refineries for people and young men and women who chose not to take a 4-year curriculum, but instead chose to attend a school to train for some job in that sector. So, if they have marginal grades, they get a 2-year certificate degree, they walk out of there, and they walk in to a $40,000–45,000 job just like that.

That is what we should be doing, training for the jobs that we have in front of us. Automobile dealers tell us that they cannot hire mechanics. I thought any farm kid who liked grease under his thumb and got a crescent wrench, a set of box tins and a screwdriver would go to work as a mechanic. Not true, because now they have to have computer skills. When you pull your car into a dealer to get it worked on, the first thing they do is plug it into a computer. And sometimes it is all put back together by a computer, reprogrammed and things like that.

Our workforce is changing out there for the ordinary, everyday people who can make a very good living, support their families, and be a vital part of our community, but they need those skills to go into that sector. And this, I think—of our men and women coming out of the service now—will give them an opportunity to train for those jobs.

I appreciate the time the Committee has given us, and I appreciate all the work that we have done on this. I also appreciate your support. Thank you very much, Mr. Chairman.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Chairman Craig, Ranking Member Akaka, Members of the Committee, thank you for allowing me the opportunity to speak today about legislation which is very important to me—the Veterans Employment and Training Act of 2006.

As you know, I had the privilege of serving as a United States Marine. That service instilled in me a great respect for the men and women who serve in our military. The sacrifices made by our brave men and women could never be overstated, particularly in these turbulent times.

Sadly, many of these individuals are faced with great hardship when they leave the service. For too many young servicemen and women, the transition to civilian life proves extremely difficult, particularly for veterans between the ages of 18 and 24. For Veterans age 20–24, unemployment currently stands at 10.2 percent; this is down slightly, but still higher than the unemployment rate for non-veterans in the same age group. And for Veterans 18–19 it is a disturbing 26.4 percent—nearly double the unemployment rate of non-veterans in the same age group. This is simply unacceptable!

To help rectify this situation, we introduced S. 2416, the Veterans Employment and Training (VET) Act of 2006.

Under the Montgomery GI Bill, the Veterans' Administration currently provides accelerated benefits to assist our servicemen and women in transitioning to the civilian job market. Through this program, the VA makes short-term, high-cost training programs more attractive to veterans by paying benefits in a lump sum and by covering up to 60 percent of the cost of some educational programs. However, this program is now only available to men and women who seek training in high-tech programs.

In order to provide this benefit to more of our brave men and women in the Armed Forces, the VET Act will expand eligibility for accelerated benefits to include industry sectors identified by the Department of Labor as likely to add large numbers of new jobs or require new job training skills in the coming years. These sectors include construction, hospitality, retail, financial services, energy, homeland security, health care, and transportation.

A number of these sectors face critical shortages of employees now or in the near future and want to attract veterans to their professions. For instance, in my State of Montana, we are currently facing a shortage of trained construction workers and truck drivers. And nationally, the trucking industry needs an additional 20,000 drivers today and expects to face a driver shortage of 110,000 drivers by 2014. The modest change that we are proposing today will help to provide needed workers to these and other industries.

To give you an idea how this will benefit veterans, take the example of a truck driver training program at one of the schools in Montana. This program, standard for most driver training programs, lasts 4 to 5 weeks and costs $4,000. Unfortunately, many Veterans are unable to afford this training, even with the $1,034 in GI Bill benefits that they may currently receive for this training. However, under the revised accelerated benefits program called for in the VET Act, that same veteran would be eligible for 60 percent or $2,400 of the costs of the training.

We have an obligation to make sure that these individuals are not forgotten when they return from service. One step we can take now is to ensure that those who serve have access to every educational opportunity possible. By expanding eligibility for accelerated GI Bill benefits, we will give many of these veterans a new opportunity to get training and find work in some of the fastest growing sectors of our economy.

This will keep our country moving on the right track and open up more opportunities for our men and women in uniform.

We owe it to these brave individuals to act quickly to provide them with this expanded benefit.

Thank you once again for providing me with this opportunity to speak on this bill.

CHAIRMAN CRAIG. Senator, thank you very much.

Now, let us turn to Senator Mark Pryor of Arkansas. Mark, welcome again before the Committee.

STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman, and thank you for your leadership on this. And also, I have a written statement, for the record. Senator Burns did a very good job of laying out the position, so I will not read the written statement.

Chairman CRAIG. Your full statement will become a part of the record.

Senator PRYOR. Thank you, Mr. Chairman. It also has a couple of attachments. One is an attachment where 13 organizations support the legislation. The other is just a newspaper story from my home State that lays out the problem out there in the real world. So, I would love for that to be included, as well.

Basically, what Senator Burns said is exactly right. And that is that we have two problems here. One is, when you look at our veterans, for veterans between 20 and 24 years of age, there is a 15 percent unemployment rate. So, if you are a veteran between 20 and 24, you have a 15 percent unemployment rate. That is nearly double, obviously, what the national average for non-veterans, et cetera, so that is a problem that we should address.

Second, the Department of Labor has identified 14 different industries that need workers. These include, again, 14 of them, but some of them are transportation, construction, hospitality, financial services, homeland security—these are needs that DOL has identified exist in our economy. That is a problem.

We can address both problems and come up with a solution in this one piece of legislation. Senator Burns did a very good job of laying this out. He is exactly right. If you look at just one of those sectors, trucking, right now there is a shortage of about 20,000 drivers nationwide. That is a big problem for the trucking industry.

But when they look out in the future in 2014, the DOL anticipates a shortage of about 110,000 drivers. Again, truck driving might be a great career path for many of our veterans.

What we are trying to do is put the tools in place for them to pursue that. Really this is a win-win situation. We are helping our veterans, we are helping the U.S. economy, and we are just doing, really, something that is common sense. This is something we should try to do.

Mr. Chairman, with that, again, Senator Burns covered this very, very well. I would appreciate the Committee's consideration on this legislation.

Thank you.

[The prepared statement of Senator Pryor with attachments follow:]

PREPARED STATEMENT OF HON. MARK PRYOR, U.S. SENATOR FROM ARKANSAS

Chairman Craig, Senator Akaka, and Members of the Committee, I would like to thank you for this opportunity to testify before you today on legislation that is important to my constituents and young veterans all across America.

Many of our soldiers, sailors, airmen, and Marines coming back from Iraq and Afghanistan are having a difficult time finding work, Mr. Chairman. I find this troubling, and I feel that we have a responsibility to support our returning veterans who are looking for work. Currently, unemployment among veterans between the ages of 20 and 24 is over 15 percent—nearly double the unemployment for non-veterans in the same age group.

Similarly, many of the fastest growing sectors of our economy are in vast need of an additional skilled labor source. The Department of Labor has identified 14 industry sectors that are expected to experience high growth over the next several years, including trucking, construction, hospitality, and financial services. In fact, the trucking industry, which is very important to my state, currently has a driver shortage of 20,000 drivers. That shortage is expected to grow to 110,000 by 2014. I have a recent article from the Arkansas Democrat-Gazette detailing the shortage the trucking industry is facing in Arkansas. I would like to include it for the record.

We have industries in need of skilled employees and we have many young men and women in need of good, high-paying jobs. Our legislation is intended to help match those with needs through increased training benefits in the Montgomery GI Bill. The GI Bill, established after World War II, was a commitment that Congress made to veterans of that war. We would like to extend that commitment to reflect the job opportunities of our modern economy.

To accomplish this task, I joined with my colleague, Senator Burns, in introducing S. 2416, the Veterans Employment and Training Act—the VET Act. To date, we have a group of seven bipartisan sponsors.

The VET Act would make those sectors identified by the Department of Labor as high growth eligible for accelerated payments under the GI Bill by expanding the number of job training programs covered by the Accelerated Payment Program.

Many of the training programs for employment in the identified sectors are short but they are often more costly at the beginning. The current structure of the GI Bill only provides veterans with the option of a smaller monthly stipend. This arrangement works well for traditional education institutions, such as two- and four-year institutions. However, this same arrangement is not conducive to the nature of our changing economy and the nature of high growth occupations. A reconfigured and expanded Accelerated Payment Program has the potential to pay big dividends for our veterans and our economy. The Arkansas Employment Security Department estimates that between one-third and one-half of all nonfarm jobs in Arkansas are in sectors that would benefit from this legislation.

For the benefit of my colleagues, let me briefly review a few reasons why I think this legislation is a wise policy decision.

First, I believe the VET Act will help veterans returning from Iraq and the War on Terror. Accelerating GI Bill benefits for training in high-growth occupations will help place veterans faster in good-paying jobs.

Second, passing the VET Act will encourage returning veterans to pursue careers in occupations that will contribute most to the U.S. economy. All fourteen sectors identified by the Department of Labor are expected to add large numbers of jobs

to our economy over the next several years. This legislation will assist in matching the available workforce with our needs to keep our economy growing.

Third, the VET Act will help make short-term, high cost training programs more affordable to veterans. GI Bill benefits are paid monthly with a maximum monthly stipend of $1,000. Many of the training programs for occupations identified by the Department of Labor as high-growth are short term and high cost in nature. Truck driver training courses typically last 4 to 6 weeks, but can cost up to $6,000. Without this legislation, GI Bill benefits will only cover between $1,000 and $1,500 of the cost. Such a low offset discourages veterans from using GI Bill benefits from these types of training programs. Accelerated benefits would cover 60 percent of the cost, and benefits would be paid in a lump sum.

Last, the VET Act will help place veterans in good-paying jobs at a very low additional cost to the Federal Government. S. 2416 merely enhances benefits already available—the total cost of the accelerated benefits program for high-tech occupations is only $5.7 million. This is a very small percentage of total benefits available to veterans already. Any additional cost will be small and incremental compared to the immediate payoff of reducing unemployment among young veterans and enhancing employment opportunities in high-growth occupations.

To date, ten veterans and industry organizations have endorsed our legislation, including the American Legion, AMVETS, American Trucking Associations, Owner-Operator Independent Driver's Association, Associated General Contractors, and the National Restaurant Association, among others. I would like to include a letter of support from some of these groups for the record.

Mr. Chairman, Senator Akaka and Members of the Committee, I believe this is good legislation that will benefit our veterans and our economy. I look forward to working with all of you to enact the VET Act and stand ready to assist you in your mission of helping our veterans succeed in civilian life.

MARCH 28, 2006

Hon. MARK PRYOR,
U.S. Senate,
Washington, DC.

DEAR SENATOR PRYOR: We, the undersigned organizations, are writing to ask for your support of S. 2416, the Veterans Employment and Training Act (VET Act), legislation sponsored by Senators Burns and Pryor to enhance GI bill benefits.

The VET Act would assist our servicemen and women in transitioning to the civilian job market by expanding eligibility for accelerated GI bill benefit payments. This modest change to the GI bill program would be especially helpful to veterans between the ages of 20 and 24, who have an unemployment rate of over 15 percent—nearly double the rate of non-veterans in the same age group.

The legislation would also help keep our economy growing. A number of industries face critical shortages of employees now or in the near future and are anxious to attract veterans to their professions. For example, the skills and experience that men and women have gained during their years in military service are highly appealing to trucking companies, many of which are struggling to attract and retain quality drivers.

Accelerated benefits, which have been available for high-tech occupations since 2002, make short-term, high-cost training programs more attractive to veterans by paying benefits in a lump sum per term, and by covering a greater share (60 percent) of the cost of such programs. The VET Act would expand eligibility for accelerated benefits to include 14 industry sectors identified by the Department of Labor as likely to add large numbers of new jobs or require new job training skills in the coming years, including construction, hospitality, financial services, energy, homeland security, health care, and transportation.

We hope you will join us and Senators Burns and Prior in supporting the Veterans Employment and Training Act. Our troops returning from the war on terror deserve our support, and the VET Act will help veterans advance their careers in the sectors of the economy that need them the most.

American Association of Community Colleges
American Hotel and Lodging Association
American Trucking Associations
AMVETS
Arkansas Trucking Association
Associated General Contractors
Association of American Railroads
Montana Motor Carriers Association, Inc.

National Private Truck Council
National Ready Mixed Concrete Association
National Restaurant Association
Owner-Operator Independent Drivers Association
Truckload Carriers Association

[From the Arkansas Democrat-Gazette, Apr. 9, 2006]

EASING DRIVER SHORTAGE PROGRAMS' AIM TRUCKING INDUSTRY TURNING TO SPONSORSHIPS TO FILL GROWING NEED

(By Laurie Whalen)

The trucking industry is counting on new driving school sponsorship programs to alleviate its growing shortage of drivers.

Driver training can take as long as 16 weeks, and tuition can be as much as $5,000. Many people have neither the free time nor the money to participate.

That could change for many potential drivers because of initiatives such as the "Company Driver Tuition Finance" program that was announced March 23, with support from the American Trucking Associations and the Truckload Carriers Association.

When drivers are sponsored by a trucking firm, they enter into a financial arrangement in which the carrier and a commercial lender pay the tuition at a driving school. Drivers typically sign a promissory note and enter into a repayment agreement, usually with a condition of a year's driving commitment.

The long-haul trucking industry estimates it needs 20,000 more drivers. National projections for the next 8 years show the need worsening to 111,000 drivers if current demographic trends continue and the overall labor force grows at a slower pace.

A shortage of drivers could limit the availability of goods and increase their price. Carriers can charge higher rates-per mile from their shipper customers, who, in turn, can pass along increases to consumer.

Dale Martin, director of the Arkansas Commercial Driver Training Institute at Arkansas State University at Newport, predicts the driver shortage will cause carrier sponsorships to become more common.

"With carrier sponsorship, if a driver fulfills the commitment, it's a good deal, especially if you're broke," Martin said.

Only about 25 percent of the estimated 1,000 annual graduates secure their own financing at the driver institute's 190-hour, 4-week program. The rest have tuition paid by the carrier. Arkansas companies P.A.M. Transportation Services Inc. in Tontitown, Willis Shaw Express in Elm Springs and USA Truck Inc. in Van Buren are among those that offer sponsorships.

The American Trucking Associations and the Truckload Carriers Association also provide what they term as low-interest loans for needy drivers who qualify for admission to a training school.

The effort is a good step in putting together a national program for drivers, said Chris Burruss, president of the 800-member Truckload Carriers Association in Alexandria, Va.

U.S. Sen. Mark Pryor, D-Ark., has pushed to include trucking as an eligible profession for Veterans Affairs funding, covering as much as 60 percent of the cost to attend a program.

Pryor said in a March 15 statement that the Veterans Employment and Training Act would benefit soldiers and employers alike. The act would expand the occupations qualifying for funding and, according to Pryor, help veterans find high-paying jobs and employers find qualified employees.

The trucking industry tends to lose drivers to higher-paying jobs such as those in construction.

Lane Kidd, president of the Arkansas Trucking Association, characterized the proposed measure as a "real world" type of job growth legislation. The legislation is pending in the House Committee on Veterans Affairs.

Arkansas student drivers also get financial help through at least two other Federal aid programs. State administrators of the Workforce Investment and Trade Adjustment Assistance acts said a small percentage of their money finances truck-driving programs.

The Freeway Program, a new private loan program of last resort for qualifying drivers, hopes to capitalize on the shortage and carriers' needs to replace an aging work force. The program targets potential drivers who are regarded as a financial risk, but who meet other criteria such as a clean driving record and drug test.

Perry Turnbull, a financial consultant and one of the Orem, Utah-based program's founders, said the fledgling loan purchasing company Educational Methods Inc., which administers the Freeway Program, will financially benefit carriers and drivers.

The 10-month-old program, set up much like a carrier sponsorship, assumes the term of the loan after driver training is completed. But unlike sponsorship, if a driver breaks his promissory note commitment, Educational Methods Inc. will attempt to collect on the loan.

Turnbull, who lives in Bentonville, said drivers benefit from fixed-interest rates ranging from 6 percent to 12 percent, which he said was low compared with other available rates. In March, the business bought its first loan from a Utah-based carrier.

"You can't borrow any cheaper than from us," Turnbull said.

Chairman CRAIG. We thank you.

Senator BURNS. I have something to add, Mr. Chairman.

Chairman CRAIG. Sure.

Senator BURNS. I will tell you it is great to work with Senator Pryor on this, as his State and all States, I think, face this situation. So, we look forward in shepherding this legislation through Congress. I certainly appreciate working with Senator Pryor and what he brings to the table. He brings a lot of knowledge and on-the-ground experience. I think that is what it is going to take to get it done.

I thank the Committee.

Chairman CRAIG. We thank you both for being here this morning to provide testimony to this legislation. I think you clearly have pointed out one of the clear options and flexibilities we need in the program for this changing workforce, and we thank you for that.

Any questions of our colleagues?

If not, we thank you much, and we will excuse you.

We have been joined by Senator Salazar.

Do you have any opening comments this morning, Senator, before we move to our next panel?

STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Senator SALAZAR. I am looking forward to the hearing and I have a statement for the record that I will submit.

Chairman CRAIG. Your full statement will be part of the record now.

[The prepared statement of Senator Salazar follows:]

PREPARED STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Thank you, Chairman Craig and Ranking Member Akaka, for holding today's hearing on legislation regarding veterans' benefits.

As we work to provide our veterans with the services and support they need, this hearing is a good reminder that veterans' needs do not stop with access to high-quality, affordable healthcare. I'm looking forward to examining the proposals before this Committee today as we look to find ways to improve benefits for veterans in the critical areas of education, pensions, job training, housing, memorials, and access to adequate legal representation. For many of our Nation's veterans—including those now returning from Iraq and Afghanistan—veterans' benefit programs are the key to rebuilding a normal life once they come home.

At last year's benefits hearing, this Committee considered a legislative proposal I introduced—the Veterans Employment and Transition Services Act—to deal with the need to improve employment options for servicemembers leaving the military by allowing veterans groups better access to servicemembers, eliminating the conflict of interest between reenlistment recruiting and pre-separation counseling, and encouraging participation in intensive Transition Assistance Program workshops. I am proud to say that provisions of my bill were recently included in the comprehensive

veterans' benefits legislation that recently passed the Senate—thanks to the hard work of so many of my colleagues here—and I am hopeful that today's hearing can serve as the starting point for further efforts to address important issues related to VA's benefit programs.

Taking a look at the bigger picture, I would also like to note that the lack of adequate funding for personnel has significantly reduced the VBA's ability to provide benefits support and to process claims as quickly as veterans deserve. As this Committee has heard time and time again, shortfalls in the VA budget have led to personnel shortages and huge backlogs in the processing of benefits claims. Until we fix these funding issues, we cannot fully live up to our promises to provide our Nation's veterans with the benefits they have earned in a timely manner.

Again, I thank all of the panelists who are here today, as well as my colleagues on both sides of the aisle who are working together to make sure our Nation's veterans can take advantage of the benefits they have earned. I look forward to joining you in this effort, and I am glad to be a part of this Committee's push for real results. At a time when Congress is struggling to convince the American people that it really is committed to addressing real issues and resolving real problems, this hearing is both reassuring and absolutely crucial.

Thank you.

Chairman CRAIG. Let us ask Ronald Aument, Deputy Under Secretary for Benefits, Department of Veterans Affairs, to come forward today. He is accompanied by John Thompson, Deputy General Counsel, Department of Veterans Affairs.

Gentlemen, welcome before the Committee.

STATEMENT OF RONALD AUMENT, DEPUTY UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS

Mr. AUMENT. Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on a number of legislative items of great interest to veterans. I am joined at the witness table by John Thompson, Deputy General Counsel.

With the Committee's permission, I will offer a summary statement this morning and request that my written testimony be submitted for the record.

Chairman CRAIG. Your full testimony will be a part of the record. Thank you.

Mr. AUMENT. Thank you, sir. I will proceed by discussing each of the bills in chronological order.

S. 2121, the Veterans Housing Fairness Act of 2005, would authorize VA to guarantee loans for stock in certain developments, structures, or projects of a cooperative housing corporation. VA cannot support this bill because we do not believe that VA participation in co-ops would be in the best interest of the veteran or the Government as guarantor of the loan.

Co-ops present significant risks to both the veteran and the VA. The buyer of a co-op does not acquire an interest in the real estate or obtain title to his or her dwelling unit. A responsible co-op owner could lose his or her interest in the co-op if the blanket mortgage for the entire property goes into foreclosure.

Unlike other VA loans, there would be no lien on real property or tangible personal property. In addition, restrictions on sales imposed by some co-ops, which are not permitted under current VA regulations for conventional or condominium developments, are viewed as detrimental to the interest of the veteran.

S. 2416, the Veterans Employment and Training Act of 2006, would expand the programs of education for which accelerated pay-

ment of educational assistance may be made under the Chapter 30 Montgomery GI Bill program. VA supports S. 2416, subject to Congress' enactment of legislation offsetting the cost of the increased benefits.

However, we believe there may be a more efficient way of achieving this objective. To facilitate the implementation of this legislation, it would be cleaner and more direct if the bill simply stated that all high cost, short-term courses were eligible for accelerated payment. As written, S. 2416 would exclude those individuals who are enrolled in an associate's or higher degree program, unless his or her program of education leads to employment in a high-tech occupation.

We can see no sound public policy basis, from a veterans perspective, for making this distinction.

S. 2562, the Veterans' Compensation Cost-of-Living Adjustment Act of 2006, would authorize a cost-of-living adjustment (COLA) in the rates of disability compensation and dependency and indemnity compensation, effective December 1, 2006. We believe this COLA is necessary and appropriate to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

S. 2659, the Native American Veterans Cemetery Act of 2006, would authorize the Secretary of Veterans Affairs to make grants to Native American tribal organizations to assist them in establishing, expanding, or improving veterans cemeteries on trust land in the same manner, and under the same conditions, as grants to States are made under 38 U.S.C. Section 2408. We strongly support enactment of this bill as a means of accommodating the burial needs of Native American veterans.

S. 2694, the Veterans' Choice of Representation and Benefits Enhancement Act of 2006, would eliminate the current prohibition of charging fees for services of an agent or attorney provided before the Board of Veterans' Appeals makes its first final decision on the case. It would also authorize VA to restrict the amount of fees agents or attorneys may charge, and subject fee agreements between agents or attorneys and claimants to review by the Secretary, such review to be appealable to the Board.

S. 2694 would also authorize VA to regulate the qualifications and standards of conduct applicable to agents and attorneys, add three grounds to the list of grounds for suspension or exclusion of agents or attorneys from further practice before VA, subject Veteran Service Organization representatives and individuals recognized for a particular claim to suspension on the same grounds as applied to agents and attorneys, and authorize VA to periodically collect registration fees from agents and attorneys to offset the costs of these regulatory activities.

Under S. 2694, attorney fees would consume significant amounts of payments under the programs meant to benefit veterans and we believe that Congress should not enact this bill unless it becomes convinced that veterans would gain more in terms of increased benefits than they would lose to their attorneys. Available evidence shows that it is unlikely, hence we cannot support the bill's enactment.

The expense of employing an attorney to obtain veterans benefits would largely appear to be unwarranted. As recognized by Congress, VSO representatives are a valued component of the VA adjudication system, providing assistance and guidance to claimants through the claims process without charge.

Additionally, existing empirical data does not indicate that attorneys would provide service superior to that represented by VSO representatives. These facts alone cause us to doubt that participation by attorneys would gain claimants more in increased benefits than it would cost them in fees.

VA assumes primary responsibility through statutory provisions and administrative procedures for leading the claimant through the administrative claims process. We are concerned that enactment of this bill would impede the Nation's paramount interest in promoting and maintaining an non-adversarial adjudication process, as exemplified by the Veterans Claims Assistance Act of 2000.

Introducing an attorney charged with a professional obligation to represent a client zealously within the bounds of the law would, in our view, inevitably make the process more adversarial. The result would almost certainly be to increase the time all veterans must wait for decisions in their claims.

Finally, we cannot support S. 2694 because it would require creation of a substantial new bureaucracy to perform the additional accreditation and oversight responsibilities. VA would have to create procedures and standards for accrediting attorneys and for reviewing fee agreements for services performed at the regional offices, determining whether a fee charged by an agent or an attorney is excessive or unreasonable.

The additional time and substantial resources would be better spent adjudicating the approximately 800,000 benefit claims that VA receives annually. A better alternative would be to have attorneys regulated by the States responsible for their licenses than to create a new Federal office to monitor attorney conduct.

S. 3363 would provide for accelerated payment for survivors and benefits assistance for certain programs of education under Chapter 35 of Title 38. VA will provide its comments and costs on S. 3363 at a later time.

Chairman CRAIG. This concludes my statement, Mr. Chairman. I would be happy to answer any questions that you or other Members of the Committee may have.

[The prepared statement of Mr. Aument follows:]

PREPARED STATEMENT OF RONALD AUMENT, DEPUTY UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on a number of legislative items of great interest to veterans. I am joined at the witness table by John H. Thompson, Deputy General Counsel.

S. 2121

S. 2121, the "Veterans Housing Fairness Act of 2005," would authorize VA to guarantee loans for stock in certain developments, structures, or projects of a cooperative housing corporation (co-ops).

VA cannot support this bill because we do not believe that VA participation in co-ops would be in the best interest of the veteran or of the Government as guarantor of the loan. Under current law, a veteran may purchase a conventional home, a condominium unit, or a manufactured home and a manufactured home lot. In all

cases except a manufactured home, the veteran is purchasing real property. Although the manufactured home is normally considered personal property, the veteran also obtains title to the actual home he or she will be occupying. In contrast, the buyer of a co-op does not acquire an interest in real estate or obtain title to his or her dwelling unit. Instead, the purchaser acquires personal property in the form of a share of the cooperative's stock, coupled with the right to occupy a particular apartment in the building. A buyer normally obtains a share loan that finances the purchase of an ownership interest in the co-op. This loan is evidenced by a promissory note and is secured by a pledge of the stock, shares, membership certificate, or other contractual agreement that evidences ownership in the corporation and by an assignment of the proprietary lease or occupancy agreement. VA would be guaranteeing this corporate share loan. Unlike other VA loans, there would be no lien on real property or tangible personal property.

