BUDGETARY NEEDS OF THE VETERANS BENEFITS ADMINISTRATION

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMPENSATION, PENSION AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

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BUDGETARY NEEDS OF THE VETERANS BENEFITS ADMINISTRATION

WEDNESDAY, FEBRUARY 23, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 11:20 a.m., in room 334, Cannon House Office Building, Hon. Jim Slattery (chairman of the subcommittee) presiding.

Present: Representatives Slattery, Evans, Edwards of Texas, Tejeda, Bilirakis, Stearns.

OPENING STATEMENT OF CHAIRMAN SLATTERY

Mr. SLATTERY. If the committee could come to order.

Good morning, ladies and gentlemen. It is good to see you all this morning.

We are meeting today to review the proposed fiscal year 1995 budget for the Veterans Benefits Administration, which includes the regional offices, and the proposed budget for the Board of Veterans' Appeals. Our central focus is on the general operating expense levels requested for each of these entities. As everyone in this room knows, major problems exist in both claims processing and appeals processing.

Projections of productivity levels in these processes are dismal. For example, at the beginning of this fiscal year a backlog of 531,000 claims existed in the regional offices and 33,000 appeals were pending at the BVA. By year's end, the RO backlog will be 712,000 and the BVA number will be at least 48,000.

Stated another way, under this budget, it is estimated that, by the end of fiscal year 1995, it will take the VA 235 days on average to process a new compensation claim and 725 days, or 2 years, for the Board to decide an appeal. As we will hear from the BVA chairman, the latter statistic could be far worse.

On March 3, one week from tomorrow, the full committee will meet to consider its recommendations to the Budget Committee as to what modifications we might wish to suggest to this budget. I hope this hearing will be helpful to our members, and to the members of the Budget and Appropriations Committees, by demonstrating the terrible situation these programs are in and to show how this budget will only further diminish the VA's ability to perform its mission of providing benefits to veterans or their survivors.

I look forward to hearing from the VA and from the major veterans' organizations represented here today, and I want to especially commend those who have once again submitted an "independent budget" for our review. We greatly appreciate your efforts and recommendations.

Before we proceed with our witnesses, I would like to recognize the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. I just have a short opening statement I would like to make part of the record.

Mr. SLATTERY. Okay.

OPENING STATEMENT OF HON. CLIFF STEARNS

Mr. STEARNS. Today, we are focusing on one area of the VA system and budget, the Veterans Benefits Administration. It is clear that the Veterans Benefits Administration needs help. Currently, there is a backlog of well over 700,000 claims. It used to take 6 months to fully process a veterans claim and run it through the system. Six months is a long time. However, incredibly the process time could soon be approach 6 years.

With the longer response time the cost has also increased. The estimates are now over $1,000 to process one veteran claim. Four years ago, it was $500. With a VA budget that includes cutbacks of personnel funding, I cannot see the situation getting any better for the veteran and his claim.

If the VA budget won't step up to the challenge, then we need to again review and implement the recommendations of the Blue Ribbon Panel on Claims Processing. For example, it has been acknowledged by the Administration that automated modernization of veterans claims management system and adjudication would be invaluable to speed up this process, but the President's budget does not make the request for full funding. This committee must do what the Administration has not done and give adequate funding to the VA system and implement changes so that the VA may do its job in a timely manner.

Adequate funding does not mean moving money around from one program to another. It means addressing the needs of VBA with full funding and system changes where needed.

In that light, Mr. Chairman, I look forward to the recommendations of the organizations before us, and thank them for their commitment to the veterans.

Mr. SLATTERY. Does the gentleman from Illinois wish to be recognized?

OPENING STATEMENT OF HON. LANE EVANS

Mr. EVANS. Yes, sir.

Thank you, Mr. Chairman. I appreciate this opportunity.

We welcome Mr. Vogel. I understand that he has just been confirmed as Under Secretary for Benefits in the VA. He has got a very difficult job, I think, here today, Mr. Chairman, defending the President's proposed budget for the VBA for fiscal year 1995. This budget will not even maintain current service levels.

If the services were now first rate, that would be one thing. But I think we all know that they are not. The backlog of claims, as my colleague from Florida has just indicated, continues to grow

exponentially, and the Board of Veterans' Appeals has responded by issuing a moratorium on hearings.

Since we all agree, I believe, that modernization and some administrative changes are needed such as those implementing the Blue Ribbon Panel's recommendations and those called for in legislation that I have introduced to make the system more effective, I am simply amazed that the VBA is not providing a better budget and that the cuts that they are talking about will have a real impact on the system as it now exists.

So, I look forward to hearing, and also I know your commitment to work some legislative markup sooner or later this spring I hope on adjudication reform is much needed, I think will be given some evidence of that today as well.

Mr. SLATTERY. Okay. Thanks, Lane.

Does the gentleman from Florida wish to be recognized for an opening statement?

OPENING STATEMENT OF HON. MICHAEL BILIRAKIS

Mr. BILIRAKIS. Thank you, Mr. Chairman, I am afraid I do.

I commend you, sir, for holding this important hearing on the Administration's budget for the Veterans Benefits Administration and the Board of Veterans' Appeals.

The message I think has been spread pretty well by my colleagues in terms of disappointments, but I add my own disappointment with the Administration's budget request for the coming fiscal year.

I don't believe, Mr. Chairman, that the Administration's budget will be adequate to address an already dismal situation. In fact, underfunding the VBA and BVA will only make a bad situation worse.

Let me be very specific. According to the committee's budget analysis on spending for veterans' programs in fiscal year 1993, some 4357 full-time equivalent employees (FTEE) were provided for VBA adjudication operations. During that time VBA processed 3.4 million claims, leaving a pending backlog of 531,078 claims.

The pending backlog is projected to increase in fiscal year 1994 to approximately 700,000 claims and in fiscal year 1995 to nearly 900,000 claims, and yet the Administration has proposed reducing the resources available. As Chairman Slattery pointed out in his opening statement, as I understand it, the BVA has a backlog of at least 48,000 claims. Response time by the Board is approaching nearly 2 years on a veteran's claim.

Clearly these statistics are unacceptable, and many of us have spent an awful lot of time in this last year looking at the working of these two organizations. The ability of the VA to provide timely and quality benefits delivery is dependent on a combination of proper staffing levels, on the training and retention of employees and funding for modernization initiatives. And yet the Administration is proposing to cut 622 FTEE from the VBA. With fewer employees, how will the VA be able to provide timely and quality service to the Nation's veterans, we must ask ourselves.

In 1991, the Disabled American Veterans Executive Director Jessie Brown testified before the full Veterans' Affairs Committee regarding the VA's budget request for fiscal year 1992. During his

testimony he focused on a hypothetical veteran of the Panamanian conflict veteran, he referred to him as Corporal Jones, who sustained a gunshot wound injury necessitating an above-knee amputation prior to release from service.

According to the then executive director, in 1990 Corporal Jones may have been one of the 1.7 million veterans who were unable to contact the Veterans Service Division (VSD) due to a series of reductions in full-time equivalent employees and a lack of budgetary support for state-of-the-art telecommunication equipment.

He theorized that when Corporal Jones was finally finished with his claim he may have been one of the 30 percent of compensation claims that required in excess of 180 days to complete due to staffing shortages.

In 1991, Executive Director Brown's solution to this problem was "to provide the VA with the resources needed to process the claims of all veterans in an accurate and timely manner." However, by the end of fiscal year 1995 under the Administration's budget proposal it will take the VA 235 days on average to process a new compensation claim.

Now, Secretary Brown is not here and I don't mean to take unfair advantage, and I realize that we have got to sort of follow the drummer who is ordinarily our superior, but I wonder what Corporal Jones would say to Secretary of Veterans Affairs Jessie Brown regarding the Administration's recent budget submission.

What has changed, we have to ask ourselves, in the past few years except that the problem has gotten worse? I am anxious to hear from the VA, and I hate to put Mr. Vogel on the spot, but here he is, because I find him to be a great guy, very caring, very concerned about the veterans, but I am very anxious to hear from him and from the veterans' service organizations scheduled to testify this morning.

As always, Mr. Chairman, I look forward to working with you and the other members of the subcommittee on any suggestions the veterans' service organizations may have on the issues before the subcommittee today.

Thank you, sir.

Mr. SLATTERY. Thank you, Mr. Bilirakis.

Does the gentleman from Texas wish to be recognized? Okay.

Our first panel is comprised of the Deputy Under Secretary for Benefits, Mr. John Vogel, who was confirmed last night by the Senate after a year-long deliberation.

John, they should have consulted us over here. We would have been able to help them with that confirmation process. You would gotten confirmed a lot sooner, probably.

But at any rate, it is great to have you here. And congratulations, John.

And the chairman of the Board of Veterans' Appeals is also with us today, Mr. Charles Cragin.

Gentlemen, you may proceed when ready.

STATEMENTS OF R. JOHN VOGEL, DEPUTY UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY J. GARY HICKMAN, DIRECTOR, COMPENSATION AND PENSION SERVICE; AND CHARLES CRAGIN, CHAIRMAN, BOARD OF VETERANS' APPEALS

STATEMENT OF R. JOHN VOGEL

Mr. VOGEL. Thank you, Mr. Chairman.

I have a brief summary statement I would like to make and ask that the full statement be made a part of the record.

Chairman Slattery and members of the subcommittee, I am pleased to be with you today to discuss the President's 1995 budget request for the Veterans Benefits Administration's compensation and pension programs. For fiscal 1995, we are requesting $17.97 billion for compensation and pension programs. This request includes a 3 percent cost-of-living adjustment during fiscal 1995.

The projected general operating expenses for adjudication FTEE in 1995 reflect the hard realities that we face today. We will have a ceiling of 4163 personnel in our Adjudication Divisions. That is a drop of over 300 from our current level. It is mostly attributable to the decrease in the workload from the Omnibus Budget Reconciliation Act of 1990. GOE request for 1995 will also decrease to $189.9 million. At the same time, however, we anticipate a significant increase in workload pending at the end of 1995 when it will be possibly 870,000 cases.

Several factors have contributed to our current situation. Recent down-sizing of the military has produced an increased number of original compensation claims. Most contain a greater number of issues. All claims adjudication has been affected by changes in due process requirements, the claimant notification requirements of Public Law 101–237, and decisions of the Court of Veterans Appeals.

We have initiated a number of measures to improve our level of service. The Blue Ribbon Panel on Claims Processing referred to by you, Mr. Chairman, and a few members of the subcommittee, which I established last year to address solutions to the pending backlog and problems in claims processing, provided 43 specific recommendations, all of which I recommended to the Secretary for approval, which he gave.

Several regional offices are conducting initiatives to redistribute personnel in order to streamline the adjudication process and make it more effective. We have initiated a number of modernization projects. These projects include the claims processing system; Rating Board automation; COVERS, which is an acronym for the Control of Veterans Records, a bar coding system that monitors movement of the claims folders; an automated reference material system; and personal-computer-generated letters.

In addition, for the last 4 years the Compensation and Pension Service has conducted centralized training for key adjudication personnel with consistently positive results. In the long run, training will be our best hope for coping with the complexity and challenges of the future.

Mr. Chairman, this concludes my remarks. I would be happy to respond to any questions which you or members of the subcommittee might have.

[The prepared statement of Mr. Vogel, with attached white paper, appears at p. 35.]

Mr. SLATTERY. Mr. Cragin.

STATEMENT OF CHARLES CRAGIN

Mr. CRAGIN. Thank you, Mr. Chairman. It is also my pleasure to be with you and the other members of the subcommittee this morning to offer the Administration's views on the budgetary needs of the Board of Veterans' Appeals.

I have submitted a rather extensive statement for the record. I would like to spend the next few minutes, summarizing and discussing the essence of that prepared statement.

Mr. Chairman, the President's budget for fiscal year 1995 includes a request of almost $30 million for the Board to support 449 full-time equivalent employees. Through the efforts of Secretary Brown and Deputy Secretary Gober, two remarkable advocates for veterans, these numbers represent an increase of $1.5 million and 3 FTE over fiscal year 1994. That is the good news.

When I appeared before this subcommittee last November I predicted that the Board's average response time by the end of fiscal year 1995 would be more than 2 years. I thought that was the bad news. Frankly, I wish I could bring you that kind of bad news today.

Mr. Chairman, based on statistics from the first quarter of fiscal year 1994 the Board is looking at an average response time of 5 years by the end of this September and 6½ years by the end of fiscal year 1995. As you correctly pointed out at last November's hearing, "justice delayed is justice denied." This kind of delay, however, is simply beyond the pale.

I will not mince words, Mr. Chairman. We are where we are because of the Veterans' Judicial Review Act. That landmark legislation which created the Court of Veterans Appeals has increased the time a claimant must wait for a final decision.

There is no doubt that the court is an adversarial system grafted onto one which was designed to function in a nonadversarial manner. The result is that the mere availability of judicial review has made the administrative adjudication process more formalistic, more rigid, and inherently more time-consuming.

This is so even though less than 10 percent of appealable decisions reach the court, and this is so even though the court reverses less than 1 percent of the Board's cases on the merits. Whatever the rate of appeals or reversals, all BVA decisions must be prepared to withstand the scrutiny of judicial review.

Because of the increasing complexity and rapidly evolving state of the law, BVA decisions are lengthier, more complex, and require more time to prepare than ever before. We face court decisions remanding Board actions because the Board failed to take into account potentially applicable VA regulations, even though they were not raised or specifically considered below.

We are told to be more vigilant with respect to whether a claim is well grounded and deserving of development, and yet are given

little guidance which would assist either Board members or the non-attorney claims examiners in the regional offices. As a consequence, speedy justice in VA claims adjudication has become an elusive moving target.

The applicable law as articulated by decisions of the court is changing on almost a daily basis. It can also change on a retroactive basis. Because the court has ruled that its precedential decisions have retroactive applicability, regional office decisions that were rendered prior to the issuance of such a decision, even though correct when made, often must be remanded to the originating agency to apply the new precedent.

In some ways this result should not be considered unexpected, Mr. Chairman. In June 1986, the court's Judge Ivers, at that time VA's General Counsel, testified before this committee. Judge Ivers warned that judicial review would interject an adversary relationship into what had been a cooperative process and would formalize an informal process by requiring VA to document every factor and consideration that led to denial of a claim; in other words, to build the record.

The landmark decisions of the court all have had the effect that Judge Ivers predicted. More formalistic legal analysis and adherence to procedure, the necessity of building the record to permit judicial review. The documentation of relatively minor ministerial acts in order to demonstrate compliance with the Department's duty to assist, and the formal requirements of regulation, requiring the inclusion of outside medical opinions, medical journals and treatises into the record because VA adjudicators may no longer rely on their own expertise, and providing notice and an opportunity to comment or provide rebuttal evidence to any evidence, such as a medical treatise, that the Board obtains and intends to rely upon in reaching its decision.

In addition, the court's decisions have increased the Board's response time because of the necessity for the Board to remand more cases for additional development. The fiscal year 1993 remand rate of 44 percent is triple the average rate during the decade preceding judicial review.

Mr. Chairman, there are three factors, in my opinion, in the court's jurisprudence that are driving this rate. The first is the retroactive effect of the court's decisions, which, when combined with the lag time we currently experience, increase the probability that a pending Board decision must be remanded to comply with procedure that was not required at the time the regional office rendered its decision.

Secondly, the court's tendency to expand the scope of issues on review including, such as in the Schafrath case, requiring the Board to take into account regulations made potentially applicable to the assertions and issues raised in the record, and the court's expansive interpretation of the Department's duty to assist.

At the Board, Mr. Chairman, we have not been standing still. Since I became aware of the first quarter statistics, we at the Board have initiated and are pursuing a series of strategies to improve timeliness and the overall service that we provide to veterans and their dependents. These are strategies that involve every part of the veteran community, this committee, the veterans' service or-

ganizations, and the various operating elements within the Department.

We have categorized these plans in the short term, mid-term and long term, and we have already accomplished many of our short term goals, and have reduced the number of decisions in which a certified list of evidence must be prepared.

We have instituted revised decision production goals for Board sections, decreased collateral duties of Board members, restricted returns of decisions by the quality review activity to substantive measures only, suspended plans to reduce the number of specialty jurisdictions assigned to individual Board sections, revised decision creation instructions to reduce the procedural history of the case set forth in the introductory portion of Board decisions, implemented with the cooperation of the Veterans Benefits Administration procedures for the advance docketing of appeals whereby cases in which a substantive appeal has been filed will be placed on the Board's docket while the claims folder will remain at the RO until the Board is ready to consider the appeal in its order on the docket.

We also have a series of mid-term measures in progress. We come before you as we have the staff and members of the Senate committee seeking immediate enactment of the Veterans' Appeals Improvement Act of 1993; legislation to authorize single member decisions; remove the time limits on acting Board members and eliminate the statutory cap on the number of Board members.

I have temporarily delayed the scheduling of new personal hearings, as Congressman Evans pointed out, in cases on appeal until we have a time that is proximate to when the appeal will be actively considered by the Board.

We have implemented a new performance plan for Board counsel which includes a new standard for timeliness. We require prescreening of cases by Board members prior to the assignment of counsel. And we are also exploring and developing new incentives for exceptional performance and special contributions by Board members.

Our long-term measures are to undertake a fundamental reexamination of how the Board does business, and to also explore legislative alternatives that will enable the Board to focus resources on substance rather than form. I have recommended to the Secretary that this task be undertaken by a select panel comprised of leaders of the veterans community and legal experts from both within and without the Department.

Mr. Chairman, we believe that the legislative proposal to provide authority for a final Board decision to be issued by a single Board member which was transmitted by the Secretary to Congress in August of 1993 and is contemplated in the Department's current budget proposal will result in an overall 27 percent increase in decisional productivity.

Aside from that initiative, we cannot, in all candor, quantify the extent to which any of these initiatives will improve productivity and timeliness, although we believe that improvement in those areas will be a cumulative effect.

Mr. Chairman, I will be pleased to answer any questions you or other members of the subcommittee may have.

[The prepared statement of Mr. Cragin, with attachment, appears at p. 58.]

Mr. SLATTERY. Prehearing questions were asked of your staff concerning the VA's estimate of the FTE level in fiscal year 1995 that would be required to maintain the current level of timeliness. The response indicated that a more effective approach would be a combination of an additional FTE and overtime, and that an increase of 342 FTE above the budget request accompanied by an additional $5 million to be used for overtime would allow the VA to maintain and perhaps improve your current timeliness levels.

I am just curious. For the record, do you agree with this assessment?

Mr. VOGEL. Yes, I do, Mr. Chairman.

Mr. SLATTERY. Okay. Pursuant to executive orders of the President some 252,000 FTE must be eliminated governmentwide by the end of fiscal year 1999. The first 100,000 FTE must be eliminated by the end of fiscal year 1995. The VA share of the total is in the neighborhood of 26,000 FTE.

In the 1995 budget request for GOE, 622 FTE were cut from VBA. Of that figure, 349 relate to implementation provisions of the Omnibus Budget Reconciliation Act of 1990 by staff of the Compensation, Pension and Education Services. That is a decrease in OBRA FTE of 72.5 percent, from 481 to 132. I have a few questions relating to this.

To what do you attribute the sharp decline in the OBRA workload?

Mr. VOGEL. Mr. Chairman, the OBRA workload largely consists of matching our data with data provided by the Social Security Administration and the Internal Revenue Service. Needs-based benefits require us to compute income, whether earnings or Social Security benefits.

We have made a large number of reconciliations in these records, to the extent that we are obtaining fewer matches. Therefore, we don't have the work in the OBRA area that we once had.

Most of the "OBRA" personnel do actions that we call authorization actions; in other words, they are not directly part of the rating activity. It is the disability rating activity which largely puts both the Board of Veterans' Appeals and the Veterans Benefits Administration behind in timeliness.

Mr. SLATTERY. Mr. Vogel, doesn't a substantial portion of these FTE represent actual VBA regional office employees who also adjudicate veterans' claims?

Mr. VOGEL. Mr. Chairman, the amount of time that our personnel spend on OBRA actions is carefully monitored. Their remaining time is, in fact, spent in the adjudication activity. But 342 represents the actual number of man-years spent in OBRA that will be reduced in 1995. Those personnel may spend other portions of their time in claims adjudication but that time is not added into the 342 man-years that have been eliminated.

A number of of them are new employees. They do learn claims adjudication. They are a source of recruitment for veterans claims examiners, veterans benefits counselors, and other positions.

Mr. SLATTERY. I am just curious. When you are required to look for additional significant numbers of FTEs in fiscal year 1996

through 1999, I mean where in the world are you going to go? You have to eliminate more FTEs.

Mr. VOGEL. Well, right now, Mr. Chairman, our objective is to bring our FTEE down by 622. The annual attrition rate in the Veterans Benefits Administration for the last few years caused us to lose somewhere in the neighborhood of 125 to 140 employees per year.

We are now so far over the FTEE goal for 1995, that we are anxiously awaiting some action by the Administration and the Congress on the buyouts, so that we can reduce the number of employees.

We are really not looking for sources of additional employees in 1996 or beyond. We are looking at 1995 as a major challenge, both in workload and staffing, to reduce by 622 FTEE. That is 300 percent over our annual attrition rate the last few years. We have had the good fortune to recruit excellent employees and hold on to them, and we haven't had the turnover we have experienced in years past.

Mr. SLATTERY. Okay. I have further questions, but I want to recognize some of the other members of the panel here today—of the committee rather, to ask their questions, and I will come back.

Mr. Bilirakis.

Mr. BILIRAKIS. Well, thank you. Thank you, Mr. Chairman. I am going to continue on with my plea for diligence to the veterans' service organizations. I have made a practice of it in the last few months. They are in the audience and I trust they are paying attention to the cuts that we are talking about.

As I understand it, while the VA is forced to cut some 5,800 health care positions, funding for outside contracting would be available for some 4940 positions. I realize, John and Charles, it is probably outside your particular scope, but I am trying to make a point to the veterans' service organizations.

At the same time that the Administration is reducing the number of health care positions it is predicting that the VA will treat 27,000 more veterans than in fiscal year 1994.

And again, how can an already overburdened VA treat more veterans with fewer employees and still provide quality health care? It's Important because we are talking about a national health care plan which would take the veterans' organizations and put them into these Alliances, so that they would then have to be competing with private facilities. At the same time we are talking about great reductions in health care personnel.

The budget does virtually nothing to position VA to respond to the challenge of national health care reform, as I have already said. The major construction account is reduced by $257 million, a 45 percent cut from fiscal year 1994 levels. Of the proposed $115 million for construction projects, $62.3 million—listen to me—of the proposed $115 million for construction projects, $62.3 million, about half, is for seismic corrections in Memphis, TN.

While this project has been on the VA's list of top projects, there has not been an earthquake or, as I understand it, even seismic activity in Tennessee since the 1800s.

The budget also contains $26 million for two research facilities, one in West Virginia and one in Oregon. I am not going into the

merits of those because I don't know whether they are—you make your own decisions—either ranked very low on the list of needed construction projects or not ranked at all.

So, again, I plead with you all for diligence. I am saying be open-minded. I am not saying be closed-minded about what we are doing up here regarding national health care. But if we want to retain our separate health care process that we have very zealously guarded over the years, we had better take all of these things into consideration.

Now, Mr. Cragin, as you know, we have talked about this and just seen the great job which your people are doing under tremendously tough circumstances down there. I have introduced the ALJ comparability bill—I can't pronounce it but I can talk about it—H.R. 69, for Board members of BVA, as you know. I was hoping it might be in VA's legislative proposals, but I don't see it.

And the question is did the VA ask OMB for such a legislative proposal?

Mr. CRAGIN. Mr. Bilirakis, it is my understanding that Secretary Brown and the Deputy Secretary were fully supportive within the Department of pay comparability legislation for Board members.

Mr. BILIRAKIS. Fully supportive. Does that mean fought for, yelled for, pounded the table for, or just merely "Well, we support it" kind of a thing? You know, we are talking here about trying to improve the process. We are talking about trying to improve the process with less personnel, and it seems to me that is one way to do it.

Mr. CRAGIN. I don't think I can characterize Secretary Brown's emotions, Mr. Bilirakis. I certainly wasn't in the room with him when he met with President Clinton for, according to his testimony, over an hour.

I can tell you that both he and the Deputy have been very supportive of getting Board members back to the position they were in; in other words, pay comparability, before Congress enacted legislation giving Social Security ALJs a different pay scale.

Mr. BILIRAKIS. Well, I am very pleased to hear that the VA is supportive of this. That certainly is a step forward. But I think sometimes we move too darn fast up here, and then oftentimes we move too slowly. And certainly in this area we are moving awfully slowly.

Does the BVA have any cost estimate for this legislation?

Mr. CRAGIN. Well, we have the cost that we provided internally within the budgeting process, and I assume that those costs were sent as part of that budgeting process to OMB for its review. I would be happy to provide to the committee whatever information we provided within the Department.

Mr. BILIRAKIS. I have always had problems, of course, with OMB, because I have problems with an ivory tower. We, the Congress, are an ivory tower too, but you have OMB and people like yourselves are down on the firing line. You know what the problems are, you make your request, then you have that ivory tower there that basically makes the final decisions.

And I had hoped when we decided to make the VA a separate Cabinet agency we would pick up enough prestige, enough power and enough strength so that we could maybe overcome that par-

ticular problem. But obviously that is not the case, and it is really very, very disappointing to me.

I do have additional questions, but I see that the yellow light is on, so I will just pass at this point in time.

I had mentioned Mr. Vogel earlier, Mr. Cragin. I had not had a chance to look at my folder yet. I didn't realize you would be testifying also. I certainly didn't mean to overlook you.

Great to have you both here.

Thank you, Mr. Chairman.

Mr. SLATTERY. The gentleman from Illinois.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. Vogel, according to your statement you recently approved a plan for the Compensation and Pension Service for implementing all 43 specific recommendations made by the Blue Ribbon Panel within 6 to 18 months. Can you provide a copy of that plan for the record?

Mr. VOGEL. I would be pleased to, Mr. Evans. The plan I have now is being made more comprehensive. I would be happy to provide to you what I have now and that which the Compensation and Pension Service, as well as the people in the IRM part of VA, are working on now. They very carefully set forth measurement points towards implementing all those recommendations.

Mr. EVANS. So, I assume you feel this panel, insofar as those recommendations, was very successful?

Mr. VOGEL. I think it was quite successful, Mr. Evans.

Mr. EVANS. What is the current status of the Commission at this point?

Mr. VOGEL. The Blue Ribbon Panel met formally three times and spent a long time developing data. My staff worked with them. The Panel has fulfilled its duties and has been dissolved.

Mr. EVANS. Do you think there would be—you know, with a reinventing government kind of efforts of this new Administration, could you see a successor to this panel having some real positive impact in terms of improving services to veterans?

Mr. VOGEL. I do, Mr. Evans. One of the things that we in Government have had to learn to do far better is listen to our customers, both internal and external. The Blue Ribbon Panel was, in part, composed of representatives of the major veteran service organizations who brought their minds and their hearts to us in representing our important customers, America's veterans. I think it was a valuable exercise (and I don't mean exercise in a pejorative way) in finding out what your customer wants.

We used to ask our customers about their satisfaction with our processes. We now ask them questions about the outcomes. And panels, such as the Blue Ribbon Panel help us keep our focus on what is important.

Mr. EVANS. All right. Well, we appreciate that kind of attitude.

Mr. Cragin, you are projecting an overall 27 percent increase in decisional productivity with single Board member decision authority. But how will decision quality change with that kind of authority?

Mr. CRAGIN. We certainly anticipate that it is not going to deteriorate, Mr. Evans. We continue to have as part of our process a Total Quality Management approach to quality control.

Obviously, our mission at the Board is to issue quality decisions that are consistent so that it isn't up to essentially the luck of the draw as to what judge a veteran gets as to what decision that veteran is going to get.

But obviously, we from an internal perspective look at quality review and quality control as a very important facet.

Mr. EVANS. All right. Could you describe the new performance plan for Board counsel which is expected to be fully implemented in April?

Mr. CRAGIN. Yes, I can. Essentially this is a performance plan that is going to recognize, more so than productivity plans utilized in the past, the complexity and uniqueness of each decision, and through a prescreening process the assigning Board member will review a case, will determine how much time in that Board member's opinion this case should take, will assign the case to counsel, giving them an assignment of—an estimate of the amount of time they should be utilizing, and then have a screening and feedback process that is almost contemporaneous with the preparation of the decision.

Mr. EVANS. All right.

Mr. CRAGIN. This is a plan that we are test implementing as of February 1. We have to have impact discussions with representatives of the labor organization that represents our counsel. We anticipate fully implementing it by the 1st of April.

Mr. EVANS. All right.

Thank you, Mr. Chairman. I have some additional questions I would like to submit for the record and ask that they be made a part of the record.

[The questions and answers appear at p. 104.]

Mr. SLATTERY. Does the gentleman from the Florida wish to be recognized?

Mr. STEARNS. Yes. Thank you, Mr. Chairman. I also want to welcome both of you here this morning. You are the messengers and we are not here to really, so to speak, try and kill the messenger, but I am quite startled to hear your testimony and to hear before I came here some of the delay that is going to be occurring.

Just for the record, both of you support this budget; is that correct?

Mr. VOGEL. That is correct, Mr. Stearns.

Mr. CRAGIN. That is correct.

Mr. STEARNS. Do you think this budget gives you the ability to reverse any of this time lag that we have talked about with well over 700,000 claims that used to take 6 months and now it might take you 6 years? Is there anything in the budget that you think can reverse this processing time?

Mr. VOGEL. There is nothing in the VBA portion of the budget which even holds the line. Timeliness and backlog numbers will continue to deteriorate.

Mr. STEARNS. Okay.

Mr. VOGEL. What we do have in the budget that we really need badly is continued funding for the modernization of our systems. We have a number of initiatives that will be in place by the end of this fiscal year, and additional applications will come in later. They are clearly a source of great hope for us, relieving some of the

administrative burden, controlling and retrieving records, and automating many of our processes. We need these initiatives badly if we are going to improve services.

Mr. STEARNS. Can you say categorically, then, that this projection of taking 6 years is going to be reversed?

Mr. CRAGIN. I think that is a statistic at the Board of Veterans' Appeals, Mr. Stearns, rather than at VBA. Let me say that within this budget is the proposed legislation, the Veterans' Appeals Improvement Act of 1993, which, if enacted by Congress, will improve our productivity from 25 to 40 percent.

Mr. STEARNS. Well, if I could interrupt you. Not improve, will you reverse?

Mr. CRAGIN. Absolutely not.

Mr. STEARNS. Okay. So we are going to see 6 years most likely?

Mr. CRAGIN. No, that is not true, and that is the point I am trying to make. I am not going to reverse the trend to come back to a pre-judicial review average response time, but I am going to impede the degradation by 25 or so percent by the enactment of that legislation, which was introduced in August of 1993.

Mr. STEARNS. Let's say a person who is a 100 percent disabled veteran comes up to you and he says to you, "How long is it going to take me under this new legislation?" what would you say to him today?

Mr. CRAGIN. Today, I would tell him that for a case coming in the door to the Board of Veterans' Appeals last week our average response time was 660 days. I would also tell him that it will continue to climb based on our projections.

Mr. STEARNS. To degrade?

Mr. CRAGIN. To degrade.

Mr. STEARNS. So, that is roughly just under 2 years. Okay.

Mr. CRAGIN. I had projected——

Mr. STEARNS. And it is going to get worse?

Mr. CRAGIN. That is right. The bottom line——

Mr. STEARNS. You project that for him it is worse?

Mr. CRAGIN. Absolutely.

Mr. STEARNS. Okay. Well, I don't understand how we can accept this today. Do you believe that we should legislate a timeliness on the veterans part that VA would actually have to comply with law in terms of processing claims, a sort of reasonable timeliness in adjudication?

We had a bill, I guess, sometime ago on this, but I mean should Congress legislate this to say we are going to make it 3 months or 5 months? Because this just seems to get worse and worse.

Mr. CRAGIN. Mr. Stearns, let me try by one example to respond to your question. We had a recent decision of the Court of Veterans Appeals handed down. I believe it was handed down on the 10th of February, and I allude to it in my more extensive prepared remarks.

In this case, the court was looking at a decision of the Board that had been decided in January of 1992, and it sent it back to the Board because the Board in its January 1992 decision had failed to consider a rule of law announced by the court in May of 1993.

Now—that is right, Mr. Reporter. We decided a case in January of 1992. The court sent it back in February of 1994, specifically be-

cause we had failed to comply with the rule of law which the court had articulated in a decision it issued in May of 1993. And this is a perfect example of the problem, and the problem will get greater as the lagtime gets greater.

When Mr. Vogel's people in the trenches, in the Florida RO decide a case, they probably did it right. But the rule of law in the 2-year or 3-year lagtime overtook them, and so by the time it is scrutinized by the Board or the Board decision is scrutinized by the court a body of law has evolved.

The court is like Congress, only the court enacts legislation on a daily basis.

Mr. STEARNS. Mr. Under Secretary, I don't know what I am going to say, hypothetically, to say to a veteran that is 100 percent disabled when he comes into my office and says, "Congressman I have been at this for 2 years and I can't get help"?

How are we going to pay for this? I mean where is he going to get money? And when is he going to get compensated? How is all of this going to work if it is going to take up to 5 years?

Mr. VOGEL. Well, if he is making a claim today at the St. Petersburg Regional Office, we would make a decision on that case (this is an original claim, presumably) in about 180 to 200 days.

If he didn't agree with the decision and pursued an appeal to the Board of Veterans' Appeals, that is when you encounter a much longer period of time for resolution of this issue.

Mr. STEARNS. I know.

Let me just close, Mr. Chairman, and ask that the Under Secretary provide us a copy of his 43 specific recommendations on page 7 which talk about the Blue Ribbon Panel on Claims Processing that will be implemented in 6 to 18 months. I think our subcommittee would like these recommendations.

And I think along with them if you could tell me what will each of them cost to implement these and what is the timetable, I would appreciate it.

Thank you, Mr. Chairman.

Mr. SLATTERY. I can inform the gentleman from Florida that we do have that list of recommendations. And, if I am not mistaken, there aren't any legislative proposals contained in those recommendations. Those are administrative recommendations, is that not correct? And I don't believe there are any legislative——

Mr. VOGEL. There are a couple, Mr. Chairman, that would require a change in VA regulations. There is also a piece of legislation that has been pending now for some time.

Mr. SLATTERY. I am aware of that. But the recommendations that I just referred to are primarily—they are recommendations that don't require legislative change?

Mr. VOGEL. Yes, sir.

Mr. SLATTERY. Okay.

Mr. STEARNS. Mr. Chairman, can we assume then that they won't require any additional cost, too? I think I would like to know what the Under Secretary anticipates as the cost to implement these recommendations?

Mr. VOGEL. There are very few that entail any additional cost. We are developing those costs now. Most of them are within the administrative discretion of the Veterans Benefits Administration and

can be done without incurrence of additional costs. But there are a few that require additional costs, and we will provide that information when we provide the implementation plan.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. SLATTERY. One of the things that I would like for you to do, if you can, is provide the committee with a plan in terms of additional personnel that would be needed to address this problem.

And also, I would like to know from you, Mr. Cragin, how you would suggest, and you may already know how to do this, changing the law, changing COVA, if necessary, to alleviate this problem. I think we need to put in place and move toward a plan to deal with this problem that will help resolve it and stabilize the backlog and start whittling it down, and the goal should be to try and get this done in, say, 2 or 3 years.

I would like for you all to present this committee with a plan of action as to how that can be done from your point of view, and then we will have to try and convince the Administration to support us or not. But I would like to know from you all as to how that can be done. And would you all be willing to provide that information to us?

Mr. CRAGIN. Mr. Chairman, as I had mentioned in my opening statement, I have asked the Secretary to empanel a special task force to look at those types of issues, and I would hope that you could defer until that task force, composed of both experts within the Department as well as without the Department, had an opportunity to convene and discuss these issues. I would be happy to provide you, obviously, with any information we can.

Mr. SLATTERY. Okay. I guess I am getting a little impatient because we have been talking about this for over a year, and you know a year ago we had some very intense meetings about this. I have met with veterans' organizations and we have bounced it around and around and time is running out.

I mean we will have blown another 2 years talking, and I would like to see a recommended plan of action that the committee can really look at and respond to, and we can make a decision. If we can find $10 or $15 million in additional resources or whatever is required, then we will take that to the Budget Committee and see if we can justify it. But I need a plan of action.

Mr. VOGEL. All right, Mr. Chairman.

[The information follows:]

Resources for Claims Processing

We do not believe that unlimited FTE is the answer to our timeliness problem. If we hired new, unskilled employees in our adjudication divisions, they would not be fully productive immediately. In actuality, it would require at least 2 years of training before these individuals could manage the range of duties expected of a fully-trained GS–9 adjudicator. Acquiring all the technical expertise we expect of our GS–12 rating specialists would require 3–4 years.

A more effective approach would be a combination of FTE and overtime. Increasing our 1995 request by 342 FTE would restore our adjudication FTE to the 1994 level of 4,505. In addition, we would require an additional $5 million for overtime. Those additional resources along with the benefits realized from our on-going adjudication training program and reengineering and automation initiatives will allow us to maintain and perhaps improve (by as much as 10 percent) our current timeliness level.

Mr. BILIRAKIS. Mr. Chairman? I am sorry.

Mr. SLATTERY. Yes. The gentleman from Florida.

Mr. BILIRAKIS. Forgive me, sir. I just want to hitchhike onto the request, and I trust maybe the chairman would be agreeable here.

Mr. Cragin, you talked about the appeals process and about the strictness of it all what was really holding things up and what not. Maybe you can include these in your recommendations to us, and frankly, I would like to see a date certain when we talk about these things. Mr. Chairman I know this is your last year in the Congress and I think this is one of the things you want to feel you have really accomplished during your tenure here.

But I would appreciate it if Mr. Cragin would include therein any suggested changes on his part as far as the appeals process is concerned, so we can streamline it, speed it up somewhat. And these are all things that we would plan to sit down with the veterans' service organizations and discuss with them.

We all want the same thing and that is to get these claims processed one hell of a lot quicker, and still retain the efficiency and the justice and everything else.

Mr. CRAGIN. Mr. Bilirakis, may I respectfully observe, sir, that a number of the things that I have recommended are contained in the Veterans' Appeals Improvement Act of 1993. Which was submitted to Congress by the Secretary on August 13, 1993, and which has been the subject matter of discussion within this subcommittee and much of which is still pending within this subcommittee.

Mr. BILIRAKIS. Okay. So, you feel you have sort of satisfied my suggestion?

Mr. CRAGIN. I don't know that I have satisfied it, but I want the record to reflect that we have been taking initiatives, anticipating that this situation was going to continue to degrade.

I am also understanding of the chairman's admonition that we should work for consensus within the veterans' service organizations and others, and that without that consensus we are probably not going to be able to do very much.

Mr. BILIRAKIS. That is for sure. Thank you.

Mr. SLATTERY. Does the gentleman from Texas wish to be recognized?

Mr. TEJEDA. Thank you, Mr. Chairman. I have just got one question, if I may.

Mr. SLATTERY. Sure.

Mr. TEJEDA. Mr. Cragin, I have heard numerous complaints from veterans' service organizations in my community that there are unnecessary and wasteful steps in the adjudication process at the VA Regional Office that delay the decision-making for many months in some cases, and these service organizations complain that complaints and claims get bogged down in the typing pool or that too many people must review the work of others.

What types of modernization and/or continuous training programs are being implemented to speed the processing of claims at the VA Regional Office level, while at the same time maintaining the accuracy that we all want?

Mr. CRAGIN. Mr. Tejeda, the regional offices fall within the purview of the newly confirmed Under Secretary of Benefits, so I am going to ask Mr. Vogel to respond to your inquiry.

Mr. VOGEL. Mr. Tejeda, your observations are correct. A number of things impede the process in regional offices, one of which is the inadequate automation of our systems. During this fiscal year we are installing additional computer capacity and with that comes six very specific software programs which will help alleviate the processing of claims.

For example, a system called the Claims Processing System will be put into place by the end of this fiscal year, which will ensure that there are no missteps in the claims development process, in the automatic generation of necessary letters to VA Medical Centers, military service departments, and others requesting evidence.

We are automating our reference material, the laws, regulations, and manuals, so that they are nearly instantaneously available in computer form without the need to pore through volumes and volumes of directives. These are only two of the initiatives currently underway.

We have pilots now in place to have some types of claims adjudication actions, especially in the compensation and pension arena, done by single individuals without the necessity of review by another. We are testing those and closely monitoring for quality.

We think these kinds of initiatives and changes will free up some employees for other necessary tasks, just as personnel in the Board of Veterans' Appeals would be freed up by single signature authority in Board decisions.

We are not standing still. We have a number of reengineering initiatives in process, and some of the more exciting of these initiatives are taking place in the two Texas Regional Offices, Waco and Houston.

But I would be pleased to provide you information on those modernization initiatives underway this year and what we expect from the increased use of them over the next few years. I will be happy to do that, Mr. Tejeda.

Mr. Chairman, I would like to make just one statement with regard to the personnel in the Veterans Benefits Administration who do this important work for veterans. It does take us longer than we want to adjudicate claims.

Last year, we added some 9,000 new disability compensation recipients to the rolls. Our timeliness declined somewhat. We went from about 184 days to nearly 190 to 200 days to adjudicate an original compensation claim, exclusive of actions required when an appeal is filed.

We render about 3½ million decisions a year just in the compensation and pension programs alone. These decisions are all appealable. If you add in education, loan guarantee, vocational rehabilitation, and insurance, total decisions number between 5 and 6 million. But 3½ million represents compensation and pension cases alone.

In 1993, we received approximately 59,000 notices of disagreement with our decisions. During that year 38,000 of these submitted an appeal to the Board of Veterans' Appeals to get what they wanted.

So, you can see that fewer than 2 percent file notices a disgreement, and fewer than 1 percent of these actually go to the

Board of Veterans' Appeals. Basically, therefore, we have very good people doing very good work.