Cooperative housing projects are usually subject to blanket mortgages. This is a matter of great concern because of the significant risk to which the buyer, the loan holder, and VA are exposed. The buyer of a co-op is responsible for the monthly payment on the share loan as well as the assessments levied by the corporation, which can be significant. The survival of the project may depend upon each member of the co-op meeting his or her obligations. Failure to do that could lead to foreclosure of the blanket mortgage on the entire building. Such foreclosure would wipe out any interest individual co-op owners, even owners who are timely in the payment of their share loans, may have in the project since they have no interest in real property. It would also leave the holder of the share loan without any security. This is what principally sets co-ops apart from condominiums.

Many co-ops also retain a right of first refusal or a right by the co-op board to approve or reject a prospective buyer. Rights of first refusal are not permitted by VA regulation, 38 CFR §36.4350, and VA does not participate in projects that have them. We believe that the issue of right of first refusal alone would disqualify most projects from VA eligibility.

We understand that some co-op projects impose other restrictions on sales, such as imposing a fee when the owner sells his or her unit to someone other than the corporation, or granting the exclusive right to sell units to a particular real estate broker, often at a higher commission. These and similar practices would be viewed as detrimental to the interests of veterans and, therefore, not permitted under current VA regulations for conventional or condominium developments. These practices could also adversely affect the marketability of a unit. If a veteran-borrower is experiencing financial difficulties and cannot freely dispose of his or her unit at an advantageous price, foreclosure with a resultant loss to VA is more likely.

We also understand that conventional lenders, as well as the secondary mortgage market agencies, generally have additional underwriting and project requirements for co-ops because of the additional risks they present. In addition, valuation of these properties would be very complicated because of the blanket mortgage.

Costs associated with this legislation would likely be insignificant compared to the overall VA guaranteed loan portfolio.

S. 2416

S. 2416, the "Veterans Employment and Training Act of 2006," would expand the programs of education for which accelerated payment of educational assistance may be made under the chapter 30 Montgomery GI Bill (MGIB) program. Specifically, this measure would permit accelerated payment of the basic educational assistance allowance to veterans pursuing an approved program of education (in addition to the programs now authorized such payment) lasting less than 2 years and leading to employment in a sector of the economy that is projected to experience substantial job growth, positively affects the growth of another sector of the economy, or consists of existing or emerging businesses that are being changed by technology and innovation and require new skills for workers, as determined by the Department of Labor (DOL).

Under current law, only an MGIB participant pursuing high cost courses leading to employment in a high technology occupation in a high technology industry has the option of receiving an accelerated benefit payment. This optional lump-sum accelerated benefit payment may cover up to 60 percent of the cost of such a course, provided the pro-rated course costs exceed 200 percent of the applicable monthly MGIB rate. The lump-sum payment is deducted from the veteran's MGIB entitlement balance in the same manner as if paid on a monthly basis and may not exceed that balance.

In addition, S. 2416 specifically states that, for purposes of accelerated payment of educational assistance, the term "program of education" would include such a pro-

gram pursued at a tribally controlled college or university (as defined in the Tribally Controlled College or University Assistance Act of 1978).

VA supports S. 2416, subject to Congress' enactment of legislation offsetting the cost of the increased benefits. However, as discussed below, we believe there may be a more efficient way of achieving its objective.

We note that implementation would be challenging for VA. The DOL employment projections change every 2 years. In addition, depending on the definition of "sector," it is possible that almost all programs would lead to employment in one sector of the economy that would affect at least one other sector positively. It would be cleaner and more direct if the bill simply stated that all high-cost short-term courses were eligible for accelerated payment. Second, S. 2416 would exclude from the proposed expansion of accelerated payment eligibility those individuals who are enrolled in an associate's or higher degree program. Thus, such an individual only could receive an accelerated payment if his or her program of education leads to employment in a high technology occupation in a high technology industry (as determined by VA). We can see no sound public policy basis for making this distinction.

Concerning the bill's express provision for accelerated payments under chapter 30 to eligible veterans pursuing a program of education at a tribally controlled college or university, VA has no objection. We note, however, that VA currently considers such programs to be "programs of education" for MGIB purposes, and we are not aware of any situations pertaining to servicemembers or veterans attending tribally controlled colleges or universities that adversely affect their eligibility for accelerated benefit payments.

VA estimates S. 2416, if enacted, would cost $11.5 million during fiscal year 2007 and approximately $121.6 million over the period fiscal years 2007–2016. The estimates for the years following fiscal year 2007 would need to be reassessed annually due to DOL initiative changes.

S. 2562

S. 2562, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2006," would authorize a cost-of-living adjustment (COLA) in the rates of disability compensation and dependency and indemnity compensation (DIC). This bill would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans and of DIC for the survivors of veterans whose deaths are service related, effective December 1, 2006. Consistent with the President's fiscal year 2007 budget request, the rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 2.6 percent. We believe this COLA is necessary and appropriate to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

We estimate that enactment of this bill would cost $590.3 million during fiscal year 2007, $3.7 billion over the 5-year period fiscal year 2007 through fiscal year 2011, and $8.2 billion over the 10-year period fiscal year 2007 through fiscal year 2016. However, the cost is already assumed in the budget baseline, and, therefore, enactment of this provision would not result in any additional cost.

S. 2659

S. 2659, the "Native American Veterans Cemetery Act of 2006," would authorize the Secretary of Veterans Affairs to make grants to Native American tribal organizations to assist them in establishing, expanding, or improving veterans' cemeteries on trust lands in the same manner and under the same conditions as grants to states are made under 38 U.S.C. §2408. We strongly support enactment of this bill.

The cemetery grants program has proven to be an effective way of making the option of veterans cemetery burial available in locations not conveniently served by our national cemeteries. S. 2659 would create another means of accommodating the burial needs of Native American veterans who wish to be buried in tribal lands.

S. 2694

S. 2694, the "Veterans' Choice of Representation Act of 2006," would eliminate the current prohibition on the charging of fees for services of an agent or attorney provided before the Board of Veterans' Appeals (Board) makes its first final decision in the case. It would also authorize VA to restrict the amount of fees agents or attorneys may charge and subject fee agreements between agents or attorneys and claimants to review by the Secretary, such review to be appealable to the Board. In addition, it would eliminate fee matters as grounds for criminal penalties under 38 U.S.C. §5905.

S. 2694 would also authorize VA to regulate the qualifications and standards of conduct applicable to agents and attorneys, add three grounds to the list of grounds for suspension or exclusion of agents or attorneys from further practice before VA, subject VSO representatives and individuals recognized for a particular claim to suspension on the same grounds as apply to agents and attorneys, and authorize VA to periodically collect registration fees from agents and attorneys to offset the cost of these regulatory activities.

We understand, and in fact agree with, the argument that veterans are as capable as anyone of deciding whether to employ attorneys on their behalves. However, that is not the issue. The Government has an obligation to ensure that veterans derive maximum value from taxpayer-supported VA programs. This Committee expressed its concern in 1988 when it reported out a bill (S. 11, 100th Cong.) that would have retained the prior $10 limitation on fees for claims resolved before or in the first Board decision, that any changes relating to attorneys' fees "be made carefully so as not to induce unnecessary retention of attorneys by VA claimants." Under S. 2694, attorney fees would consume significant amounts of payments under programs meant to benefit veterans, and Congress should not enact this bill unless it becomes convinced veterans would gain more in terms of increased benefits than they would lose to their attorneys. Available evidence shows that is unlikely, hence we cannot support the bill's enactment.

Throughout the years, Congress has recognized, correctly, that integration of VSO representatives into the process of developing and deciding claims is one of the most valuable features of the VA adjudication system. These representatives are available to guide through the claims process all claimants who seek their assistance, without charge. VSO representatives are well-versed in veterans benefits law as a result of the training they receive and therefore are well-equipped to successfully assist claimants throughout the administrative processing of their claims. Further, VSOs must certify to VA that their representatives are fully qualified to represent claimants. These facts alone cause us to doubt that participation by attorneys would gain claimants more in increased benefits than it would cost them in fees.

Moreover, what empirical data exist do not indicate attorneys would provide service superior to that rendered by VSO representatives. For example, in fiscal year 2005, 7.5 percent of appellants before the Board of Veterans' Appeals were represented by attorneys, and approximately 80 percent were represented by VSOs. Approximately the same percentage of claims was granted in matters appealed to the Board whether a claimant was represented by a VSO representative or was represented by an attorney. In fiscal year 2005, the Board granted one or more of the benefits sought in 21.3 percent of the appeals in which a claimant was represented by an attorney. The Board granted one or more of the benefits sought in 22.3 percent of the cases in which a claimant was represented by a VSO.

The expense of employing an attorney to obtain veterans benefits would appear to be largely unwarranted. For example, many claims are granted immediately by VA based on a presumption of service connection or incurrence of an injury or disease during service. VA currently has presumptions of service connection for several different kinds of service and many diseases. For example, a Vietnam veteran is entitled to a presumption of service connection if he or she develops diabetes mellitus (Type 2). Giving VA an opportunity to decide such a claim without attorney involvement may well save a veteran money. In addition, claimants do not appeal to the Board in about 90 percent of claims decided by VA regional offices, suggesting a high level of satisfaction with the regional offices' decisions in their cases. Paying an attorney to assist in presenting these claims would seem to be a waste of claimants' financial resources.

Also, as this Committee recognized in 1988 when it reported out S. 11, there is "no compelling justification" for hiring an attorney prior to that point. The Supreme Court recognized in *Walters* v. *National Ass'n of Radiation Survivors* that, "[a]s might be expected in a system which processes such a large number of claims each year, the process prescribed by Congress for obtaining disability benefits does not contemplate the adversary mode of dispute resolution." Rather, the Supreme Court said, "The process is designed to function throughout with a high degree of informality and solicitude for the claimant."

All a claimant need do is file a claim, and VA will notify the claimant of the information and evidence necessary to substantiate the claim, assist the claimant in obtaining relevant Government and private records, provide a medical examination or obtain a medical opinion when necessary to decide a compensation claim, and make an initial decision on the claim. If a claim is denied, all a claimant need do to initiate an appeal to the Board is to write VA expressing dissatisfaction or disagreement with the decision and a desire to contest the result. The VA agency that made the original decision on the claim will develop or review the claim in a final attempt

to resolve the disagreement and issue a statement of the case if the disagreement is not resolved. VA assumes primary responsibility for leading a claimant through the administrative claims process, making the expenditure of a claimant's limited financial resources on an attorney unnecessary. Furthermore, we are concerned that enactment of this bill would impede the Government's paramount interest in promoting and maintaining a non-adversarial adjudicative process, as exemplified by the Veterans Claims Assistance Act of 2000 requiring VA to notify a claimant of the information and evidence necessary to substantiate a claim and to assist a claimant in obtaining such evidence. This statute was designed to facilitate beneficial interaction between claimants and VA during the initial adjudication process. S. 2694, by permitting claimants to employ paid attorneys before issuance of the first final Board decision, would be incongruent with the beneficent VA system that Congress has nurtured over the decades.

Also, attorney-represented claimants would lose certain benefits of the current non-adversarial system. For example, the Court of Appeals for the Federal Circuit recently held in Andrews v. Nicholson that VA must sympathetically read all pro se pleadings, including a pro se motion alleging clear and unmistakable error (CUE) in a VA decision. However, the court stated in Andrews and in Johnston v. Nicholson that VA is not obligated to sympathetically read pleadings filed by counsel, and the failure to raise an issue in a CUE motion filed by counsel before the Board is fatal to subsequently raising the issue before the Court of Appeals for Veterans Claims.

S. 2694 would attempt to maintain the non-adversarial nature of the process by authorizing VA to suspend claim representatives who fail to conduct themselves "with due regard for the non-adversarial nature of" VA proceedings. However, a requirement for non-adversarial conduct by an attorney appears inconsistent with an attorney's professional responsibility to "represent a client zealously within the bounds of the law." Model Code Of Prof'l Responsibility Canon 7 (1983). "While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law" and may urge any permissible construction of the law favorable to his client. Model Code Of Prof'l Responsibility EC7–3 and 7–4 (1983). An attorney who "appear[s] before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law." Model Code Of Prof'l Responsibility EC7–15. Introducing an attorney charged with such professional obligations into the non-adversarial claims process from its initial stages would, in our view, inevitably make the process more adversarial, which we believe would harm the interests of VA claimants. Further, if S. 2694 were enacted, VA would likely have to hire attorneys to work in its Regional Offices to respond to the legal pleadings filed by attorneys in support of their clients' claims. However unintentional it would be, we predict the process would inevitably become more formal and brief driven, to the point claimants may feel they must hire attorneys to establish entitlement to their benefits. The result would almost certainly be to increase the time all veterans must wait for decisions in their claims.

Finally, we cannot support S. 2694 because it would require creation of a substantial new bureaucracy to perform the additional accreditation and oversight responsibilities. Currently, an attorney in good standing with the bar of any state may represent a claimant before VA if the attorney states in a signed writing on his or her letterhead that he or she is authorized to represent the claimant. If S. 2694 were enacted, VA would have to create procedures and standards for accrediting attorneys and for reviewing fee agreements for services performed at the ROs to determine whether a fee charged by an agent or attorney is "excessive or unreasonable." The additional time and substantial resources that would be required to carry out the accreditation process and review fee agreements for work performed before the ROs would, in our view, be better spent adjudicating the approximately 800,000 benefit claims that VA receives annually.

Moreover, attorneys are licensed by the various states, which are responsible for regulating their conduct and disciplining them if they overreach with respect to fees charged. If attorneys are permitted to practice before the Department and charge fees for their services, it would be far better to have them regulated by the states responsible for their licenses than to create a new Federal office to monitor attorney conduct.

S. 3363

S. 3363 would provide for accelerated payment of survivors' and dependents' educational assistance for certain programs of education under chapter 35 of title 38, United States Code.

VA will provide its comments and costs on S. 3363 at a later time.

That concludes my statement, Mr. Chairman. I would be happy now to entertain any questions you or the other Members of the Committee may have.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LARRY E. CRAIG TO RONALD AUMENT

Question 1. In addition to giving veterans the right to hire attorneys, S. 2694 would give the Department of Veterans Affairs (VA) authority to require attorneys to have minimum levels of experience and specialized training; to require attorneys to follow standards of conduct specified by VA; to set restrictions on the amount of fees that attorneys may charge; to suspend any representative from practicing before VA who fails to comply with any conditions specified by the Secretary; and to reduce any attorney fee that is excessive or unreasonable. Would those additional authorities allow VA to prevent the potential problems you mentioned in your testimony? If not, what authorities would VA need?

Answer. The additional authorities listed in Question 1, all of which concern the accreditation and oversight of attorneys, do not address the concerns expressed in the Department of Veterans Affairs' (VA) hearing statement. VA has indicated that it opposes S. 2694 because attorney fees would needlessly deplete claimants' benefits or financial resources, not because attorneys generally lack the requisite character and competence to represent veterans. Under S. 2694, VA would be authorized to prevent attorneys from charging unreasonable fees. However, even in the case of reasonable fees, the claimant's benefits or financial resources would be diminished by the amount of the fees, and available data indicates that it is unlikely that claimants would gain more in terms of increased benefits than they would lose in payment of fees to attorneys.

Further, VA has indicated that it opposes S. 2694 because introduction of attorneys into VA adjudication proceedings would undermine the current non-adversarial nature of the system. The bill would allow claimants to pay attorneys for their representational services during proceedings before the Department, but would require non-adversarial conduct by attorneys in VA proceedings. We explained in our hearing statement that attorneys are ethically bound to represent their clients "zealously within the bounds of the law." Model Code Of Prof'l Responsibility Canon 7 (1983). Introducing an attorney charged with such professional obligations into the non-adversarial claims process from its initial stages would, in our view, inevitably make the process more adversarial, which we believe would harm the interests of VA claimants. Further, if S. 2694 were enacted, VA would likely have to hire attorneys to work in its regional offices (ROs) to respond to the legal pleadings filed by attorneys in support of their clients' claims. However unintentional it would be, we predict the process would inevitably become more formal and brief driven, to the point claimants may feel they must hire attorneys to establish entitlement to their benefits. The result would almost certainly be to increase the time all veterans must wait for decisions in their claims. These problems would not be alleviated by additional regulatory authority.

VA has also indicated that it opposes the provisions of the bill that would require VA regulation of attorney qualifications. Currently, an attorney in good standing with the bar of any state may represent a claimant before VA if the attorney states in a signed writing on his or her letterhead that he or she is authorized to represent the claimant. If S. 2694 were enacted, VA would have to create procedures and standards for accrediting attorneys and for reviewing fee agreements for services performed at ROs to determine whether a fee charged by an agent or attorney is "excessive or unreasonable." The additional time and substantial resources that would be required to carry out the accreditation process and review fee agreements for work performed before the ROs would, in our view, be better spent adjudicating the approximately 800,000 benefit claims that VA receives annually.

Moreover, attorneys are licensed by the various states, which are responsible for regulating their conduct and disciplining them if they overreach with respect to fees charged. If attorneys are permitted to practice before the Department and charge fees for their services, it would be far better to have them regulated by the states responsible for their licenses than to create a new Federal office to monitor attorney conduct. VA opposes imposing this task on VA because it would necessitate creation of a substantial new bureaucracy to perform the additional accreditation and oversight responsibilities.

Provision of additional regulatory authority would not address these concerns. Thus, the only suggestion that VA can offer to avoid the problems that we believe

would be associated with enactment of S. 2694 with regard to regulation of attorneys is to delete the attorney-regulation provisions in the bill.

Question 2. One provision of S. 2694 would allow VA to suspend attorneys from practicing before VA if they fail to show "due regard for the non-adversarial nature of the system." This provision was intended to give VA redress against an attorney who attempts to use aggressive litigation techniques to overwhelm or confuse regional office adjudicators. If the current language does not accomplish that objective, what language would?

Answer. As explained in our response to Question 1, attorneys are ethically bound to represent their clients "zealously within the bounds of the law." Model Code Of Prof'l Responsibility Canon 7 (1983). Introducing an attorney charged with such professional obligations into the non-adversarial claims process from its initial stages would, in our view, inevitably make the process more adversarial, which we believe would harm the interests of VA claimants. The result would almost certainly be to increase the time all veterans must wait for decisions in their claims. We do not believe that the attorney-regulation provisions of the bill will protect the non-adversarial nature of the VA system and suggest that those provisions be deleted.

Question 3. As drafted, S. 2694 would give VA a 6-month window to promulgate any necessary regulations to implement the legislation. If this bill is enacted substantially in its current form, would 6 months be sufficient time for VA to promulgate any necessary regulations? If not, what would you estimate to be an appropriate amount of time?

Answer. If S. 2694 were revised to delete the attorney-regulation provisions, we believe it would be possible for VA to promulgate implementing regulations within 6 months.

Question 4. If S. 2694 were to become law, it would allow veterans to hire attorneys with regard to any claims filed 6 months or more after enactment. This delayed and staggered effective date was intended to allow a deliberate and gradual implementation of this policy. Yet, some have recommended that the prohibition on attorneys be lifted on the bill's day of enactment for all pending and future claims. If this bill were to be enacted into law, how would you recommend structuring the effective date?

Answer. A delayed effective date would be necessary if Congress enacts S. 2694 as currently drafted, as lengthy rulemaking proceedings would be needed to implement the legislation. Regulations would need to be in place to implement the bill's requirements for VA recognition of attorneys, regulation of fees, and collection of registration fees.

Chairman CRAIG. Ron, thank you again for being with us. I must tell you, I find your testimony in relation to S. 2694 interesting. I guess that is one way of saying it.

In this country, I think we are proud to refer to this as the land of the free. Would you not agree that personal freedom should at least be one of the factors, if not the most important factor, in considering whether the current law should be changed?

Mr. AUMENT. We certainly have no opposition to this legislation on any philosophical grounds whatsoever, Mr. Chairman. Our position is more of an empirical one. As we said before, the available data suggests today that claimants, veterans represented by attorneys, do not fare any better than claimants that are represented by the Veterans Service Organizations at the initial claim level.

Therefore, we do not see that there is going to be any benefit to veterans, but certainly there are going to be expenses.

Chairman CRAIG. If I correctly understand your testimony, the Administration's position is that no veteran should have the option of hiring an attorney because you think the expense of employing an attorney would appear to be largely unwarranted.

Mr. AUMENT. That is correct, sir.

Chairman CRAIG. How is it possible for you to draw that conclusion without knowing how complicated a particular veteran's case may be, without knowing what type and what amount of benefits the veteran eventually would win, without knowing the veteran's

financial situation, and without knowing how much the attorney would charge?

Mr. AUMENT. Sir, we can only look at the data that we have available today. And today, of course, attorneys can represent veterans both at a regional and appellate levels, only they are subject to the existing statutory fee restrictions.

There is a fairly busy attorney practice——

Senator ISAKSON. Mr. Chairman, what is that fee? I hate to interrupt.

Chairman CRAIG. I do not know.

Mr. AUMENT. It is $10.

Mr. THOMPSON. No. It is no longer $10. No fee.

Chairman CRAIG. There is no fee requirement now, is there?

Mr. THOMPSON. No fee is permitted at the administrative stage.

Chairman CRAIG. Thank you.

Mr. AUMENT. I stand corrected on that, sir. But, again, the empirical evidence at the Board of Veterans' Appeals level showed that veterans represented by attorneys fare no better than veterans represented by Veterans Service Organizations.

Similarly, at the VBA level, we find the same results.

Chairman CRAIG. Given these variables, wouldn't it be better to allow each individual veteran to decide, based on the circumstances of his or her case, whether hiring an attorney would be appropriate?

Mr. AUMENT. I will repeat, sir, from a philosophical ground, we have no opposition whatsoever. Our main concern is for the benefits of the veterans and the issue of unintended consequences.

Chairman CRAIG. Phenomenal parental attitude, is it not?

Mr. AUMENT. That is——

Chairman CRAIG. Given your concession that veterans are indeed capable of deciding whether to hire attorneys, I am perplexed at your position that we nevertheless should not allow veterans to make these decisions because they might end up wasting financial resources.

Is that testimony meant to suggest that veterans are not capable of making wise decisions in hiring attorneys?

Mr. AUMENT. Certainly not, sir.

In no way, shape, or form, would I ever want to imply that. As I said before, from a conceptual level, we have no opposition to this. One of our main concerns is the issue of unintended consequences. When you have an entire system that has been constructed around the philosophy of a non-adversarial system.

It is already taking us, in our view, too long to process the claims that we receive today with the growing backlog. We are very concerned that with the insertion of this new phenomena into the system, it is going to only worsen.

Chairman CRAIG. I will conclude this first round of questioning because I think there is more to be brought out here. In a non-adversarial environment that was once relatively simple, we now have a phenomenally complicated process to work our way through. That complication in itself becomes adversarial in many instances.

With that, let me turn to our colleagues. I see Senator Thune has joined us. I will turn to him in a moment.

Let me turn to Senator Graham first. Lindsey.

Senator GRAHAM. Mr. Chairman, I find the Administration's position on this is breathtakingly bad. You are telling every veteran in the country you have looked at their needs and you have decided they do not need a lawyer because, at the end, it is not worth it for them. Is that right?

Mr. AUMENT. In part, Senator——

Senator GRAHAM. You put our democratic friends to shame, in terms of what they would like to do for the country. I mean, I am sitting here, and this Republican Administration is telling every veteran in the land we have done an economic analysis of the legal right you may have, and we have decided you do not need. Other than that, I have got no problem with your position.

[Laughter.]

Senator GRAHAM. Now, Social Security, is there an economic benefit to having legal representation to get your Social Security benefits?

Mr. AUMENT. I am not an expert on Social Security, sir.

Senator GRAHAM. I think we should be as equally protective of the Social Security to the disabled population. I would hope the Administration would look at the Social Security system and see whether or not legal representation benefits the people who are applying and that have been denied claims.

The bottom line is, Mr. Chairman, you are right. The VSO is out there—God bless you. You are doing a great job. You do it for free and I appreciate you helping our veterans. Sometimes these cases get to be complex. They are very complex.

I would just like to reiterate that if there is a willing client and willing lawyer to have a relationship formed to help that veteran and the fees will be looked at by the Veterans' Administration, just like they are at the Social Security Administration. We are going to regulate who can do this, so that people do not get taken advantage of.

I think in today's world, 2006, with a bunch of people coming back from Iraq and Afghanistan with the benefits changing everyday, if you can understand that you are better than I am, Ron, I cannot understand it all. The idea that a lawyer could be helpful should be interjected into this system and we will regulate how that happens. But I just find it incredibly misguided to say that the executive branch of our Government is going to make that decision for every veteran in the country who may need some help beyond what the VSOs can provide.

I know it works in Social Security. I can assure you, having been a lawyer, that there are many cases where the legal representation of that Social Security beneficiary made all the difference in the world. And I am totally confident it would make all the difference in the world to veterans out there who are lost in a bureaucracy of well-meaning people. But it is a bureaucracy that is getting more complex by the day because the benefit packages are getting more complex by the day.

I see some veterans shaking their heads. I hope we can give you the right, if you choose to exercise it, to get a lawyer to go in there and fight for you. Thank you, Mr. Chairman.

Chairman CRAIG. Thank you, Senator.

Senator Isakson.

Senator ISAKSON. Currently a veteran cannot bring a lawyer at any phase of an issue before the VA?

Mr. AUMENT. They cannot pay a lawyer a fee. Until the veteran has received his first decision of denial at the appellate level with the Board of Veterans' Appeals.

Senator ISAKSON. If that is the case, how can you say based on your experience, that they would not gain any benefit? I mean, if they are not allowed to, then you do not have any experience where they have engaged a lawyer to help them.

Mr. AUMENT. We do, sir. Because there are many veterans that are represented by attorneys on a pro bono basis, we do have that empirical data, both at the VBA and the Board of Veterans' Appeals level.

Senator ISAKSON. I will yield to Senator Graham for a second.

Senator GRAHAM. The only time you are allowed legal representation is once you have been denied your initial claim, is that correct?

Mr. AUMENT. On a fee basis.

Senator GRAHAM. Right. Basically, not being able to hire a lawyer, you have got a de facto bar, because the lawyer cannot get compensated for their time.

At the appeals level, can you submit new matters?

Mr. AUMENT. Yes.

Senator GRAHAM. You can?

Mr. AUMENT. At the appeals level, you say, can new evidence be introduced?

Senator GRAHAM. Yes.

Mr. AUMENT. It can be introduced anywhere in the process.

Senator GRAHAM. Is it an adversarial situation at the appeals level?

Mr. AUMENT. I would say no, it is not.