I just wanted to say a few words of praise for the employees of the VA Regional Offices throughout this land, who really have the same interest that you have and I have in doing the right thing by our veterans.

Mr. SLATTERY. Mr. Vogel, I hope you don't and haven't ever concluded from anything that I have said that I don't have any——

Mr. VOGEL. No. I only said that, Mr. Chairman, because we tend to look at the negative side of things from time to time.

Mr. SLATTERY. Yes. Is the glass 90 percent full or is it 10 percent empty? I mean I understand what you are saying.

I just want you to understand and the people that work with you on your team over there, and the same with Mr. Cragin, understand that I am not suggesting that you all are not doing everything that you can. I mean I am very painfully aware of what changes COVA has brought in your operation internally.

I am also aware that we have all patted ourselves on the back around here, and bragged about having frozen government spending, all discretionary spending, and this year in every agency of government we are going to have similar type problems, and I am aware of that.

And what I do think that we should recognize though is that in some of these situations, unless we want to see the situation get worse, which the indication is that it will, then we need to put in place a plan to respond to that. I mean I am sure, Mr. Cragin, you are aware that the legislation that was passed earlier dealing with the broader issues of reinventing government does contain some of the legislative changes that we have all pretty much agreed upon dealing with the single member boards, and lifting the cap on Board members and other changes that we have agreed upon were contained in that——

Mr. CRAGIN. H.R. 3400, Mr. Chairman. Yes, and I appreciate the committee's action.

Mr. SLATTERY. What we may need to do is move our own standalone bill and get it separate from H.R. 3400, so that we are not waiting on all these other issues to be resolved. And perhaps I can—in fact, I will visit with the Senate committee to determine if they are interested in doing something like that.

But let me just ask you another question. The independent budget prepared by several major veterans' organizations proposes that Congress legislate that payment of the cost of administration of benefits be funded on a mandatory basis from the compensation and pension appropriation.

I am just curious. How does the Administration view such a proposal? And I am advised that the Social Security benefits is funded in a similar manner, and I am just curious why wouldn't we fund the administration of compensation and pensions the same as you fund the administration of the Social Security System.

I am further advised that apparently there is about a $280 million provided in the budget request for the Social Security Administration to help address their backlog situation. I am just curious, why aren't we treating the veteran situation the same as we do the Social Security Administration?

Mr. VOGEL. Mr. Chairman, in discussions in years past the idea has been put forth in VA that we really want to identify clearly the cost of administration. We don't want to bury it in the total budget with the entitlement portion. As government managers, we ought to know the actual cost of administering our programs. I am sure the Social Security Administration has a way of separating out its administrative costs.

In general, we want to know what it is costing us to administer all our programs.

Mr. SLATTERY. I would think even if it was funded in the mandatory portion of the budget you would still be able to make the same determination as to the costs that you are currently able to do, could you not?

Mr. VOGEL. Yes, sir.

Mr. SLATTERY. Okay. What would be wrong with us trying to obtain some additional funding by going that route?

Mr. VOGEL. I am not sure. I don't think I can respond to all of the pros and cons of that as I sit at this table. But we can give you our observations on what you have expressed, Mr. Chairman.

Mr. SLATTERY. Yes. Okay. Again, I want to urge you all to provide us some information within the next few weeks, if you can, about exactly, you know, what kind of personnel you would need to address this problem and sort of get the backlog turned around and what kind of resources we are talking about. Will you provide that to us?

Mr. VOGEL. We will, Mr. Chairman.

Mr. SLATTERY. Mr. Cragin.

Mr. CRAGIN. Yes, sir.

Mr. SLATTERY. Thank you.

[The information follows:]

FUNDING FROM MANDATORY ACCOUNTS

VBA already has experience with this concept through the reimbursable provisions in the Omnibus Budget Reconciliation Act of 1990 (OBRA) and the Credit Reform Act of 1990 (credit reform). Because each of those laws provided for reimbursement under different scenarios, they provided us an opportunity to compare reimbursement methodologies.

Funding authority under OBRA allows us to charge expenses to the compensation and pensions appropriations as needed to complete the workload. The language provided sufficient flexibility to allow for changes in each of the provision's workload.

On the other hand, funding authority under credit reform simply appropriates a fixed resource level for each of the credit accounts without regard to fluctuating workloads during execution. For example, our housing program is funded from four accounts—Loan Guaranty Revolving Fund, Guaranty and Indemnity Fund, Direct Loan Revolving Fund and Native Americans Fund. Each fund receives a separate, finite appropriation and does not provide flexibility for shifts in workload among the accounts due to economic changes which occur after the appropriation is enacted.

The subject of funding administrative expenses from mandatory accounts has been historically controversial. VA naturally wishes to have adequate resources to administer its programs, but recognizes that all spending, no matter its source, must be considered within the constraints imposed by the budget caps.

Mr. SLATTERY. Any further questions by members of the committee?

If not, then we thank both of you, Mr. Cragin and Mr. Vogel, for your testimony today. We always appreciate hearing from you.

Mr. VOGEL. Thank you, Mr. Chairman.

Mr. SLATTERY. The next panel will be composed of Mr. Russell Mank, who is the National Legislative Director of the Paralyzed

Veterans of America, and Mr. Joseph Violante, the Legislative Counsel, Disabled American Veterans, and Mr. James Magill, Director of the National Legislative Service for the Veterans of Foreign Wars.

Gentlemen, we welcome you all. As always, we look forward to your testimony and counsel. Why don't I proceed from my right to left.

Mr. Magill.

STATEMENTS OF RUSSELL W. MANK, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; JOSEPH A. VIOLANTE, LEGISLATIVE COUNSEL, DISABLED AMERICAN VETERANS; AND JAMES N. MAGILL, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

STATEMENT OF JAMES N. MAGILL

Mr. MAGILL. Thank you. It is my pleasure to represent the Veterans of Foreign Wars before this important committee. Our 2.2 million members, as well as many widows of deceased members, are very interested in and concerned about the generally poor quality of compensation and pension decisions and educational assistance decisions that have been issued over the past 4 years.

As you recall, when the VFW testified before the subcommittee in April of 1993, we stated that in 1992 it took on average 9 months to receive a compensation and pension decision from the regional office. Today, it has increased to one full year for the first part of 1994.

We also realize that part of this VBA problem has resulted from being underfunded for personnel the past several years.

The fiscal year 1995 budget asks for 4163 full-time employees to staff the C&P/education portions of VBA at a total cost of approximately $190 million. The figure 4163 is a net loss of 342 employees from the 1994 current estimate. This is a serious problem, if one accepts the premise that the accurate and timely processing of claims is dependent to a great degree on the number of persons available to do the work.

The VFW notes that VBA itself expects to start fiscal year 1995 with a backlog of about 167,000 C&P cases. This is a 22 percent larger workload than VBA ended with in fiscal year 1994. VFW is aware of several other factors that will compound the fiscal year 1995 VBA workload, primarily in the C&P programs. They are the Court of Veterans Appeals' mandated requirement for regional offices to address every contention, piece of evidence, applicable regulation, and related issue in each filed claim request. The fiscal year 1995 Department of Defense ongoing reduction of active duty personnel.

The VFW believes the Veterans' Affairs Committee as an authorizing committee should introduce the appropriate and necessary legislative changes to authorize additional transfers from existing mandatory budget authority to fund VBA personnel costs of delivering the authorized entitlements to veterans for all C&P and educational claims. The total number of employees authorized should be enough to allow an accurately adjudicated decision to be delivered in a reasonably timely fashion.

This proposed action should improve the situation VBA has historically been faced with, one that is further aggravated by the Omnibus Budget and Reconciliation Act of 1993. Briefly stated, all the programs discussed here are mandatory entitlements and therefore fully funded and allowed to grow with the rate of inflation. Unfortunately, the people part of these mandated entitlements are paid from the discretionary account.

VFW believes that for fiscal year 1995 Congress must provide BVA with the necessary resources in the form of money to conduct in-house training programs, to increase the Board members salaries to that paid Administrative Law Judges and to ensure that BVA has sufficient funds to continue automation of Board sections.

Based on our above recommendations, we believe a sum of 200,000 is needed for the on-site training of all staff employees. The cost projections for the BVA Administrative Law Judge pay comparability is estimated to be about 700,000 for fiscal year 1995 and almost double in fiscal year 1996 to 1.3 million.

Our last suggestion is to increase BVA's total 1994 FTE from 446 to 632, an increase of 186 employees, using the average salary cost for fiscal year 1995 of about 56,000. This would mean an additional approximately $10.5 million.

This concludes my statement. I will be happy to respond to any questions you may have.

[The prepared statement of Mr. Magill appears at p. 68.]

Mr. SLATTERY. Thank you, Mr. Magill.

Mr. Violante.

STATEMENT OF JOSEPH A. VIOLANTE

Mr. VIOLANTE. Thank you, Mr. Chairman, members of the subcommittee.

On behalf of the Disabled American Veterans and its Woman's Auxiliary, I wish to thank you for this opportunity to present our views on the fiscal year 1995 budget and its impact on the Department of Veterans Affairs' adjudication and appellate processes.

At the outset, Mr. Chairman, I wish to thank you, the ranking minority member, Representative Bilirakis, and members of the subcommittee for your commitment over the past year in focusing attention on and attempting to bring about major improvements in the manner in which veterans claims and appeals are processed.

I would like to respond to Mr. Bilirakis" question about Corporal Jones, and just note that if Corporal Jones had to appeal his determination, his rating determination, he is probably still waiting for the final appellate determination.

Getting back to my statement, I would also like to recognize the efforts of Secretary Brown and his managerial staff for their extraordinary efforts with respect to modernization and the innovations being implemented around the country in the regional offices. While I am certain that these changes will help to improve the manner in which the VA processes claims, I am extremely concerned that the President's fiscal year 1995 budget will continue to seriously erode the VA's ability to provide these services and benefits in a timely manner.

The complexity and the amount of manpower required to complete claims are increasing, as are the delays and backlogs in the

Adjudication Division. To meet these increasing demands, VA is once again being asked to do more with less. VBA's employee level is being reduced by 622 employees, of which CP&E will lose 342. As pointed out in the independent budget, without a significant increase in the number of employees available to adjudicate veterans benefits claims, claims backlogs will increase beyond the already unacceptable levels.

Mr. Chairman, last year the VA estimated that it would take approximately 1050 additional employees to reduce the claims backlog to 200,000 claims. Yet the President's budget calls for further reductions for BVA.

In addition, should Congress reject, and it is possible they will, an Administration proposal to fund the administrative costs of VA's insurance program from insurance reserves, VBA will be faced with an additional loss of 546 employees for a total of 1168 employees less for fiscal year 1995 than are currently available to provide services to veterans and their families. This would be more than 2,200 employees below the level that VA stated was necessary to reduce the backlog to 200,000 claims.

The situation is even worse at the Board of Veterans' Appeals. Delays at the BVA have become unconscionable and intolerable. Based on first quarter of fiscal year 1994, each staff attorney will produce only 29.1 decisions this year.

Generally, the number of decisions BVA issues is also decreasing. The first quarter figure for fiscal year 1994 was 3,200 decisions, approximately 50 percent less than the first quarter figures for fiscal year 1993. If BVA continues at this pace throughout fiscal year 1994 the final figure will be under 13,000 decisions, of which only approximately 6,500 will be final determinations.

Mr. Chairman, we view the President's recommendations as neither fair nor equitable or in the best interest of our Nation's sick and disabled veterans and their families.

And before I close I would like to say something in defense of the United States Court of Veterans Appeals. While it is correct that some of their decisions do legislate law, the vast majority of their decisions merely focuses the VA's attention to the laws and regulations which are currently in effect. And while the figure of 1 percent of those cases appealed to COVA are actually reversals, I think it is misleading because many of the cases, particularly the ones that I was involved with, once they got back to the Board on a regular remand for correction of an error that took place either at the regional office or at the BVA ended up as an allowance, so more veterans than just 1 percent of those that are reversed are getting the benefits that they were entitled to.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions that you may have.

[The prepared statement of Mr. Violante appears on p. 72.]

Mr. SLATTERY. Thank you, Mr. Violante.

Mr. Mank.

STATEMENT OF RUSSELL W. MANK

Mr. MANK. Mr. Chairman, members of the subcommittee, the Paralyzed Veterans of America appreciate this opportunity to testify before the subcommittee regarding the fiscal year 1995 budget

for the Department of Veterans Affairs' Veterans Benefits Administration.

Mr. Chairman, each year Paralyzed Veterans of America presents testimony to this subcommittee and urges an increase in the funding of this particular Administration. This year is no different. The Administration's appropriation request for fiscal year 1995 was $629 million, obligations were 811 million. While this was an increase of 21 million over the fiscal year 1994 appropriation, it was $397 million less than the independent budget's coauthors recommended for current services, and VBA's average employment for this particular year is 13,203, a decrease of 622. We recommended that 15,754 FTEE employees be in the VBA for 1995.

The adjudication process is slow today with a reduction in employees. How much slower will it be tomorrow?

PVA, however, does not believe that funding and staffing are the only crises in the VBA. I would like to raise two points and just highlight in my remaining time some of the other points that we had raised last year that along with staffing and funding we also believe may be necessary to address again this year in the second session.

First, the Department of Veterans Affairs has always been considered nonadversarial in nature. It was not the intention of the Congress to change the system into an adversarial process with the advent of judicial review.

Chairman Montgomery made it clear when the Veterans Judicial Review Act was passed that it was not meant to change the nonadversarial system of adjudication at the regional office and the Board of Veterans' Appeals.

As proof of that intent, Congress required that if any doubt existed in the resolution of an issue relevant to a claim for benefits, the veterans must be given the benefit of the doubt by the VA in resolving that issue.

Yet the manner in which the VA has seen to treat the changes wrought by the enactment of the Veterans Judicial Review Act is creating an adversarial relationship between the veteran and the VA the likes of which have not been seen before. What were at one time referred to as requests are now motions. Suddenly with the onset of the judicial review the Board of Veterans' Appeals has need for a bailiff, rather than a secretary.

The Court of Veterans Appeals' opinions reflect VA's move to a more adversarial system. Of great concern are the Court of Veterans Appeals decisions we see being issued on a daily basis. The Court of Veterans Appeals has found much lacking with the fact finding and rationale supporting the VA's denial of numerous benefit claims.

The court, reluctant to interpose itself in an area where the VA is presumed to have the expertise, remands these cases to the VA for corrective action. The court when it remands a case admonishes VA that its remands are not merely for the purposes of rewriting the BVA opinions so that it will superficially comply with reasons or basis requirement, and yet all too often the VA does not use this opportunity to evenhandedly correct an error in the adjudication, nor to assist the veteran in locating evidence to bolster his claim.

Rather the VA takes the newly given opportunity to search for evidence that would support its denial of the claim. In short, the BVA uses the opportunity of the court's remand to make its next denial "courtproof."

The second point I want to make is one that we have made before but I think it demands repeating. If this committee would like to reduce the processing time for claims adjudication, I think it must take its focus off of the Board of Appeals and place its attention squarely at the regional offices. Even more critical than change at the top of the administrative adjudication system, change at the bottom is crucial to the veteran receiving a fair and swift adjudication of his or her claim.

There are two reasons for this. First, only about 15 percent of the claims filed at the various regional offices are appealed to the Board of Veterans' Appeals. Consequently, for the vast majority of veterans there will only be one look at their case. If the regional office is not properly equipped to thoroughly and properly adjudicate claims, the veteran suffers. The VA also suffers when claims are not adjudicated properly.

Second, and finally, veterans who appeal their initial regional office decisions face further delay in the adjudication of their claims. It means that the case will come back to the regional office to be done over again, adding unnecessary time to the adjudication of that claim.

Mr. Chairman, my grandfather would have put it this way. If there is not time to do it right, when will there be time to do it over?

That concludes my testimony. Thank you.

[The prepared statement of Mr. Mank appears on p. 77.]

Mr. SLATTERY. First of all, let me thank all of the panelists today for your testimony.

I am just curious. One of the recommendations in the independent budget is that we mandate minimum timeliness standards for adjudicating claims.

Do you have any thoughts about how any such standards will be established? And even more important, about how they would be enforced?

Mr. VIOLANTE. Mr. Chairman, I might respond to that. Number one, I think what needs to be done is that a particular number of days to process a claim needs to be established. Any claim that goes beyond that period of time, would require the VA to pay the benefit until the final adjudication of the claim, because some of these veterans are in dire need of this compensation or benefits and are being denied it on a timely basis. I believe that would allow the VA, you know, a certain amount of time to adjudicate it, and if it can't be done within that time, then compensation should be paid to the veteran.

Mr. MANK. Mr. Chairman, I agree. Let's hypothetically say a 75-year-old veteran who should be awarded aid and attendant care waits for his claim to be filed, and it is filed. Lo and behold, 3 years later he is awarded his claim and, lo and behold, he is dead. This is the thing that perhaps we need to examine. I think that is a good suggestion.

Mr. MAGILL. As a coauthor of the independent budget, the VFW, of course, concurs with that. I could say that we have been trying for years and years to get a more timely schedule on claims, possibly going after the pocketbook would be the way to do it at this point.

Mr. SLATTERY. Mr. Bilirakis, do you have any questions?

Mr. BILIRAKIS. Mr. Chairman, the mandatory payment concept is a very interesting one. I know Bob McEwen, a former member of this committee, introduced that type of legislation a few years ago and it didn't go anywhere. I guess maybe it is something that should be looked at.

Let me just ask one question. I have been here 12 years now, and I frankly still don't completely understand the process. I don't know that I ever will. Maybe that is why things are in the situation that they are in because it is so very difficult to understand the process.

I didn't want to leave any wrong impressions. I understand that the Secretary really worked his head off, spent time, a lot of time with the President, and his people in trying to get a good VA budget, certainly not as reduced as it is. I don't know how much time was spent, but understand it was an awful long period of time. And I certainly don't mean to disparage the time that he has spent and his efforts in that regard. He was a very dedicated Executive Director of the DAV, and I expect that dedication for veterans is still there.

But I am wondering. The request goes to OMB and then the OMB/President's decision comes back and we see these great big reductions, over a billion dollars in medical programs, approximately a billion dollars overall here, much cutting in the general operating expenses and miscellaneous, which is really where we are at.

But as I understand it, there is an opportunity to go back and appeal that. Is that correct? If you are not satisfied with the President's request you have an opportunity to appeal it.

Have any of you checked into that in terms of what was appealed, what wasn't appealed, what efforts were made in that regard?

Mr. MAGILL. I could comment for the VFW. I don't know particular areas that were appealed, but I do know that there is a vehicle for a head of a department to go back and, if you will, plead his case, and I think this is what you were referring to when Secretary Brown went back——

Mr. BILIRAKIS. Right.

Mr. MAGILL. And again, we are not happy with this budget, but we have confidence that the Secretary championed our cause as best he could at that time.

Mr. BILIRAKIS. Any further knowledge?

Mr. VIOLANTE. I would second that.

Mr. BILIRAKIS. You would second that.

Mr. VIOLANTE. Yes, I don't have any specific——

Mr. BILIRAKIS. You don't have any specific knowledge as to what particular areas where, I will use the word appeal, whatever the proper terminology there is, to go back again and—yes, go ahead, Jim.

Mr. MAGILL. If I could just add, I, of course, don't exactly know what went on in these meetings, but I could be mistaken, but I think it is a one-on-one situation where there may not be a lot of people that know exactly. It is just the Secretary and the President.

Mr. BILIRAKIS. And the President.

Mr. MAGILL. Again, I am not sure, but this is my understanding that in some cases that happens.

Mr. BILIRAKIS. This so-called appeal process that we are referring to is one on one.

Mr. MAGILL. Yes, sir, just a one-on-one.

Mr. BILIRAKIS. And do we understand that that did take place and that was the period of the time that was involved there?

Mr. MAGILL. It is my understanding that it did take place.

Mr. BILIRAKIS. That it did take place. The one hour that you were referring to was during that period, the appeal process.

Yes. We understand that at least an hour took place between the President and the Secretary on a one-on-one basis.

Well, all right. Thanks. Thanks, gentlemen.

Again, be diligent. Please, be diligent.

Mr. SLATTERY. I don't have any further questions, and I appreciate your testimony today and your assistance, and I am going to continue to work on this. I want to get this matter resolved if at all possible. So, thank you very much for your help here today.

Mr. MAGILL. I thank you, Mr. Chairman.

Mr. VIOLANTE. Thank you, Mr. Chairman.

Mr. MANK. Thank you.

Mr. SLATTERY. Okay. The next panel, Mr. Larry Rhea, the Deputy Director of Legislative Affairs for the Non Commissioned Officers Association, and Mr. Carroll Williams, Director of Operations, the National Veterans Affairs and Rehabilitation Commission of the American Legion, Mr. Ed Howell, Legislative Assistant of AMVETS.

We welcome all of you, and I guess we will use the same procedure, from my right to left. My right to the left, yes.

Mr. Rhea.