Senator GRAHAM. By the time you have been denied, your initial denial had without representation.

Mr. AUMENT. Not necessarily.

Senator GRAHAM. You cannot pay a lawyer. Unless every lawyer in the country wants to do it for free.

Mr. AUMENT. That does not mean that they are unrepresented. They may have been represented by a VSO or by a pro bono attorney.

Senator GRAHAM. I do not mean to take your time, but the rules right now that you are not going—lawyers have to make a living like everybody else. If you cannot hire a lawyer at the initial stage, once you lose the case, it is very hard to change the outcome.

In effect, what you are doing is you are letting a lawyer come in at a time when a veteran is at his weakest, not at his strongest. I think that is equally bad.

Chairman CRAIG. Senator Isakson.

Senator ISAKSON. I reclaim my time.

First of all, I am not a lawyer.

Secondly, I am like most Americans—everybody hates lawyers but loves their lawyers.

Senator GRAHAM. Right.

Senator ISAKSON. I mean, that is kind of like Congress. Everybody hates Congress but loves their Congressman. And I think——

Chairman CRAIG. At least we hope the latter is true.

[Laughter.]

Senator ISAKSON [continuing.] That we hope the latter is true. That is right.

But I think that is, although humorous, also pretty much fair. In this situation where you have a right, or believe you have a right or a benefit to say that you do not have a right to representation until some stage down the process, to me, just does not seem right.

I have great regard for the VSOs and the services they provide and I have read some of the testimony in here where they have expressed some opposition, Mr. Chairman. But in analyzing it, as one who is not an attorney and does not have a dog in the fight economically, I would guess you would say, looking at the benefit, it would seem only right to me that a veteran have the option to have that.

I do not think you can say evidence proves they would not gain any benefit if, in fact, that evidence now is tangential at best. Certainly not with the practice of choice being a reality.

With that, I will yield back the balance of my time.

Chairman CRAIG. Thank you, Senator. We have been joined by Senator Patty Murray.

Senator Murray, do you have any opening statement and/or questions of this panel?

STATEMENT OF HON. PATTY MURRAY,
U.S. SENATOR FROM WASHINGTON

Senator MURRAY. I just have a couple of comments. I know we are going to have a vote here in a minute. Let me just thank you for having this hearing. I know Senator Akaka was not able to come.

Chairman CRAIG. Yes.

Senator MURRAY. He is on the floor. I just want to mention his important piece of legislation, the Native American Veterans Cemetery Act of 2006, and I really appreciate his leadership on that and I commend him for working on that.

I just want to say that I am really disappointed that the Committee is not going to bring S. 2147. That is a bill that will help our veterans get treatment for Multiple Sclerosis. The bill would eliminate the arbitrary 7-year presumptive period for veterans diagnosed with MS.

As many of our colleagues know, a lot of our servicemen and women who served, especially in the Gulf War, are being diagnosed with MS. It is a very difficult disease to diagnose. I know this because my father had MS and was a veteran. It is a disease that you do not necessarily diagnose correctly within the first 7 years. We have this arbitrary decision today that if you have not been diagnosed by 7 years, you arbitrarily do not get benefits. Because of the difficulty of diagnosing this disease, I would really hope, Mr. Chairman, that we could move on that piece of legislation. I hope we can work on that in the future.

And, while I have a moment, I just also want to mention that, like everyone in this room, I hope we can really focus in this Committee on some of the things we need to do for our veterans. Mr. Chairman, you worked with us last year, and I know you care

deeply about this. You have provided the leadership, but I am, again, really concerned that we are not going to have the resources that we need for our veterans.

I talked to many of our Iraq veterans who come home and cannot find a job and are having a hard time transitioning back to civilian life. Many of them are having to wait a year or even 18 months to get the benefits that they need or to get the health care that they are seeking. I think we have a real challenge out there that we need to address.

I just listened to the exchange about the Chairman's bill and making sure veterans have access to legal counsel and not being able to do it because we do not have the resources. All of this, I think, points to some serious concerns that we have got to have a realistic assessment on. In fact, in March, before the Military Construction Veterans Appropriation Committee, the VA told us that they are seeing 38 percent more Iraqi War veterans than they budgeted for. And in fiscal year 2006, the VA expected to provide medical care to 110,000, but that number is now estimated to be closer to 170,000.

I hope that we can really take a good look at these numbers and assess where we are. I know that we are hearing, even from the VA Under Secretary for Health Policy Coordination, that waiting lists render mental health and substance abuse care virtually impossible across our country.

Mr. Chairman, it just all adds up to my continual concern that we have asked these men and women to serve overseas, and yet when they come home they are facing really a difficult time getting in and getting care, getting their benefits and transitioning back to the world. I know you know this, but I hope that we can focus on that.

Finally, let me just mention, now learning that the VA data theft that occurred May 5th, more than a month ago, now—and details are still trickling out that 2.2 million servicemembers, including Guard and Reservists also lost their ID. That is going to have a financial impact on the VA as they notify these veterans.

We have got to do this right. We have got to make sure that they are notified, that they get the help and support they need to make sure that their ID is not misused, or, if it is, that they get taken care of quickly.

It is a responsibility we now incur because it was our VA that lost the IDs, and we know that is going to cost something. We have got to make sure that we pay that, but we do not want to take it out of the health care or the access for our current veterans.

It is a challenge in front of us and I hope that we can spend some time dealing with that. Thank you, Mr. Chairman.

Chairman CRAIG. Senator, I appreciate your sensitivity to these issues. With your help, we are going to continue to be monitoring all of this very, very closely so that, certainly as it relates to the latter portion of your statement, that any of those new costs and additional costs to protect our veterans and their IDs and their financial wholeness are not going to come out of health care. Period. End of statement. That just will not happen. We will not allow that to happen. And it is my clear understanding that neither will this Administration or the VA.

If it is going to take additional resources, then that is going to be our job to get them.

Senator MURRAY. If I could just ask, Mr. Chairman, do we have any assessment from the VA on when they will provide us an estimate on the cost of dealing with this?

Chairman CRAIG. I am dialoguing with the Secretary, now. I anticipate that we will have the estimate probably before the Committee meets again, within a couple of weeks—to see where they are and what the costs are going to be, and how they are reaching out and will continue to reach out to veterans that may have been affected by this. We do not know that, yet. But certainly that liability and responsibility is there. We will stay very current on it.

Senator MURRAY. Thank you very much.

Chairman CRAIG. Thank you very much.

Ron, in your testimony, you suggest that veterans should not be permitted to hire attorneys to navigate the VA system. Several years ago, an Under Secretary for Benefits testified that the system is the most complex disability claims system in the Federal Government and opined that the process veterans must follow is complicated. And in testimony last year, VA's current Under Secretary for Benefits said that it has become an increasingly complex system.

Also, in the VA's 2007 budget submission—VA repeatedly stressed how complex the system had become. Can you clarify whether you are suggesting the system is not complex?

Mr. AUMENT. I certainly can, sir. Indeed, I take no issue with those statements. It is a complicated system, but our concern is not to make it more complicated than it is.

Chairman CRAIG. You are suggesting that a veteran's right to hire an attorney would make it more complicated?

Mr. AUMENT. I am suggesting, sir, that the current nature of the process was designed totally to be a non-adversarial process. We believe that inevitably the introduction of routine attorney representation at the original claim level is likely to make it more complicated.

Mr. THOMPSON. If I could interject here.

Chairman CRAIG. Please.

Mr. THOMPSON. Zealous lawyering is, by definition, contentious. And contentiousness leads to adversarial relationships and you do not have to take VA's word for that. Chief Justice Rehnquist in 1988—if you permit me to quote just four sentences from a 1988 Supreme Court decision authored by the Chief Justice.

He said that "even apart from the frustration of Congress's principal goal of wanting the veteran to get the entirety of the award, the destruction of the fee limitation would bid fair to complicate a proceeding which Congress wished to keep as simple as possible. It is scarcely open to doubt that if claimants were permitted to retain compensated attorneys the day might come when it could be said that an attorney might indeed be necessary to present a claim properly in a system rendered more adversary and more complex by the very presence of lawyer representation.

It is only a small step beyond that to the situation in which the claimant, who has a factually simple and obviously deserving claim, may nonetheless feel impelled to retain an attorney, simply

because so many other claimants retain attorneys. This additional complexity will undoubtedly engender greater administrative costs with the end result being that less Government money reaches the intended beneficiaries."

We think it really would lead inexorably to a more complicated and more adversarial system.

Chairman CRAIG. We could go on. Your position has been made very, very clear. And I think you're finding that not only do a substantial number of people disagree, but this Committee disagrees with you. And we will see if we can work our way through this.

I find it interesting that until recently not a single law school in the country included a course in veterans law in its curriculum. With the current restrictions on receiving any compensation at all for helping veterans navigate the VA system, few attorneys, estimated at less than 200, have made veterans law a principal area of practice.

Is it not entirely possible that if attorneys are exposed to this area of law during law school and have the benefit that the VSO representatives now enjoy of being able to earn a living helping veterans navigate the VA system, they too could be included as providing a valuable service to veterans?

Mr. THOMPSON. We do not believe there is any doubt that lawyers who become expert in this practice could lend help to a claimant, but the VSOs are themselves very experienced and are expert in providing this service. They do it now for free. So, the question really becomes whether you want benefits appropriated for veterans to compensate them for their injuries—you want a portion of those benefits to be diverted to the pockets of attorneys.

Chairman CRAIG. We will leave it at that. Gentlemen, thank you very much for your testimony on this and other pieces of legislation. We will work with you as it relates to educational benefits. You made some suggestions and we will see if those can be worked out, because I think both Senators pointed out the obvious, the changing educational environment and the need to keep the GI Bill tuned to that.

Thank you very much.

Now let us call our third panel. We are inviting the Honorable Donald Ivers, former Chief Judge of the United States Court of Appeals for Veterans Claims; Quentin Kinderman, Deputy Director, National Legislative Services, Veterans of Foreign Wars of the United States; Richard Weidman, Director of Government Relations, Vietnam Veterans of America; and Bart Stichman, Co-Director, National Veterans Legal Services Program.

We will get you all settled in and Judge Ivers, we will start with you. Thank you for being with us today.

STATEMENT OF HON. DONALD L. IVERS, FORMER CHIEF JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Judge IVERS. Thank you, Mr. Chairman, Members of the Committee. I want to thank you for this opportunity to appear here and testify regarding S. 2694, the Veterans Choice of Representation Act of 2006.

I also want to thank the Committee staff, especially Amanda Meredith and Brian Bainbridge for their courtesies in preparing for this testimony today.

I want to say to the Committee that I am testifying here at the invitation of the Committee as a former judge, and I am not representing the Court as it is currently constituted.

Chairman CRAIG. Thank you for making that clarification for the record.

Judge IVERS. This Act, which grants veterans the right to retain counsel at the initial stages of the claims process is but another step in the continuing, evolving process of judicial review. That process began in 1988 with the passage of the Veterans' Judicial Review Act.

In my opinion, the time has come for this next step. The U.S. Court of Appeals for Veterans Claims, as the Committee well knows, has long been on record in support of a veteran's right to retain counsel at the initial stages of the process. The first Chief Judge of the Court, the Honorable Frank Nebeker was to testify before this Committee in May, but is now out of the country. I am here in his stead and ask that his letter of May 10, 2006, and mine of June 6, be submitted in their entirety for the record.

Both of those letters are brief, concise and self-explanatory. In fact, I will conclude my brief testimony with that reference.

[The prepared statement of Judge Ivers with attached letters follow:]

PREPARED STATEMENT OF DONALD L. IVERS, FORMER CHIEF JUDGE, U.S. COURT OF APPEALS FOR VETERANS CLAIMS

Thank you for the invitation to testify before the Committee on June 8, 2006, and to address S. 2694, the "Veterans' Choice of Representation Act of 2006."

In his May 10, 2006, letter to you, Frank Nebeker, the first Chief Judge of the U.S. Court of Appeals for Veterans Claims, who was initially asked to testify, set forth his views regarding S. 2694. I have read that letter and I am in complete agreement with Judge Nebeker's views. In order to minimize redundancy, I ask that Judge Nebeker's letter be made available along with mine at the hearing.

The Committee is probably aware that the Court has long been on record as supporting the availability of attorney representation at the initial stages of the claims process. Freedom to seek counsel of one's choice has long been a hallmark of this Nation's system of justice. That those who have given much in defense of that system are denied that freedom in pursuing claims arising out of their service is, at best, highly contradictory.

As Frank Nebeker points out in his letter, attorney discipline is powerful and active in every jurisdiction. That should relieve the Department of much of the burden of regulating the qualification and actions of those attorneys retained by veterans. Furthermore, attorneys are expected and required to follow appropriate ethical codes and to assure the effectiveness and viability of any system in which they provide representation, either adversarial or paternal.

My personal position on this issue is not one that I take lightly or without awareness that I have taken a different position in years past. My position, is, however, tempered by my service on the Court and the opportunity to observe the process from both within and without, so to speak. It is, if anything, stronger for that opportunity.

I join with Judge Nebeker in commending this effort to provide veterans the freedom to enter into a willing attorney-client relationship at the initial stages of the benefits claims process. I also join in his observation that a slow integration of attorney representation would give rise to invidious discrimination against those already in the system who might wish to retain counsel.

Hon. LARRY E. CRAIG,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for the invitation to testify before the Committee on June 8, 2006, and to address S. 2694, the "Veterans' Choice of Representation Act of 2006."

In his May 10, 2006, letter to you, Frank Nebeker, the first Chief Judge of the U.S. Court of Appeals for Veterans Claims, who was initially asked to testify, set forth his views regarding S. 2694. I have read that letter and I am in complete agreement with Judge Nebeker's views. In order to minimize redundancy, I ask that Judge Nebeker's letter be made available along with mine at the hearing.

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Sincerely,

DONALD L. IVERS.

MAY 10, 2006

Hon. LARRY E. CRAIG,
Chairman, Veterans' Affairs Committee,
Hart Senate Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for the invitation to express my views on S. 2694. As you know, I was the first Chief Judge of the Veterans' Court. It soon became clear to me and my colleagues that the paternal approach of effectively preventing lawyer representation in the benefits process was severely outmoded. Thus, I compliment the sponsors of S. 2694 for recognizing that veterans, like everyone else, should be at liberty to seek counsel in the free market. Indeed, the fear that once existed that veterans needed protection from predatory lawyers no longer exists. Every jurisdiction in this country has very powerful and active disciplinary entities to police their bars under quite detailed and strong codes of professional conduct. I can speak from my experience on the District of Columbia Court of Appeals since 1969. Today the Court has a very substantial portion of its docket dealing with lawyer discipline—much of it in reciprocal discipline from all state courts and many Federal courts. Thus, burdening the Secretary with lawyer qualification, regulation, and discipline should, in my view, be kept at a minimum in light of extant bar disciplinary systems.

It may be anticipated that some resistance to this change from a once well intentioned limitation on the ability to retain counsel will develop. To the extent such resistance is motivated by a "turf" interest in keeping lawyers from invading the province of non-lawyer veteran service officers, it should be paid no heed. The benefits process has become so complex and protracted that the need for counsel is manifest where it was not before. To the extent that that resistance is motivated by concern for maintaining the non-adversarial nature of veterans' benefits process, I suggest once a claim has been denied and the veteran wishes to appeal, the process inescapably becomes adversarial. The need for filing a "notice of disagreement," by

its terms, connotes the commencement of an adversarial process from the veteran's perspective. The fact that the duty to assist and the evidentiary equipoise doctrine remain viable does not alter the reality of the veteran's situation and his or her perception that it is now "Veteran v. VA."

Moreover, the proceedings before the Court of Appeals for Veterans Claims have been recognized as adversarial from 1989, the inception of the Court. That fact has not negated the non-adversarial nature of the process at VA. Indeed, with counsel representing the appellant veteran, it has always been possible to ensure that the duty to assist and the evidentiary equipoise doctrine remain the rule. The presence of counsel for the claimant does not alter the paternal nature of the process, nor would it from the initial claim level and beyond. In fact, counsel can assure the viability of that process from the very beginning.

Some might say that with counsel present the claimant is "ready to fight," but that view misperceives the role of counsel particularly in a non-adversarial process. Counsel is there to ensure the nature of the process is preserved as well as to ensure from the beginning that errors threatening that process do not occur.

I commend the effort to treat veterans as equals of all citizens in their right to seek a willing attorney and client relationship at the initial stage of the benefits process. But I have considerable doubt that slow integration of lawyer representation only in the initial application stage is necessary and reasonable since those already in the system would be invidiously discriminated against by being unable to retain counsel. There will hardly be a landslide of lawyers appearing at subsequent stages prior to a final BVA decision. At least there is no evidence to support a favorable reaction to such an in terrorem argument.

Sincerely,

FRANK Q. NEBEKER.

Chairman CRAIG. Judge, thank you.

Judge IVERS. Again, I want to thank you for the opportunity to testify, and I will be glad to respond to any questions you might have.

Chairman CRAIG. Thank you very much. Those two letters will become a part of the record.

We have had a vote start, but I think we can still get through some testimony before that, and then I will recess, run and vote, and return very quickly.

Quentin, we will continue with your testimony.

STATEMENT OF QUENTIN KINDERMAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. KINDERMAN. Thank you, Mr. Chairman. First, I would like to thank you for coming over last night to the House Office Building and for your inspiring words of tribute to your friend and ours, Lane Evans.

Chairman CRAIG. Thank you for hosting that. It was very appropriate.

Mr. KINDERMAN. Mr. Chairman and Members of the Committee. VFW appreciates very much the opportunity to present our views on legislation here, especially the bill that you have sponsored, and which seems to be the focus of interest.

I would like to go through the bills, but probably end with that one.

Chairman CRAIG. OK.

Mr. KINDERMAN. Because I think that one will consume the most time.

With regard to S. 2121, the Veterans Housing Fairness Act, which extends VA loans to cooperative residential units, we favor that legislation and we expect that, since the rest of the housing

industry has figured out ways to finance co-ops, we think the VA could probably sort that out, as well. We have great faith in them.

Regarding S. 2416, The Veterans Employment and Training Act, which would expand accelerated payment for courses of instruction in high-tech and other high demand fields, we support that as we also support S. 3363, by Senator DeWine, who would provide similar benefits for Chapter 35 survivors and dependents.

We do have some reservations about, essentially, paying out large sums of money for short-term courses. We would suggest to you that you continue to have strong oversight and demand that the VA, in administering these bills, are very careful about it. Some of these schools come and go and we want to protect the veterans interests, as well as their long-term careers.

With regard to the Cemetery Bill for Native Americans, we also favor that. We also favor its House companion bill.

With regard to the Cost-of-Living Increase Bill, we appreciate your interest in maintaining the integrity of the veterans compensation program and the rates. We do not favor what some veterans organizations have talked about, which would be indexing it once and for all. We would prefer, I think, to have the opportunity to discuss it with you in this forum every year, which has been a strong tradition.

We do have some reservations about the rate structures as they exist today. And we make reference to that in our statement and we can provide more information for the record if you would like to see that. But essentially this chart shows the rate structure as it exists today. I apologize for the colors. They are probably a little bit inappropriate, but, sir, it is rates and not States.

The red ones are the actual rates that the veterans receive. The blue ones are what they would be if they were, in fact, proportional to the 100 percent rate. I do not think too many people realize that the 90 percent rate actually pays 60 percent of the total rate, and so on. Eighty percent is a little over 50 percent and as you get down to the bottom, they are about half of what you would have expected.

We think that particularly up in here, in the upper reaches of the rates, it plays havoc with incentives and the other aspects of the program. We just want to bring that to your attention.

Chairman CRAIG. We will take a look at that.

Mr. KINDERMAN. I would be glad to provide that for you.

Chairman CRAIG. Thank you.

Mr. KINDERMAN. We realize that there is a commission considering the veterans program, as we speak, and that at the time the commission submits its report that this will probably be an issue, but we wanted to kind of give you a heads up as to what we are thinking on that.

Chairman CRAIG. OK.

Mr. KINDERMAN. But we do appreciate the COLA. We would like to see you round up the numbers instead of down, but that is a minor point.

Chairman CRAIG. OK.

Mr. KINDERMAN. Which brings us of course to the Veterans Choice of Representation Act. We are bound in the VFW by a resolution to oppose the practice of attorneys for pay at the regional of-

fice. About half of our testimony goes to that issue. In essence, I think we can really state five reasons. Just very briefly.

We do not believe that lawyers are a necessary expense at the initial claim level. If there is going to be an appeal, the money that veterans would pay lawyers is probably better spent in that appeal. Otherwise, we do not see that is necessary.

To paraphrase a famous movie, VA cannot handle lawyers. A lot of what has been called complexity here, we see a little differently. We see it as an administrative system that is in desperate trouble. We see big backlogs. We see 15 percent error rate. We see somewhat chaotic leadership from time to time and we see major crises, as we had in the last 2 weeks, which will have significant effect on that.

A good lawyer will pursue every avenue, alternative evidence, treatment and exams outside VA, he will claim every possible condition. Much effort will be expended by the veteran and the VA, generally, probably for the same result as would happen were he represented by a veterans organization at no cost. We think the incentives that an attorney will have, in terms of maximizing his fee, will be prevailing rather than the altruistic desire to serve veterans.

With regard to the types of claims, we think lawyers will, at least initially, pick claims that will be profitable. We do not think that they are going to get involved in claims that are questionable or too complex that require enormous amounts of investment before they reach any kind of resolution.

We also have some very serious reservations about the provisions of the bill that would require the VA General Counsel to police non-adversarial behavior and frivolous claims. Some of the things that have become mainstream claims in the VA, Agent Orange, Persian Gulf Illness, things like that, would have, I think, initially been considered frivolous. They are so far from what one would imagine would happen. But wartime is a very difficult time and strange things happen.

Regarding non-adversarial behavior, I am not sure you can even really define that, but I think that might have a chilling effect if we are going to do this. And our position, of course, is you should not do this.

If you are going to do this, and you are going to have attorneys practicing at this level, let them be attorneys. It will become adversarial. It will become difficult. The VA will get worse backlogs than they have now. I think the effect of keeping this threat of not behaving in a non-adversarial manner over the advocates, both veterans advocates and attorneys, would be very difficult.

Finally, we do not think that, as important as this might be to some veterans right now, we do not think this addresses what are the real issues in VBA, and we think that this would, for virtually all veterans, the intrusion of this very work intensive aspect of representation would make things tough for everybody.

I would like to just take a moment and read something that was taken from testimony in 1988, before the hearings in this Committee on judicial review, by my good friend Don Ivers, when he was General Counsel of VA. And I do not do this to embarrass him.

I do this because I think it is the best description of how a lawyer should behave and how he should serve his client.

"Under our adversary system, the role of counsel is not to make sure that the truth is asserted, but to advance his client's cause by any ethical means within the limits of professional propriety. Causing delay and sowing confusion are not only his right, but may be his duty. The appearance of counsel for the citizen is likely to lead the Government to provide one, or at least to cause the Government's representative to act like one."

In other words, I think it will become much more adversarial in the regional offices if we have attorneys practicing in there. That is one man's opinion, but if you take, possibly, the duty to cause delay and sow confusion in the regional offices, there is plenty of that already. I cannot imagine that they could tolerate a whole lot more. I think what could very well happen is a representative, an attorney, would, in essence, attempt, not only to get his client the proper decision, but develop a reputation for wearing down the process, and thus maybe get a faster path, more receptive path in the regional offices. I think that is not outside the realm of possibility.

Mr. Chairman and Members of the Committee, once again on behalf of the men and women of the Veterans of Foreign Wars, I thank you for inviting us to present our views here today. I will be happy to respond to any questions you may have.

[The prepared statement of Mr. Kinderman follows:]

PREPARED STATEMENT OF QUENTIN KINDERMAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

On behalf of the 2.4 million men and women of the Veterans of Foreign Wars of the U.S. (VFW) and our Auxiliaries, thank you for including us in today's discussion on the veterans' benefits bills under consideration.

S. 1990, the "Veterans Outreach Improvement Act of 2005," establishes a $25 million program to provide grants for state veterans' outreach programs. The grants would be weighted based on the veterans' population by state. Because it would be funded from the VA, the VFW cannot support this bill.

The VFW recognizes the need for increased local outreach and supports the goals of this legislation. However, as structured, this program would redirect funds used for Veterans Benefits Administration (VBA) use for VA outreach and claims processing unless Congress allocates funding from a separate appropriations account, in addition to current VBA funding. The VBA faces a mounting challenge of the 808,000 plus claims that await processing and a dismal error rate on the claims they do process. While we are aware that VBA asserts that their resources are adequate, it appears to us that there is considerable evidence that this is not the case. Removing VBA resources to do outreach weighted toward the largest, most populous states, will exacerbate VBA's claims processing problems. While we do not doubt that there exists a need to reach out to America's underserved veterans, we do not see further deterioration in service as a viable tradeoff for this initiative.

The VFW supports S. 2121, the "Veterans Housing Fairness Act of 2005," which would extend housing loan benefits to purchase residential cooperative apartment units. Many other government agencies, including the Federal Housing Administration (FHA) already have programs in place, which provide loans for cooperative residential units, and we believe that VA would also be able to address any legal issues by regulation, as well. This bill would favorably impact veterans living in densely populated urban areas and create options for veterans facing expensive housing markets.

S. 2416, the "Veterans Employment and Training Act of 2006," aims to expand licensure based lump-sum payments to areas of industry that are experiencing critical shortages of employees or that are deemed high growth industries, as determined by the Secretary of Labor.

The VFW has long called for the expansion of licensure and certification programs to expedite the transition period from military to civilian employment for

servicemembers. We have also supported expanding the GI Bill to make it more flexible and adaptable to the real needs of today's veterans. Despite this, we have several concerns about this legislation.

We are wary that the definition of the industries this bill covers is overly broad; and in some cases, it could lead to careers, which do not provide adequate skills to sustain long-term goals. The Department of Labor's definition currently includes such broad industries as "hospitality" and "retail." While rewarding careers can be found within these industries, we believe the definition of which types of programs are eligible needs careful monitoring, making it easier for veterans to find truly rewarding careers in high-paying jobs.

Our second concern is oversight. With the expansion of the program, comes opportunity for "start-up" companies and businesses claiming to provide educational training opportunities for veterans as a way to make easy profits. While the vast majority of companies are sure to provide legitimate service, there will likely be opportunity for fraud and abuse. Congress must see to it that there is vigorous oversight built into the program to include significant evaluation and accreditation so that unscrupulous companies cannot take advantage of veterans.

S. 2562, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2006," seeks to adjust compensation rates to reflect the rising cost of living. We appreciate the Committee's commitment to maintaining the integrity of the buying power of the veterans' compensation program by providing periodic cost-of-living increases (COLAs). We fully support this goal. However, we note that this bill once again contains a provision for rounding down any fraction of a dollar in the COLA calculation. This works against the spirit of this bill.

Over time rounding down the dollar, when combined with other adjustments to meet budgetary goals, has caused erosion in fractional compensation rates, especially for severely disabled veterans. This has lead to significant problems for America's veterans. We think this is the underlying cause of some compensation policy problems recognized by this Committee. Accordingly, we support this action to adjust the buying power of this program, which is of critical importance to America's veterans who have sacrificed life and limb for our country; but we urge you to refrain from this process of rounding down the last dollar. While we realize that restoring the compensation rates to linearity with the percentage of disability would require a significant budgetary commitment, we urge you to at least begin the process by enacting a "rounding up" provision this year. This would serve as a show of good faith with America's veterans.

S. 2659, the "Native American Veterans Cemetery Act of 2006," would allow tribal organizations to apply for grants to establish and maintain veterans' cemeteries on tribal lands. We fully support S. 2659. We believe that this is a logical extension of the veterans' cemetery grant program and will serve the needs of Native American veterans and their families that are not fully addressed by the National and State veterans' cemeteries.

S. 2694, the "Veterans' Choice of Representation Act of 2006," is generally consistent with the proposals that the Veterans of Foreign Wars has opposed over many years. It would provide for claimants the opportunity to be represented by for-profit lawyers from the point of first filing a claim at a VBA regional office, instead of from the point at which administrative remedies have been exhausted, the decision of the Board of Veterans' Appeals (BVA). This is a radical departure from current law.

The current administrative process, despite its shortcomings in execution, is designed to be a non-adversarial process, with multiple opportunities for review, and no restrictions on the submission of evidence. By design, it also offers the opportunity for self-representation, or representation by Veterans Service Organizations (VSO) representatives at no cost to the claimant. This is the administrative process of filing a claim, and many claims are granted at this level. If not granted, then from the Notice of Disagreement to the BVA decision, many claims, which were initially denied, are reversed on reconsideration, or on account of submission of new evidence. These claimants, if represented by lawyers under the provisions of this bill, would pay a substantial amount of their benefits as a fee for services that either would require only nominal effort, or would have been provided at no cost by a VSO representative.

This would represent a windfall opportunity for lawyers to earn significant fees with little effort. Moreover, since the fees may also be dependent on the accumulated retroactive benefit, this bill provides incentive for lawyers to slow the administrative process as much as possible, both to wear down resistance to granting the benefit, but also to maximize the past due amount of benefits payable. Since there is no provision in this bill requiring lawyers to accept all clients, they are free to pick those claimants who have claims that are most likely to prevail in the adminis-

trative process. This allows lawyers to maximize the fees payable, while minimizing their own efforts.

While the VFW supports veteran claimants, and the struggle that many face to receive the benefits that they deserve as a result of their increasingly often-heroic service, we believe that the interjection of lawyers into a system intended to serve most claimants sympathetically and efficiently is misguided. It would inevitably result in even less timely service, and provide program administrators with a justification to ratchet back still further in service and assistance.

Under current law, claimants have the opportunity for legal representation in the adversarial court process following a denial at the BVA. VFW believes that this is the logical point at which the assistance of a for-profit lawyer is appropriate and necessary. The current system conserves the claimants' resources should it be necessary to hire an attorney at the appellate level. We have seen, even under the current system, claimants left without either resources or representation, in the midst of their appeal, when both run out on them.

The VFW still hopes that the VA leadership will address the very significant deficiencies in claims processing in the regional offices, but our optimism wanes. VBA's claims backlog now exceeds 808,000 claims, and continues to grow, the very significant errors in about 100,000 claims per year remain unaddressed, duty to assist is often not honored, and appeals processing is grinding to a standstill in some offices. Yet, VBA asserts that they are adequately staffed. If this is the growing "complexity" that justifies for-profit representation at the regional office level, then lawyers will provide relief for selected claimants, at significant additional cost to them, but at substantial cost to the entire system, since attorneys will not tolerate this treatment by the VBA. Unless VBA addresses their own problems instead of ignoring them, any significant number of attorneys practicing at the regional office level may bring this system to the point of collapse. The VBA system is simply not robust enough to absorb the additional labor-intensive burden that effective for-profit representation will impose. Introducing attorneys at the initial stages of claims processing might be the tipping point referenced by the Administrative Conference of the United States, in testimony before the passage of the 1988 Veterans' Judicial Review Act, that any system that permits attorneys, will eventually require them.

The VFW is also concerned that provisions in S. 2694, which would apply to both attorneys and veterans' service organizations representatives (VSORs) would negatively affect their ability to assist veterans. This provision, no doubt crafted to address some of the objections raised by the VFW and other organizations, would authorize the VA General Counsel (VAGC) to remove or sanction any veteran representative who fails to respect the "non-adversarial nature of any proceeding . . ." or presented ". . . frivolous claims, issues, or arguments to the Department . . ." or any other standard that the Secretary sees fit to establish by regulation. It seems to us that these restrictions are both too vague and subjective, and are potentially too vulnerable to abuse by a department seeking to restrict workload, to be in the best interest of veterans.

We frequently hear the complaint from VBA leadership that veterans present claims for too many conditions or that veterans should be restricted from reopening claims when their disabilities become more severe. Our responsibility is to represent the interests of America's veterans. We do this in teamwork with the VBA. However, should the best interest of a veteran diverge from that of the VA, we do our best within the law to assist the veteran. Furthermore, while we as VSORs work toward fair and equitable decisions under the established statutes, policies, and regulations and recognize that the system must work accurately and efficiently for all to benefit, an attorney can and should set about winning the maximum benefits for his/her client. This would necessarily suggest the maximum use of every opportunity to acquire or submit evidence, testify at a hearing, or dispute VA exams or other evidence.

While we believe this is not disrespect for the ". . . non-adversarial nature of any proceeding . . ." and it might increase the cost of representation to the veteran, it will inevitably slow down VBA processing. Should VA seek to curtail this as "adversarial" behavior when faced by the inevitable growing backlogs, there is no obvious line at which veteran's right to the claims process could be fairly limited. One need only look at the history of claims processing before the Veterans' Claims Assistance Act of 2000 and the many claims denied as "not well grounded" to realize that the balance between protecting veterans' rights and addressing backlogs is a difficult one. We believe that, in the effort to protect the non-adversarial process, veterans' rights might be harmed, or taken away. The possibility of sanctions or removal might tend to intimidate or discourage claims representatives, or if this bill were to be enacted in full, attorneys. This would not be in the veteran's best interest.

Regarding "frivolous" claims, we believe that prior to Congressional action, claims from veterans claiming to be harmed by weed killers used in Vietnam, atomic tests, secret mustard gas experiments on "volunteer" servicemen, and Gulf War illnesses that defy diagnosis, might all meet some definition of "frivolous." In at least one example: Agent Orange, veterans who accepted VA's guidance and did not file were penalized as a result. While we realize that the Veterans' Court has established a very limited definition of frivolous claim, we see no legitimate need for this restriction at the initial claim's level. Certainly, any claim that is truly frivolous would be as rare as to have negligible an affect on VBA's workload; and the potential for abuse by restricting legitimate claims would be too great to make this restriction worthwhile. Certainly, an administration that tolerates 100,000+ seriously erroneous claims decisions every year should not be authorized to restrict the claims themselves on the basis that they might be perceived to be frivolous.

It is for these reasons that we must oppose S. 2694.

Chairman CRAIG. Quentin, thank you.

I am going to have to recess the Committee for a few moments while I run and vote, and then we will be back for the rest of the testimony.

Mr. KINDERMAN. Thank you, Mr. Chairman.

Chairman CRAIG. And I will let you and the Judge work out your differences.

[Laughter.]

Mr. KINDERMAN. Would you like us to do that while you are gone, or should we wait?

Chairman CRAIG. Please.

[Laughter.]

Judge IVERS. I would like to have an opportunity to respond, Mr. Chairman.

[Recess.]

Chairman CRAIG. The Committee will reconvene. Thank you, gentlemen, for your patience, and the audience, for your patience.

Before I go to Mr. Stichman let me turn to Judge Ivers again.

Judge Ivers, you have been quoted, I think reasonably, for the record and in a reasonably short period of time, I should give you the opportunity to respond to your own words.

Judge IVERS. Thank you, Mr. Chairman. I first want to disavow total ownership of those words, and point out that they were quoted from a law review article by Judge Friendly in the University of Pennsylvania Law Review in 1975. So they are not totally my words; however, they were part of my testimony. I think, in fairness, we need to go back and look at what was being considered at that time.

First of all, I was the General Counsel of the Veterans' Administration at that time. The Administration's position was that we did not need lawyers at the initial stages. I do not disagree with that position at that time in that context. I still feel that was probably the right position to take.

However, the other thing that was under consideration at that time was a process whereby once a veteran completed the VA process, he or she would go directly into the U.S. District Courts. That was before Congress, in its wisdom, arrived at the compromise, which became the U.S. Court of Appeals for Veterans Claims, which I think was the right answer, if there was to be judicial review. But at the time that testimony was given and that statement was made and Judge Friendly was quoted, the object of the exercise was to put veterans cases into the Federal Court system at the

U.S. District Court level. That, for lack of a better term would have turned them into a veritable brawl with different results coming from different U.S. District Courts and the further need to filter the results up through the Federal Circuits.

So, we were talking about a completely different process.

Chairman CRAIG. Thank you. I appreciate that.

Mr. KINDERMAN. Mr. Chairman, very briefly.

I did not hear Judge Ivers say anything about the nature of lawyers changing from Judge Friendly's characterization of someone who will do everything within appropriate limits for their client, which was the sole purpose of my quoting him.

Chairman CRAIG. Thank you.

Judge IVERS. May I, Mr. Chairman?

Chairman CRAIG. Very briefly.

[Laughter.]

Judge IVERS. I think that you have to take Judge Friendly's comments with a grain of salt and also look at this process that we are engaged in now. The Veterans judicial review is an ongoing educational and maturing process. Attorneys are bound by ethical rules. They are bound to follow the rules of the forum in which they appear. If it is a non-adversarial forum, then the attorney is obligated to honor that system.

The system can police itself in that respect by seeing that lawyers toe the line and abide by the non-adversarial nature of the proceedings below. Again, it does not become adversarial in the strictest sense until you get into the court. I think there is some merit to the argument that once you are denied a benefit, as far as you are concerned as a veteran, it is adversarial, particularly if you believe very strongly, as most veterans do, that they are entitled to that benefit and they are being wrongfully denied.

Chairman CRAIG. All right, gentlemen.

Mr. KINDERMAN. Just one more, please.

Chairman CRAIG. Alright. No more counterpoint. I gave you five extra minutes in your opening statement.

Mr. KINDERMAN. Yes, sir.

I am not going to say a word about taking Judge Ivers' testimony with a grain of salt, but I do have here an article that I downloaded from the Internet about an attorney who is doing very well out of Nebraska, which perhaps means that this legislation is not necessary. He represents many veterans, apparently, in his county before the VA in Nebraska, from the very beginning of the claim.

He does not charge an attorney fee, but he has a memorandum of gift, instead of memorandum of fee. He is apparently very successful at having veterans, after their claims are decided successfully at the regional office, tip him 20 percent of the retroactive benefits.

I spoke to the VA General Counsel. They are going to look into it. But I might say that it appears in this article, if it is true, the Nebraska Supreme Court's Counsel for Discipline investigated the matter and says that there does not appear to be anything illegal or unethical about the attorney receiving gifts freely given. So, I would submit that for the record.

Chairman CRAIG. I understand that. Doctors used to take chickens and pieces of beef, also, for services rendered to their clients. I think we have gone beyond that. Obviously, here is a gentleman who, if true, has found a unique way to find compensation in a system that denies it. The intent of the legislation is not to deny it.

Mr. KINDERMAN. I understand.

Chairman CRAIG. OK. Let us move on. I thank you both for your testimony.

Richard Weidman, Director of Government Relations, Vietnam Veterans of America, welcome to the Committee.

STATEMENT OF RICHARD WEIDMAN, DIRECTOR OF GOVERNMENT RELATIONS, VIETNAM VETERANS OF AMERICA

Mr. WEIDMAN. Thank you very much, Mr. Chairman. On behalf of John Rowan, our national president, I want to thank you and your distinguished colleagues for the opportunity to present our views here today.

Like my colleague from the VFW, I will take the less controversial first if I may——

Chairman CRAIG. Alright.

Mr. WEIDMAN [continuing].—and then zero in on the attorney representation. In regard to the COLA Bill, S. 2562, Vietnam Veterans of America is very much in favor of it.

S. 2121, as someone who grew up in New York City, I can tell you how much this legislation is needed. To not be able to purchase a co-op, which was one of the main ways housing is organized in the Greater New York City area is a tremendous detriment to our veterans. The ability to exercise this important veterans benefit should not be determined by where one lives in the country. And now, there is discrimination against the 200,000 plus veterans who live in the Greater New York City area, in that they cannot exercise the opportunity to use a VA loan guaranteed by a co-op.

In regard to 2659, the Native American Veterans Cemetery Act, we thank Senator Akaka and Senator Inouye for introducing that. We are very much in favor of providing that opportunity to Native Americans to establish their own resting place for their veterans in the reserve territories. We would hope for a speedy passage and enactment of that bill.

In regard to S. 2416, VVA is very much in favor of that bill. And while we continue to believe that we need to move toward a World War II style GI Bill for the young men and women serving today, there are many steps on the road to achieving that. But our goal is clear, sir. We need a bill like that according to my father when he returned from the South Pacific, from the China, Burma, India theater.

In regard to S. 3363, the Amendment to Title 38, about accelerated payments under the GI Bill, VVA strongly supports this legislation. The safeguards are in place through the State-approving agencies and the only codicil we would put is, we would encourage you to have your staff look into the difficulties with the legislation that was passed 2 years ago with the accelerated payments with problems with the State-approving agencies moving ahead and approving courses of non-credit courses of study for veteran entrepreneurs. They have become biased, if you will, in favor of those

who award academic credit. That is not what our entrepreneurs need. They need the skills in how to put together a business plan, in how to put together a capital formation plan, and in how to actually move forward to create wealth and create jobs in this society.

In regard to S. 2694, the Veterans Choice of Representation Act of 2006, we want to salute and thank you, Mr. Chairman, for introducing this legislation. Since Vietnam Veterans of America's inception in 1978, when we were still called the Council of Vietnam Veterans, we have favored attorney representation and judicial review.

We believe that this is a right that is now, as you pointed out earlier so eloquently, accorded to enemy combatants. It has always been accorded to illegal aliens. It has been accorded to virtually every sector of society. How ironic it is that the very people who pledge life and limb in defense of the Constitution of the United States should be denied one of the basic rights under the Constitution, which is access to the courts under our balance of power in our unique, democratic republic.

There are many distinguished colleagues in the other veterans organizations, as you are keenly aware, that oppose this. We respect them enormously. We would draw your attention and that of your distinguished colleagues not just to the VFW's statement, but that of the Disabled American Veterans, which is extremely well put together. We disagree with it strenuously, but it is extremely well done, and we hope that it will be carefully considered by you and all of your colleagues, as well as by your staff.

There is one thing I would like to correct in the record. We said $10 originally, it was, of course, $5, and then raised to $10 very soon afterwards, in terms of what was allowed. Of course, none is allowed today.

The cries that this will destroy the non-adversarial system of veterans benefits were exactly the same cries that we heard in 1986 to 1988, during the period where we moved toward, at least limited judicial review. Virtually everyone was saying at that time, including VA, that it would destroy the veterans benefits system as we know it. It has not. The veterans benefits system lives on. The problems with the veterans benefits system really have much more to do with proper training and proper accountability within that system, particularly of managers and supervisors and proper training with competency—and I stress that if I may, sir—competency-based testing for everyone involved in the system, including adjudicators.

In regard to involving attorneys, the standards that you talked about in terms of professional standards, we believe that attorneys can help ensure that this complicated process is processed correctly and thoroughly from the outset. Otherwise, they are subject to discipline by their local bar association.

They are going to have to equip themselves just as they would have to in any other subset and law specialty in order to be able to provide adequate representation to their clients under this area of specialized law.

This would also have the effect of facilitating more successful administrative appeals because the claims would be better prepared from the outset. I draw your attention, if I may, sir, to the IG's report of May 2005, in regard to disparities in claims and awards

given. One of the key findings of that, which was, unfortunately, all too much overlooked, is that you had a 68 percent better chance of your claim being successful if, in fact, you had a Veterans Service Organization representative. Why is that? Because it was better prepared than by the VA people, because many of our folks are better prepared.

Those who say that this is not an adversarial system at present have never been through this system. We always recommend that you get a Veterans Service Representative now, or a Veterans Service Officer, if you will, in some organizations, because you need someone who knows what he or she is doing in terms of preparing your claim and properly representing it.

When veterans do not understand and/or often it is the veteran and the spouse who approach us, we explain it by saying it is like this, it is like having an attorney represent you within this closed system. Only a fool represents him or herself before the court. Opening it up to attorneys on the outside, we believe, will only make it a more fair system and one that is more professional overall.

As I mentioned before, I am going to touch on again, it is an adversarial system, not intentionally so. Because of, as I mentioned, lack of accountability, lack of proper training—and the reason why they are overwhelmed is that there is not a focus on doing it right the first time. Hopefully, with having attorneys involved, more competent—and VA will respond with having adjudicators better prepared.

The opponents who say that allowing veterans freedom of choice, that only those veterans with financial means—that does not restrict people who are seeking benefits before the Social Security Administration. As you know, almost all of those folks who generally have nothing, because they have not been able to work in several years, are represented on a contingent basis.

The overriding concern for VVA, as well as any other group that cares about the rights of veterans, is, of course, that the veterans get the most effective representation possible. If a veteran wants to hire an attorney as his or her representative at the VA regional office, is there a legitimate basis to deny this right to do so? Our position is that we cannot imagine this patronization and regarding VA as—I hesitate to use this term, but others have used this term—as the last plantation. That somehow, some way, we lose our native intelligence when we enlist in the Armed Forces or serve our country and take that step forward.

In addition to losing the right to hire an attorney, that somehow, from that point on, we are not competent. That the young people who are coming out of the military today who, last month, had, at their control in many instances, in some military specialties, more firepower and more awesome firepower than ever unleashed in the history of mankind suddenly, suddenly, as soon as they become veterans, are not capable of making an informed and intelligent decision about whether to hire an attorney and, if so, what attorney to choose. That simply flies in the face of what we believe is a proper attitude toward veterans.

The fair fees, as provided for——

Chairman CRAIG. Can I ask you to observe that red light, and wrap it up as quickly as you can.

Mr. WEIDMAN. I am sorry. I am over.

The fair fees, we are somewhat concerned about the VA—if people succeed too much in claims, that there be an appeals procedure that really works. And we ask that you exercise diligent oversight in that regard. I have talked with your staff about this issue, and they have convinced me that the oversight and appeals process is adequate and I have gone back and talked to our leadership on this issue.

We are very much in favor of this legislation and once again salute you and thank you and urge speedy enactment of this legislation as written. Mr. Chairman, thank you very much.

[The prepared statement of Mr. Weidman follows:]

PREPARED STATEMENT OF RICHARD WEIDMAN, DIRECTOR, GOVERNMENT RELATIONS, VIETNAM VETERANS OF AMERICA

Chairman Craig and distinguished Members of the Senate Veterans' Affairs Committee, on behalf of Vietnam Veterans of America (VVA) and our National President John P. Rowan, I thank you for the opportunity to appear here today to offer our views on these important pieces of legislation. While I will comment on each of the bills being considered today, I will devote most of my time to the question of attorney representation, as it is perhaps the thorniest question the Committee is considering today.

S. 2694, VETERANS' CHOICE OF REPRESENTATION ACT OF 2006

American veterans essentially cannot obtain legal representation because of the current fee limitation in effect until after their case has gone past the Board of Veterans' Appeals. Legal counsel at the Court of Appeals for Veterans Claims (CAVC) is allowed to present no new evidence. Allowing veterans legal counsel at the initiation of their claim would give that claim a legal continuity. Legal counsel is the right of all Americans, except veterans. This is an injustice that must be redressed. VVA thanks you for bringing this issue to the fore, and starting the process that we hope will at long last be successful.

As you are aware, legislation of this nature is not unheard of, and in fact there have been several attempts over the past 20 years to pass similar bills. None of these previous attempts have been even remotely successful because of the vehement opposition of the Department of Veterans Affairs under several Presidents, and the opposition of some of our distinguished colleagues in other major veterans service organizations (VSOs). The VA bureaucracy itself has opposed opening the process to any form of meaningful reform. Today, however, Congress appears to be ready to move to fix the broken, backlogged VA claims adjudication process. Significantly, unlike in previous efforts, the bipartisan leadership of both the Senate and House Veterans' Affairs Committees appear to be the primary impetus behind the current legislation. For this reason, there is a very strong possibility that the current prohibition against veterans hiring attorneys before the VA will be repealed during the 109th Congress.

From our inception in 1978, VVA has been the foremost champion among the major VSOs of allowing veterans the right to choose to retain attorney representation in their claims for VA benefits, and of achieving full judicial review of all Compensation & Pension decisions of the VA. In 1988, VVA secured a partial victory in this effort with passage of the Veterans Judicial Review Act (VRJA), which among other provisions provided for attorney representation of veterans before the United States Court of Appeals for Veterans Claims (Veterans Court), and limited attorney representation in Veterans Court cases that were returned to the VA for re-adjudication. Under the proposed legislation, veterans would be allowed to retain an attorney to represent them before the VA regional offices (VAROs)—at the stage where their case has not yet been fully adjudicated or denied, and before an appeal to the VA's Board of Veterans' Appeals (BVA) is required.

Historical Background

The current restriction on attorney representation has its origin in the Civil War (1861–1865). At that time, Congress limited the fee charged by an attorney or "claims agent" to $10 for assisting a veteran to complete and submit a claim to the

Pension Bureau for a war pension. This statute was passed to protect veterans from unscrupulous lawyers and claims agents whose aim was to steal the veterans' pensions. In 1865 there was no regulation of law practice by government or licensing of attorneys by bar associations. Anyone could hold himself out as an attorney or claims agent and, for a fee, assist a veteran claim a pension. Nonetheless, in 1865 the value of $10 was many times greater than today, and at that time this amount was a fair fee and reasonable incentive for attorneys to assist veterans.

The statutory bar prohibiting a veteran from hiring an attorney evolved from this 1865 legislation because the $10 limit was never raised in the 123 years since then. With time, the $10 payment became meaningless. In the modern era, unless the attorney represented a veteran pro bono, the veteran could not legally hire an attorney for representation services before the VA. An attorney accepting a fee from a veteran greater than the authorized $10 would be committing a felony, and was subject to a fine and/or imprisonment. Over time, the primary proponents for not raising the $10 fee limit were the major VSOs, with the VA as their ally, the sole purpose of which was to prevent veterans from hiring attorneys.

With passage of the VJRA in 1988, which VVA vigorously supported, the first major change in 123 years loosened the prohibition against the veterans' right to hire an attorney. The VJRA created the Veterans Court, giving veterans the right for the first time to appeal an adverse BVA decision to a Federal court of review. And, with the right to judicial review, Congress also allowed veterans the limited right to hire an attorney to represent them in the Veterans Court, as well as before the VA in cases the Veterans Court returned for re-adjudication. While an important step, the VJRA left in place the prohibition against veterans hiring an attorney for representation before the VARO and the BVA. Thus, although some veterans are currently free to hire an attorney in limited circumstances (i.e., where the case has first been through the entire VARO and BVA appeals process), most veterans remain prohibited from hiring an attorney.

Because of their training in the law, attorneys generally can ensure that complicated claims are processed correctly and thoroughly from the outset. Having attorneys involved at the initial claims processing would help to ensure that the evidence is fully developed "up front," and that the VA is satisfying its legal duty to assist and complying with its own laws, regulations, and procedures. Also, attorneys are more likely to interpret, understand and apply new case law to veterans' claims. Just as important, attorneys also are well equipped to identify frivolous or non-meritorious issues, and would more likely ensure that these have been eliminated from a veteran's application for benefits. Attorneys are ethically bound to do so. Bringing a claim with little chance of success, only to be locked into a years-long battle with the VA does not serve the interests of the veteran.

If attorneys were allowed to represent veterans before the VARO, this also would have the effect of facilitating more successful administrative appeals before it would become necessary to appeal such cases to the BVA or the Veterans Court. For example, attorney participation in the claims adjudication process would "raise the bar" on the part of VA adjudicators. Adjudicators would have to perform at higher levels of competency at the early stages of the process and would have to work a lot harder to justify denials of meritorious claims. Also, on average, an attorney would have a smaller caseload than most VSO service representatives. Therefore, the case of a claimant retaining an attorney to represent him or her during the entire claims process would likely receive significant individual attention, which would also free VSO service representatives to spend more time on their own veteran clients. All these effects will cause a reduction in the number of BVA and Veterans Court appeals and remands, leading in turn to a decrease in the backlog of claims. This outcome would be of great benefit to all veterans.

The Rehashed Arguments Against Allowing Veterans the Right to Choose Their Representative Have Long Been Discredited

The same arguments used to resist passage of the VJRA of 1988 are being asserted again to resist passage of the Veterans' Choice of Representation Act of 2006. Primarily, the rationale articulated by the major VSOs and the VA for their vehement support for perpetuating the bar to veterans choosing attorney representation is paternalistic, i.e., they argue that the veterans benefits system is non-adversarial and pro-claimant, and as such veterans and their benefits must be "protected" from unscrupulous attorneys. Putting aside the merits of the argument that the VA benefits system is non-adversarial, the view that veterans need to be "protected" from attorneys simply has no basis in fact, and discriminates against veterans in comparison to the unfettered right of all other socioeconomic groups in our Nation to hire an attorney. There is no evidence that veterans have been abused by their attorneys (by charging exorbitant fees, for example) upon their being provided rep-

resentation services before the Veterans Court and then on remand from the Court to the BVA.