STATEMENTS OF LARRY D. RHEA, DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS, NON COMMISSIONED OFFICERS ASSOCIATION; CARROLL WILLIAMS, DIRECTOR, OPERATIONS NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; AND ED HOWELL, LEGISLATIVE ASSISTANT, AMVETS

STATEMENT OF LARRY D. RHEA

Mr. RHEA. Thank you, Mr. Chairman, and good afternoon.

It is once again a pleasure for NCOA to be invited to testify before this distinguished and important subcommittee as you address the VBA and Board of Veterans' Appeals portions of the 1995 DVA budget.

Just let me begin, sir, by publicly stating the Association's deep appreciation to the chairman for the sustained interest you have given to improve the quality of C&P decisions and to improving the timeliness with which original decisions and appeals are processed

and rendered. Certainly the dilemma that we are confronted with today is not a result of lack of attention on the part of you personally and on the part of this subcommittee, and for that, for the resolve with which you have undertaken to reverse this situation, NCOA is deeply grateful, sir, and we do appreciate it.

Certainly it is not necessary for me to describe the current situation confronting us at this time. Those facts have been previously stated and are well known by every one in this room. All of us certainly can agree that the current situation is sadly deplorable.

But when I look at the current situation and assess it against the fiscal year 1995 budget proposals, the prospect for improvement is absent, and the implications of this budget, in the opinion of NCOA, beyond 1995 paint a grim picture.

NCOA believes that unless this subcommittee intervenes to reverse this downward tailspin we should commence now to tell veterans that their entitlement for service-connected injuries and illnesses are essentially hollow.

The link between accurate and timely delivery of entitlements and sufficient people to do the work is inescapable. That also was portrayed, in NCOA's opinion, in common sense terms in the independent budget of veterans' organizations. Yet in budget terms the two are delinked because one is discretionary while the other is nondiscretionary.

The solution offered by this budget to the ever-increasing VA workload and backlog is to reduce by 342 the full-time employees in the C&P account. The budget provides for 449 FTEs for VBA, three more than in 1994.

And, while NCOA appreciates this modest increase, we are not the least bit optimistic that any reduction will be realized in the 40,000 cases before the Board. NCOA simply does not believe that an increasingly larger, more complex workload can be undertaken by the VBA with fewer employees and expect to achieve anything but continued dismal results. The old adages of work smarter not harder and do more with less certainly have their limits.

In regards to this budget, NCOA recommends that the subcommittee seriously consider funding VBA's personnel costs for veterans' services, compensation, pension, education, and vocational rehab and counseling through transfers from mandatory spending accounts in a manner similar to that what the chairman mentioned earlier in regards to the Social Security Administration.

We also request that the 342 FTEs deleted in the C&P account be restored. We suggest that the committee include a line item in BVA's budget for VBA-wide training, and we would request in the strongest terms that the issue of salary disparity between the VBA and the Administrative Law Judges be addressed and acted upon to close the gap. As long as the disparity exists, the decimation of VBA's most talented members will continue in favor of the more lucrative ALJ positions.

And finally, as you are aware, Mr. Chairman, NCOA was among the last, if not the last, of the VSOs to sign on to the one member BVA decision authority. We only did that last fall. And although that was acted upon as part of a larger bill by the House during the first session, we would request that you consider, as you al-

luded to earlier, a separate initiative to expedite that through the legislative process because it is now desperately needed.

While we could agree or disagree with the BVA chairman's estimates on the potential increase in productivity, he says 25 to 27 percent, if it is half or one-third of that, I believe it is a step in the right direction.

We certainly as an Association recognize that there are no quick and easy solutions to a situation that has been allowed to digress to its present-day state. But one thing is abundantly clear, unless the trends of the past are reversed, and done so now with resolve, the future for veterans will not only be more of the same, but it is going to simply get increasingly worse.

We appreciate your consideration of our comments and our recommendations in our prepared statement, and we thank you again, Mr. Chairman.

[The prepared statement of Mr. Rhea appears on p. 86.]

Mr. SLATTERY. Thank you, Mr. Rhea.

Mr. Williams.

STATEMENT OF CARROLL WILLIAMS

Mr. WILLIAMS. Thank you very much, Mr. Chairman, and members of the subcommittee. The American Legion appreciates the opportunity to share its views and concerns with you regarding the proposed VA budget for fiscal year 1995 in light of increasing time required to process cases at both the regional offices and the Board of Veterans' Appeals.

We understand that there are many important and diverse issues such as health care reform and deficit reduction facing the Congress in the remaining months of this legislative year. However, we are firmly convinced that debate on these subjects must not be allowed to overshadow the need to address the crisis which exists in VA's claims adjudication and appeals process.

In the current fiscal year, the backlog of pending claims in the regional offices is projected to reach almost three-quarters of a million. The Department of Veterans Affairs clearly is facing the most serious operational crisis in its history.

This situation, however, did not just develop overnight. Over the past 12 years, the American Legion has repeatedly spoken to this and congressional committees about the consequences of VA's repeated unrealistic budget requests and inadequate staffing levels.

Over the past 4 years, in particular, we have seen a steady deterioration in the quality and timeliness of the service being provided veterans due to persistent cutbacks in personnel in the regional offices and the slow pace of implementation of new ADP systems and programs.

It is of no comfort to veterans that recent statements by Secretary Brown and other VA officials finally acknowledge the seriousness of the backlog problem, which he projects will reach 700,000 cases this year, and if nothing changes, will be 900,000 by the end of fiscal year 1995.

The sheer size of these numbers are indeed shocking. But what is particularly shocking and frightening is the fact that each of these cases is a disabled veteran or a widow or dependent who has filed a claim and is now waiting for a decision.

The problems affecting the operation of the regional offices and the Board of Veterans' Appeals demand urgent congressional attention and action. We therefore wish to commend you, Mr. Chairman, for scheduling this oversight hearing early in this final session of the 103rd Congress, and commend you for your continuing personal efforts to try to find solutions to the many long-standing problems confronting the regional offices and the Board of Veterans' Appeals.

The proposed funding level for fiscal year 1995 will, in our view, do little to stem the continued deterioration and the level of services provided veterans and their families. With respect to the operation of the Board of Veterans' Appeals, despite staffing increases over the past 3 years the time required to decide a case has grown dramatically. Currently there are over 43,300 cases pending at the Board.

In this fiscal year the number of appeals decided is expected to be only 13,000. This is significantly down from fiscal year 1993 when the Board rendered some 33,000 decisions.

With regard to the vocational rehabilitation program for disabled veterans, the net effect of the increase projected caseload and loss of personnel is reflected in the substantial rise in the number of days a veteran must wait before receiving an appointment to discuss their application for training or services. It will go from 74 days in 1992 to approximately 91 days in 1995. The goal is a waiting time of only 30 days.

Of the various legislative proposals discussed at the hearings before the subcommittee last October, we believe this Congress should give priority to the timely enactment of legislation authorizing single signature Board decisions.

In conclusion, the American Legion believes that this nationwide crisis within VA's claims adjudication and appeals process demands immediate and effective action by this Congress.

Mr. Chairman, that concludes our statement.

[The prepared statement of Mr. Williams appears on p. 91.]

Mr. SLATTERY. Thank you, Mr. Williams.

Mr. Howell.

STATEMENT OF ED HOWELL

Mr. HOWELL. Good morning, Mr. Chairman. AMVETS is grateful to you and the members of the subcommittee for holding this hearing and for inviting us to testify here today.

Not much has changed since we came here just a few months ago, except for the increase in the VA claims backlog, the further degradation in the timeliness of claims processing, and the new Administration's budget that continues VA underfunding and understaffing.

We are again disheartened by the apparent tunnel vision exhibited in the VA appropriations process. The fiscal year 1995 independent budget is a no nonsense, honest assessment of what it will take VA to carry out its wide-ranging mission.

The President's budget request seriously undercuts the independent budget by $4 billion and sends a message to veterans they are not very high on the list of the Administration's budget priorities.

For VA's wide variety of programs and services designed to meet the needs of veterans, no one program should have to compete with

others within the VA for funding, especially those programs that help disabled and homeless veterans and veterans displaced by the defense drawdown.

The Blue Ribbon Panel zeroed in on the critical nodes in VA adjudication. The panel recommends among other things Rating Board automation, bar code claim file tracking, and on-line reference materials. But these things take money, money that is not in the Administration's latest VA budget request and time that will only see the problem worsen.

Improper development at regional offices contributes to BVA backlog. The panel found that roughly 40 percent of all BVA claims were not final decisions at all, but rather claims needing additional development.

Team development and rating of initial claims will motivate VA employees to work together, encouraged to get it right the first time. With new work rate standards, veterans claims will no longer be hot potatoes in a high pressure, assembly line quota system.

With no additional FTE, the backlog under current conditions can only be expected to grow. Single member ratings with oversight of the BVA Chairman will streamline decision-making and speed up processing. Claims development at BVA also impacts timeliness. Identifying deficiencies and directing ROs to correct them will improve BVA's turnaround time.

A lot can happen to a veteran in the 6 years it takes BVA to reach a decision on a pending claim. Claimed conditions could deteriorate, secondary conditions could develop, or worst of all, the veteran may die before receiving a final decision on his or her disability claim. There is no justification for poor claims development. Remands must be given priority treatment over original claims, otherwise veterans with remanded claims essentially start back at the very beginning again.

The key to much of the envisioned improvements in VA adjudication is training of VA employees. Employee turnover and the push to crank out decisions is a dangerous combination that has had disastrous results. The mechanism for much of the training is already in place—the National Veterans Training Institute—and Congress must continue to fully staff and fund it to provide VA employees the quality of education and training that will provide like service to veterans.

Local training is also important at the regional offices to coincide with automation and job function shifts. While the Administration appeared supportive of the panel's recommendations, the President's budget request for VBA does not follow through. Further reductions in FTE will exacerbate an already overburdened VBA adjudication staff.

The VBA claims backlog is approaching 700,000. According to VA statistics, the average time for a BVA decision has jumped from an average of 6 months in 1990 to nearly 6 years now. In fiscal terms that means that the cost to process a claim has nearly tripled, up from $421 dollars in 1990 to an estimated $1127 in fiscal year 1994.

The past decade has shown us that business as usual is not getting the job done. Enactment of the Blue Ribbon Panel's recommendations will no doubt result in higher quality of claims proc-

essing and a much improved turnaround time. But more importantly, both VA employees and veterans they serve will enjoy a level of quality never before possible. I stress the words "never before possible" because unless VA receives funding for these upgrades that anticipated level of quality won't ever be possible.

AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars have worked together for the past 8 years to develop and publish the independent budget (IB). We believe this IB reflects a reasonable approach to funding VA's mission.

Granted the President's VBA budget request contains an overall increase of 237 million with modest increases for C&P and readjustment benefits programs. But VA loan guarantee programs will suffer substantial cuts. This is particularly disturbing. As thousands of veterans are RIFed from the military, they and their families dream of owning their own homes. The President's lack of concern for VA loan programs signals veterans that their chances of counting on a VA home loan are being diminished.

Mr. Chairman, sacrifice is a term all veterans know and understand. It is something they do willingly with pride knowing they contribute to the security of our Nation. Honorable service in our armed forces is their way of keeping their promise that they will always be willing to go in harm's way.

For those sacrifices we, as a grateful Nation, have also promised to provide them benefits unique to their veteran status. As the final tabulations are made on the VA budget for fiscal year 1995, let us all remember that veterans have never failed to keep their promise to serve our country. Realistic funding for the full scope of VA programs is the essence of America's promise to them.

As a member of the IB team, AMVETS suggests that the IB be taken seriously this time and that appropriations for VA in fiscal year 1995 reflect accordingly.

As always, we look forward TO working with you and your staffs to ensure that VA continues to meet the needs of America's veterans. Thank you again, Mr. Chairman, for allowing us to testify today, and that concludes my statement.

[The prepared statement of AMVETS appears on p. 95.]

Mr. SLATTERY. Thank you, Mr. Howell.

Mr. Williams, I am just curious. Would the American Legion support funding of administration of programs from the C&P appropriation?

Mr. WILLIAMS. Would you repeat the question?

Mr. SLATTERY. Yes. I am just curious, Mr. Williams. Would the American Legion support funding the administration of the programs from the compensation and pension appropriation as the independent budget has suggested? Do you all embrace that concept? Or have you taken a position on it?

Mr. WILLIAMS. Mr. Chairman, well, I don't believe we have taken a position on it at the present, but I will get back with you and let you know what the American Legion's position is on funding the administration of programs from the Compensation and Pension Service appropriation.

Mr. SLATTERY. Thank you.

Mr. Bilirakis, do you have any questions?

Mr. BILIRAKIS. Mr. Chairman, no, I have no questions. As one of the VSO gentlemen said earlier about how we hope that the Congress can change this and that sort of thing, and you know that this subcommittee and the full committee, are going to do everything they possibly can.

But I am here to tell you we can't do it alone. It is going to take you people, and it is going to take that veteran, that voting veteran back home to really get involved in something like this. I mean we have issues up here and it is amazing how quickly that network gets involved and sends us letters and telephone calls and things of that nature. It is just amazing how quickly they get involved.

So, you know, you guys are going to have to do your share, because we are not going to be able to get very far without pressure coming from back home, meaning all 50 States and Territories:

Having said that, Mr. Chairman, thank you.

Mr. SLATTERY. Again, I appreciate your testimony here today. It is been very helpful for me and for members of the committee, I am sure. And we look forward to continuing to work with you on this. We, obviously, have a lot of work to do here. So, thank you very much.

The meeting is adjourned.

[Whereupon, at 1:04 p.m., the subcommittee was adjourned.]

APPENDIX

STATEMENT OF

R. J. VOGEL

DEPUTY UNDER SECRETARY FOR BENEFITS

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1994

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO BE HERE TODAY TO DISCUSS THE PRESIDENT'S 1995 BUDGET REQUEST FOR THE VETERANS BENEFITS ADMINISTRATION'S COMPENSATION AND PENSION PROGRAMS.

FOR FY 1995 WE ARE REQUESTING $17.97 BILLION FOR COMPENSATION AND PENSION PROGRAMS. THIS REPRESENTS A $447 MILLION INCREASE OVER THE ESTIMATED 1994 BUDGET OF $17.53 BILLION AND A MORE SIGNIFICANT INCREASE OVER THE 1993 BUDGET OF $17.2 BILLION. WE ARE REQUESTING NEARLY $14.5 BILLION FOR COMPENSATION PROGRAMS IN 1995 AND $3.3 BILLION FOR PENSION PROGRAMS. THESE APPROPRIATIONS, WHICH TAKE INTO ACCOUNT A PROJECTED 3 PERCENT COST-OF-LIVING ADJUSTMENT IN COMPENSATION

AND PENSION PROGRAMS DURING FY 1995, WILL ENSURE UNINTERRUPTED BENEFIT PAYMENTS TO VETERANS AND DEPENDENTS. THE COST-OF-LIVING INCREASE IS BASED UPON THE ANTICIPATED CHANGE IN THE CONSUMER PRICE INDEX AND IS IDENTICAL TO THE COLA ESTIMATE FOR SOCIAL SECURITY RECIPIENTS.

OUR PROJECTED GENERAL OPERATING EXPENSES (GOE) ACCOUNT FUNDING AND ADJUDICATION FTEE IN 1995 REFLECT THE HARD REALITIES THAT WE ARE FACING TODAY. AT THE END OF FY 1993 WE HAD 4357 ADJUDICATION FTEE, AND OUR GOE OBLIGATION FOR THAT YEAR TOTALLED $180 MILLION. FOR 1994 WE HAVE A CEILING OF 4505, AND CURRENTLY WE ARE AT 4480. OUR ESTIMATED GOE OBLIGATION IS $194 MILLION. FOR 1995 WE WILL HAVE A CEILING OF 4163 FTEE, REPRESENTING A DROP OF OVER 300 FROM OUR CURRENT LEVEL. GOE REQUESTS FOR 1995 WILL ALSO DECREASE TO $189.9 MILLION.

THE DECREASE IN 1995 FTEE IS FOR THE MOST PART ATTRIBUTABLE TO A DECREASE IN THE WORKLOAD FROM THE OMNIBUS BUDGET RECONCILIATION ACT (OBRA) OF 1990. THE TOTAL COMPENSATION AND

PENSION WORKLOAD RECEIVED WILL DROP BY 471,000 ACTIONS, OR 13.6 PERCENT. NEARLY 75 PERCENT OF THAT DECREASE IS RELATED TO OBRA. SINCE 1992 WE HAD SEEN A STEADY INCREASE IN OBRA WORKLOAD, FROM 168,000 ACTIONS IN THAT YEAR TO 223,000 IN 1993 AND NEARLY 500,000 FOR 1994. FOR 1995, WE ARE ESTIMATING A SHARP DECLINE TO 138,000.

AT THE SAME TIME, HOWEVER, WE ANTICIPATE A SIGNIFICANT INCREASE IN WORKLOAD PENDING AT THE END OF 1995. AT THE END OF 1993 WE HAD A PENDING WORKLOAD OF APPROXIMATELY 531,000 CASES. CURRENTLY IT IS 571,000 CASES. WE ANTICIPATE THAT THE PENDING WORKLOAD MAY BE CLOSE TO 710,000 CASES BY THE END OF THIS FISCAL YEAR, AND WE ESTIMATE THAT BY THE END OF 1995 WE COULD HAVE 870,000 PENDING CASES. THE MOST TROUBLING ASPECT OF THE OVERALL PENDING WORKLOAD INCREASE IS THE INCREASE IN THE BACKLOG OF CASES PHYSICALLY BEFORE THE RATING BOARDS. FROM THE END OF FY 1991 TO THE PRESENT, DESPITE A 42 PERCENT INCREASE IN RATING SPECIALISTS (480 TO 683), WE HAVE SEEN AN INCREASE OF OVER 100 PERCENT IN THE NUMBER OF CASES PENDING BEFORE THE RATING BOARD AT THE END OF EACH FISCAL YEAR. OF THE CURRENT PENDING WORKLOAD OF 571,000 CASES, WE ESTIMATE THAT 260,000 (OR NEARLY 46 PERCENT) INVOLVE RATING ISSUES. PLEASE BEAR IN MIND, AS WELL, THAT THESE ARE OFTEN THE MOST COMPLEX CASES IN THE SYSTEM.

ACTUAL WORK COMPLETED HAS DECLINED FROM 3.4 MILLION CLAIMS IN 1993 TO AN ESTIMATED 3.3 MILLION IN 1994 AND 2.8 MILLION IN 1995. MOST OF THE DECLINE, PERHAPS AS MUCH AS 75 TO 80 PERCENT, CAN BE ATTRIBUTED TO A DECLINE IN CASES ARISING UNDER OBRA 1990. NONETHELESS, WE ANTICIPATE NO CORRESPONDING IMPROVEMENTS IN CLAIMS PROCESSING TIMELINESS. TO TAKE ONE EXAMPLE, AT THE END OF FY 1992, IT TOOK 164 DAYS TO COMPLETE AN ORIGINAL COMPENSATION CLAIM. BY THE END OF 1993, THAT FIGURE HAD RISEN TO 189 DAYS. ON THE BASIS OF CURRENT FTEE PROJECTIONS, WE ESTIMATE THAT AT THE END OF 1994, IT WILL TAKE 226 DAYS TO COMPLETE AN ORIGINAL COMPENSATION CLAIM, RISING TO 235 DAYS BY THE END OF 1995.

A NUMBER OF DIFFERENT FACTORS HAVE CONTRIBUTED TO PRODUCE THIS SITUATION. RECENT DOWNSIZING OF THE MILITARY, COUPLED WITH OUR OWN OUTREACH EFFORTS AND THOSE OF VETERANS' SERVICE ORGANIZATIONS, HAS PRODUCED BOTH AN INCREASED NUMBER OF ORIGINAL COMPENSATION CLAIMS AND A GREATER NUMBER OF ISSUES PER CLAIM THAT MUST BE ADDRESSED. FOR EXAMPLE, IN 1990 WE RECEIVED 100,000 ORIGINAL COMPENSATION CLAIMS. MOST OF THEM HAD, ON THE AVERAGE, 1 TO 3 ISSUES TO BE RESOLVED. IN 1993, WE RECEIVED

150,000 ORIGINAL COMPENSATION CLAIMS; THE AVERAGE NUMBER OF ISSUES PER CLAIM ROSE TO TWO OR THREE TIMES WHAT IT WAS BEFORE.