Also cited by the VA and some others as to why attorney representation of veterans is harmful and should not be allowed is that, by introducing attorneys into the mix during the initial claims process, VA adjudicators will be forced to take a more adversarial position when adjudicating claims. However, many veterans' advocates would argue that the VA adjudication process is already adversarial. Virtually any veteran who has been through this process will tell you that.

The fact that this process is adversarial not necessarily because of the animus of VA adjudicators, but because of their heavy workload and the massive backlog of cases. It is far faster and easier for a VA adjudicator to deny a claim and let the next level decisionmaker fix any errors than it is to fully review the record, develop the evidence and make a thoroughly reasoned decision. With the assistance of an attorney at the start of a claim, the adjudicator's task can be streamlined to reviewing the evidence, developing the evidence as specified by the attorney, considering the attorney's legal and factual arguments and analysis, and rendering a decision. If the attorney fully develops the evidence as much as possible and writes a coherent argument, a favorable claims decision is essentially written for the adjudicator. Moreover, the adjudicator will have to work harder to find a justifiable basis to deny the claim.

Another discredited "doomsday" argument is that allowing attorneys to represent veterans at the VARO level will result in undue competition with service representatives, perhaps even causing smaller VSOs to be driven out of the business of representing veterans. Such an outcome is highly unlikely. Allowing veterans the right to choose attorney representation will not diminish the critically important role of VA accredited VSO service representatives. As demonstrated by VVA's historical support for judicial review and the right to attorney representation, as well as its use of its own attorneys to represent veterans before the BVA and the Veterans Court, VVA has always viewed the roles of accredited service representatives and attorneys as complementary. Both groups train and learn from each other, and cooperate in the representation of VVA's veteran clients. The strength of accredited service representatives is in their front-line work in the field, developing claims and succeeding at the regional office level in most routine cases. The further up the appeal process a case must go, the more likely it presents complicated legal or factual issues, and is not routine. In such cases, especially at the appellate levels, the role of attorneys can be critical to providing veterans with quality representation.

Moreover, there will never be enough attorneys representing veterans to assist them all. Nor would attorneys have any incentive to take all veterans as clients. Because attorneys will be paid, economic considerations will determine the number of veterans who will choose legal representation. For the same reason, no small VSOs will be put out of the business of representing veterans because of attorneys. Only a small percentage of veteran's benefits claims involve amounts of past-due compensation sufficient to create incentives for attorney representation. Because the vast majority of cases do not involve large awards of past-due benefits, the vast majority of veterans will continue to have their cases represented by accredited VSO service representatives.

Yet another argument used in the past to resist attorney representation is that many attorneys have little or no training in VA laws, regulations and adjudication policies, which would result in inadequate representation or even legal malpractice. This is a "red herring" because, since the VJRA was enacted in 1988, there already have been a number of attorneys throughout the country practicing in this area of the law. It is true that more attorneys new to this practice will become involved if the current bar to attorney representation is repealed. However, ethical and other professional responsibility rules require attorneys to be competent to adequately represent their clients. Attorneys without direct experience with VA benefits laws and procedures should be at least familiar with how to obtain the information and learn what is necessary to provide adequate representation to veterans. This is not a new concept for attorneys. It is the method attorneys use with respect to every area of law in which they might practice.

Lastly, opponents of allowing veterans' freedom of choice also argue that only those veterans with financial means will be able to afford attorney representation. In other words, they argue that poorer veterans will be unable to afford attorneys and thus will be disadvantaged in terms of the quality of their representation, causing disparate classes of benefits claimants. It is highly unlikely, however, that some veterans will be denied the benefit of attorney representation based solely on their inability to pay the attorney's fee. Virtually no veteran will be required to pay an attorney in advance for representation. The vast majority of veterans' cases handled by attorneys will be done on a contingent basis (no fee unless an award of past-due

compensation is won), which is the case with the limited attorney represented cases that occur today. This means that the merits of the veteran's case will most likely determine his or her access to an attorney, not the veteran's financial standing.

The overriding concern for VVA, as well as any other individual or group that cares about the rights of veterans, is that veterans get the most effective representation possible. If a veteran wants to hire an attorney as his or her representative at the VARO, is there a legitimate basis to deny them the right to do so? The position of VVA since its founding has been that no such basis exists. There should be no wavering from this same answer today.

THE CHANGES PROPOSED IN THE NEW LEGISLATION

Current law setting forth the limited circumstances and requirements for attorney representation for payment in veterans benefits claims is found at 38 U.S.C. §5904(c) (2000). There currently are three basic requirements. First and foremost, there must be a final adverse BVA decision with respect to the claim.[1] (This first requirement means that a veteran with a case in a position to finally hire a lawyer has gone through the entire VA claims adjudication and appeals process without the right to have hired one. On average, this process takes three to five years to complete.) Second, the veteran must hire the attorney within 1 year of the date of the BVA decision. Third, compensation can be paid to the attorney only for services rendered after the date of the final BVA decision in the claim that was the subject of the BVA's decision to deny benefits. See §5904(c)(1).

The BVA has promulgated regulations requiring the attorney to file a copy of any attorney-fee agreement with a veteran with the VARO and BVA. When a fee becomes payable, the VARO first reviews the agreement to determine that all the requirements for payment of a fee have been met. Later, the BVA has the authority to entertain any allegation that the fee charged by the attorney is excessive or unreasonable. If so, the BVA may order a reduction in the fee called for in the agreement. See id. at §5904(c)(2). The BVA's regulations provide that an attorney fee of 20 percent or less is presumed to be reasonable.

In addition, the attorney can choose to have the VARO withhold his or her fee and be paid directly by VA. If this payment procedure is used, the attorney-fee amount cannot exceed 20 percent of the amount of past-due benefits paid to the veteran on the basis of the claim. See id. at §5904(d)(1).

In the proposed Veterans' Choice of Representation Act of 2006, the requirement that there be a final adverse BVA decision before the veteran may retain an attorney is eliminated in favor of allowing this at the point the veteran a claim for benefits before the VARO. All of the current provisions providing for VA oversight of the attorney-fee agreement with the veteran would be kept in place; that is, the requirements that the attorney-fee agreement be submitted to the VA and that the fee must not be excessive or unreasonable continue as before. The essential effect of the change is to allow veterans to hire an attorney while their claims are still in the early stages of adjudication at the VARO level of the claims process.

THE VETERANS' RIGHT TO CHOOSE

By virtue of the title of the legislation itself—Veterans' Choice of Representation Act of 2006—the problem it seeks to redress is readily apparent. Unless the veteran decides to be his or her own representative, or is able to find a volunteer attorney, by law the only choice of representation currently available is a service representative from a VSO. Recently, a World War II veteran and long-time attorney representing other veterans as a volunteer has described the notion that veterans are not capable of competently deciding who will represent them in a VA matter as "flabbergasting."[2]

Although veterans are considered mature and responsible enough to choose to serve their country, they are seen as lacking such capabilities with respect to choosing legal representation. This limitation, and the patronizing reasoning behind it, sets veterans off from every other discrete group of the American population. No other group—including illegal aliens and felons in penal institutions—is barred from making a free choice about who will be their legal representative in matters personal to them that may be pending before the government.

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[1] A BVA decision remanding a claim (to the VARO for further development of the record, and, or, re-adjudication) is not "final." A BVA decision awarding benefits without denying any is not "adverse." Neither is a decision appealable to the Veterans Court, nor one about which an attorney may be retained by the veteran.

[2] See "Who Can Fight for the Soldiers?—Veterans Need the Right to Hire a Lawyer" by John C. McKay, The Washington Post, Opinion Section (Sunday, January 22, 2006).

If any group has earned the right to choose whether or not to hire an attorney, it is our Nation's veterans. There simply is no justification for refusing veterans this basic right that is taken for granted by every other segment in our society.

Aside from the basic moral imperative of allowing veterans the choice to freely pick their representation, there are other very practical reasons veterans would desire this right. Primarily, the VA benefits system is rife with problems about which attorneys possess special skills to address. Even though intended to be "non-adversarial," the VA benefits system is nonetheless inherently complicated. There are numerous claim forms, confusing terminology, multiple deadlines for the submission of evidence and arguments, unpublished rules, numerous sources of military and medical records vital to a successful claim, and legal requirements that even VA adjudicators do not easily understand. Because of the complex nature of the veterans benefits system, and the lack of qualified VA adjudicators, there is a tremendous backlog of claims awaiting adjudication by VA. Because VA decision-making is so poor, adding to the backlog of cases are hundreds of cases each month returned to the VAROs from the BVA and the Veterans Court to correct errors. A veteran typically can be stuck in the VA claims process for years. In the present system, however, a lawyer cannot become involved in the case until it is too late, i.e., after the initial evidence development and adjudication has already occurred.

Vietnam Veterans of America strongly and unreservedly supports S. 2694 by convention resolution VB–14–95 "Attorney Representation at VA" (copy attached). We urge its endorsement by this Committee and passage by both houses of Congress. Our hope is that once this milestone is achieved we can move quickly to real judicial review by the Federal courts.

S. 2562, VETERANS' COLA ADJUSTMENT ACT OF 2006

S. 2562 would increase the current levels of disability compensation, additional compensation for dependents, the VA clothing allowance, and the various rates of Dependency and Indemnity Compensation (DIC) for disabled veterans and their families. The percentage increase would be equivalent to the percentage of the cost-of-living adjustment (COLA) for Social Security beneficiaries, and would become effective as of December 1, 2006. These COLA increases are absolutely necessary to prevent veterans and their dependents from falling through inflationary cracks.

VVA would also seek language in this legislation to include COLA increases for children receiving $250 DIC compensation. DIC payments are not affected by COLA increases.

S. 2121, VETERANS HOUSING FAIRNESS ACT

S. 2121 is a worthy piece of legislation. In some areas of the country, co-ops—the two-syllable colloquialism for cooperative housing corporations—have been off-limits to veterans seeking to secure a VA-guaranteed loan to purchase residential cooperative apartment units. Mr. Schumer's sensible bill would remedy this, providing thousands of veterans residing in urban areas with a housing option currently closed to them.

VVA endorses S. 2121.

S. 2659, NATIVE AMERICAN VETERANS CEMETERY ACT OF 2006

American Indians have served in every war fought by the United States of America. During World War I approximately 12,000 served with the American Expeditionary Force and many distinguished themselves in the fighting in France. In World War II, more than 44,000 fought against the Axis forces in both European and Pacific theaters. These Americans compiled a distinguished record of courage and sacrifice. More than 42,000 American Indians fought in Vietnam. American Indian contributions in United States military combat continued in the 1980s and 1990s as they saw duty in Grenada, Panama, Somalia, and the Persian Gulf.

Native Americans continue to play a major role in the armed services with nearly 11,000 on active duty today.

VVA believe it is time that Native American veterans who served our country so honorably are allowed to pursue a decent, dignified resting place on their tribal lands and fully supports S. 2659.

S. 2416, VETERANS EMPLOYMENT AND TRAINING ACT OF 2006

The GI Bill is marketed toward youth. It is portrayed through mass advertising in such a skewed light that there is a common albeit mistaken, perception among the general public that the GI Bill will send a veteran through 4 years of college. The reality is far different. Today's GI Bill will pay on average a little more than

one-fourth the amount of 4 years expenses at a state university at in-state costs. Long gone are the days of former infantrymen walking the halls of Yale and Stanford. The fact that qualified veterans are by and large excluded, due to their economic stations in life, from the top, prestigious institutions that churn out tomorrow's leaders, is not only detrimental to veterans, but is a real blow to this Nation.

VVA believes that the time has come for a serious overhaul of the existing Montgomery GI Bill. A truly substantial GI Bill, one modeled on that accorded to World War II veterans that transformed America, built the middle class, and was an essential ingredient in building the greatest sustained economic engine in the history of the world, is what is needed today. Additionally, we need to restore the apprenticeship and explicitly directed vocational emphasis in the GI Bill to meet the needs of many of our newest veterans. This is one benefit that will, in turn, benefit this Nation for generations to come, returning many times over the investment in dollars to the Treasury, as well as greatly aiding in growing our Gross Domestic Product.

S. 3363—VVA supports this amendment to Chapter 35 Subtitle IV of 38 U.S. Code that would extend an accelerated education payment program to dependents and survivors under the Montgomery GI bill. This benefit is extremely useful in non-degree education/training programs that will directly lead to meaningful employment.

Mr. Chairman, again all of us at VVA thank you for this opportunity to present our views on these improvements in vital veterans benefit.

ATTORNEY REPRESENTATION AT THE VA

(VB–14–95)

Issue:

American veterans are unable to pay for legal services until after their case has gone past the Board of Veterans' Appeals.

Background:

Legal counsel at the Court of Veterans Appeals for Claims for Claims is allowed to present no new evidence. Allowing veterans legal counsel at the initiation of their claim would give that claim a legal continuity. Legal counsel is the right of all Americans, except veterans.

Resolved, That:

Vietnam Veterans of America actively seeks and supports legislation allowing veterans to access legal counsel at any point in their claim.

Financial Impact Statement: In accordance with motion 8 passed at VVA January 2002 National Board of Directors meeting which charges this Committee with the reviewing its relevant Resolutions and determining an expenditure estimate required to implement the Resolution, presented for consideration at the 2005 National Convention; this Committee submits that implementation of the foregoing Resolution shall be at no cost to National.

Chairman CRAIG. Richard, thank you very much.

Now let us turn to Bart Stichman, Co-Director of National Veterans Legal Services Program.

Bart, welcome before the Committee.

STATEMENT OF BARTON F. STICHMAN, CO-DIRECTOR, NATIONAL VETERANS LEGAL SERVICES PROGRAM

Mr. STICHMAN. Thank you, Mr. Chairman, for the opportunity to testify. I would like to focus my remarks this morning on S. 2694.

A major part of the mission of the National Veterans Legal Services Program since we were formed in 1980 has been training lawyers and non-lawyer representatives in veterans law. We have trained, over the last 26 years, thousands of lawyers and non-attorney representatives in veterans law. And that helps inform my written testimony and oral testimony today.

I ask that the written testimony be made part of the record. I would like to highlight——

Chairman CRAIG. Without objection, it will be. Thank you.

Mr. STICHMAN [continuing].—I would like to highlight two points in that testimony. First, the Veterans Service Officer network is greatly overburdened today with a staggering caseload.

As you know, over the last 5 years, the number of claims has increased by 36 percent. The VA expects over 900,000 new claims this year. In a recent National Law Journal article, it reported that the cases of 18,000 VA claimants pending before the VA regional office in St. Petersburg were being handled by 14 service officers employed by a major national Veterans Service Organization. At the Los Angeles VA regional office, the cases of 9,000 VA claimants pending before that office were being handled by 9 service officers employed by that same organization.

This amounts to over 1,000 pending claims for each service officer. No service officer, no matter how well trained, can devote a lot of time to an individual disabled veteran's case when he or she has to handle more than 1,000 clients at the same time.

Enactment of S. 2694 will have the important positive effect of increasing the pool of advocates available to represent the increasing number of disabled veterans who are seeking VA benefits. This, in turn, will lighten the overwhelming caseload borne by the service officers. It will be a win-win situation for veterans, the service officers, and attorneys.

The second point I would like to emphasize in my testimony has to do with the arguments against allowing attorneys into the system that have been made this morning: that it will make the system more adversarial. I have a sense of deja vu. I have heard these same arguments in 1988 when Congress was debating whether to authorize judicial review of VA decision-making. The arguments have not changed. The people who are being quoted are the same people, Chief Judge Rehnquist from a 1985 decision, judges who spoke in 1988, but that is 18 years ago. What has happened in the last 18 years?

When Congress enacted the Veterans' Judicial Review Act, they actually allowed attorneys into the VA system to be hired by veterans in a limited sense. When there is a denial by the Board of Veterans' Appeals, Congress allowed, beginning in 1988, veterans to hire lawyers to reopen their claim at the regional office or to represent them for a fee on remand from a court proceeding.

The Board of Veterans' Appeals denies about 10,000 claims each year. Since 1988, 180,000 claims have been denied by the BVA and an opportunity to hire a lawyer has existed. Some of the veterans in these 180,000 cases have given up. Some of the veterans have used Veteran Service Officers to reopen a claim, or represent them on remand from court. And some have hired attorneys. So, we have had 18 years of experience with lawyers to some degree in the VA system. As a former Senator said, where is the beef? Where is the evidence that lawyers have caused the VA system to be more adversarial?

The VA and the others who have testified against your bill have not cited any evidence. I know of no evidence. The sky has not fallen, to my knowledge, because some lawyers have been involved in the VA system. If you want to know the impact of attorneys on the system, ask the clients of those attorneys how they felt when they were represented and whether they were helped, and whether it

was worth the money to have paid the attorney to, hopefully, win the case. That is the type of record that would need to be made and is not being made to show that the system would be made worse by the introduction of attorneys.

I would be pleased to answer any questions the Committee may have.

[The prepared statement of Mr. Stichman follows:]

PREPARED STATEMENT OF BARTON F. STICHMAN, CO-DIRECTOR, NATIONAL VETERANS SERVICES PROGRAM

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the views of the National Veterans Legal Services Program (NVLSP) on S. 2694, the "Veterans' Choice of Representation Act of 2006." NVLSP is a veterans service organization with a unique perspective on the merits of this legislation. Since NVLSP was established in 1980, we have trained thousands of veterans service officers and lawyers in veterans benefits law. We have also written educational publications that have been distributed to thousands of veterans advocates to assist them in their representation of VA claimants. This experience has helped us in formulating our position.

NVLSP strongly supports enactment of S. 2694. As I discuss in more detail below, we support S. 2694 for many of the reasons that Senators Craig and Graham identified when they introduced this legislation.

THE MAJOR REASONS THAT S. 2694 SHOULD BE ENACTED

1. *Freedom of Choice.* In his press release of May 4, 2006, Senator Craig answered yes to the following question: "If American soldiers are mature and responsible enough to choose to risk their lives for their country, shouldn't they be considered competent to hire a lawyer?" NVLSP agrees entirely. Veterans deserve the right to choose to hire an attorney to represent them on a claim for VA benefits. It makes no rational sense to deny them this right when the right to choose to hire an attorney is enjoyed by criminal defendants, claimants for other Federal Government benefits including social security, and non-citizens opposing Federal Government efforts to deport them. As one observer aptly put it, the current, 144-year-old statutory bar to hiring an attorney to help a disabled veteran on a VA claim is a "museum piece" that deserves to be repealed.

2. *The Overburdened Veterans Advocacy Network.* Another major reason that NVLSP supports S. 2694 is that the current network of veterans advocates available to our Nation's disabled veterans is greatly overburdened. As I explain in more detail below, the time that veterans service officers can devote to an individual disabled veteran's case is greatly limited by the daunting caseload they must carry. Allowing disabled veterans to hire attorneys will help alleviate this burden and promote justice.

The number of disabled veterans who need representation on their claims before the VA is staggering, and it is increasing over time. Thomas J. Pamperin, Assistant Director of the VA's Compensation and Pension Service, recently quantified for NVLSP the upsurge in VA claims. He stated:

As reported in the President's budget submission for fiscal year 2007, disability claims from returning war veterans, as well as from veterans of earlier periods, have increased 36 percent between 2000 and 2005. VA projects that disability claims in 2006 will increase to an estimated 811,947, an increase of 23,649, based on the increasing claim rate. We project an additional 98,178 more claims as a result of specific legislation contained in VA's appropriation for 2006 mandating personal contact with veterans in six states (the "outreach effort"). Thus, we anticipate a total of 910,126 disability claims in 2006 compared to actual receipt in 2005 of 788,298, an increase of 121,828 claims . . . Furthermore, VA is currently working on initiatives to conduct outreach to potential non-service-connected, pension-eligible wartime veterans and survivors.

A recent article in the National Law Journal (a copy of which is attached hereto) gives a glimpse of the heavy load that is being carried by our Nation's veterans service officers. The National Law Journal reports that as of 2003, the cases of 18,000 VA claimants pending before the VA regional office in St. Petersburg were being handled by 14 service officers employed by a major national veterans service organization. The cases of 9,000 VA claimants pending before the VA regional office in Los Angeles were being handled by nine service officers employed by the same organization.

This amounts to over 1,000 pending claims for each service officer. No service officer—no matter how well-trained—can devote a lot of time to an individual disabled veteran's case when he or she has to handle 1,000 or more clients at the same time.

Enactment of S. 2694 will have the important positive effect of increasing the pool of advocates available to represent the increasing number of disabled veterans who are seeking VA benefits. This, in turn, will help lighten the overwhelming caseload borne by many service officers. Most disabled veterans will undoubtedly choose to continue to be represented by a service officer who by law provides this service at no cost. But disabled veterans who are represented by a service officer will be benefited because the service officer will have more time to devote to their case.

3. *Improving Veterans' Access to the VA and Expediting Just Outcomes.* In Senator Craig's May 6th press release, he quoted Senator Graham as stating that "[t]his overdue change will significantly improve veterans' access to the VA and expedite just outcomes." Senator Graham went on to state that "[i]n today's complicated world, legal assistance in navigating the system is more timely than ever." NVLSP strongly agrees with this assessment.

In the first place, NVLSP can vouch for the fact that the Federal veterans benefits system has always been highly complex. To assist service officers and attorneys in representing veterans in this system, NVLSP has written the Veterans Benefits Manual ("VBM"), which has been published since 1999. The fact that the VBM is over 1,700 pages long reflects the complexity of the system. I should note that because important changes in veterans benefits law take place every year, a new edition of the VBM is published annually.

NVLSP also agrees with Senator Graham that enactment of S. 2694 would expedite just outcomes in this complex system. For example, in 11,833 of the 15,823 appeals (or 74.8 percent) that the U.S. Court of Appeals of Veterans Claims decided on the merits during the last 10 fiscal years, the Court was forced to remand the case back to the VA for further proceedings. Similarly, in 51,675 of the 121,174 cases (or 42.6 percent) heard by the Board of Veterans' Appeals during the last three fiscal years, the Board was forced to remand the case back to a VA regional offices for further proceedings.

A large percentage of these Court and Board remands are caused by the failure of the regional offices to comply with the nonadversarial VA procedures required by law in a way that prejudiced the veteran's case. For example, some claims have had to be remanded because the regional office failed to inform the disabled veteran of the evidence necessary to substantiate the veteran's claim as required by 38 U.S.C. §5103. Some claims have had to be remanded because the regional office failed to obtain the veteran's service department records, Social Security records, or private medical records, or to provide the veteran with a medical examination as required by 38 U.S.C. §5103A. Some claims have had to be remanded because the regional office failed to obtain a medical opinion addressing whether the veteran's current disability is related to an event, injury, or disease that occurred during the veteran's military service as required by 38 U.S.C. §5103A. These remands delay, sometimes for years, the ultimate resolution of a disabled veteran's claim that has already taken years to reach the Board of Veterans' Appeals or the Court of Appeals for Veterans Claims.

But forcing the Board or the Court to make VA regional offices comply with these nonadversarial requirements is not the only way for a disabled veteran to have his claim fairly decided. If the obstacle to a fair decision is that the regional office failed to inform the disabled veteran of the evidence necessary to substantiate the veteran's claim, a service officer or lawyer can remove that obstacle early in the claims process by simply informing the disabled veteran about the evidence that is necessary. If the obstacle to a fair decision is that the regional office failed to obtain a medical nexus opinion or a veteran's service department records, Social Security records, or private medical records, a service officer or lawyer can remove that obstacle early in the claims process by obtaining this evidence themselves and submitting it to the regional office.

Given the current heavy caseload borne by the Nation's service officers, many of them simply do not have enough time in every case to analyze the claim and to obtain and submit the evidence that the VA regional office was obligated by law, but failed, to obtain. Enactment of S. 2694 should help alleviate this overload by making additional advocates available to our Nation's veterans to assist them on their VA claims. This, in turn, will increase the amount of time these advocates have to devote to an individual case, thereby allowing them early in the claims process to remedy the regional office's failure to comply with the nonadversarial procedures required by law. The net result, as Senator Graham stated, will be to "expedite just outcomes."

I want to stress that in the experience of NVLSP, most service officers are well-trained, knowledgeable, and dedicated to helping veterans obtain the benefits they deserve. Adding attorneys to the mix of advocates who can represent veterans before the VA will ease the workload of many overburdened service officers and allow them to spend more time per case helping veterans. This legislation would add more advocates to the mix, and protect veterans from unreasonable fees. It is a "win-win" for both veterans and for service organization representatives.

An Argument Raised Against S. 2276: It Will Allegedly Make the VA System More Adversarial

Finally, I would also like to address an argument we have heard some make against allowing veterans freedom to choose to hire a lawyer on any VA claim. That argument is that the introduction of lawyers will make the VA claims adjudication system more adversarial.

The basic flaw in the argument is that there is no evidence to support this notion. Over the last five fiscal years, lawyers have represented VA claimants before the Board of Veterans' Appeals in 13,021 of the 152,731 cases (or 8.53 percent) decided by the Board. Thousands of VA claimants have been represented by lawyers before VA regional offices. If lawyers would make the VA claims adjudication system more adversarial to the detriment of VA claimants, then there would already be evidence of this phenomenon. To NVLSP's knowledge, there is no such evidence.

In conclusion, NVLSP greatly appreciates the opportunity afforded to us by the Committee to address the merits of S. 2694. We believe that there are some technical amendments to S. 2694 that would further the objectives of the bill, and we intend to provide them to the Committee in writing in the near future. That concludes my prepared statement, and I would be happy to answer any questions.

Chairman CRAIG. Thank you very much.

Before we turn to any questions of the panel, we have been joined again by Senator Thune.

John, do you have any opening statement or comments or questions you would like to direct to this panel?

STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. I thank you, Mr. Chairman. I would like to make just a couple of comments and then I do have a question that I would like to ask this panel. I appreciate you holding this hearing and taking a look and hearing from all about the range of initiatives and legislation that is moving through the Congress up here that would address veterans benefits. Obviously, we all have a bipartisan desire, and that is to see that we ensure the veterans who faithfully served our country receive the benefits that they have earned. And that the veterans in this country know that we stand behind them in the policies that we put in place.