THE COMPLEXITY OF ALL TYPES OF CLAIMS HAS BEEN AFFECTED BY CHANGES IN DUE PROCESS REQUIREMENTS, THE CLAIMANT NOTIFICATION REQUIREMENTS OF PUBLIC LAW 101-237, AND DECISIONS OF THE COURT OF VETERANS APPEALS. WE ARE NOW UNDER STATUTORY AND REGULATORY MANDATES TO GIVE OUR CLAIMANTS FULL AND ACCURATE INFORMATION IN A TIMELY MANNER AND TO MAKE EVERY ATTEMPT TO SAFEGUARD THEIR DUE PROCESS RIGHTS BEFORE AND AFTER MAKING A FINAL DECISION ON A CLAIM. THE COURT HAS MADE US INCREASINGLY AWARE OF OUR RESPONSIBILITIES SUCH AS OUR DUTY TO ASSIST CLAIMANTS IN DEVELOPING THEIR CLAIMS, DETERMINING THE CREDIBILITY OF EVIDENCE, AND EXPLAINING THE REASONS AND BASES FOR ANY DECISION WE MAKE. AS A RESULT OF THESE THREE INFLUENCES, OUR CLAIMS EXAMINERS ARE NOW PREPARING MORE DETAILED AND THOROUGH NOTICES THAT ACCURATELY CONVEY NOT ONLY THE FINAL DECISIONS MADE ON CLAIMS, BUT ALSO THE EVIDENCE USED IN REACHING THE DECISIONS AND THE REASONS AND BASES UPON WHICH THE DECISIONS REST. THE CLAIMS ADJUDICATION PROCESS IS, THEREFORE, LENGTHIER AND MORE COMPLEX, BUT ON THE POSITIVE SIDE, OUR DECISIONS AND DECISION

NOTICES ARE BETTER AND MORE INFORMATIVE. THE INFLUENCE OF THE COURT OF VETERANS APPEALS HAS ALSO BEEN FELT IN ANOTHER SIGNIFICANT WAY. THE COURT HAS HANDED DOWN 471 PRECEDENT DECISIONS. AS A RESULT OF 70 OF THOSE DECISIONS, WE NOW HAVE IN VARIOUS STAGES OF ACCOMPLISHMENT 115 CHANGES TO OUR ADJUDICATION REGULATIONS AND PROCEDURAL MANUAL.

IN TAKING STEPS TO RESOLVE OUR PROBLEMS WITH TIMELINESS AND PRODUCTIVITY, MR. CHAIRMAN, WE HAVE INITIATED A NUMBER OF MEASURES WHICH, DESPITE THE CURRENTLY ANTICIPATED RESOURCES, WE HOPE WILL ALLOW US NOT SIMPLY TO MAINTAIN OUR PRESENT LEVEL OF SERVICE, BUT TO IMPROVE IT SIGNIFICANTLY AND PROVIDE A SOLID BASIS FOR CONTINUED IMPROVEMENTS.

I FIRST WOULD LIKE TO SPEAK BRIEFLY ABOUT OUR PARAMOUNT INITIATIVE, THE BLUE RIBBON PANEL ON CLAIMS PROCESSING. I ESTABLISHED THIS PANEL LAST YEAR TO ADDRESS SOLUTIONS TO THE PENDING BACKLOG OF CLAIMS AND PROBLEMS IN THE CLAIMS PROCESSING SYSTEM. AFTER SEVERAL MONTHS OF CONSIDERATION, THE PANEL CAME UP WITH 43 SPECIFIC RECOMMENDATIONS. IN SUMMARY, THE BLUE RIBBON PANEL CALLED FOR THE FOLLOWING:

(1) A REVIEW OF ADJUDICATION ORGANIZATION WITH THE OBJECTIVE OF INCREASING THE NUMBER OF ACTUAL DECISION-MAKERS, PARTICULARLY IN THE RATING BOARDS;

(2) TIMELY AND FULL DEPLOYMENT OF FIVE KEY STAGE I MODERNIZATION INITIATIVES, SUCH AS THE CLAIMS PROCESSING SYSTEM AND RATING BOARD AUTOMATION;

(3) IMPROVED TRAINING PROGRAMS, INCLUDING THOSE UTILIZING INTERACTIVE COMPUTER-BASED TRAINING AND VIDEO-CONFERENCING;

(4) BETTER AND MORE TIMELY C&P EXAMINATIONS;

(5) MORE ACTIVE LIAISON WITH OTHER GOVERNMENT AGENCIES THAT AFFECT C&P CLAIMS PROCESSING; AND

(6) BETTER COMMUNICATIONS WITH THE VETERAN.

THE SECRETARY HAS APPROVED ALL 43 SPECIFIC RECOMMENDATIONS MADE BY THE PANEL, AND I RECENTLY REVIEWED AND APPROVED THE PLAN OF THE COMPENSATION AND PENSION SERVICE FOR THEIR IMPLEMENTATION WITHIN 6 TO 18 MONTHS, DEPENDING ON THE RECOMMENDATION.

I WOULD LIKE TO TALK BRIEFLY ON INITIATIVES UNDERWAY TO REENGINEER OUR WORKFORCE. IN SEVERAL REGIONAL OFFICES, (FOR EXAMPLE, OAKLAND, MUSKOGEE, NEW YORK, PORTLAND, INDIANAPOLIS, AND JACKSON, TO NAME A FEW) WE HAVE IN PLACE INITIATIVES WHOSE ESSENTIAL GOAL IS TO REDISTRIBUTE REGIONAL OFFICE EMPLOYEES INTO CERTAIN KEY DECISION-MAKING POSITIONS IN AN ATTEMPT TO STREAMLINE THE ADJUDICATION PROCESS AND MAKE IT MORE EFFECTIVE, RESULTING ULTIMATELY IN IMPROVED QUALITY AND TIMELINESS OF OUR WORK PRODUCT. THESE INITIATIVES GREW OUT OF OUR REALIZATION THAT IN ORDER TO MEET THE INCREASING DEMANDS AND EXPECTATIONS OF OUR CLIENTS, WE HAD TO CHANGE OUR CONCEPTS ABOUT THE WAY WE DO BUSINESS. THE INITIATIVES RANGE FROM THE MORE STRAIGHTFORWARD, SUCH AS ASSIGNING CERTAIN EMPLOYEES TO ACT AS RATING ANALYST TECHNICIANS IN ORDER TO ASSIST IN CONTROLLING WORK FOR THE RATING BOARDS AND TO IMPLEMENT COMPLETED RATING DECISIONS, TO MORE COMPLEX AND DIFFICULT TESTS, SUCH AS SELF-DIRECTED WORK TEAMS, WHICH ARE MADE UP OF HIGHLY SKILLED EMPLOYEES WHO SHARE RESPONSIBILITY FOR A SERVICE OR PRODUCT AND WHO SET THEIR OWN PRIORITIES, ORGANIZE THEIR WORK, EVALUATE THEIR PROGRESS, AND TAKE CORRECTIVE ACTION.

WE ALSO HAVE A NUMBER OF IMPORTANT MODERNIZATION INITIATIVES, ALL OF WHICH HAVE THE SAME BASIC GOAL: TO IMPROVE OUR WORKFLOW, REDUCE OUR WORKLOAD IN A TIMELY FASHION, AND

IMPROVE THE QUALITY OF THE DECISIONS MADE ON CLAIMS. I WOULD LIKE TO MENTION JUST FIVE OF OUR MAJOR PROJECTS.

WE ARE DEVELOPING A CLAIMS PROCESSING SYSTEM WHICH WILL BOTH SIMPLIFY AND EXPEDITE CLAIMS DEVELOPMENT. THE SYSTEM WILL USE INFORMATION ENTERED BY ADJUDICATION PERSONNEL AND INFORMATION FROM OTHER DATABASES TO DETERMINE WHAT ADDITIONAL EVIDENCE IS NEEDED TO PERFECT A CLAIM AND TO REQUEST THAT EVIDENCE. WE EXPECT TO HAVE THIS SYSTEM IMPLEMENTED NATIONWIDE IN FY 1995.

WE ARE WORKING ON A RATING BOARD AUTOMATION SYSTEM, WHICH WILL ALLOW RATING SPECIALISTS TO PREPARE THEIR OWN RATINGS, THEREBY SAVING CLAIMS PROCESSING TIME THROUGH ELIMINATING THE DICTATION-TRANSCRIPTION METHOD CURRENTLY IN PLACE. WE PLAN TO HAVE THE INITIAL APPLICATION OF THIS SYSTEM READY FOR INSTALLATION BY LATE 1994. SINCE OUR MOST TROUBLESOME AREA IS THE RATING BOARD BACKLOG, YOU CAN WELL UNDERSTAND THE IMPORTANCE OF THIS PARTICULAR INITIATIVE.

ANOTHER INITIATIVE IS COVERS, WHICH STANDS FOR CONTROL OF VETERANS RECORDS. THIS IS A PROJECT DESIGNED TO PROVIDE AN AUTOMATED METHOD OF TRACKING CLAIMS FOLDERS WITHIN A REGIONAL

OFFICE AS THEY MOVE THROUGH THE CLAIMS ADJUDICATION PROCESS. BARCODED LABELS ARE ATTACHED TO THE CLAIMS FOLDERS AND MOVEMENT OF THE FOLDERS IS MONITORED BY READING THE LABELS WITH WANDS ATTACHED TO TERMINALS. BY BEING ABLE TO BETTER TRACK THE LOCATION OF A CLAIMS FOLDER WITHIN AN OFFICE, WE WILL SAVE TIME SEARCHING FOR FOLDERS AND SPEED CLAIMS PROCESSING WHEN FOLDERS ARE NEEDED.

THE AUTOMATED REFERENCE MATERIALS SYSTEM (ARMS) IS A PROJECT TO ALLOW AUTOMATED ACCESS BY ADJUDICATION EMPLOYEES TO DIRECTIVES, INCLUDING MANUALS, CIRCULARS, AND REGULATIONS. SUCCESSFUL IMPLEMENTATION OF THIS SYSTEM WOULD MEAN THAT A USER HAS EASY AND ALMOST INSTANTANEOUS ACCESS TO THE DESIRED REFERENCE. THE SEARCH CAPABILITY OF THE SYSTEM WOULD PERMIT RAPID LOCATION OF A SPECIFIC CITATION. OUR PLANS CALL FOR DEVELOPMENT OF A METHOD OF UPDATING THE REFERENCES TIMELY TO ENSURE THAT ALL EMPLOYEES HAVE ACCESS TO THE MOST RECENT DIRECTIVES. WE EXPECT TO TEST A PILOT SYSTEM AT TWO SITES BEGINNING IN MARCH OF THIS YEAR, WITH NATIONWIDE IMPLEMENTATION TARGETED TO BEGIN THAT SAME MONTH.

THE FINAL INITIATIVE I WOULD LIKE TO DISCUSS IS PERSONAL COMPUTER GENERATED LETTERS (PCGL). PARTLY AS A RESULT OF THE NOTIFICATION REQUIREMENTS IN PUBLIC LAW 101-237, WE CAME TO THE REALIZATION THAT OUR CURRENT AUTOMATED LETTER GENERATION SYSTEM WAS INADEQUATE. IT IS, FRANKLY, AN INFLEXIBLE SYSTEM THAT DOES NOT ALLOW OUR ADJUDICATORS TO REVIEW, EDIT, OR ADD TO A LETTER BEFORE IT IS GENERATED AND MAILED. SUBSEQUENT MODIFICATIONS AND DEVELOPMENTS TO THE SYSTEM HAVE MADE SOME IMPROVEMENTS, BUT THOSE HAVE BEEN VERY LIMITED OR HAVE CREATED MEMORY AND STORAGE PROBLEMS. THEREFORE, WE HAVE BEGUN DEVELOPING A MORE VERSATILE AND FLEXIBLE LETTER GENERATION SYSTEM, WHICH WE HOPE TO BEGIN RELEASING TO THE FIELD IN APRIL 1994. I ALSO WANT TO MENTION AT THIS POINT AN INITIATIVE ORIGINATED BY THE JACKSON REGIONAL OFFICE TO IMPROVE THE QUALITY OF LETTERS SENT TO OUR CLAIMANTS. THIS PROGRAM, KNOWN AS "WRITING FOR REAL PEOPLE," HAS AS ITS GOAL IMPROVEMENT OF OUR CORRESPONDENCE TO MAKE IT MORE COMPREHENSIBLE TO OUR CLIENTS. TRAINING IN THIS PROGRAM IS CURRENTLY BEING COORDINATED FOR REGIONAL OFFICES ACROSS THE COUNTRY. WE PLAN TO REWRITE OUR AWARD AND DENIAL LETTERS AS WELL AS OTHER LETTERS COMMONLY USED BY THE REGIONAL OFFICES AND ULTIMATELY INCORPORATE THEM INTO THE PCGL PACKAGE.

MR. CHAIRMAN, I ALSO WANT TO ADDRESS THE ISSUE OF TRAINING. THE COMPENSATION AND PENSION SERVICE HAS PROVIDED CENTRALIZED TRAINING FOR KEY ADJUDICATION PERSONNEL FOR THE LAST FOUR YEARS. THE RESULTS HAVE BEEN CONSISTENTLY POSITIVE. THROUGH CENTRALIZED TRAINING COURSES WITH STANDARDIZED CURRICULA AND TRAINING MATERIALS, THE COMPENSATION AND PENSION SERVICE HAS RELIEVED THE REGIONAL OFFICES OF MUCH OF THE BURDEN OF TRAINING NEW EMPLOYEES AND PROVIDING ON-GOING REFRESHER TRAINING. THE TRAINING ENSURES THAT ADJUDICATION EMPLOYEES ARE GIVEN CONSISTENT INFORMATION ON VA BENEFIT PROGRAMS, AND A STANDARDIZED INTERPRETATION OF LAWS, REGULATIONS, AND PROCEDURES. IN THE LONG RUN, TRAINING IMPROVES QUALITY AND TIMELINESS OF BENEFITS AND SERVICES TO VETERANS AND THEIR DEPENDENTS.

IN ADDITION TO DIRECT ON-SITE TRAINING OF NEWLY HIRED CLAIMS EXAMINERS, WE PROVIDE ADVANCED TRAINING, SPECIAL PROGRAM TRAINING, PERIODIC REFRESHER TRAINING, TRAINING FOR SENIOR ADJUDICATION PERSONNEL, AND MANAGEMENT TRAINING FOR FIRST-TIME SUPERVISORS. SINCE 1990, THE C&P SERVICE HAS TRAINED 1,284 ADJUDICATION PERSONNEL, OF WHOM 616 (48 PERCENT) WERE NEWLY HIRED VETERANS CLAIMS EXAMINERS. LAST YEAR WE TRAINED MORE

THAN 200 NEW RATING SPECIALISTS AT THE VBA TRAINING ACADEMY IN BALTIMORE, AND PROVIDED ONE-DAY SEMINARS ON THE COURT OF VETERANS APPEALS AND PTSD TO SOME 400 MORE. RECENTLY, AS A FOLLOWUP TO PUBLISHING FINAL REVISIONS TO THE RATING SCHEDULE ON THE GENITOURINARY AND DENTAL/ORAL SYSTEMS, WE SENT TO THE REGIONAL OFFICES SOFTWARE PACKAGES WHICH WILL ALLOW RATING SPECIALISTS TO TAKE INDIVIDUAL OR GROUP TRAINING ON THESE REVISIONS VIA PERSONAL COMPUTER. AS FINAL AMENDMENTS ARE PUBLISHED ON EACH OF THE REMAINING BODY SYSTEMS IN THE RATING SCHEDULE, SIMILAR SOFTWARE TRAINING PACKAGES WILL BE PROVIDED.

I HAVE EMPHASIZED TRAINING BECAUSE THE ULTIMATE SUCCESS OF OUR MODERNIZATION AND REENGINEERING INITIATIVES DEPENDS UPON OUR CLAIMS EXAMINERS. THEY ARE OUR MOST DIRECT AND IMPORTANT LINK TO THE VETERANS AND THEIR DEPENDENTS. ACCORDINGLY, WE CANNOT STRESS TOO MUCH THE IMPORTANCE WE PLACE ON CONTINUING OUR TRAINING PROGRAMS. THEY ARE OUR BEST HOPE FOR COPING WITH THE INCREASING COMPLEXITY AND CHALLENGES OF THE FUTURE.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WILL BE HAPPY TO ANSWER ANY QUESTIONS WHICH YOU OR MEMBERS OF THE SUBCOMMITTEE MIGHT CARE TO ASK.

WHITE PAPER

ISSUE: Claims Processing in Regional Offices

BACKGROUND: Since the mid 1970's claims processing has occurred in a top-down pyramid structural organization with several layers of management directing the operation. With the institution of Total Quality Management (TQM) techniques and the formulation of Quality Improvement Plans (QIP), this management structure is undergoing revision. Employees are being empowered to take an active part in decision-making, to evaluate the work processes, and to make suggestions for improvement. From this concept, the idea of processing claims in a team environment was born. Where a claim once passed through five or six processing levels throughout an Adjudication division, a claim processed by a team may pass through only three or four levels (most of the time never leaving the team area).

STATUS OF INITIATIVES:

New York Regional Office Prototype Unit

The New York regional office is participating in the OMB White House Initiative by testing a redesign of the adjudicative process through a Self-Directed Work Team (SDWT) structure.

The Prototype unit, which began operation in mid-May 1993, is made up of four Self-Directed Work Teams (SDWT). Each team has a Team Coach, seven Case Managers, and four Case Technicians. During the third quarter of FY94, the RO plans to initiate a second unit of four teams to handle an additional fourth of the work. The RO plans to initiate two more units of four teams to handle the last half of the work prior to its move to another facility, tentatively scheduled for February 1995. The original unit will be used as a model for these subsequent units.

Portland Regional Office VA Service Center

The Portland regional office pursued a local Quality Improvement Plan (QIP) initiative to speed up the claims process and improve direct service to the claimant. The activities of the Veterans Services and Adjudication Divisions were combined in a new organization called "VA Service Center". Testing began as an Original Claims Team in January 1993 for half of the span of work, but was expanded to the whole range in May 1993. The initial plan called for a second phase to be an Adjustment Team. However, after review and evaluation of the test process, the RO has decided to divide the work by terminal digit assignments rather than type of claims. Two groups (25 digits each) will function as self-directed teams involving Veterans Service Division (VSD) and Adjudication. The other two 25-digit groups will process claims in the traditional manner in Adjudication.

Oakland Regional Office Service Delivery Teams

In October 1992, the Oakland regional office selected one Adjudication unit to function as a Self-Managing Service Delivery Team (SMSDT), testing alternate claims processing methods for 25 digits worth of work. The team was designed to be a complete, independent unit handling the entire claims process. Improved claims processing timeliness and increased customer satisfaction were the team defined goals. This initiative was assessed by the improved timeliness of different types of claims compared to both Western Area averages and to national averages.

Based on the positive experiences of the team, the improved processing timeliness in the measured work areas, and expert advice from an independent consultant, the regional office converted the entire division to the SMSDT model. This conversion coincided with the office move from San Francisco to Oakland in July 1993. Currently there are five groups of about 25 employees each. Each group is split into two Service Delivery Teams.

Jackson Regional Office Claims Processing Teams

In July 1993, the Jackson Adjudication division reorganized into five Semi-Autonomous Claims Processing Teams. Significant accomplishments include:

a. improved claims processing timeliness (9 claim types met goal in 9/93)
b. more decision makers (team leaders rate cases 25% of the time)
c. days pending workload reduced to well below the national and area average
d. employees are sharing information and have better understanding of all jobs
e. improved productivity

Muskogee Regional Office Claims Processing Team

The Muskogee experiment started in April 1993, with two teams devoted to a grouping of types of claims, such as original claims, reopened claims, and supplemental claims. This was eventually expanded to six teams, including a clerical support team, for virtually the full range of C&P claims. For the Chapter 30 education work done by the office, there are six work teams, counting an inquiry resolution unit. Adjudication has fared well in this environment, with several on the key C&P end products meeting goal levels and three more continuing to improve.

Indianapolis Rating Analyst Technicians

On an experimental basis, in January 1993, three senior claims examiners were designated as Rating Analyst Technicians (RATs) to assist in the control of work destined for the rating boards. The purpose of the experiment was to prevent cases from getting to the rating board before they are ready for a final rating decision. By March 1993, a dramatic reduction in pending rating board work was evident.

In April, claims clerks (called Medical Information/Certification Examiners, or MICE) were assigned to the RATs. Their duties included Automated Medical Information Exchange (AMIE) input of VA examination requests as well as follow up on overdue examinations. This freed up time for RATs to implement certain completed rating decisions. In May 1993, to better allocate resources, three journeyman claims examiners began training to perform the RAT function so the seniors could return to their authorization duties.

VBC/VCE Planning Initiative

The Compensation and Pension, Education, and Veterans Assistance Service co-sponsored VBC/VCE Planning Initiative in 1992. The purpose of this initiative was to test the feasibility of combining the Veterans Benefits Counselor (VBC) and the Veterans Claims Examiner (VCE) jobs. Seven ROs participated initially with each developing an individual implementation plan. A brief description follows of the tests that are still active:

a. CLEVELAND: Testing has been conducted at the RO, a VAO, and a VAMC. Nine VBCs process burial and plot allowance claims while three supervisors serve as authorizers. During the third quarter of 1993 the test was expanded to include six more VBCs to process dependency review cases. One of the lessons learned from this experiment: a significant initial investment in training time is required for this type of endeavor, but after the initial instruction, a few hours of training each month allows the project to continue successfully.

b. LINCOLN: A case management team was formed in December 1992. The team is responsible for Veterans Assistance Inquiries (VAI), "difficult cases", congressional inquiries, as well as designated digits. Once customer contract is established, the case manager covers a full range of VBC duties as well as adjudicative responsibility. To improve timeliness and assist in locating files, support personnel have been assigned to the team. Intensive crosstraining took place between the VBC and VCE involved in this project. Focus groups will be conducted to assess customer satisfaction.

c. PITTSBURGH: A test began in January 1993 when a fulltime VBC/VCE was added to the VSD staff to interview claimants and prepare awards. With staffing changes this position was subsequently moved to the Special Projects unit in Adjudication to make phone calls, prepare awards, and assist with VAIs. Claimants are provided faster resolution of concerns and Adjudication has better control of VAIs.

SPECIAL WORK GROUP:

The Blue Ribbon Panel on Claims Processing had a number of action items calling for a review of the organizational structures of adjudication divisions throughout the country. In brief, the Panel called for each station to review its organizational structure, primarily adjudication, and then to submit an organizational plan to primarily adjudication, and then to submit an organizational plan to Central Office that benefits from "improved business practices" and maximizes the utilization of available resources. These plans will be submitted by mid-May for review by Central Office staff along with a special work group of Adjudication Officers or surrogates from nine representative stations. The collective group will define organizational models to be used in the field. While relying on the expertise of all, it will draw upon the experience of those who have worked with Self-Directed Work Teams--to compare and contrast the alternative structures, analyze the methodology to build them, and review performance indicators for assessing them.

VBA Modernization/VETSNET

Installation of Stage I equipment began during the Fall of 1993 and will be completed by end of this year. The impact of systems and applications that will be developed for this and other updated equipment cannot be accurately assessed until a sufficient data gathering period has passed. Stage III of the modernization project, referred to as VETSNET, which is a total redesign of the Benefits Delivery Network (TARGET), will be installed by the end of 1996. It is premature to attempt to gauge its effect on timeliness and quality at this time. Be assured however, that all development efforts are being focused on improving timeliness and quality of service delivery.

CLAIMS BACKLOG

ISSUE:

Pending Claims Backlog and Providing Timely Service

CURRENT STATUS:

The time it takes to process the key compensation and pension claims continues to mount as does the backlog of claims pending adjudication. The following table shows the growing amount of time it takes to process an average original compensation claim and an original pension claim, two of the more important types of claims adjudication processes:

	FY 1990	FY 1991	FY 1992	FY 1993	FYTD FY 1994
Original Compensation					
Average days to process	151	164	159	181	215
Original Pension					
Average days to process	97	107	114	119	124

The following table shows the amount of total compensation and pension claims pending at the end of the noted fiscal years and the current amount:

	FY 1990	FY 1991	FY 1992	FY 1993	FYTD FY 1994
Pending Claims	377,767	391,743	535,135	528,078	533,124

TIMELINESS:

The projections assume the current level of CP&E staffing, 4,505 for FY 1994, and the anticipated staffing of 4,163 for FY 1995 and the out-years; the full deployment of key Stage I Modernization initiatives by end of FY 1995 and the development and deployment of the Staff III VETSNET environment by FY 1996; the full implementation of all the Blue Ribbon Panel's action items on schedule; an increased adjudication organization efficiency through improved business practices being developed through field initiatives, such as the Self-Directed Work Teams at the New York Regional Office; and no dramatic increases to the workload caused by Court rulings, legislation or additional military downsizing.

TYPE OF CLAIM	EndFY93		EndFY94	EndFY95	EndFY96	EndFY97	EndFY98	Goal
	Proj	Actual						
OrigComp	181	189	226	235	215	185	155	106
OrigPens	121	119	128	133	122	105	88	77
OrigDIC	105	102	112	101	93	80	68	68
DeathPen	71	67	66	61	56	50	44	44

BACKGROUND:

There are a number of key causes for this backlog and overall increase in the amount of time it takes to process compensation and pension claims. The most notable are as follows.

Military downsizing increased original compensation claims during 1991, 1992 and 1993. Three separate actions account for this increase. First, military personnel in Reserve and National Guard units, called to active duty for Operation Desert Storm, filed claims upon discharge. Second, DOD's scheduled downsizing increased the number of active duty personnel separated. Third, the impact from this larger than normal number of new veterans is compounded by implementation of the Transition Assistance Program. This joint effort by VA, Department of Labor, and DOD to provide military personnel with benefits and job counseling shortly before they leave active duty significantly increased the percentage of dischargees who file claims for VA benefits. When comparing the number of original compensation claims filed in 1991 with 1992, we find a 36% increase (37,500 veterans).

The Court of Veterans Appeals (The Court) has had a dramatic impact on claims processing. One Court decision can result in hundreds of Board of Veterans Appeals (BVA) remands, which in turn can change regional office procedures affecting thousands of claims. Although an individual Court decision may prompt immediate action by all the regional offices of jurisdiction, the full ramifications of that decision for all regional offices may require lengthy analysis. The impact at the regional office decision processing level became noticeable during the last quarter of FY 1991 and continues to grow. Two other recent actions, geared toward improving the quality of our decision making process, have also increased the length of time it takes to process a claim:

> The Due Process Requirements resulting from the 1987 Semenchuk law suit. These requirements resulted in regulatory guidelines governing the content of our benefit reduction or termination notices, and time frames for taking such actions.
>
> The Claimant Notification Requirements of Public Law 101-237, effective February 1, 1990. This statutory provision essentially eliminated use of computer generated award or disallowance notices. Time consuming individually composed letters are now used to notify claimants of such actions.

The Omnibus Budget Reconciliation Act of 1990 (OBRA) significantly increased our workload volume. It changed the basic eligibility criteria for several benefit programs. OBRA provisions also authorized VA access to income records maintained by the Internal Revenue Service and the Social Security Administration, for the purpose of verifying income and assets self-reported by certain VA beneficiaries.

In addition, the general level of inexperience among the Adjudication divisions--with all the accompanying problems--continues to impede improvement. Although the experience level has risen to about 70% from a low of about 50% in FY 1991 among Claims Examiners, the time spent out of production for training, the reduced levels of output and the increased need for secondary review of adjudicative decisions to ensure quality are still very much a factor in virtually all divisions.

PLANNED ACTIONS: We have a number of initiatives geared to improve the timeliness of claims processing and reduce the backlog of pending claims; some are associated with Stage I of VBA's ADP System Modernization. A number of the major initiatives are noted below in some detail. In addition to these, most Adjudication divisions, under the sponsorship of the four Area Directors and the Compensation and Pension Service, are experimenting with restructuring their workforces to improve the effectiveness of the available personnel by decreasing the number of clerical positions and increasing decision making positions, rating in particular.

CLAIMS PROCESSING SYSTEM--PHASE I: Work began in 1993 on Phase I of the Claims Processing System (CPS). This project will result in a new system using rule-based technology which will support development processing for all issues related to original compensation and pension claims. This production system is based on expertise gained from a prototype system. The claims development function of CPS will begin at the point the claim is received, then flow to the point the claim is ready for referral to the rating board or authorization for final action. Additionally, CPS will include data entry by Veterans Service Division (VSD) to generate the original claim form (VA Form 21-526).

The CPS rule-based system will identify all necessary evidence when the claim is first reviewed, generate requests to the veteran or third parties, and access information through automated interfaces with the BDN. This will eliminate both piece-meal development and overdevelopment. This initiative should reduce the amount of time it takes to acquire essential evidence. Improved timeliness will result because data entered when assisting a veteran with completion of the computer-generated compensation application, will be captured electronically and transferred directly into the claims processing system. This will not only eliminate the need for redundant data entry but will also result in the generation of evidence requests which can be handed to the veteran as he or she signs the application form. We expect to have this ready for testing in the Baltimore and St. Petersburg offices in the Fall of 1994.

EVR REDESIGN: Several changes have been implemented to streamline verification of pension eligibility and ease the reporting burden on VA pension recipients. Eligibility Verification Reports (EVRs) have been redesigned so that monthly Social Security rates are printed on the EVR forms. Beneficiaries are told to make no entry if the preprinted amount is correct. If there is no change in previously allowed continuing medical expenses, a beneficiary need not complete VA Form 21-8416, Report of Medical, Legal or Other Expenses. In those cases, the individual must certify that expenses for the received and expected EVR reporting periods are substantially the same as the amounts previously reported. That amount is also now preprinted on the EVR form.

We have also redesigned EVRs to include a bar code with the beneficiary's name, claim number, and payee number to facilitate initial EVR processing. Testing of EVR bar coding has been successful in four regional offices. Equipment has recently been sent to five additional offices with other offices to follow as Stage I Modernization is fully implemented.

BIRLS ENHANCEMENT: A project was recently installed which will establish a basic Beneficiary Identification and Records Locator Subsystem (BIRLS) record for each service member at the time of enlistment. This record will be updated as new data is available, including military discharge. In the past, the BIRLS record was not built until the veteran's discharge was received under the VADS program or an application for benefits was received by VA.

SERVICE MEDICAL RECORDS: Since October 1992 we have received service medical records directly from Army separation centers. When a claim is filed, these records are sent with the claim to the regional office. If no claim is filed, the records are sent to the Service Medical Records Center in St. Louis. This procedure has greatly improved timeliness. As a result of negotiations in progress with the other branches of service, we anticipate that the Navy and Marine Corps will begin to send records directly to VA in January 1994, with the Air Force following in June 1994.

WARS (Word Automated Recognition System): During 1993 the Atlanta and New Orleans regional offices' rating boards tested a prototype voice recognition system for preparing rating decisions. The final evaluation of this testing concluded that the use of the voice recognition prototype substantially improved document timeliness and improved document quality without causing any significant increase in the rating specialist's time, but was extremely costly and therefore prohibitive. In lieu of voice recognition, VBA is developing an application called Rating Board Automation (RBA), which will allow rating specialists to prepare rating decision documents through sophisticated computer programming and a large database of standardized phrases, sentences and paragraphs. Until the first system called Word Automated Recognition system (WARS). WARS is a mouse-driven, word processing version of the voice recognition prototype.

NEW RATING DECISION FORMAT: A new rating decision format became effective on October 1, 1993. The narrative portion of the rating decision now consists of four sections: Issue, Evidence, Decision, and Reasons and Bases. A separate rating decision codesheet is also required for each decision. Using the revised rating format, the narrative portion of the rating decision may be provided to the claimant as an attachment to a decision letter. This change will assist VA in providing complete, accurate decision notification to claimants.

RATING BOARD AUTOMATION: The Rating Board Automation (RBA) project will develop an automated system for creation of a rating decision using a personal computer. This project evolved from the Voice Recognition Prototype. Our goal has moved beyond conventional word processing by taking full advantage of the opportunities that computer intelligence offers us. The design concept will link key elements of individual issues within a rating decision, thereby providing a more systematic and consistent analysis of each rating issue. By doing this, internal consistency will be enhanced for each rating decision with a minimum of keystroke entries by the rating specialists. Rating data essential to award processing will also be generated.

The development of this project has been divided into four phases. The first phase addresses disabilities of the know which will include the required text and logic for the issues of service connection, evaluation, secondary service connection, individual unemployability, paragraph 29, paragraph 30, special monthly compensation, deferred ratings, new and material evidence, and competency. We anticipate that around August 1994 installation and testing will be conduced in a controlled environment.

The second phase will add text using criteria from the rating schedule for the approximately 700 diagnostic codes remaining under 15 separate body systems. Field testing at the regional offices in Baltimore and St. Petersburg will be conducted to measure the effect on quality, timeliness, and production.

The third phase will include memorandum issues, pension ratings, and death ratings. In addition, several special categories of ratings including disabilities associated with Agent Orange, asbestos, radiation, and POWs will be included in this phase?

A final phase release will address all documents required for the appeals process, including Statements of the Case, Supplemental Statement of the Case, Hearing Officer Decisions, and associated pattern correspondence.

AMIE: During the late summer of 1993, Automated Medical Information Exchange (AMIE) Version 2.5 was installed by all medical centers. This version included initial enhancements which had been approved by the AMIE Expert Panel (AEP).

VHA management has mandated that the Physician's Guide be included in the AMIE program. A separate work group is working on this project. Version 2.6 will be limited to the Physician's Guide with release currently anticipated in early 1994. Inclusion of the Physician's Guide in the AMIE system will, we believe, improve the quality of examination reports received for rating purpose. Release of Version 2.7 is anticipated in July 1994.

Many of the problems associated with AMIE relate to the WANG platform on which VBA runs the system. Conversion to personal computer (PC) workstations in regional offices will eliminate many problems associated with AMIE and provide future capabilities not possible with the WANG based system. Conversion of the system to the PC environment will improve performance, printing capabilities, and overall access.

BLUE RIBBON PANEL: The Blue Ribbon Panel of Claims Processing was established by the Deputy Under Secretary for Benefits in June 1993 to develop recommendations to shorten the time it takes to make decisions on disability claims and reduce the backlog of pending claims.

The panel determined that claims processing timeliness would improve with the creation of a consolidated rating activity. In conjunction with this reorganization effort a new position, rating technician, would be created with responsibility for control, development, and award action. Centralized training programs would have to be expanded to expedite training of newly assigned rating technicians. A short-term initiative to reduce pending rating backlogs is the use of rating "help teams" at regional offices where backlogs are most critical.

The panel also recognized the need for full deployment of five ADP applications currently being developed to support the compensation and pension programs. They are Claims Processing System (CPS), Rating Board Automation (RBA), On-line Reference Materials, PC Letters, and Control of Veterans Records (COVERS). Enhancements to the Automated Medical Information Exchange (AMIE) system were also identified as necessary to improving claims processing.

Timely receipt of service medical records and quality VA physical examinations are essential to improve claims processing timeliness. To achieve these goals VBA has to work hand-in-hand with the Department of Defense and Veterans Health Administration.

The panel also recommended the development of a national letter package that would provide the claimant with clear, direct and compassionate information and instructions. In addition, the use of

other methods of communication such as telephone or fax communications was seen as having a positive effect on the claims process.

All 43 of the Blue Ribbon Panel's recommendations for improving claims processing have been approved by the Secretary of Veterans Affairs and included in an action plan with implementation periods ranging from 6 to 18 months for 39 of the 43; four will require more than 18 months for implementation. Many of the ideas expressed by the Panel are already being pursued by the Compensation and Pension Service.

STATEMENT OF THE HONORABLE CHARLES L. CRAGIN
CHAIRMAN, BOARD OF VETERANS' APPEALS

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

February 23, 1994

Thank you, Mr. Chairman. It is a pleasure to be with you and the other members of the Committee this morning to offer the Administration's views on the budgetary needs of the Board of Veterans' Appeals.

We share the concerns of this Committee with regard to the need for some kind of relief from the excessive average response times required in connection with an appeal to the Board of Veterans' Appeals. As recently as fiscal year 1991, it took the Board, on the average, less than five months--139 days--to reach a final decision on an appeal. Because of constantly increasing procedural requirements and changes in the law (as interpreted by the Court of Veterans Appeals), the Board saw its average response time climb to 466 days at the end of FY 1993. If statistics from the first quarter of FY 1994 are reliable (and first-quarter statistics have been reliable), we are looking at an average response time of 1,843 days--*5 years*--by the end of this September and 2,397 days--*6½ years*--by the end of FY 1995.

As you correctly pointed out at the Subcommittee's hearing last November, Mr. Chairman, this is justice delayed--and that is justice denied.

I want to discuss with you and other members of the Subcommittee how we got here and--more importantly--measures we are taking at the Board to increase productivity and timeliness.

As a preliminary matter, however, I want to thank the Secretary and the Deputy Secretary for their help in the budgetary process. These are times of fiscal restraint, which is felt by every part of the Department. But I am pleased to report that Secretary Brown and Deputy Secretary Gober--both of whom have the experience of representing veterans before VA--fought hard to keep average employment at the Board at its fiscal year 1994 level. The veterans community is fortunate to have such advocates leading VA.

I will not mince words, Mr. Chairman. We are where we are because of the Veterans' Judicial Review Act. That landmark legislation, which created the Court of Veterans Appeals, has increased the time a claimant must wait for a final decision. There is no doubt that the Court is an adversarial system grafted on to one which was designed to function in a nonadversarial manner. The result is that the mere availability of judicial review has made the administrative adjudication process more formalistic, rigid, complex, and inherently more time-consuming. The attached chart provides in graphic form an illustration of just how complex and convoluted the process of appellate adjudication at the Board has become in the era of judicial review.

I am not saying that there have not been major benefits from judicial review. There have. It has helped in establishing a more systematic approach to benefits claims adjudication. It has provided a forum to veterans for dispute resolution outside the Department when they may feel that VA has not treated them fairly.

These benefits, however, have not been achieved without costs, particularly in increased formality and complexity of the adjudication process. I noted in my 1992 *Annual Report to Congress* that no decision of the Court, with the exception of *Bethea v.*

Derwinski, 2 Vet.App. 252 (1992), has yet resulted in an improvement in decision productivity or timeliness in the entire VA adjudication system. Many decisions have had exactly the opposite result. Also, by its very nature, another layer of appellate review adds to processing time as lower level adjudicatory bodies struggle to meet new requirements.

This is so even though relatively few decisions of the Board actually come before the Court. For example, in fiscal year 1993, the 1,265 notices of appeal received by the Court represented less than 10% of appealable decisions. Nevertheless, all BVA decisions must be prepared to withstand the scrutiny of judicial review. Preparation of cases according to these standards, which include all notice and due process procedures, has increased the length and complexity of BVA decisions, added a legalistic tone to the decision making process, and dramatically increased the time it takes the Board to issue a decision.

In some ways, this result should not be considered unexpected. In June 1986, the Court's Judge Ivers--at that time VA's General Counsel--testified before this Committee. Judge Ivers warned that judicial review would formalize an informal process by requiring VA to document every factor and consideration that led to denial of a claim--in other words, to build a record.

The landmark decisions of the Court all have had the effect that Judge Ivers predicted. For example, *Manio, McGinnis, Grottveit, Schafrath,* and *Bernard* require application of more formalistic legal analysis and adherence to procedure. *Gilbert* and *Godwin* illustrate the necessity of "building the record" to permit judicial review. *Ivey,* and *Murincsak* require the documentation of relatively minor "ministerial acts" in order to demonstrate compliance with the Department's "duty to assist" and the formal requirements of regulation. *Colvin* and its progeny introduce expert medical opinion, medical journals, and treatises into the record because VA adjudicators may no longer rely on their own expertise. Moreover, under *Thurber*, the Board is required to provide notice and an opportunity to comment or provide rebuttal evidence to any evidence, such as a medical treatise, that it obtains and intends to rely upon in reaching its decision.

Because of the increasing complexity and rapidly evolving state of the law, BVA decisions are lengthier, more complex, and require more time to prepare than ever before. As a consequence, speedy justice in VA claims adjudication has become an elusive, moving target. The applicable law, as articulated by the decisions of the Court, is changing on almost a daily basis. As one of the members of the BVA team recently observed, "I don't mind jumping through hoops, I just wish they would hold them steady."

In addition, the Court's decisions have increased the Board's response time because of the necessity for the Board to remand more cases for additional development.

For the decade prior to the passage of the VJRA, the Board's fiscal year remand rates ran from a low of 13.4 percent to a high of 20.7 percent. With the full impact of judicial review, the remand rate hit 50.5 percent in fiscal year 1992. The rate for fiscal year 1993 is only somewhat improved, at 44 percent. Most cases remanded to the originating agency are returned to the Board for final adjudication. And because these cases are generally the oldest docketed appeals, they must be worked before the later docketed appeals. As a result, the need to readjudicate those cases returned to the Board following completion of the development requested on remand further delays the initial adjudication of newly received appeals, which further degrades average response time. As I will explain shortly, this delay engenders additional remands and further delay.

We trace the increased remand rate to three factors in the Court's jurisprudence.

First, the Court's precedential decisions generally are given retroactive effect. Thus, VA regional office decisions that were rendered prior to the issuance of a controlling precedent decision of the Court often must be remanded to the originating agency to apply the precedent. As I previously noted, the longer the time between the issuance of the Regional Office's (RO's) decision and the Board's consideration of the appeal from the RO's decision, the greater the probability that the Board will be required

to remand the case to the RO to comport with Court precedent that did not exist at the time the RO issued its decision. The same principle applies in regard to the time lag between the issuance of the Board's decision in a claim and the Court's consideration of the appeal in that case. For example, in a recent decision (*Graves v. Brown*, No. 92-483 (U.S. Vet. App. Feb. 10, 1994), the Court vacated a BVA decision issued in January 1992 because the Board's decision did not comport with the notice and comment procedures first mandated by the Court in its May 14, 1993 decision in *Thurber v. Brown*, 5 Vet.App. 119 (1993).

Second, the Court has shown a tendency to expand the scope of issues on appeal, making it more likely that an issue will have been missed and, therefore, not adjudicated below. For example, in *Schafrath v. Derwinski*, the Court stated that "[w]here a VA regulation is made *potentially* applicable through the assertions and issues raised in the record, the Board's refusal to acknowledge and consider that regulation is 'arbitrary, capricious, an abuse of discretion,' and 'not in accordance with the law,' and must be set aside as such." Thus, the Board must identify and discuss all potentially applicable statutes and regulations even though they have not been raised or specifically considered below. This, in turn, creates additional due process considerations.