As we look at the bills on the agenda today, I also want to just make a couple of remarks about a bill I introduced shortly before the Memorial Day break, and that is Senate Bill 3068, which picks up on something one of your bill does, Mr. Chairman, that is to extend the COLA through 2007 for veterans disability. What my bill would do would just make that permanent.

It is something that the cost is already assumed in the budget baseline, and therefore does not have a budgetary effect. Social Security and Medicare have automatic COLAs and I think the veterans deserve the same security. And so I hope this Committee would be able to support that bill. It is a good bill that, again, has a neutral budgetary effect and it is a small way, I think, of giving our disabled veterans a little more peace of mind as they face the challenges of everyday life.

I have a question with respect to the whole issue of hiring lawyers, as well. I know there has been some discussion of this on the last panel. I would be curious to get some comments from this panel. I know that the process is designed not to be adversarial and to promote a high degree of solicitude for our veterans. I am sensitive to that side of the argument, as well.

But, I guess I am curious to know if there are any other instances aside from the VA benefits claims process where adults are restrained by law from hiring an attorney. This seems to me to be a pretty rare exception. I think this question was raised earlier, but if any of you are aware of anybody that draws Social Security benefits that is prevented from being able to retain an attorney to pursue that.

One of the problems with the Board of Veterans' Appeals that we have is the significant backlog, and I guess I am interested in just getting your observation about what effect allowing veterans to hire lawyers at any stage in the process would have on—would it increase the likelihood that backlogs would become more significant or would it be likely to streamline the process? I mean, what is your take on that particular—that is an issue that, I think, is of great interest.

Mr. KINDERMAN. Mr. Thune, Quentin Kinderman with the Veterans of Foreign Wars.

We believe—I think we are alone at the table here—in that we do not favor attorneys practicing in regional offices. We believe that if there were only a few attorneys, it would probably have a nominal effect. So, you cannot really predict what is going to happen until you know how many attorneys will end up practicing.

But we believe that the strategies that the attorneys will use and the efforts they will go to assure that they do everything on behalf of their clients will, in fact, make the claims process more labor intensive. So, yes, if attorneys practice in the regional offices to a significant extent, we believe that we would see backlogs increase, unless VBA has a commensurate increase in their capacity to do work. We do not see that.

Mr. STICHMAN. If I might interject. I believe just the opposite. The claims process will speed up by the introduction of attorneys and let me explain why.

I mentioned before the high caseload maintained by Veteran Service Officers. Because they have such a high case load, they are forced to rely on the non-adversarial system for the VA to assist the claimant by going out and getting Social Security records, service medical records, private medical records. And the veteran has to wait for the VA to do those things, or, if it does not do it, for the service officer to contest that by appeal to the Board of Veterans' Appeals.

Lawyers with a lower caseload do not need to wait. They typically, from my experience, go out and get those records. Even though the VA is required to get it, they go get the records, submit it, and package the case so that the VA can quickly decide it.

I was at a veterans law conference recently, where the Deputy Service Manager of the Baltimore regional office of the VA was talking about how wonderful it is to get a package case. She loves when a claim comes in and has all the evidence. The VA does not

have to go out and get it because the attorney has already done that and has the time to do that.

Those cases are decided quickly and favorably. And if you have people with more time, that is going to happen more.

Mr. WEIDMAN. I would like to second that, Senator. The better prepared the case is with laying out the law, cogently summarizing the argument as to why the individual qualifies for the benefit for the compensation under that. Then, have the evidence that is cited, tabbed, the same way an attorney would in any filing of any significant brief. Attorneys know how to do that. And when you give that to the VA, it can be adjudicated in 15 to 30 minutes. Period. It is either there or it is not there, and attorneys are used to doing that.

Judge IVERS. Senator Thune, I might add from the perspective of having sat on the court for 15 years and observed the significant number of cases that were remanded for record insufficiencies, that having attorneys preparing the record helped change my perspective on whether or not attorneys should be allowed at the regional office level. I think preparation of the record is key. The more concise that record is and the more complete that record is, the better it is for review by the court. I think that would help reduce the number of remands from the court.

I am not sure how many attorneys will appear at the initial stages. That would remain to be seen, as everybody has pointed out. But any case that comes before the court that has a complete and well documented record is going to get a complete review on the merits because the essential record is all there for the Court to look at.

Senator THUNE. I appreciate that. That is a great perspective. I think that is a concern, obviously, that whatever we do, we want to make sure that it does not add to the backlog and the delays and the slow downs that currently exist. It seems to me that it would. If you have got folks like attorney who are carefully organizing and putting together the evidence, so to speak, and being able to make a very coherent argument that it could have a streamlining effect.

But I think you stirred up here, a little bit, Mr. Chairman, with your bill, but I appreciate the opportunity to hear from the organizations that would be most affected by this and want to work with you to make sure that we are serving our veterans in the best manner possible. Hopefully, taking steps to streamline the process to avoid the backlog and make some headway in terms of just providing, I guess, a better level of service when it comes to processing claims.

I appreciate very much your perspective on that and, again, look forward to moving forward with the legislation. Thank you, Mr. Chairman. I thank the panel.

Chairman CRAIG. Members of the panel, I want to thank you all for your presence and your opinions. I think they are extremely valuable for the record. My concern is equal to yours, as it relates to case backlog and veterans being treated fairly and timely, as it relates to the claims process.

We have a full complement at the court now. We have visited it. We are listening. We are watching. We are trying to understand

where the problems rest. I know Quentin expressed his concern and, it is a concern of ours. It has been expressed by all of you, certainly the two of you—and also Richard. As you heard the VA, it is pretty hard to argue the principle that is reflected in the legislation, but we find it inherent to defend the status quo.

The status quo is not serving our veterans, as we speak. There are numerous reasons for it. I think Quentin, you reflected some of those: proper training, educational processes, making sure it is done right. That is one of the reasons why I began to look at the possibility of taking down this old restriction and opening up the opportunity for a broader constituency out there of professionals that could facilitate and assist our veterans.

We will see where it takes us. It is a worthy and important debate to determine whether we move in this direction. Judge Ivers, I think I am much closer to where you are as it relates to the maturing of a process and of an approach that we are into now, as it relates to veterans claims and how they get handled effectively.

As my statement reflected, this is a policy in place of long-standing that may no longer serve our veterans well, so we are going to take a hard look at it.

Gentlemen, thank you very much for being with us today. We appreciate it. The Committee will stand adjourned.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. CHARLES E. SCHUMER,
U.S. SENATOR FROM NEW YORK

Good morning Chairman Craig, Ranking Member Akaka. I want to thank you and other Members of the Senate Committee on Veterans Affairs for giving me the opportunity to testify on the importance of the Veterans Housing Fairness Act of 2005 (S. 2121).

I come here today to speak in support of a very important issue, veterans housing benefits. Everyone should be afforded the basic right of having a roof over their heads and a safe and decent place to live. No one should be left out in the cold, especially not our Nation's veterans. The veterans of this country are the hard working men and women who put their lives on the line to uphold the basic freedoms that our country provides. These veterans are the men and women who proudly served our country in World War II, the Korean War, Vietnam and the Persian Gulf War.

And today, we have thousands of troops putting their lives on the line in Iraq. These men and women who are in Iraq today will soon be our newest generation of veterans. We need to ensure that we provide all of our hard working veterans with the very basic rights, such as a roof over their heads, after they put their lives on the line to protect our rights as a Nation.

Today veterans face many problems when trying to secure safe, decent and affordable housing. In many areas throughout the country, including New York City, the cost of houses, condominiums, townhouses and even mobile homes can be exorbitantly high. Sky-rocketing housing prices combined with a lack of affordable housing units increase the likelihood for veterans to be homeless, which is a growing problem. According to the Department of Veterans Affairs, 250,000 of our Nation's veterans are homeless—12,000 of them are concentrated in New York City alone.

I am committed to ensuring our Nation's veterans receive the best housing benefits, which is why I have introduced the Veterans Housing Fairness Act in the previous two Congresses, and have re-introduced this important legislation in the 109th Congress.

Under current law, veterans may use their VA housing loans to purchase a house, townhouse, condominium, or mobile home, but they are not able to purchase cooperative residential units with these loans. Cooperative residential units, however, provide another affordable alternative. My legislation, the Veterans Housing Fairness Act of 2005, will expand the authority for VA home loan benefits to add this important option for home ownership in a changing marketplace, which will be a great asset to our Nation's veterans.

In certain areas of New York, such as New York City, cooperative housing comprises as much as 30 percent of all residential owned housing. Cooperative housing units are certainly not unique to the State of New York. Outside of New York, there are over 15,000 cooperative townhouses in southeastern Michigan, 25,000 units in the greater Washington D.C. area, 5,000 in Kansas City, and over 30,000 in the state of California.

Other government agencies, such as FHA, currently have programs to give loans for cooperative residential units. There is no reason to deny veterans the ability to use their VA housing loans to purchase these same units. S. 2121 will allow veterans to explore all housing options and choose the one that best suits their needs, which will increase the amount of affordable units, and will stem the tide of homeless veterans.

This legislation would still ensure that a veteran can use his or her VA housing Loans to purchase stock or membership in a single family residential unit, much like the units in condominiums. My bill would also comply with criteria established by the Secretary of Veterans Affairs.

I am proud to announce that the American Legion, Paralyzed Veterans of America (PVA), and the Veterans of Foreign Wars of the United States (VFW) have all endorsed this legislation, and the Disabled Association of Veterans (DAV) has acknowledged that this would be beneficial to veterans and their families.

At a time when housing prices can far exceed a person's means, it is important to present veterans with all options so that they too can have the opportunity to purchase an affordable home. We need to ensure that every American citizen—especially those who fought long and hard for our country—has an opportunity to live the American dream of homeownership. I urge my colleagues to support the Veterans Housing Fairness Act of 2005, and I thank Chairman Craig and Ranking Member Akaka for the opportunity to discuss this important issue.

PREPARED STATEMENT OF HON. MIKE DEWINE, U.S. SENATOR FROM OHIO

I want to thank Chairman Craig and Ranking Member Akaka for inviting me to discuss legislation that will benefit the survivors and dependents of our deceased servicemembers. I appreciate your steadfast dedication to improving benefits for our Nation's veterans and their families. These families embody courage, patriotism, and dedication.

As you know, more than half of America's men and women in uniform are married and about half of those families also have children. These families supply endless support for our servicemen and women and I believe we need to provide them that same support in the event that they are killed while serving on active duty.

My legislation, S. 3363, which you will consider today, would pay most of the education benefit upfront for survivors and dependents who are pursuing an education in high-tech fields each semester. These accelerated payments would be granted to students pursuing programs in life science or physical science, engineering, mathematics, engineering and science technology, computer specialties, and engineering, science, and computer management. Accelerated payments for these programs are currently available to GI Bill recipients and are helping our country educate a much needed workforce in the following high-tech fields: biotechnology, life science technologies, opto-electronics, computers and telecommunications, electronics, computer-integrated manufacturing, material design, aerospace, weapons, and nuclear technology.

I am thankful that the Committee has agreed to take a look at my legislation—which represents the first step toward improving the education benefit for survivors and dependents—but I am hopeful that this Committee will also consider revisiting the policy regarding the survivor education benefit. Conceptually, the Survivors' and Dependents' Educational Assistance Program was established to provide a partial education benefit. I think that it is time to again discuss the intent of this program. We owe our deepest gratitude and support to families who have lost loved ones while on active duty. Think of the children who will grow up without their parent. The uniformed mother or father of these children will never again sit at the dinner table to help with homework, watch proudly as their child receives his or her high school diploma, or help pack the car to move their new student to college.

Last fall I introduced S. 2014, which would provide each eligible beneficiary access to a college education. This bill would eliminate the current 45-month cap on benefit payments and establish a $80,000 lump sum that can be drawn down for any educational expenses, including tuition, fees, room, board, and books. Under current law, a survivor only has access to about $37,215 if he/she attends college or a trade school on a full-time basis. As we know, this amount would not even guarantee a survivor access to a college degree from many state universities today. In fact, let's use the Ohio State University as an example. This public institution will cost in-state students roughly $15,285 for the 2005–2006 school year, which includes tuition, room, and board. Now, if there were no cost increases over the course of a 4-year matriculation—which, in this day and age is an unrealistic assumption—a degree from Ohio State would cost $61,140. This amount is $23,925 more than the current benefit that is available from the Department of Veterans Affairs. Clearly a gap exists.

Again, I appreciate the Committee's commitment to ensuring our veterans, survivors, and their families have fair and adequate benefits. I look forward to working with you as S. 3363 moves through the Senate. This benefit improvement will not only improve the United States' high-tech workforce, but will also provide easier financial access to a high-tech education for our military survivors and their dependents.

PREPARED STATEMENT OF PETER S. GAYTAN, DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to submit The American Legion's views on the bills being considered by the Committee today. The American Legion commends the Committee for holding a hearing to discuss these important and timely issues.

S. 2562, THE "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2006"

S. 2562 will increase, effective as of December 1, 2006, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans. The amount of increase shall be the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2006.

The American Legion supports this annual cost-of-living adjustment in compensation benefits, including dependency and indemnity compensation (DIC) recipients. It is imperative that Congress annually considers the economic needs of disabled veterans and their survivors and provide an appropriate cost-of-living adjustment to their benefits, especially should the adjustment need to be higher than that provided to other Federal beneficiaries, such as Social Security.

S. 2694, THE "VETERANS' CHOICE OF REPRESENTATION ACT OF 2006"

The "Veterans' Choice of Representation Act of 2006" seeks to amend title 38, United States Code, to remove certain limitations on attorney representation of claimants for veterans benefits in administrative proceedings before the Department of Veterans Affairs (VA), and for other purposes. S. 2694 outlines the oversight of attorney representation to include registration fees collected by VA from attorneys who wish to represent veterans.

The American Legion does not oppose the concept of attorney representation in the VA system or the lifting of current restrictions on attorney representation. We are concerned that such legislation should contain adequate safeguards to ensure each attorney's competency, training and reasonable fee limits. We are pleased that this bill includes provisions addressing these areas of concern. We recommend a fee cap or reasonable hourly rate be included to help ensure a speedy resolution of the claim. As it currently stands with a 20 percent fee agreement, the longer it takes to satisfactorily resolve a claim, the larger an attorney's fee. A fee cap or reasonable hourly rate would help to avoid this problem and create an incentive for a timely resolution of the claim.

Although we do not disagree with the reasoning of this bill, namely that a veteran should have the right to hire counsel to represent him or her in the VA claims administrative process, we do not concede that attorneys would necessarily do a better job representing claimants before the VA compared to experienced veterans' service organization (VSO) representatives who currently provide this service free of charge. Just because a veteran's advocate is an attorney does not mean that he or she is proficient in this very specialized area of administrative law and would be a more effective representative. In fact, the data at the administrative level does not indicate that attorneys are better or more effective representatives than VSO service officers. A review of the Board of Veterans' Appeals (BVA) disposition of appeals for Fiscal Year (FY) 2005 demonstrates that VSOs do as well, if not better, than attorneys in achieving a favorable resolution of an appeal.

Additionally, The American Legion disagrees with the notion that lifting current restrictions so attorneys can enter the administrative process, before a final VA administrative decision, will fix all the problems that currently exist in the VA claims process. We are concerned that attorneys may make these problems worse by clogging the system with frivolous motions and other paperwork requests, and may affect the current non-adversarial nature of the VA administrative process. Moreover, some claimants who begin the process with an attorney may, at some point during the claims process, for whatever reason, sever the attorney-client relationship and then seek the services of a VSO representative. This situation may put both the claimant and the VSO representative at a disadvantage.

In conclusion, although we do not oppose this bill and appreciate the various safeguards that are included, The American Legion does not believe this legislation is a solution to resolving the major problems that exist in the VA adjudicative process. We urge the Committee to address the major problems, as discussed in detail below, that currently exist, including, but not limited to, lack of accountability in the adju-

dicative process, training, inadequate staffing levels, and lack of quality and consistency in rating decisions by the rating officials and veteran law judges.

STAFFING

Whether complex or simple, VA regional offices are expected to consistently develop and adjudicate veterans' and survivors' claims in a fair, legally proper, and timely manner. The adequacy of regional office staffing has as much to do with the actual number of personnel as it does with the level of training and competency of the adjudication staff. The Veterans Benefits Administration (VBA) has lost much of its institutional knowledge base over the past 4 years, due to the retirement of many of its 30-plus year employees. As a result, staffing at most regional offices is now made up largely of trainees with less than 5 years of experience. Over this same period, as regional office workload demands escalated, these trainees have been put into production units as soon as they completed their initial training.

Concern over adequate staffing in VBA to handle its demanding workload was addressed by VA's Office of the Inspector General (IG) in a report released in May of 2005 (Report No. 05–00765–137, dated May 19, 2005). The IG specifically recommended, "in view of growing demand, the need for quality and timely decisions, and the ongoing training requirements, reevaluate human resources and ensure that the VBA field organization is adequately staffed and equipped to meet mission requirements." Additionally, the chairman of the Veterans' Disability Benefits Commission questioned the Under Secretary for Benefits about the adequacy of current staffing levels during a Commission meeting this past July. The Under Secretary conceded that the number of personnel has decreased over the last 3 years. It is an extreme disservice to veterans, not to mention unrealistic, to expect VA to continue to process an ever increasing claims workload, while maintaining quality and timeliness with less staff.

Our current wartime situation provides an excellent opportunity for VA to actively seek out returning veterans from Operations Enduring Freedom and Iraqi Freedom, especially those with service-connected disabilities, for employment opportunities within VBA. We also encourage the hiring of more veterans and Reserve component personnel as they are already well versed in the rigors of military service, its health system and its medical and personnel recordkeeping systems, thus their 'corporate knowledge' acquired in service to their country will enhance their work and they can provide valuable insights to their non-veteran coworkers that will help the VA in its overall mission of adjudication of veterans' claims.

TRAINING

Over the past few years, The American Legion's Quality Review Team has visited almost 40 VA regional offices for the purpose of assessing their overall operations. This assessment includes a review of recently adjudicated claims. Our site visits have found that frequently there have been an insufficient number of supervisors or too many inexperienced supervisors to provide trainees the necessary mentoring, training, and quality assurance. In addition, at many stations, ongoing training for the new hires as well as more experienced staff was postponed or suspended in order to focus maximum effort on production. However, we are encouraged by the Under Secretary for Benefits' public commitment to improving the training of VBA personnel and we optimistically anticipate improvements in this area in 2006.

PRODUCTION VERSUS QUALITY

An informed observer of the VA adjudication system would find that the VA suffers from a quality problem. Although VBA's policy of "production first" has resulted in many veterans getting faster action on their claims, the downside has been that tens of thousands of cases have been arbitrarily denied due, in part, to the lack of proper development of the claim at the regional office. Approximately 65 percent of VA raters and Decision Review Officers (DROs) surveyed by the IG, in conjunction with its May 2005 report, admitted that they did not have enough time to render timely quality decisions. In fact, 57 percent indicated that they would have difficulty meeting production standards if they took time to adequately develop claims and thoroughly review the evidence before making a decision. Inadequate regional office staffing levels and pressure to render quick decisions resulted in an overall decrease in quality of work, and has also been a consistent complaint among Service Center employees interviewed by The American Legion during our quality checks. As a consequence, the appeals burden at the regional offices, the BVA and the Appeals Management Center (AMC) continues to grow.

In fiscal year 2005, the BVA issued more than 34,000 decisions. The BVA overturned the regional offices' decisions or remanded the decision for additional devel-

opment in almost 60 percent of these appeals. Clearly, if the VA ensured proper regional office decision-making the inventory of appealed claims at the Board level would drop precipitously. For years, The American Legion and other VSOs have maintained that the driving force behind most VA adjudications is the need by the VA to process as many claims as possible in the fastest time possible. Awards and bonuses are often centered on production. Even the IG acknowledged that because the VA often does not take the time to obtain all relevant evidence and information, there is a good chance that these claims are not properly adjudicated. This improper emphasis on quantity and speed of adjudication results in premature adjudications, improper denials of benefits, and of course, inconsistent decisions.

Another result of premature claim adjudications is incorrect decisions by the regional offices, which cause the consequent increase in remand orders by BVA veteran law judges. In essence, these remand orders are merely directing the regional offices to properly redevelop a veteran's claim, actions the regional office should have taken the first time the claim was filed. The growing claims backlog (according to the VA, there were 370,799 rating claims pending as of May 20, 2006) and the immense pressure on VA leadership to reduce it and provide timely decisions is often at odds with efforts to maintain or improve the quality of the decisions.

The establishment of realistic production goals and timelines that take into consideration the number of pending cases and the complexity of the work must be accomplished if VA is to ever reach a much needed balance between production and quality in its adjudication process. In addition to providing rating personnel with sufficient time to properly develop and rate claims, it is essential for VA management to actively encourage and reward quality work and hold individuals, at every level, accountable for inferior work.

S. 2659, THE "NATIVE AMERICAN VETERANS CEMETERY ACT OF 2006"

The "Native American Veterans Cemetery Act of 2006" will enable the Secretary to make grants under this subsection to any tribal organization to assist the tribal organization in establishing, expanding, or improving veterans' cemeteries on trust land owned by, or held in trust for, the tribal organization. Grants under this subsection shall be made in the same manner, and under the same conditions, as grants to States are made under the preceding provisions of this section.

The American Legion supports the establishment of additional national and state veterans' cemeteries wherever a need for them is apparent. The American Legion supported P.L. 108–109, the National Cemetery Expansion Act of 2003 authorizing VA to establish new national cemeteries. Thus, The American Legion supports the Native American Veterans' Cemetery Act of 2006 because of the apparent need encompassed in this legislation.

Every passing generation of veterans has earned the thanks of a grateful nation. Burial in a veterans' cemetery is the final salute to this Nation's heroes. The American Legion will continue to work with Congress to ensure that it provides the appropriate honor and recognition to "him who shall have borne the battle and for his widow and his orphan." With young American servicemembers answering the Nation's call to arms in every corner of the globe, we must now, more than ever, work together to honor the sacrifices of America's veterans, past, present and future.

S. 2416, THE "VETERANS EMPLOYMENT AND TRAINING ACT OF 2006"

S. 2416 seeks to expand the scope of programs of education for which accelerated payments of educational assistance under the Montgomery GI Bill (MGIB) may be used, and for other purposes.

A higher percentage of today's servicemembers are married (with children in the majority of cases) when they are discharged. Meeting their financial obligations to sustain and maintain a family household is paramount and financial obligations often serve as major obstacles to the timely use of the MGIB. Every effort must be made to empower veterans with options to make the best vocational choice.

The American Legion supports the provisions of the "Veterans Employment and Training Act of 2006". The current unemployment rate for veterans ages 18 to 24 is 15 percent, compared to the private sector rate of 8 percent. Increasing the educational benefit available through the MGIB would provide a better incentive for veterans to complete an educational program with immediate employment results without the need of acquiring student debt. In addition, The American Legion strongly supports the expansion of the program to include other short-term educational programs of value that could lead to the employment of veterans.

S. 2121, THE "VETERANS HOUSING FAIRNESS ACT OF 2005"

S. 2121 seeks to expand the VA Home Loan benefit to include the purchase of stock or membership in a development, project, or structure of a cooperative housing corporation. The loan may not be guaranteed under subsection (a)(12) unless the development, project, or structure of the cooperative housing corporation complies with such criteria as the Secretary prescribes in regulations and the dwelling unit that the purchase of stock or membership in the development, project, or structure of the cooperative housing corporation entitles the purchaser to occupy is a single family residential unit.

The American Legion has a number of concerns relating to this legislation and its potentially harmful effects on veterans. These concerns are listed below:

- A veteran who buys into a co-op is also paying into a shared loan, this arrangement potentially places the veteran in a situation that depends on the financial stability of others.
- Any significant down turn in the economy, or other financially related events, could have a significant impact on the ability of other cooperative members to meet their fiscal obligations to the co-op, which could result in the foreclosure of the blanket mortgage on that dwelling thus forcing the veteran to lose his or her home through no fault of his or her own.
- Unlike other homeowners, veterans residing in co-ops do not obtain a title to their home. Therefore, that veteran does not truly own his or her own home. In addition, veterans may forfeit the normal homeowner's right to sell their co-op, when and to whoever they chooses because co-ops have their own governing rules regarding the resale of a dwelling unit and these rules may conflict with current VA and Federal laws and regulations.
- In addition to the fact that a sale must be approved by the co-op, the sale of a dwelling unit may include the charging of additional fees, which, can be placed on the veteran at any time. These unregulated additional fees are contrary to the purpose of providing affordable housing to veterans.

The American Legion does not have an official position on this particular bill at this time.

A DRAFT BILL, TO AMEND TITLE 38, UNITED STATES CODE, TO PROVIDE FOR ACCELERATED PAYMENT OF SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE FOR CERTAIN PROGRAMS OF EDUCATION, AND FOR OTHER PURPOSES

The Draft Bill extends to Chapter 35 beneficiaries the same accelerated payment feature for high-tech courses that Chapter 30 beneficiaries have, and it adds additional accelerated payment course options similar to those found in S. 2416, which seeks to expand the scope of programs of education for which accelerated payments of educational assistance may be used.

The American Legion supports this bill. As the educational and labor demands in our society change, the educational benefits VA provides under Chapter 35, Dependents' Educational Assistance, need to adapt accordingly. This bill will take today's diversity in educational programs and vocations into account and provides more educational opportunities for Ch. 35 participants.

CONCLUSION

Thank you again, Mr. Chairman, for allowing The American Legion to provide written comments on these measures. As always, The American Legion welcomes the opportunity to work closely with you and your colleagues on enactment of legislation in the best interest of America's veterans and their families.

PREPARED STATEMENT OF DAVID G. GREINEDER, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Chairman Craig, Ranking Member Akaka, and distinguished Members of the Committee:

On behalf of National Commander Edward W. Kemp and the nationwide membership of AMVETS (American Veterans), I am pleased to offer our views on the pending veterans legislation before you today.

AMVETS is a staunch advocate of providing veterans with the benefits and services they earned through honorable military service. As a leader since 1944 in helping to preserve the freedoms secured by America's Armed Forces, our organization continues its proud tradition providing not only support for veterans and the active military in procuring their earned entitlements, but also an array of community services that enhance the quality of life for this Nation's citizens.

AMVETS applauds this Committee and its efforts to identify, examine and pursue the legislative initiatives necessary for veterans to obtain the services and benefits they so richly deserve.

S. 2562, THE VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2006

S. 2562 would provide a cost-of-living adjustment (COLA) to veterans' benefits effective December 1, 2006. The House and Senate annually review service-connected disability benefits and DIC programs to ensure they provide reasonable and adequate compensation for disabled veterans and their families. Based on this review, Congress acts to provide a COLA in compensation and DIC benefits.

AMVETS supports S. 2562, but we would strongly recommend rounding benefits to the next higher dollar amount, not the next lower dollar amount, as outlined in Section 2(c)(2). We believe rounding to the next higher dollar amount would be fair and appropriate for disabled veterans.

AMVETS also encourages this Committee to seriously look at legislation recently introduced by Sen. John Thune of South Dakota and Rep. Joe Knollenberg of Michigan. Their bills, S. 3068 and H.R. 5444 respectively, would automatically increase veterans' disability benefits each year by the Consumer Price Index (CPI), without an act of Congress. It is important VA benefits keep pace with society and the high cost of living. H.R. 5444 would see that veterans' benefits are increased proportionately and will sustain the same buying power as in previous years. AMVETS believes this is a more efficient and timely way of providing a COLA to our Nation's disabled veterans and their families.

S. 2694, THE VETERANS' CHOICE OF REPRESENTATION ACT OF 2006

With all due respect, Mr. Chairman, AMVETS has many concerns with this legislation. S. 2694 would allow veterans to hire an attorney at any stage of the VA administrative process. First, veterans service organization provide, free of charge, excellent representation and a broad range of services to any veteran—member or not—within the community. A private attorney can and will charge high fees, which would be withheld from any benefit awarded to the veteran.

Furthermore, the VA benefits system is a labyrinth of laws and regulations that takes years of experience and training to understand and navigate. I realize there are training programs and fee caps outlined in the bill, but frankly, how is VA going to administer these programs and caps, and how will they work? VBA is financially strapped as it is, and claims backlogs continue to grow. We need to work on reducing pending cases and hiring more effective and knowledgeable claims processors, not lawyers.

Mr. Chairman, there are currently over 118,000 claims pending for more than 180 days. Please don't add to the growing backlog by allowing lawyers into the VA system. AMVETS knows you are a friend to veterans and are trying to think of ways to improve the benefits system. But the issue is not necessary whether veterans have the right to hire a lawyer, they do at certain stages of the process. We are concerned that lawyers would only increase the burden to the system and contribute to the growing backlog. AMVETS does NOT support this legislation and we recommend you reconsider your position.

S. 2659, THE NATIVE AMERICAN VETERANS CEMETERY ACT OF 2006

S. 2659, introduced by Ranking Member Akaka, would authorize the Secretary of Veterans Affairs to make grants to any tribal organization for establishing, expanding, or improving veterans' cemeteries on trust lands. Essentially, it would allow tribes to apply for state cemetery grants from VA. Under current Federal law, only States are able to apply for the grants.

As the veterans service organization responsible for the cemeteries portion of The Independent Budget, AMVETS works very closely with the National Cemetery Administration (NCA) and fully supports the State Cemeteries Grant Program. The program assists States in providing gravesites for veterans in areas where VA's national cemeteries cannot fully satisfy their burial needs. In the western United States, where many Native Americans live today, the large land areas and spread out population makes it difficult to meet the "170,000 veterans within 75 miles" national veterans cemetery requirement.

AMVETS believes cemeteries on tribal lands would be an appropriate memorial and reminder of the sacrifices made by Native American men and women. AMVETS supports the bill.

S. 2416, THE VETERANS EMPLOYMENT AND TRAINING ACT OF 2006

S. 2416, introduced by Sen. Burns, would greatly enhance Montgomery GI Bill education benefits for eligible veterans wanting to use tuition assistance in a high-growth industry. Specifically, the bill would expand the range of programs for which accelerated payments of educational assistance can be used.

Overall, the legislation would make short-term, high-cost training programs more affordable to veterans. Currently, GI Bill benefits are paid as a monthly stipend to the maximum amount of $1,000. However, many training programs run anywhere from 4 to 6 weeks, and can cost upwards of $6,000. At most, the GI Bill benefits only offset about $1,500 of the veterans' tuition, but accelerated benefits could cover upwards of 60 percent of the cost.

Most importantly, this legislation would help address the serious unemployment rate of veterans between the ages of 20 and 24. Veterans in this age bracket have an unemployment rate of over 15 percent—nearly double the rate of non-veterans in the same age group. Accelerating GI Bill benefits for training in high-tech occupations would help place veterans in a good paying, long-term, and secure job. AMVETS endorses the bill.

S. 3363, A BILL TO PROVIDE ACCELERATED PAYMENTS OF SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

S. 3363, introduced by Sen. DeWine, would extend accelerated education payments for high-tech industries outlined in Sen. Burns' bill, S. 2416, to survivors and dependents. AMVETS supports the legislation.

S. 2121, THE VETERANS HOUSING FAIRNESS ACT OF 2005

S. 2121, introduced by Sen. Schumer, would allow VA housing loan benefits to be used for the purchase of residential cooperative apartment units. Under current law, VA loans can be used to purchase a house, townhouse, condominium or even a mobile home, but not a co-op. Co-ops make up the vast percentage of affordable housing in large cities and are usually less expensive than a condo or other unit. This legislation would give veterans greater housing choice by allowing them to use their hard-earned benefits to buy a co-op if they prefer. AMVETS supports the bill.

Mr. Chairman, before I close, I would like to take a moment and thank you for your swift action on H.R. 5037, the Respect for America's Fallen Heroes Act. AMVETS appreciates you working together with Mr. Akaka, the Leadership and your colleagues in the Senate to get this very important bill passed. It is the right thing to do for the families who have lost loved ones, and will it honor the ultimate sacrifice of our fallen comrades. Thank you for your leadership.

In closing Mr. Chairman, AMVETS looks forward to working with you and others in the Senate to ensure the earned benefits of all of America's veterans are strengthened and improved. As we find ourselves in times that threaten our very freedom, our Nation must never forget those who ensure our freedom endures.

This concludes my testimony. Thank you again for the opportunity to present our views, and I would be happy to answer any question you might have.

JUNE 8, 2006.

Hon. LARRY CRAIG,
Chairman, Veterans' Affairs Committee,
Russell Senate Office Building,
Washington, DC.

DEAR CHAIRMAN CRAIG: Neither AMVETS nor I have received any Federal grants or contracts, during this year or in the last 2 years, from any agency or program relevant to the May 25, 2006, Committee hearing on the legislation before the panel.

Sincerely,

DAVID G. GREINEDER,
Deputy National Legislative Director.

PREPARED STATEMENT OF DOUGLAS M. KLEINE, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF HOUSING COOPERATIVES

On behalf of the National Association of Housing Cooperatives, I thank the Chairman and Members of the Committee for the opportunity to testify about the need to include cooperative housing in the VA Home Loan Guaranty Program, as proposed in S. 2121. I am Douglas M. Kleine, Executive Director of the National Asso-

ciation of Housing Cooperatives, or NAHC. NAHC represents housing cooperatives and housing cooperative professionals.

NAHC

The National Association of Housing Cooperatives (NAHC) was founded in 1960 to provide information on the successful creation and operation of housing cooperatives. NAHC helps low and moderate income families govern, manage, and preserve affordable homeownership communities for themselves and future residents. Over 1.2 million families now live in townhouse and apartment housing co-ops in 30 states, the District of Columbia, and Puerto Rico. About half of all housing co-ops are in the greater New York City area, but other concentrations can be found in Boston, Atlanta, Miami, Philadelphia, Pittsburgh, Detroit, Chicago, Indianapolis, Minneapolis-St. Paul, San Francisco, Seattle, and Los Angeles. Here in DC, where Washington's Mayor Williams lives in a co-op, there are over 200 co-ops, and just outside the city, the planned community of Greenbelt, Maryland, has been a co-op for over 50 years.

What is Cooperative Homeownership?

While everyone is familiar with homeownership through fee simple ownership of a single-family home or a condominium unit, the option of owning one's home through a cooperative is much less understood, even though co-ops date back to the 1920s in the US. In a cooperative, residents own shares of the cooperative corporation; the corporation holds title to the entire multi-family property. Ownership of a share in the cooperative entitles the resident to sole occupancy of a specific unit. Instead of rent, the resident-owners of the cooperative pay monthly carrying charges to cover the cooperative's debt, maintenance, and other expenses. As in condominiums, the resident-owners elect a board of directors from among themselves to make policies for the cooperative. The board of directors usually hires a manager or management agent to run day-to-day operations.

Congress Should Continue to Treat Co-Op Share Loans Like Single Family Mortgages

Purchasers of cooperative shares obtain financing from lenders on much the same terms as a mortgage. The loan is secured by the shares, and has been classified as a residential mortgage by the Federal Home Loan Bank Board for over 25 years. Fannie Mae has provided a secondary mortgage market for share loans for over 25 years, the Federal Housing Administration (FHA) has had authority for over 25 years to ensure share loans through the Section 203(n) program, and for over 60 years, Congress has recognized the similarity of cooperative homeownership to single family and condominium ownership by giving co-op shareholders the right to take a personal income tax deduction for interest on a share loan and a pro rata portion of the mortgage interest and real estate taxes paid by the cooperative corporation. In 2000, Congress made co-op homeowners eligible for FHA-insured Home Equity Conversion Mortgages, and in 2004, Congress included co-ops in the American Dream Downpayment Assistance Act.

Veterans Should Have the Ability to use the VA Loan Guaranty Program to Buy Into a Co-Op

Given all the other agencies and organizations participating in share loan financing, it clearly is time that the Department of Veterans Affairs be given the statutory authority to guaranty share loans as provided in S. 2121. Doing so is good for the veteran by providing the veteran with a wider choice in housing and a wider choice in home financing. Indeed, in many housing markets co-ops are often the most affordable homeownership option for veterans. And this benefit would come with little or no risk to the government. We can say that because underwriting guidelines have existed for over 25 years, and Fannie Mae reports that their co-op share loan portfolio performs better than their single family portfolio. We are confident that VA's Loan Guaranty Service, using this marketplace underwriting history as well as VA's long experience in multifamily settings through its condominium program, can establish reasonable risk mitigation procedures to protect the veteran and the agency.

Thank you again, Mr. Chairman and Members of this Committee, for this opportunity to state why our veterans should have greater choice and be able to use VA home loan guaranty benefits to buy into a housing cooperative.

PRESS RELEASE FROM THE NATIONAL ASSOCIATION OF HOUSING COOPERATIVES

WASHINGTON, DC.—"Veterans cannot now use their GI benefits to buy into a housing co-op," said Douglas M. Kleine, executive director of the National Associa-

tion of Housing Cooperatives in testimony submitted to the U.S. Senate Committee on Veterans Affairs hearing on S. 2121, The Veterans Housing Fairness Act of 2006. S. 2121 would give authority to the Department of Veterans Affairs to guaranty home loans for veterans who choose to buy into a housing co-op.

"In many housing markets, co-ops are often the most affordable homeownership option for veterans," Kleine says. "And adding co-ops to the VA loan guaranty program would come with little or no risk to the government." NAHC noted that co-op loan underwriting guidelines of Fannie Mae have existed for over 25 years. "We are confident that VA's Loan Guaranty Service, using this marketplace underwriting history as well as VA's long experience in multifamily settings through its condominium program, can establish reasonable risk mitigation procedures to protect the veteran and the agency," concluded Kleine.

NAHC

The National Association of Housing Cooperatives (NAHC), founded in 1960, provides information on the successful creation and operation of housing co-ops. NAHC helps low- and moderate-income families govern, manage, and preserve affordable homeownership communities for themselves and future residents. Over 1.2 million families now live in townhouse and apartment housing co-ops in 30 states, the District of Columbia, and Puerto Rico. About half of all housing co-ops are in the greater New York City area, but other concentrations can be found in Boston, Atlanta, Miami, Philadelphia, Pittsburgh, Detroit, Chicago, Indianapolis, Minneapolis-St. Paul, San Francisco, Seattle, and Los Angeles. In Washington, D.C., where Washington's Mayor Williams lives in a co-op, there are over 200 co-ops, and just outside the city, the planned community of Greenbelt, Maryland, has been a co-op for over 50 years.

PREPARED STATEMENT OF ROSE ELIZABETH LEE,
GOLD STAR WIVES OF AMERICA, INC., CHAIR, LEGISLATION COMMITTEE

"With malice toward none; with charity for all; with firmness in the right, as God gives us to see right, let us strive to finish the work we are in; to bind up the nation's wounds, to care for him who has borne the battle, his widow and his orphan."

PRESIDENT ABRAHAM LINCOLN,
Second Inaugural Address, March 4, 1865.

Mr. Chairman, Senator Akaka, and Members of the Senate Veterans' Affairs Committee, I would like to thank you for the opportunity to submit testimony to you on behalf of all Gold Star Wives regarding a bill to provide for accelerated payment of survivors' and dependents' educational assistance.

My name is Rose Lee. I am a widow and the Chair of the Gold Star Wives (GSW) Committee on Legislation. I am also currently President of the Potomac Area Chapter. In the past, I have held the positions of President and Chair, Board of Directors for GSW. For nearly thirty years now I have been working to achieve the overall goals of the Gold Star Wives, and more specifically to assist our young, new widows, one by one, wind their way through the maze that lies before them with first notification of the death of their loved one.

The Gold Star Wives of America, Inc. was founded in 1945 and is a Congressionally chartered service organization comprised of surviving spouses of military servicemembers who died while on active duty or as a result of a service-connected disability. We could begin with no better advocate than Mrs. Eleanor Roosevelt, newly widowed, who helped make GSW a truly national organization. Mrs. Roosevelt was an original signer of our Certificate of Incorporation as a member of the Board of Directors. Many of our current membership of over 10,000 are the widows of servicemembers who were killed in combat during World War II, the Korean War, the Vietnam War and the more recent wars including the one we are currently in, the Global War On Terrorism (GWOT).

In this testimony I will respond to your request for our legislative views on S. 3363, a bill to provide for accelerated payment of survivors' and dependents' educational assistance. It is important that our widows and their children have the assistance they need to continue or begin an education to help assure employability as they transition into their new lives with a need for a different means of family support than had been previously planned. It is imperative that the difficulty of the sacrifice of our husbands' lives be mitigated to the degree possible by providing support for opportunities through education to achieve financial security for the survivors.

Thank you for this opportunity and for your continued support of programs that directly support the well-being of our servicemembers' widows and their families.

Gold Star Wives applaud the efforts of this bill to assure timely payment of educational benefits. This is surely a key to easing a survivors' difficult task of moving into their new lives. There are several principles that we feel are necessary to assure that this legislation can truly accomplish the purposes for which it was written.

1. We need to assure that there is thorough and wide-spread communication about this benefit when it is passed into law. It is one thing to do the right thing in providing the legislative authority necessary to help with transitioning lives; it is quite another to assure that those who could use the benefit recognize that it is available and know how to access it. Communication is key, and we recommend that it be part of this legislation.

2. Other legislation aimed at assisting survivors over the last several years has sometimes divided survivors along an arbitrarily designated date that excludes those who became widows early in this current conflict from the benefit. GSW recommends that it be clearly stated in this legislation that it applies to all widows or survivors of the Global War on Terror.

3. Education benefits for surviving spouses who are on active duty should be able to use the education benefit derived from her deceased husband while still serving on active duty. Currently, the active duty widow must resign from the military in order to use the derived educational benefit. GSW recommends that this legislation assure this inequity is fixed.

In conclusion, we do not want our widows to be forgotten. Whenever the ultimate sacrifice is given, there is family left behind. In the same way we have asked some to give their lives, we have also asked some to continue their lives with a chasm so large it is difficult to transgress. Let us show the spirit of this nation by not forgetting these widows, whose numbers grow daily.

I thank this Committee for using this hearing as one more avenue of awareness of issues facing survivors daily. We will be happy to work with the Committee on this initiative. Thank you.

PREPARED STATEMENT OF JAMES C. MCKAY,
SENIOR COUNSEL, COVINGTON & BURLING, WASHINGTON, DC

Mr. Chairman and Members of the Subcommittee:

This statement, in support of S. 2694, responds to some of the issues raised in the opposition filed on behalf of the Disabled American Veterans by Joseph A. Violante. I will not respond to the ad hominem attacks on the ethics of lawyers, except to state that the type of unethical conduct predicted by the DAV and a plurality of four justices of the Supreme Court in *Walters* v. *National Association of Radiation Survivors*, 473 U.S. 395 (1985), heavily relied upon by the DAV would be unlikely to occur in view of the rules currently governing the conduct of lawyers throughout the United States.

I served on active duty in the United States Naval Reserves from December 15, 1941, to October 1945. I received an LLB from Georgetown University School of Law in February 1947. Since that date, I have continuously practiced law with the Washington, D.C., firm of Covington & Burling, with the exception of a period of service as an Assistant United States Attorney for the District of Columbia, and a period of service as an Independent Counsel.

I have represented numerous veterans on a pro bono basis for more than 10 years before the court now known as the United States Court of Appeals of Veterans Claims (CAVC). That representation involved becoming familiar with numerous CAVC opinions and opinions of the United States Court of Appeals for the Federal Circuit. In connection with that representation I became aware of the anachronistic and often prejudicial law that bars veterans from hiring lawyers to represent them during the crucial early phases of the Department of Veterans Affairs administrative process. That knowledge led me to research the origin of this uniquely restrictive law. I wondered why this particular class of United States citizens, owed such a large debt of gratitude by their Government, should be denied the basic important right to hire legal counsel.

I could think of no reason why any individual or any group of individuals would support such an obviously discriminatory rule of law. It came as a surprise when I learned that the law has vigorous support, not only of organizations of veterans, but also of the Department of Veterans Affairs. For example, a 2003 House Bill (H.R. 3492), which would have allowed the employment of lawyers by veterans throughout the entire VA administrative process, was opposed by the VA and by service organizations.

The DAV asserts in the third paragraph of his statement that "veterans should be able to file claims for disability benefits and receive fair decisions from the Department of Veterans Affairs (VA) without the necessity to hire and pay a large portion of their benefits to lawyers." There if no foundation for the premise of that statement. Under the provisions of S. 2694, there would be no "necessity" that veterans hire lawyers. Rather, each veteran would have the choice of hiring a lawyer or not hiring a lawyer. Likewise, there is no basis for the demeaning conclusion that veterans would choose to hire a lawyer to satisfy an "emotional gratification of having the right to choose representation by a lawyers."

The third paragraph of the DAV's statement continues by stating that "Congress designed the current administrative claims process to be non-adversarial and pro-veteran." The current administrative claims process is based on a law enacted in 1862, which limited to $5 the fee that legally could be charged a veteran. In 1864, the fee limit was raised to $10, where it remained for 124 years, when the current system was enacted, allowing no fee to be charged until after the first final decision of the Board of Veterans' Appeals. Criminal penalties were provided for the violation of all of those discriminatory laws.

The main thrust of the DAV's argument relies completely on an outdated statement in S. Rep. No. 100–418, at 63–64 (1988), which, in turn, relied completely on the plurality opinion of four justices of the Supreme Court in Walters, issued twenty-one years ago. The DAV's statement quotes lengthy passages from that opinion, which included quotations from the Supreme Court's opinions in Gagnon v. Scarpelli, 411 U.S. 778, 787–788 (1973), and *Wolff* v. *McDonnell*, 418 U.S. 539, 570 (1974).

The DAV statement does not mention that the plurality decision in *Walters* was based largely on the amazing conclusion that lawyers are not needed because service organizations representatives (who charge no fee) are fully capable of representing veterans for the reason that "complex" cases constituted a "tiny fraction" of the total cases pending before the VA. (473 U.S. at 329–330). The plurality of justices proclaimed that the medical questions relating to the degree of disabilities of veteran claimants were overwhelmingly simple, and that complex medical issues seldom arose in VA administrative proceedings. (*Ibid.*)

The plurality justices' view of the simplicity of veterans claims was at odds with the Supreme Court's view stated eleven years earlier in *Johnson* v. *Robinson*, 415 U.S. 361, 370 (1974), where the Court's decision relied on a statement of the Administrator of the Veterans Administration in support of the 1979 amendment to 38 U.S.C. sec. 361 (1974), that, "in the adjudication of compensation and pension claims, a wide variety of medical, legal, and other technical questions constantly arise which require expert examiners of considerable training and experience and which are not readily susceptible of judicial standardization."

Daniel L. Cooper, then Under Secretary for Benefits, Department of Veterans Affairs, in testimony before the House Veteran's Affairs Committee on November 3, 2005, stated that the "number of disabilities per claim submitted by veterans has increased significantly, making claims more complex." He went on to describe the influx of "new and more complex disability claims based on environmental and infectious risks, traumatic brain injuries, complex combat injuries, involving multiple body systems, concerns about vaccinations and other conditions." He referred to the aging of the veteran population, who were service connected for diabetes, as adding to the complexity of claimed disabilities. He noted that "more than 220,000 veterans are now service connected for diabetes." Mr. Cooper went on to say that the number of veterans submitting claims for PTSD through fiscal year 2005 had increased from 134,000 to 245,000. "These cases present unique processing complexities because of evidentiary requirements to substantiate the event causing the stress disorder."

In *Kirkendall* v. *Department of the Army*, 412 F.3d 1273, 1277 (Fed. Cir. 2005), the Federal Circuit noted that the Veterans Employment Opportunities Act of 1998, 5 U.S.C. sec 333a, "is less detailed than the highly complex scheme used to provide benefits for veterans."

The DAV's reliance on Gagnon and Wolff is equally misplaced. The Gagnon case was decided 33 years ago. The petitioner was not a veteran. He was a felony probationer who was arrested after committing a burglary. The case involved the due process rights of felony parolees in parole revocation proceedings. The Wolff case was decided 32 years ago. The petitioner was a Nebraska prisoner, who challenged the constitutionality of the Nebraska prison disciplinary proceedings. The Supreme Court said that the prisoners' rights were "subject to restrictions imposed by the nature of the regime in which they have been lawfully committed." The Court said further that the proceedings "take place in a closed tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so." (418 U.S. at 561)

It was misleading in the extreme for the DAV to quote selectively from those three Supreme Court opinions, and not tell the Committee the whole story. To liken the due process rights of a paroled felon and an incarcerated prisoner with those of a veteran, who has honorably served his or her country is completely unfounded, and insulting to say the least.

It is urged that members of the legal staff of this Committee read these three Supreme Court decisions, if they have not done so. It will quickly be seen that those decisions provide no substantial support for the DAV's arguments against the enactment of S. 2639.

The desirability of permitting veterans to employ lawyers during the early proceedings before the VA has been recognized by those in best position to perceive the prejudicial effect of the current system—the Judges presiding over the CAVC.

They have seen at first hand the costly delays and prejudices that result when issues and arguments are not raised before the VA prior to appeals to the Court. Thus, Chief Judge Frank Nebeker, in a concurring opinion in *Matter of Kenneth B. Mason Jr.*, 12 Vet. App. 135 (1999), stated that "the Court experience. . . over the past 9 years" convinced him that "the time was ripe for a reexamination of the role of attorneys in the benefits adjudication process and whether this Court should have the responsibility to oversee the matter of fees charged by those attorneys." Judge Nebeker was troubled by "the limited role lawyers are permitted (or may be paid) to play in the adjudication of veterans benefits." (*Id*. at 137) The opinion went on to say:

"When judicial review was established 10 years ago, there was apparent concern on the part of Congress that opening the door to lawyer representation, even in a limited way, was fraught with potential peril that at least some oversight of the attorney-client relationship was necessary." (*Id*. at 137)

Judge Nebeker questioned the need "effectively to restrict lawyer representation by proscribing the charging of fees prior to BVA decision and the oversight of fee agreements by the Court." He continued by saying:

"In the absence of any empirical or statistical data, one can only wonder whether Congress presumed that the bar would act unprofessionally or would replace the services offered gratis by veterans service groups. If the former, it is an unfounded indictment based on mistrust. If the latter, it is evidence of a desire to prevent the bar from trespassing upon protected turf. In either case, now that we have had nearly 10 years of experience, a questioning of the basic premise is in order." (*Ibid*.)

Judge Nebeker then referred to the Court's years of experience in reviewing Board denials of benefits. He stated:

"The Court continues to see many appeals, if counsel were realistically permitted to represent a claimant during the adjudication process before a final BVA decision, an appeal would be unnecessary or seen as futile by the applicant; however, with the present restriction on lawyer representation, an error at the VA level may not be discovered until years later where, with counsel, it might well have been prevented at the outset. Thus, restricting realistic access to counsel until after a final BVA decision can cause years of delay both in adjudication before the VA and in discovering error through appellate litigation, only to have the matter returned to the VA for readjudication. This happens in many appeals.

"Effectively limiting lawyer representation until after a BVA final decision and after oversight of fee agreements is, quite arguably, unnecessarily paternalistic." (*Ibid*.)

In a 2004 interview, then Chief Judge Donald L. Ivers, stated that lawyers "have provided tremendous assistance" in cases before the Court. "The Court has historically taken a position recognizing the involvement of lawyers before the VA could be very helpful . . . , and I concur. Tommy: Issue No. 4. 2004.

Retired Judge Ronald Holdaway, also a former General Counsel of the VA, speaking at the CAVC Eighth Judicial Conference, expressed his support for an amendment of 38 U.S.C. sec. 5094, allowing lawyers to represent veterans before the VA.

After pointing out that "all too frequently you get cases that have been through the system seven or eight or nine times where nobody is really focused on what the issue is or they've lost on an issue." Judge Holdaway said:

"If you get lawyers involved at the beginning, you can focus on what is this case about. I think you would get better records, you would narrow the issue, there would be screening . . . But the fundamental reason, why should veterans be treated differently from anyone else?"

Speaking from an appellate judges point of view, Judge Holdaway stated further:

"It would be a lot easier for an appellate judge to review cases where counsel had been involved; where there had been better building of the record; where the issues had been narrowed; and where there had been a certain amount of screening going

on when counsel explains to his client whether he's got a good case or not. I think all those would certainly be helpful to appellate judges."