Finally, the Court's expansive interpretation of the Department's duty to assist claimants in the development of their claims has greatly increased the need for remands by requiring VA to seek out possibly relevant additional service records, private and VA medical records, Social Security Administration records, new physical examinations, and more complete examinations.

I note that the Court, in a recent decision (*Grivois v. Brown*, No. 92-289 (U.S. Vet. App. Jan. 5, 1994)) suggested that VA itself was partially responsible for the growing backlog by assisting veterans in the development of claims that are not "well-grounded," thereby consuming the Department's "limited resources." Moreover, the Court indicated that the determination of whether a claim is "well-grounded," and, therefore, one which triggers the Department's "duty to assist," is a threshold issue to be determined "not only by the Board but for the initial adjudicators, for it is their duty to avoid adjudicating implausible claims at the expense of delaying well-grounded ones." The Court noted that if VA, "as a matter of policy, volunteers assistance to establish well groundedness (*sic*), grave questions of due process can arise if there is apparent disparate treatment between claimants in this regard."

Our experience does not indicate that the erroneous classification of claims as being "well-grounded" contributed significantly to our current backlog. Further, in my judgment, the Court's decisions have done little to solve the problem of which the *Grivois* panel complained. The Board undertook a careful, longitudinal analysis of the pertinent caselaw in order to provide guidance to its Members and staff counsel on how to apply that law to the practicalities of deciding veterans' claims. That study revealed that, with only a few narrow exceptions, the Court has never set forth a "bright line" for determining what is and what is not a "well-grounded" claim. For the most part, the Court's determination of whether a claim is "well-grounded," i.e., "plausible," turns on a case by case analysis of the particular factual situation presented. Nevertheless, with little clear guidance, the initial VA adjudicator, who most often is not an attorney, must decide whether or not to assist a veteran in developing his or her claim. A wrong decision, either to assist or not to assist, is fraught with legal peril. I believe that, in demonstrating the spiraling legalism of the current adjudication and appellate environment, the Court has provided a graphic, if unintended, illustration of the root causes of the backlog.

So that is how we arrived at our present state: Judicial review has slowed the process. I applaud the concept and much--although, frankly, not all--of the jurisprudence.

What I would like to discuss next, Mr. Chairman, are the strategies we have pursued and are pursuing at the Board to improve timeliness and the overall service that we provide to veterans and their dependents. These are strategies that involve every part of the veteran community: this Committee, the Veterans Service Organizations and the various operating elements within the Department.

In November 1993, ahead of schedule, the Board completed the "automation" of its Professional Service. At that time we were able to provide a personal computer to all our Board members and staff counsel. This provided them with an additional tool for the preparation of decisions -- one which we believe will be more efficient in the long run. In the short term, however, the introduction of new technology has resulted in a loss of productivity because of the need to provide training on the new equipment and to develop and adapt to new case preparation procedures. We believe that, as our staff progresses along the "learning curve," this new tool ultimately will enhance decision productivity and timeliness.

Other measures taken in 1993 to improve BVA's service include the consolidation of all BVA personnel in the Washington, D.C. area in a single location. For many years previous to this change, BVA personnel were dispersed at several locations, resulting in considerable administrative and logistical overhead, as well as difficulties in communication. We have established a formal, comprehensive training program for our staff counsel and have continued providing guidance on individual Court decisions on an expedited basis. Our staffing level has increased, which permitted the hiring of 50 attorneys in FY 1993. In addition, the Board has continued to integrate appropriate new technologies into its automation structure, including imaging capabilities for the on-line storage of archived decisions.

In FY 1994, the Board has developed a series of new initiatives designed to improve decision productivity and to reduce average response time. Most of these measures will produce some improvement on a relatively short-term basis. Others will probably require longer to implement and can best be described as "mid-term" initiatives. Still others, which involve a reexamination of the Board process, are "long term," requiring several months to complete. Some of the initiatives have been or will be implemented on the Board's own action. Others, however, require action by the Department, and, in some instances, legislative change.

We have already accomplished <u>many</u> of our ***short-term goals*** and have:

- Reduced the number of decisions in which a "Certified List" must be prepared as the result of the Secretary's approval of our suggestion to limit the preparation of a "Certified List" of evidence relied on by the Board only to those final BVA decisions in which a Notice of Appeal has been filed with the Court. (February 7, 1994)

- Instituted revised decision production goals for Board sections (January 31, 1994)

- Decreased collateral duties of Board members (e.g., not requiring comments on reconsideration motions) (January 25, 1994)

- Restricted returns of decisions by the quality review activity to substantive measures only (January 24, 1994)

- Suspended plans to reduce the number of specialty jurisdictions assigned to individual Board sections (January 19, 1994)

- Revised "decision creation" instructions to reduce the procedural history of a case set forth in the "Introduction" portion of Board decisions (January 25, 1994)

- Implemented with the cooperation of the Veterans Benefits Administration procedures for the "advance docketing" of appeals, whereby cases in which a substantive appeal has been filed will be placed on the Board's docket while the claims folder will remain at the RO until the Board is ready to consider the appeal in its order on the docket. The effects of this procedure will greatly reduce the need to transfer records between the Board and the RO's, thereby reducing the time and staffing consumed by responding to case status inquiries and the case transfer and tracking process. In addition, "advance docketing" will permit VA to

comply with the Court's decision in *Ebert v. Brown*, 4 Vet.App. 324 (1993) by providing the RO access to a veteran's records to act on new claims while the veteran's appeal of an earlier decision remains in appellate status.

We also have a series of ***mid-term measures*** in progress:

- Seek immediate enactment of the draft bill entitled the "Veterans Appeals Improvement Act of 1993," which was transmitted to the Congress by the Secretary in August 1993. Key features of this proposed legislation would (1) authorize single-member decisions, (2) end time limits on acting Board members, and (3) remove the statutory cap on the number of Board members. (A version of this legislation, H.R. 3400, was passed by the House on November 22, 1993; a request by the Secretary for legislative action was transmitted to the Senate Committee on Veterans' Affairs on February 9, 1994)

- Defer the scheduling of new personal hearings in cases on appeal until a time proximate to that when the appeal will be actively considered by the Board (January 19, 1994)

- Implement a new performance plan for Board counsel, which includes a new standard on timeliness (test implemented February 1, 1994; full implementation April 1, 1994)

- Require "prescreening" of cases by Board members prior to assignment to counsel (February 1, 1994)

- Explore and develop new incentives for exceptional performance and special contributions by Board members (coordinating with VA Office of Human Resource Management)

Our ***long-term measures*** are to undertake a fundamental reexamination of how the Board does business and to explore legislative alternatives that will enable the Board to focus resources on substance rather than form. I have recommended to the Secretary that this task be undertaken by a Select Panel comprised of leaders of the veterans community and legal experts from both within and without the Department.

We believe that the legislative proposal to provide authority for a final Board decision to be issued by a single Board member, which was transmitted by the Secretary to the Congress in August 1993 and is contemplated in the Department's current budget proposal, will result in an overall 27 percent increase in decisional productivity. Aside from that initiative, we cannot, in all candor, quantify the extent to which any of these initiatives will improve productivity and timeliness, although we believe that improvement in those areas will be the cumulative effect.

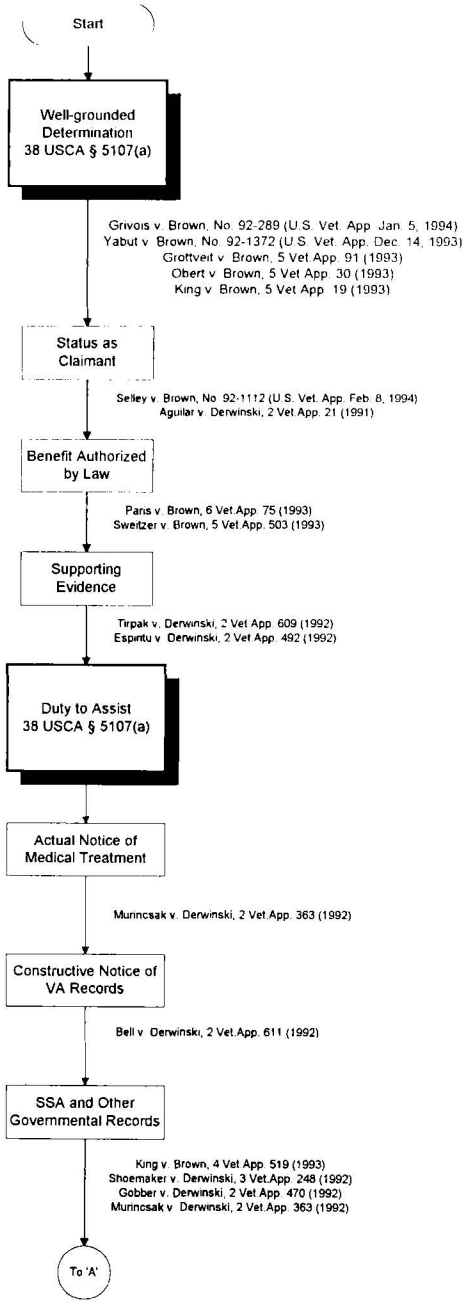
I wish I could tell you, Mr. Chairman, that there is a magic solution that will solve our problems. I wish I could tell you that, with just a few more FTEs, I could bring response time back to historic levels of timeliness. I cannot.

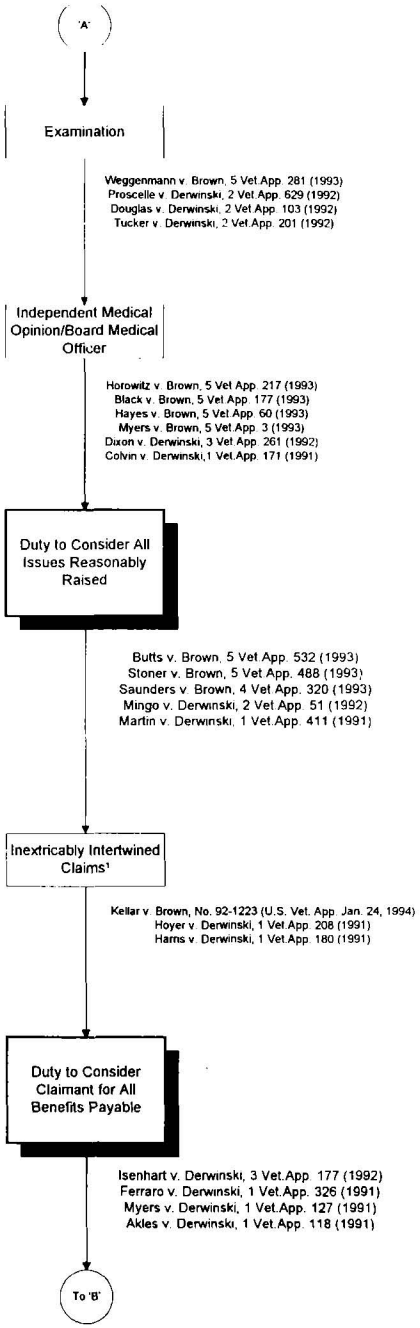
I can tell you that we at the Board are attempting to meet the challenges posed by judicial review. We are grateful for this Committee's rapid action last fall in approving the single-member decision authority. We stand ready to work with this Subcommittee, veterans' representatives, and operating elements within the Department to bring timely justice back to the appeals process.

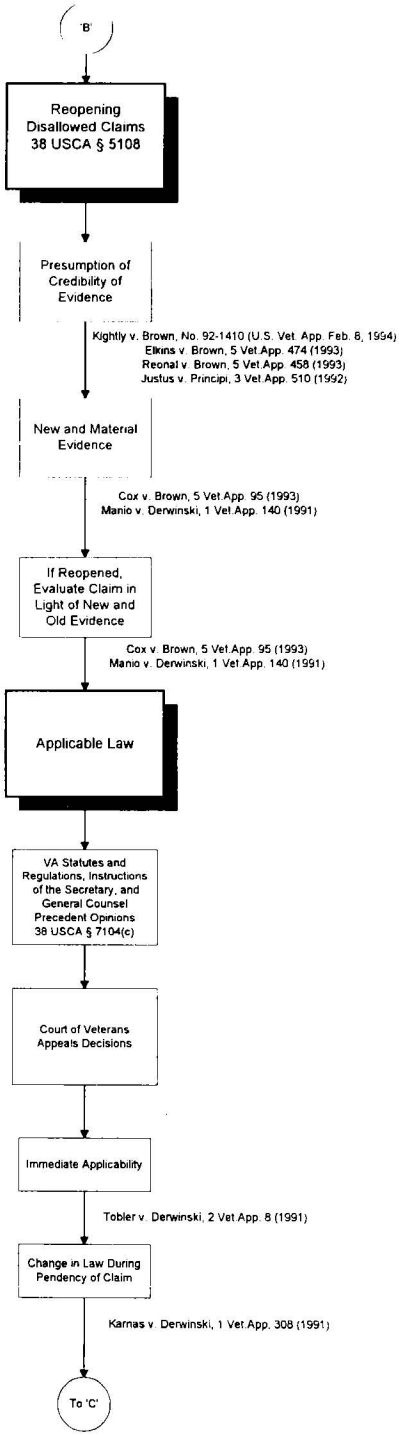
I will be pleased to answer any questions you or other members of the Subcommittee may have.

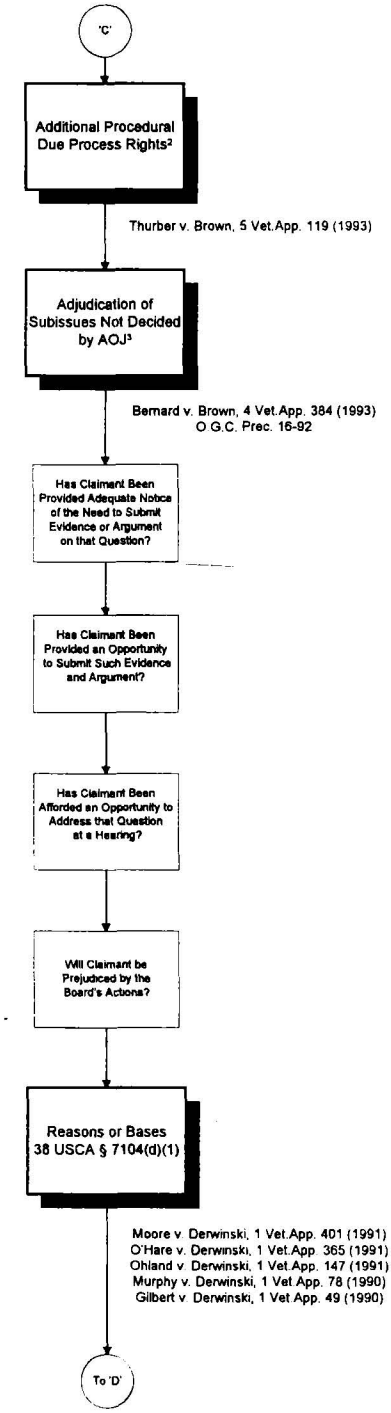
BVA APPEALS ADJUDICATION

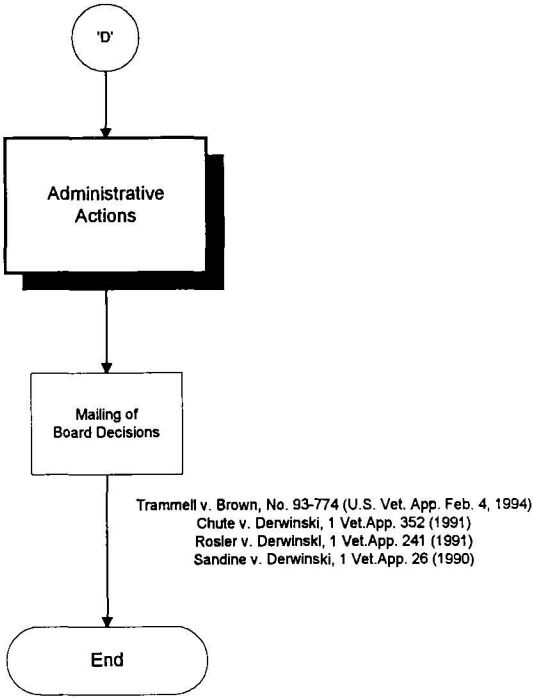
Attachment to Statement of the Honorable Charles L. Cragin Chairman, Board of Veterans' Appeals Before the Subcommittee on Compensation, Pension and Insurance, Committee on Veterans' Affairs House of Representatives February 23, 1994




'A'
Examination
Weggenmann v. Brown, 5 Vet.App. 281 (1993)
Proscelle v. Derwinski, 2 Vet.App. 629 (1992)
Douglas v. Derwinski, 2 Vet.App. 103 (1992)
Tucker v. Derwinski, 2 Vet.App. 201 (1992)
Independent Medical Opinion/Board Medical Officer
Horowitz v. Brown, 5 Vet.App. 217 (1993)
Black v. Brown, 5 Vet.App. 177 (1993)
Hayes v. Brown, 5 Vet.App. 60 (1993)
Myers v. Brown, 5 Vet.App. 3 (1993)
Dixon v. Derwinski, 3 Vet.App. 261 (1992)
Colvin v. Derwinski,1 Vet.App. 171 (1991)
Duty to Consider All Issues Reasonably Raised
Butts v. Brown, 5 Vet.App. 532 (1993)
Stoner v. Brown, 5 Vet.App. 488 (1993)
Saunders v. Brown, 4 Vet.App. 320 (1993)
Mingo v. Derwinski, 2 Vet.App. 51 (1992)
Martin v. Derwinski, 1 Vet.App. 411 (1991)
Inextricably Intertwined Claims[1]
Kellar v. Brown, No. 92-1223 (U.S. Vet. App. Jan. 24, 1994)
Hoyer v. Derwinski, 1 Vet.App. 208 (1991)
Harris v. Derwinski, 1 Vet.App. 180 (1991)
Duty to Consider Claimant for All Benefits Payable
Isenhart v. Derwinski, 3 Vet.App. 177 (1992)
Ferraro v. Derwinski, 1 Vet.App. 326 (1991)
Myers v. Derwinski, 1 Vet.App. 127 (1991)
Akles v. Derwinski, 1 Vet.App. 118 (1991)
To 'B'


'B'
Reopening Disallowed Claims 38 USCA § 5108
Presumption of Credibility of Evidence
Kightly v. Brown, No. 92-1410 (U.S. Vet. App. Feb. 8, 1994)
Elkins v. Brown, 5 Vet.App. 474 (1993)
Reonal v. Brown, 5 Vet.App. 458 (1993)
Justus v. Principi, 3 Vet.App. 510 (1992)
New and Material Evidence
Cox v. Brown, 5 Vet.App. 95 (1993)
Manio v. Derwinski, 1 Vet.App. 140 (1991)
If Reopened, Evaluate Claim in Light of New and Old Evidence
Cox v. Brown, 5 Vet.App. 95 (1993)
Manio v. Derwinski, 1 Vet.App. 140 (1991)
Applicable Law
VA Statutes and Regulations, Instructions of the Secretary, and General Counsel Precedent Opinions 38 USCA § 7104(c)
Court of Veterans Appeals Decisions
Immediate Applicability
Tobler v. Derwinski, 2 Vet.App. 8 (1991)
Change in Law During Pendency of Claim
Karnas v. Derwinski, 1 Vet.App. 308 (1991)
To 'C'


'C'
Additional Procedural Due Process Rights[2]
Thurber v. Brown, 5 Vet.App. 119 (1993)
Adjudication of Subissues Not Decided by AOJ[3]
Bernard v. Brown, 4 Vet.App. 384 (1993)
O.G.C. Prec. 16-92
Has Claimant Been Provided Adequate Notice of the Need to Submit Evidence or Argument on that Question?
Has Claimant Been Provided an Opportunity to Submit Such Evidence and Argument?
Has Claimant Been Afforded an Opportunity to Address that Question at a Hearing?
Will Claimant be Prejudiced by the Board's Actions?
Reasons or Bases 38 USCA § 7104(d)(1)
Moore v. Derwinski, 1 Vet.App. 401 (1991)
O'Hare v. Derwinski, 1 Vet.App. 365 (1991)
Ohland v. Derwinski, 1 Vet.App. 147 (1991)
Murphy v. Derwinski, 1 Vet.App. 78 (1990)
Gilbert v. Derwinski, 1 Vet.App. 49 (1990)
To 'D'



[1]"Inextricably intertwined claims" arise when a claim raised explicitly or implicitly in the record is of such significance to the claim pending before the Board of Veterans' Appeals (Board) that it must be resolved prior to entry of a final determination of the claim developed for appellate consideration.

[2]In *Thurber v. Brown*, 5 Vet.App. 119 (1993), the Court of Veterans Appeals held, in summary, that if the Board intends to rely on any evidence, including medical treatises, developed or obtained by it subsequent to the issuance of the most recent statement of the case or supplemental statement of the case, prior to issuing its decision, the Board must provide the claimant with notice of such evidence and of the reliance proposed to be placed on it as well as an opportunity to respond to it. Neither VA statutes nor regulations require that the Board provide claimants with such notice or opportunity to be heard.