Thank you for considering the foregoing views which are presented in the interest of the thousands of veterans who have filed claims for benefits for service-connected disabilities, and those who will file such claims in the future.

PREPARED STATEMENT OF THE PARALYZED VETERANS OF AMERICA

Chairman Craig, Ranking Member Akaka, and Members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit a statement for the record on S. 2562, the "Veterans' Compensation Cost-of-Living Adjustment Act;" S. 2694, the "Veterans' Choice of Representation Act;" S. 2659, the "Native American Veterans Cemetery Act;" S. 2416, the "Veterans Employment and Training Act;" S. 2121, the "Veterans Housing Fairness Act;" and proposed legislation. We appreciate the efforts of the Committee to improve the benefits available for veterans.

S. 2562, THE "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT"

PVA supports S. 2562, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2006." This bill would increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for widows of certain disabled veterans. As we have done in the past, we oppose again this year the provision rounding down the cost-of-living adjustment to the nearest whole dollar. Continuing to round down these benefits year after year only serves to erode the value of them. Furthermore, this provision forces veterans to bear some of the burden of cost-savings for the Federal Government.

S. 2694, THE "VETERANS' CHOICE OF REPRESENTATION ACT"

PVA supports the principle that veterans should have the choice to hire attorneys; however, we do not believe that S. 2694 offers the best approach to addressing this issue.

The restrictions against veterans hiring lawyers to represent them date back to the Civil War. At that time the prohibition may have made sense and was to protect veterans from unscrupulous lawyers who were charging exorbitant fees to assist veterans in obtaining their pensions. This law initially imposed a fee of $5, and it was later raised to $10. This was considered a reasonable fee at the time and was not eliminated until 1988 when Congress created the U.S. Court of Veterans' Appeals, which later became the Court of Appeals for Veterans' Claims. The creation of the Court led to a prohibition on veterans hiring a lawyer until after the Board of Veterans' Appeals rendered a final decision.

The reason for the statutory fee limitation, now a prohibition, does not exist currently and has not existed for a long time. Today, lawyers are highly regulated and subject to significant disciplinary action if determined to have engaged in unscrupulous or unethical conduct while engaged in the practice of law. We believe that VA's attempt to mollify the push to change the law to give veterans the choice to hire a lawyer falls short. A May 2004 letter from VA General Counsel to Representative Lane Evans, Ranking Minority Member of the House Committee on Veterans' Affairs, indicated that claimants can hire and pay a lawyer for pre-application for benefits counseling under current law. It is the VA General Counsel's position that as long as the consultation occurred prior to the filing of the application for VA benefits, and the lawyer did not prepare the application, there is no violation of statutes. A law that would permit the veteran to hire a lawyer for pre-application advice but denies him or her the ability to continue with this paid representation is harmful to veterans and makes no sense.

Today there are a number of Veterans' Service Organization (VSO) service officers to assist veterans in accessing the full range of benefits and services available to them. Veterans' Service Organizations provide such services free-of-charge, and veterans are free to choose which VSO they would like to assist them. Service officers also help veterans access the many health care services available through the VA. Likewise, they help veterans gain access to assistive technology and other equipment to meet their accessibility needs. The service officer and the veteran develop a unique relationship through this interaction and will, we believe, continue to serve in this important role even if veterans are given the choice to hire a lawyer to represent them before the VA.

PVA believes that the most appropriate time for veterans to hire and pay a lawyer to represent them is after a Notice of Disagreement is filed and their initial applica-

tion for benefits has been denied. This is the time at which a lawyer's skills would be particularly helpful. Furthermore, PVA is unaware of any other government benefits program which prohibits claimants from hiring a lawyer to assist those obtaining benefits. This is the position taken by H.R. 4914, the "Veterans' Choice of Representation Act" that has been introduced in the House of Representatives by Representative Evans.

If this legislation or similar legislation is enacted, it is imperative that the VA conduct a campaign to inform veterans of their options. We believe that under the Evans' proposal, an information brochure outlining the veteran's options following a Notice of Disagreement could be included in the notification. This would allow veterans to make a decision for themselves as to the type of representation they would like through the rest of the claims adjudication process.

While PVA appreciates the logic of the proposal outlined in S. 2694 of a veteran having the choice to hire a lawyer from the beginning of the application process, PVA believes that this aspect of the Evans bill is a good compromise by perpetuating the valuable role played by VSOs and their service officers. It acknowledges and addresses some of the concerns this issue has generated among the VSOs. This may even encourage the VA to grant more meritorious claims upon initial application.

But many issues remain to be addressed in any piece of final legislation. One of the greatest questions is what will be considered reasonable fees to the veteran? PVA believes that further guidance is needed for what would constitute a reasonable fee for other than contingency fee arrangements. We recommend that the Committee consider language similar to that contained in Title 42 that governs recognition of representatives before the Social Security Administration and the fees that those representatives may collect. Specifically, 42 U.S.C. §406(a)(2) specifies that an attorney's or agent's fee will not be more than 25 percent of the total amount of past-due benefits or $4,000, whichever is less. Similar protections could be placed in the legislation for veterans hiring attorneys. Additionally, specific guidelines and regulations are critical before allowing this program to begin. This must also include the preservation of the pro-claimant aspects of the system.

Furthermore, we must not forget that responsibility for the claims backlog rests with the Veterans Benefits Administration (VBA). This claims adjudication process is not a faultless process. Moreover, VBA suffers from too few staff and not enough resources to meet the demand that is placed on the system. If full consideration is given for this legislation, then adequate funding and staffing must also be included in that discussion. Otherwise, the system is really no better off.

Whatever legislation is passed, we must ensure that the best interests of the veteran are protected in the end. With this in mind, it is critical that clear guidance on the basis for suspension of veteran's representatives be established, whether they are lawyers, agents or even a VSO National Service Officer. And it must be ensured that no provision of the law will conflict with a lawyer's ethical obligation to zealously represent his or her client's interests.

Though the original law severely restricting and finally prohibiting payment to attorneys may have been valid in the past, PVA believes that giving veterans the ability to choose and pay a reasonable fee to a representative of their choosing after the initial Notice of Disagreement is the right thing to do at this time, so long as our above mentioned considerations are taken into account.

S. 2659, THE "NATIVE AMERICAN VETERANS CEMETERY ACT"

PVA supports S. 2659 which would allow Indian tribal organizations to apply for Federal grants to establish veterans' cemeteries on trust lands. This legislation would essentially provide for the same eligibility to Indian tribal organizations for these grants that states currently have when they wish to construct a new cemetery.

S. 2416, THE "VETERANS EMPLOYMENT AND TRAINING ACT"

PVA fully supports S. 2416, the "Veterans Employment and Training Act of 2006." With the increases in new veterans entering the VA system due to the current Global War on Terrorism, particularly the huge increase in National Guardsmen and reservists becoming veterans, every chance to expand the education opportunities for this widely diverse group is critical. The ability to enter high technology training that will lead to an occupation in this rapidly expanding field will help not only the veteran, but the economic viability of America. Increasing the ability to accelerate payments to receive this training will provide veterans with the opportunity to more rapidly enter the high technology field. It will also assist in our veterans' rapid transition from military service to community citizen and is a win for everyone. We also

welcome the introduction of Senator DeWine's legislation to make these similar accelerated payments available to survivors and dependents of veterans.

S. 2121, THE "VETERANS HOUSING FAIRNESS ACT"

PVA supports the provisions of S. 2121. This legislation would authorize a veteran to use veterans' housing loan benefits to purchase stock or membership in a development, project, or structure of a cooperative housing corporation. In order to do so, the structure that the veteran purchases must be in compliance with criteria set forth by the Secretary of Veterans Affairs, and it must be a single-family residential unit.

PVA would like to thank you for the opportunity to submit our views on the important legislation pending before the Committee. We would be happy to answer any questions that you submit for us in writing.

PREPARED STATEMENT OF DONALD SWEENEY, LEGISLATIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE APPROVING AGENCIES

INTRODUCTION

Chairman Craig, Ranking Member Akaka and Members of the Committee on Veterans Affairs, this written testimony is provided in support of two of the bills that were discussed at the hearing today. The National Association of State Approving Agencies respectfully request that this testimony be placed in the record on the proceedings of the hearing.

REMARKS

The Association is pleased to add its support to S. 2416, the Veterans Employment and Training Act of 2006 and S. 3363, a bill to extend the provisions of S. 2416. Specifically, S. 2416 amends title 38, United States Code, to expand the scope of programs of education for which accelerated payment of educational assistance under the Montgomery GI Bill may be used. Similarly, S. 3363 extends the accelerated payment provision to survivors' and dependents' that are eligible for assistance under the Chapter 35 program. Both of these bills are significant improvements to the existing accelerated payment provision of law, section 3014A of title 38, United States Code, which limits payments to education leading to employment in high technology industries.

In general, much has been done in recent years to provide servicemembers, veterans and other eligible persons with greater opportunities to use the education and training benefits to which they are entitled. Yet, the nature of the today's global economy demands that we continue to strive to help our workforce—especially our veterans—to gain new knowledge and learn new skills in order to maximize their contributions to the Nation. The provisions of S. 2416 and S. 3363 help to provide these new learning opportunities in occupational areas where shortages currently or will exist.

CLOSING

Thank Mr. Chairman, Ranking Member Akaka and Members of the Committee, for the opportunity to provide written testimony on bills being considered by the Committee. Additionally, we thank you for the leadership and support that you provide to our Nation's military personnel, veterans and their dependents.

PREPARED STATEMENT OF JOSEPH A. VIOLANTE, NATIONAL LEGISLATIVE DIRECTOR, THE DISABLED AMERICAN VETERANS

Mr. Chairman and Members of the Subcommittee:

On behalf of the 1.3 million members of the Disabled American Veterans (DAV), I respectfully provide our comments on the following bills for the record.

S. 2694 would amend existing law to permit attorneys and agents to charge claimants for services rendered in the preparation, presentation, and prosecution of claims. It would authorize the Secretary of Veterans Affairs to collect registration fees, set limitations for fees charged claimants, prescribe standards of conduct, and expand grounds for suspension or exclusion from further practice for attorneys and agents providing such services. It would subject veterans service organization representatives to the same rules for suspension.

With removal of the limitation in current law that authorizes attorneys and agents to charge claimants fees only for services provided after the date on which

the Board of Veterans' Appeals (BVA) first makes a decision in the case, fees could be charged at all stages of the administrative claims process. The Disabled American Veterans opposes this provision.

Veterans should be able to file claims for disability benefits and receive fair decisions from the Department of Veterans Affairs (VA) without the necessity to hire and pay a large portion of their benefits to lawyers. Congress designed the current administrative claims process to be non-adversarial and pro-veteran. Unlike litigation in the courts where the parties must discover and produce their own evidence and affirmatively plead all the legal technicalities on which they base their suit, Congress obligated VA to assist the claimant in obtaining pertinent evidence and placed the duty upon VA to consider all relevant law and avenues of entitlement.

Disability compensation and other benefits for veterans and their families should go to the intended beneficiaries for the purchase of the necessities of life and to meet other needs, not into the pockets of lawyers. That is the very reason the system was designed to work without lawyers and the wisdom behind the law that has for so long prohibited lawyers from charging veterans for filing and prosecuting claims: "There would seem to be no need for the assistance of an attorney in order to initiate the claims process by completing and filing an application. Moreover, even if the initial decision is adverse, the Committee believes that it may be unnecessary for a claimant to incur the substantial expense for attorney representation that may not be involved in appealing the case for the first time to the BVA. The claimant may well prevail, as many claimants currently do, without legal representation when the case is first before BVA." S. Rep. No. 100–418, at 63–64 (1988). "The Government interest, which has been articulated in congressional debates since the fee limitation was first enacted in 1862 during the Civil War, has been this: that the system for administering benefits should be managed in a sufficiently informal way that there should be no need for the employment of an attorney to obtain benefits to which a claimant was entitled, so that the claimant would receive the entirety of the award without having to divide it with a lawyer." Walters v. National Ass'n of Radiation Survivors, 473 U.S. 305, 321 (1985). By allowing lawyers to charge veterans for claims assistance, this bill abandons the commitment to a system that delivers benefits to veterans without necessity to pay lawyers.

Under the best of circumstances, mistakes will be made in a mass adjudication system such as VA's, but claimants can guard against such mistakes through free representation from recognized veterans organizations. Veterans organization representatives also provide free advice, claims filing assistance, and a wide range of other assistance with matters not involving monetary awards. Lawyers will have no reason to assist veterans in matters that are not fee-producing. They will naturally limit their assistance to matters where there is potential for receiving for themselves a portion of the claimants' monetary benefits. Claimants who obtain the services of lawyers rather than through appointment of a veterans service organization representative may very well find themselves without the availability of free assistance in routine matters that they receive from veterans service organization representatives.

We believe enactment of this bill will have far reaching detrimental effects that will far outweigh the emotional gratification of having the right to choose representation by a lawyer. The Court recognized the probable adverse effects in National Ass'n of Radiation Survivors:

There can be little doubt that invalidation of the fee limitation would seriously frustrate the oft-repeated congressional purpose for enacting it. Attorneys would be freely employable by claimants to veterans' benefits, and the claimant would as a result end up paying part of the award, or its equivalent, to an attorney. But this would not be the only consequence of striking down the fee limitation that would be deleterious to the congressional plan.

A necessary concomitant of Congress' desire that a veteran not need a representative to assist him in making his claim was that the system should be as informal and nonadversarial as possible. . . . The regular introduction of lawyers into the proceedings would be quite unlikely to further this goal. Describing the prospective impact of lawyers in probation revocation proceedings, we said in Gagnon v. Scarpelli, 411 U.S. 778, 787–788, 93 S.Ct. 1756, 1762, 36 L.E.d.2d 656 (1973):

"The introduction of counsel into a revocation proceeding will alter significantly the nature of the proceeding. If counsel is provided for the probationer or parolee, the State in turn will normally provide its own counsel; lawyers, by training and disposition, are advocates and bound by professional duty to present all available evidence and arguments in support of their clients' positions and to contest with vigor all adverse evidence and views. The role of the hearing body itself . . . may become more akin to that of a judge at a trial, and less attuned to the rehabilitative needs of the individual. . . . Certainly, the decisionmaking process will be pro-

longed, and the financial cost to the State—for appointed counsel, . . . a longer record, and the possibility of judicial review will not be insubstantial."

We similarly noted in *Wolff* v. *McDonnell*, 418 U.S. 539, 570, 94 S.Ct. 2963, 2981, 41 L.Ed.2d 935 (1974), that the use of counsel in prison disciplinary proceedings would "inevitably give the proceedings a more adversary cast. . . ."

Knowledgeable and thoughtful observers have made the same point in other language:

"To be sure, counsel can often perform useful functions even in welfare cases or other instances of mass justice; they may bring out facts ignored by or unknown to the authorities, or help to work out satisfactory compromises. But this is only one side of the coin. Under our adversary system the role of counsel is not to make sure the truth is ascertained but to advance his client's cause by any ethical means. Within the limits of professional propriety, causing delay and sowing confusion not only are his right but may be his duty. The appearance of counsel for the citizen is likely to lead the government to provide one or at least to cause the government's representative to act like one. The result may be to turn what might have been a short conference leading to an amicable result into a protracted controversy.

"These problems concerning counsel and confrontation inevitably bring up the question whether we would not do better to abandon the adversary system in certain areas of mass justice. . . . While such an experiment would be a sharp break with our tradition of adversary process, that tradition, which has come under serious general challenge from a thoughtful and distinguished judge, was not formulated for a situation in which many thousands of hearings must be provided each month." Friendly, "Some Kind of Hearing," 123 U.Pa.L.Rev. 1267, 1287–1290 (1975).

Thus, even apart from the frustration of Congress' principal goal of wanting the veteran to get the entirety of the award, the destruction of the fee limitation would bid fair to complicate a proceeding which Congress wished to keep as simple as possible. It is scarcely open to doubt that if claimants were permitted to retain compensated attorneys the day might come when it could be said that an attorney might indeed be necessary to present a claim properly in a system rendered more adversary and more complex by the very presence of lawyer representation. It is only a small step beyond that to the situation in which the claimant who has a factually simple and obviously deserving claim may nonetheless feel impelled to retain an attorney simply because so many other claimants retain attorneys. And this additional complexity will undoubtedly engender greater administrative costs, with the end result being that less Government money reaches its intended beneficiaries.

473 U.S. AT 323–26

It is understandable why some attorneys advocate changing the system. Perhaps veterans who advocate it do so under the belief that they would generally receive better representation by attorneys. Data on the subject simply do not support that belief. Attorneys presumably choose only the cases they believe more meritorious, where most veterans service organizations essentially represent any claimant and do not refuse representation in cases merely because of a lower likelihood of favorable outcome. Nonetheless, historically and currently, attorneys still have no greater success rate in BVA appeals, for example, than veterans service organization representatives. In 2005, the average BVA allowance rate among veterans service organizations was 21.7 percent. The allowance rate for attorneys was 21.1 percent. Average allowance rates among the veterans service organizations are again higher than allowance rates for attorneys thus far in 2006. With a 21.3 percent allowance rate as of the end of April 2006, attorneys are below the overall average BVA allowance rate for all appeals including those with no representation of 21.6 percent.

Beyond our opposition to removal of restrictions on attorneys' fees, we have other concerns about provisions of S. 2694. Section 2(b) of the bill would amend section 5904(b) of title 38, United States Code, by adding more grounds for suspending or excluding attorneys and agents from further practice. These additional grounds are: (1) failure of the attorney or agent "to conduct himself or herself with due regard for the non-adversarial nature of any proceeding before the Department," (2) submittal of "frivolous claims, issues, or arguments," and (8) failure "to comply with any other condition specified by the Secretary in regulations prescribed by the Secretary for purposes of this subsection." Section 2(a)(2) of the bill provides that veterans organization representatives may be suspended on the grounds in section 5904(b) applicable to suspension and exclusion from further practice in the case of attorneys and agents.

The Secretary of Veterans Affairs has promulgated a comprehensive rule governing suspension and termination of accreditation of representatives. We believe additional statutory provisions for suspension of veterans service organization rep-

resentatives are unnecessary. Moreover, we believe the new grounds that would be added by section 2(b) of the bill are so broad and vague as to be difficult to follow or enforce. For example, it is unclear what would be considered an action without "due regard for the non-adversarial nature of any proceeding before the Department." In addition, given that VA has a duty to seek supporting evidence for a veteran's claim, the law does not require that such claim be accompanied by evidence. Attorneys, agents, and representatives will sometimes be unable to determine the factual merits of a claim before it is submitted. Under these circumstances and many others that are unlike those of more traditional proceedings, it will be more difficult to define frivolous claims. We believe these additional rules will unnecessarily complicate the process.

We also have some concern, should the bill be enacted, that it authorizes VA oversight only for contingency fee agreements under which the Secretary is to pay the attorney directly from past-due benefits awarded on the basis of the claim. We believe this leaves open the possibility for abuse.

For these reasons, we believe enactment of these provisions will profoundly change the administrative claims process to the detriment of veterans and other claimants. We believe there is a potential for wide-ranging unintended consequences that will be beneficial for neither claimants nor the Government. Beyond the cost to veterans, added administrative costs for VA are likely to be substantial, without commensurate added advantages or benefits for either.

S. 2562, the Veterans' Compensation Cost-of-Living Adjustment Act of 2006, would increase, effective as of December 1, 2006, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans. However, within the cost-of-living adjustment (COLA) measure is a provision that "Each dollar amount increased under paragraph (1), if not a whole dollar amount, shall be rounded to the next lower whole dollar amount." (The DAV supports the overall intent of this bill.) To maintain the value of veterans' benefits, they must be adjusted to keep pace with the rise in the cost of living. Rounding down the adjusted rates to the next lower dollar amount, however, will gradually erode the value of benefits over time and thus benefits will not keep pace with the rise in the cost of living. Rounding down veterans' cost-of-living adjustments unfairly targets veterans for convenient cost savings for the government. Additionally, the DAV supports legislation that would provide for automatic annual adjustments, based on increases in the cost of living, for specially adapted housing and automobile grants to assist eligible disabled veterans and servicemembers. These grants must be adjusted annually if they are to keep pace with the rise in the cost of living and remain meaningful benefits.

Because the issues addressed within the following bills are not specific to its legislative focus, the DAV has no resolutions pertaining to these measures. However, because they would benefit veterans and their family members, the DAV has no objection to their favorable consideration:

• S. 2659, the Native American Veterans Cemetery Act of 2005, would amend title 38, United States Code, to provide for the eligibility of Indian tribal organizations for grants for the establishment of veterans' cemeteries on trust lands.

• S. 2416, the Veterans Employment and Training Act of 2006, would provide flexibility in the programs of education for which accelerated payments of educational assistance under the Montgomery GI Bill (MGIB) may be used. Specifically, it would allow MGIB payments to be used for tuition for education programs that lead to certification or licensure in an occupation, or leads to occupation in an industry that has a critical shortage of employees or is an industry that is experiencing a high growth rate.

• S.—, draft legislation, would authorize accelerated payments of educational assistance for survivors and dependents of veterans who died or are permanently and totally disabled as a result of a disability arising from active military service. Specifically, it would allow such payments to be used for tuition for education programs that lead to certification or licensure in an occupation in a high technology field, or leads to occupation in an industry that has a critical shortage of employees or is an industry that is experiencing a high growth rate.

• S. 2121, the Veterans' Housing Fairness Act of 2005, would provide housing loan benefits for the purchase of residential cooperative apartment units.

We appreciate the Committee's interest in ensuring the effectiveness of programs for disabled veterans, and we appreciate the opportunity to present DAV's views.

NATIONAL ORGANIZATION
OF VETERAN'S ADVOCATES,
May 22, 2006.

Hon. LARRY CRAIG,
Chairman, Committee on Veterans' Affairs,
Russell Senate Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you on behalf of the National Organization of Veterans' Advocates to offer the following testimony in support of Senate Bill S. 2694. This bill, if enacted, would provide veterans with the choice to hire counsel when they file their initial claims at the Regional Office. The Floor Statement submitted with this bill accurately explained that the point at which a veteran can hire counsel under current law is too late in the process for counsel to be truly effective because by that time the evidentiary record is effectively closed. . .if attorneys were retained at an earlier stage of the process, they could be helpful in obtaining and presenting necessary evidence and in ensuring that VA timely and accurately processes claims.

NOVA believes that veterans should have the right to choose whether they wish to hire a lawyer. Every year NOVA members receive calls from many veterans requesting assistance with their claims that are pending before the VA. Unfortunately, given the fee limitations in 38 U.S.C. §5904, our members are not able to assist veterans at this critical stage of the proceedings. The best opportunity for an attorney to assist a veteran is before the Board of Veterans' Appeals denies the claim because the record is not closed. S. 2694 would give the veterans the choice to hire counsel during this crucial time period.

The United States Court of Appeals for Veterans Claims awarded NOVA the Hart T. Mankin Distinguished Service Award in 2000. In presenting the award, the Board of Judges specifically recognized that NOVA's continuing legal education programs provide valuable training for attorneys. For over 10 years, NOVA has offered continuing legal education, and it is the founding principle that led to the formation of our organization. Therefore, NOVA supports the provisions of this bill that require the VA to ensure that all attorneys who practice before the VA have adequate training or experience in this specialized area of the law.

While NOVA fully supports S. 2694, we urge you to examine the following issues. First, as proposed, S. 2694 would only apply to veterans' claims filed after the effective date of the legislation. The proposed bill would artificially create two categories of veterans based upon date of filing: those permitted to hire counsel because their claims are filed after the date of enactment, and those who are not allowed to hire counsel. According to a recent GAO study, there were three hundred forty-six thousand veterans claims pending at the end of fiscal year 2005. All of those veterans would be precluded from hiring counsel under S. 2694 as proposed. Such a limitation of the right to counsel appears to significantly undermine the rationale for and purpose of the legislation. Moreover, as VA claims can take years if not decades to resolve this dichotomy will exist for years to come. It is not at all apparent why a veteran seeking a straightforward increase in a rating filed the day after the legislation becomes effective should have a right to hire counsel, while a veteran seeking the same benefit the day before the act becomes effective should not. NOVA urges you to make the law effective for all veterans who have claims pending on the date of enactment as well as for those veterans who file claims after the date of enactment.

Second, the bill should include a provision which eliminates the permissive language in 38 U.S.C. §5904. When §5904 was originally enacted the law provided that the Secretary may withhold and pay a 20 percent contingent fee to the attorney. NOVA urges that the permissive language of 5904 "may" be changed to a mandatory statement that the Secretary "shall" withhold and pay.

For these reasons, NOVA strongly supports the Veterans Choice of Representation Act of 2006 and urges you to consider these comments as you work with your colleagues in the House to enact this legislation. If you have any questions or need any assistance please feel free to contact me. Thank you for your time and efforts on behalf of veterans.

Very truly yours,

ROBERT V. CHISHOLM,
Past President.

NAVAJO NATION WASHINGTON OFFICE,
May 26, 2006.

Sen. DANIEL AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: On behalf of the Navajo Nation, I am writing to thank you for the introduction on the S. 2659, the "Native American Veterans Cemetery Act of 2006." Currently, the Navajo Nation's only Veterans cemetery is full and the Navajo Nation is without access to grant funding establish and maintain a Veterans cemetery. Navajo Veterans who wished to be laid to rest with military honors among fellow Native American warriors must be laid to rest far from the aboriginal homeland they fought to protect. S. 2659 will allow Native American to be buried near their families and in their homeland.

Another important issue for Navajo veterans is access to Improved Veterans health care. Currently, the Navajo Nation and the Veterans Health Administration are discussing the proposed placement of a VA health clinic within the Navajo Nation.

The Navajo Nation respectfully requests Senator Akaka's continued support these two important measures. Furthermore, the Navajo Nation Washington Office will continue to work to see additional support for S. 2659 among Congress and the National American Indian Veterans Services Organization, Inc.

Again, thank you for introducing S. 29 and the Navajo Nation looks to your leadership for S. 2659's movement. If there are questions, please feel free contact me at the Navajo Nation Washington Office at (202) 775–0393.

Sincerely,

SHARON CLAHCHISCHILLIAGE,
Executive Director.

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