[3]For our purposes, we use the term "issue" to refer to a particular claim of entitlement, e.g., service connection for a particular disability, and the term "subissue" to refer to the elements which make up the determination of that issue, e.g., whether service connection may be established on a particular basis.

STATEMENT OF

JAMES N. MAGILL, DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

THE 1995 BUDGET FOR THE COMPENSATION AND PENSION PORTION OF THE VETERANS BENEFITS ADMINISTRATION; AND, THE BOARD OF VETERANS APPEALS

WASHINGTON, DC FEBRUARY 23, 1994

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

It is my pleasure to represent the Veterans of Foreign Wars of the United States (VFW) before this important subcommittee. Our 2.2 million members, as well as many widows of deceased members, are very interested in and concerned about the generally poor quality of compensation and pension (C&P) decisions and educational assistance decisions that have been issued over the past four years. To add insult to injury, even as the quality of decisions have deteriorated the time it takes to receive a decision from the Veterans Benefits Administration (VBA) continues to increase. As you recall when the VFW testified before this subcommittee in April 1993 we stated that in 1992 it took, on average, nine months to receive a C&P decision from the Regional Office (RO). Today it has increased to one full year for the first part of 1994. We also realize that part of this VBA problem has resulted from being underfunded for personnel the past several years.

Before going into any details on the Administration's (President's) Budget for fiscal year 1995 (FY1995) to address this issue, it is necessary to recall the restraints imposed by the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). This law, which incorporates all legislation designed to reduce the federal deficit by $500 billion over the five year period FY1994-1998, contains a number of decremental provisions that adversely affect VBA. It is a fact that regardless of the rate of inflation VBA must continue to operate with the same funding in 1995 as it had in 1994. To compound this problem the House and Senate Committees on Veterans' Affairs were also instructed to find additional total savings of $2.6 billion from within VA during these same five fiscal years.

The FY1995 Budget asks for 4,163 full time employees (FTE) to staff the C&P and Education portions of VBA at a total cost of $189,969,000. This works out to an average annual salary with benefits to about $42,653 per employee. However, the figure 4,163 is a net loss of 342 employees from the 1994 current estimate. This is a serious problem if one accepts the premise that the accurate and timely processing of claims is dependent to a great degree on the number of persons available to do the work. The VFW notes that VBA itself expects to start FY1995 with a backlog of about 867,000 C&P cases. This is a 22 percent larger workload than VBA ended with in FY1994.

The VFW is aware of several other factors that will compound the FY1995 VBA workload, primarily in the C&P programs. They are:

-- The Court of Veterans Appeal (CVB) mandated requirement for ROs to address every contention, piece of evidence, applicable regulation, and related issue in each filed claim request.

-- The FY1995 Department of Defense's (DoD) ongoing reduction of active duty personnel. It is a fact that as a result of the pre-discharge counseling being given to service personnel through the Military Service/Transition Assistance and Disabled Assistance Programs (TAP/DTAP), veterans have been claiming more service-connected conditions on their initial applications. Rather than the usual 2 or 3 disabilities per claim, ROs are dealing with 10 to 15 per claim.

-- Based on current National Academy of Sciences literature veterans will be allowed to submit initial claims for Hodgkin's disease, PCT, multiple myeloma and respiratory cancers based on herbicide exposure. There is also a strong probability that VBA will add chronic obstructive pulmonary disease (COPD) and several cancers associated with exposure to mustard gas, to include other vesicant agents such as Lewisite.

-- The impact of BVA remanded cases should be about 50 percent in FY1995, in our judgment.

Based on the above outline of this complex issue the VFW believes the Veterans Affairs Committee, as an authorizing committee, should introduce the appropriate and necessary legislative changes to authorize additional transfers from existing mandatory budget authority to fund VBA personnel costs of delivering the authorized entitlements to veterans for all C&P and educational claims. The total number of employees authorized

should be enough to allow an accurately adjudicated decision to be delivered in a reasonably timely manner.

This proposed action should improve the situation VBA has historically been faced with; one that is further aggravated by OBRA 1993. Briefly stated, all the programs discussed here are mandatory entitlements and therefore fully funded and allowed to grow with the rate of inflation. Unfortunately, the "people" part (FTEs) of these mandated entitlements are paid for from discretionary funds. This is the only category of money addressed by OBRA 1993.

Said another way, unless this committee authorizes funding for all personnel costs for entitlement delivery from mandatory spending accounts, four years from now in FY1998 much of these entitlement programs will be hopelessly bogged down and for all practical purposes become a futile drill on the part of both the veteran and VBA. This will dilute further the meaning of a C&P and/or an educational entitlement. If there were no OBRA constraints the VFW would strongly recommend as a minimum FTE for FY1995 a C&P and educational adjudication work force of 4,700 as opposed to the previously mentioned budget requested figure of 4,163. The VFW would restore the 342 FTE deleted by the FY1995 budget and add an additional 195 adjudication FTEs.

The Board of Veterans' Appeals (BVA) is charged with making final decisions on appeals to the Secretary of Veterans Affairs in the full range of veterans' entitlement benefit. Its primary workload revolves around claims for entitlement to service-connection, disability ratings, and pension benefits. BVA's primary objective is to decide cases promptly and consistently in compliance with statutory, regulatory and controlling precedent of the United States Court of Veterans Appeals (CVA).

CVA has had a profound impact on BVA's volume of work and the way decisions must be processed. In sum, BVA will probably end FY1994 with a pending backlog of close to 50,000 cases which hopefully will not exceed a period of 24 months per case to issue a decision. This volume of work and the complexity of the decision process has resulted in a threefold increase in the total average cost per case. In FY1990 the cost per case was about $420. In early 1994 the cost thus far has been almost $1,200.

While the VFW recognizes that there are no quick fixes to the BVA's problems, we don't think the FY1995 budget request is very helpful. Specifically, the FTEs or "people" recommended totals 449 -- some three more than presently assigned. The average BVA salary with benefits is expected to be almost $56,000 per year. The total budget request for FY1995 is about $29 million, approximately one and one half million dollars more than in the FY1994 current budget.

The VFW believes that for FY1995 Congress must provide BVA with the necessary resources in the form of money to conduct in-house training programs, to increase the board members' salaries to that paid Administrative Law Judges (ALJ), and to ensure that BVA has sufficient funds to continue automation of board sections.

Based on our above recommendation we believe a sum of $200,000 is needed for the on-site training for all staff employees.

The cost projections for BVA-ALJ pay comparability is estimated to be about $700,000 for FY1995 and almost double in FY1996 to $1,300,000. Our last suggestion is to increase BVA's total 1994 FTE from 446 to 632, an increase of 186 persons. Using the average salary cost for FY1995 of about $56,000 would mean an additional $10,416,000.

This concludes the VFW's formal statement. I shall be happy to answer any questions you or any committee member may have, Mr. Chairman. Thank you.

STATEMENT OF
JOSEPH A. VIOLANTE
LEGISLATIVE COUNSEL
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
FEBRUARY 23, 1994

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than 1.4 million members of the Disabled American Veterans (DAV) and its Women's Auxiliary, I wish to thank you for this opportunity to present DAV's views on President Clinton's budget for Fiscal Year 1995 and its impact on the Department of Veterans Affairs (VA) adjudication and appellate processes.

At the outset Mr. Chairman, we wish to thank you, Ranking Minority Member Representative Bilirakis and the members of the Subcommittee for the timely exercise of your oversight responsibilities. We certainly appreciate the fact that your highest priority has been placed on bringing about major improvements in the manner in which veterans' claims and appeals are processed. By focusing your attention on the budgetary needs of the Veterans Benefits Administration (VBA), specifically the adjudication divisions within the Compensation and Pension Service (C&P), and the Board of Veterans' Appeals (BVA), the final appellate body within the VA, you have demonstrated, in a most meaningful way, your commitment to ensuring that America's service-connected disabled veterans and their families receive the VA benefits and services to which they are entitled.

Mr. Chairman, as you are aware, President Clinton's Fiscal Year 1995 budget for VA was submitted to Congress on February 7, 1994. This budget shows funding levels for the VA will reach $37.8 billion in FY 1995, an increase of $1.3 billion above the FY 1994 budget. Outlays, however, will increase only 0.52 percent above the FY 1994 budget. When we examine what this increase really means, we see that it means a below current services budget. The realities of this budget provide us with a very bleak picture of the VA's ability to provide quality benefit determinations in a timely manner.

President Clinton's budget calls for:

- Overall spending on Veterans Benefits Administration (VBA) to increase by $21 million, however, an employment reduction of 622 employees will take place in FY 1995;

- The budget authority for Compensation, Pension and Education (CP&E) to be $4 million below current appropriated level and reduces CP&E by 342 employees below FY 1994 appropriated level;

- A BVA employee level of 449 employees, an increase of 3 employees; and

- A legislative proposal to fund the administrative costs (mainly employees) of VA's insurance program from insurance reserves.

Additionally, according to the President's budget, the compensation caseload is projected to be 19,374 greater than

originally estimated for FY 1994. This increase in caseloads is due in part to the military downsizing and the Secretary's decision to compensate Vietnam veterans with certain conditions presumed to be associated with military service in Vietnam. For FY 1995, it is predicted that the compensation caseload for veterans will increase by 8,200 cases.

Mr. Chairman, veterans are continuously told that these are fiscally tough times and that we must be willing to do our fair share to reduce the deficit. However, in FY 1992, VA spending dropped to 4.4 percent of the total outlays for social welfare programs, the lowest of all six programs. Further, while total spending on all social welfare programs is projected to increase by nearly $145 billion between 1994 and 1998, VA appropriations will decline by $2.5 billion.

For over a quarter of a century, while meeting the needs of aging veterans from World War I, World War II and Korea, and new veterans coming out of Vietnam -- our country's longest and most costly war -- and the military campaigns in Lebanon, Granada, Panama and the Persian Gulf, the VA and all of its programs were continually required to do more with less. Since the 1980's and continuing into this decade, VA funding has been cut. DAV has been outspoken against these continuous cuts in VA's workforce and funding and we have predicted that these cuts would erode, and they have, the VA's ability to provide quality benefit determinations in a timely manner.

Unfortunately, the current Administration's budget proposal does not provide for sufficient resources for the VA to fulfill its mission to veterans, their families and survivors in a timely manner. In fact, the current budget proposal is below current services levels.

For the first time in its long history, Mr. Chairman, the VA has a Secretary FOR Veterans Affairs. Secretary Brown, a combat wounded veteran of the Vietnam War, has dedicated his adult life to ensuring that all veterans, including their dependents and survivors, obtain the benefits and services to which they were entitled. Secretary Brown knows the system and he knows the needs of this country's veterans. However, without sufficient resources, Secretary Brown will not be able to accomplish the VA's stated mission -- "to care for him who shall have borne the battle and for his widow, and his orphans."

We would like to recognize Secretary Brown, his management staff and the VA workforce, and express our appreciation to them for their efforts with respect to ADP modernization and the innovations in the claims adjudication process that are being implemented at Regional Offices around the country. These programs will certainly help to improve the claims adjudication process; however, we are not as optimistic as the VA that these innovations and ADP modernization will make up for the thousands of employees lost over the years or that they will have a significant impact upon the adjudication claims backlog hoped for by VA.

Mr. Chairman, as you know, VA's discretionary spending is frozen at FY 1993 levels for the next five years. This spending freeze, coupled with the employee cut imposed by the President in an effort to reduce the federal workforce, and the potentially devastating effect that the additional spending cuts under a balanced budget amendment could have on VA programs, quite simply, will seriously erode VA's ability to provide quality benefits and services. In testimony before the Senate Committee on Appropriations, Secretary Brown testified that, assuming there are no increases in federal revenues through increased taxes and assuming the cuts are applied across the board, VA would be faced with an 11.4 percent cut in spending to

reach a balanced budget in FY 1995. VA spending levels, as proposed in the FY 1995 budget, "would be cut by a total of $4.3 billion -- $2.3 billion in entitlements and $2.0 billion in discretionary programs." Secretary Brown went on to say that the cut in VA's General Operating Expense (GOE) account would further frustrate VA's efforts to administer VA programs in a timely fashion -- processing time for original compensation claims would increase to a full year.

As pointed out in the Independent Budget, without a significant increase in the number of employees available to adjudicate veterans' benefits claims, claims backlogs will increase beyond the already unacceptable levels. Veterans who are now required to wait more than six months for a determination on their compensation claims will wait even longer, rendering Congressionally authorized benefits meaningless and causing even more hardships for those who depend on VA compensation payments to provide for their basic daily necessities.

Currently, VBA has a 535,000 claims adjudication backlog, plus an additional 25,000 claims dealing with Agent Orange. At current staffing levels, VA is predicting that the claims backlog will increase to 709,000 at the end of FY 1994 and 867,000 in FY 1995. A backlog of this magnitude would be outrageous, intolerable and totally unacceptable to the DAV, particularly in light of VA's own admission that a backlog of 350,000 is acceptable. Further, while the VA's C&P timeliness goal is 106 days -- the average days to complete a claim -- C&P timeliness standards are continuing to move further away from that goal. In FY 1992, it stood at 164 days. In FY 1993, it was 189 days and, predictions for FY 1994 and FY 1995 show 226 days and 235 days, respectively.

Mr. Chairman, last year the VA estimated that it would take approximately 1,050 additional FTE to reduce the claims backlog to 200,000 claims. Yet the President's budget calls for a reduction of 622 FTE for VBA. In addition, should the Congress reject -- and it is possible they will -- an Administration proposal to fund the administrative costs (mainly employees) of VA's insurance program from insurance reserves, VBA will be faced with an additional loss of 546 employees, for a total of 1,168 FTE less for FY 1995 than are currently available to provide services to veterans and their families. This would be more than 2,200 employees below the level that VA stated was necessary to reduce the backlog to 200,000 claims.

We believe, Mr. Chairman, that a crisis situation -- approaching a state of emergency -- currently exists in VA's Compensation and Pension Service. Drastic measures are necessary if this nation's veteran population is to receive some semblance of timely and quality benefit determinations.

Additionally, delays at the BVA have become unconscionable and intolerable. In FY 1991, each BVA attorney generated 109.4 decisions; in FY 1992, this number decreased to 81.5 and in FY 1993 the number of decisions per staff attorney dropped to 59.9. Based on the first quarter of FY 1994, each staff attorney will produce only 29.1 decisions this year. Similarly, the number of decisions BVA issues is also decreasing. It rendered 45,308 decisions in FY 1991, 33,483 decisions in FY 1992 and, in FY 1993, this figure dropped to 26,400 decisions. The first quarter figure for FY 1994 was 3,240 decisions, approximately 50 percent less than the first quarter figure for FY 1993. If BVA continues at this pace throughout FY 1994, the final figure will be under 13,000 decisions. Considering that the present remand rate is about 50 percent, that would mean that there will be only 6,500 final determinations.

What does all this mean for BVA timeliness? BVA response time -- the number of days it takes to render decisions on pending appeals during a year -- equaled 139 days in FY 1991, increased by more than 100 days to 240 in FY 1992 and in FY 1993 it jumped to 466 days. Currently, the average response time is 660 days. Based on the first quarter figures for FY 1994, it is predicted that the response time will increase to just under 1,700 days if no changes are made in the way appeals are processed. This would mean that a claimant would have to wait more than 4.5 years for his/her appeal to be decided by the BVA. For FY 1995, the wait increases to six years and seven months.

Additionally, the BVA, as of April 30, 1994, will not be conducting any further travel hearings until the backlog is reduced. There are approximately 40,300 cases physically located at BVA. It does not take a mathematician or a Rhodes Scholar to figure out that with only 6,500 final determinations per year, the current backlog will only continue to grow at an alarming rate.

Mr. Chairman, we view the President's recommendations as neither fair nor equitable or in the best interest of our nation's sick and disabled veterans and their families.

HIGHLIGHTS OF THE INDEPENDENT BUDGET RECOMMENDATIONS

Mr. Chairman, this is the eighth consecutive year that American Veterans of World War II, Korea and Vietnam, Disabled American Veterans, Paralyzed Veterans of America and Veterans of Foreign Wars have joined forces to formulate a needs-based budget for the Department of Veterans Affairs (VA). As in prior Independent Budget's, DAV has drafted the Benefits Programs and General Operating Expense (GOE) portion of the Independent Budget.

The Independent Budget Veterans' Service Organizations (IBVSO) appreciate the recognition and praise our efforts have received from the Veterans Affairs and Appropriations Committees in the past. We once again submit the Independent Budget for your careful consideration of our collective analysis of the funding needed to provide adequate benefits and services to our nation's veteran population.

During the past several years, we have seen a dramatic increase in the time it takes to adjudicate virtually all categories of veterans' claims. While we acknowledge that the increased delay in processing veterans' claims results, in part, from decisions of the United States Court of Veterans Appeals and from the downsizing of our military, we do believe, however, VA reacted slowly to the increased demands the Court placed upon it, and, at times, has had a knee jerk reaction to some court decisions.

The cornerstone of the Independent Budget funding recommendations is an entitlement's inseparability from its timely delivery. This principle should also be the basis for VA management's budgetary planning. Now is the time to link veterans' entitlements and their timely and accurate delivery. With proper equipment and sufficient numbers of trained employees, VA management has the talent and dedication to meet reasonable timeliness and accuracy standards cost-effectively.

Our budget analysis, contained in the Independent Budget, performs two main functions:

(1) it assesses the level of service provided to veterans; and

(2) it recommends authorizing and appropriations legislation to restore adequate benefits and services delivery to veterans.

VETERANS BENEFITS ADMINISTRATION (VBA)

- Congress should authorize funding of VBA's personnel costs for Veterans Services; Compensation, Pension and Education; and Vocational Rehabilitation and Counseling through transfers from mandatory spending entitlement accounts.

- VBA's budget should have a line item for training. For FY 1995, Congress should appropriate $8 million to fund VBA wide training.

- As VBA's workforce becomes more skilled and productive, management should re-examine and revise position descriptions, with a view toward increasing their grade levels.

Information Resources Management (IRM)

- We urge Congress to ensure that VBA moves forward with a realistic, comprehensive plan to provide much needed ADP improvements for VBA;

- We urge VA to give VBA both the authority and responsibility for all ADP systems activities that relate to program delivery, including equipment acquisition.

Compensation, Pension and Education (CP&E)

- Without the necessary equipment, training, and employees to adjudicate veterans' claims, little progress can be made to reduce the overwhelming backlog of claims; therefore, we recommend an increase in CP&E employment level to 4,700. This is 540 more employees than in the President's proposal.

Board of Veterans' Appeals (BVA)

- Based on current staffing levels, it is projected that BVA's response time would be more than 6.5 years at the end of FY 1995 -- which is totally unacceptable; therefore, BVA should be provided with adequate resources to accomplish its goals of providing quality, timely appellate decisions.

- An appropriation of $200,000 should support BVA's FY 1995 training activities.

- Congress should increase board members' salaries so that they have pay equity with administrative law judges.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions you may have.

STATEMENT OF

RUSSELL W. MANK, NATIONAL LEGISLATIVE DIRECTOR

PARALYZED VETERANS OF AMERICA

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

OF THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

CONCERNING THE IMPACT OF THE 1995 BUDGET

ON THE VETERANS BENEFITS ADMINISTRATION

February 23, 1994

Mr. Chairman and Members of the Subcommittee, Paralyzed Veterans of America (PVA) appreciates this opportunity to express our views concerning the impact of the 1995 budget of the Department of Veterans Affairs as it pertains to the Veterans Benefits Administration.

Mr. Chairman, each year PVA presents its testimony to this Committee urging it to increase the funds provided to the Veterans Benefits Administration (VBA). This year is no different. The Administration's appropriation request for fiscal year 1995 was $629.5 million. Obligations requested were $811.6 million. While this was an increase of $21.7 million over the fiscal year 1994 appropriation, it was $379.7 million less than the Independent Budget co-authors recommended for current services. VBA's average employment recommendation accompanying the request for FY 1995 was 13,203, a decrease of 622 FTEE from 1994. The Independent Budget recommended 15,754 FTEE for VBA in FY 1995 which highlights an even greater discrepancy between need and actual resources available. The adjudication process is slow today; with a reduction in employees, one would have to ask, "how much slower will it be tomorrow"?

PVA, however, does not believe that funding and staffing are the only crises in VBA. I would like to raise two points and ask the

Committee to consider them very, very carefully. Because, unless attention is paid to these two concerns, very soon the system you have carefully constructed to ensure veterans are treated compassionately and fairly in their claims for benefits will be destroyed and the principal of judicial review will be reduced to a weak and hollow symbol.

First, the Department of Veterans Affairs (VA) has always been considered nonadversarial in nature. It was not the intention of this Congress to change the system to an adversarial process with the advent of judicial review. Chairman Montgomery made it clear when the **Veterans Judicial Review Act** was passed that it was not meant to change the nonadversarial system of adjudication at the Regional Office and the Board of Veterans' Appeals. As proof of that intent, for example, Congress required that if any doubt exists in the resolution of an issue relevant to a claim for benefits, the veteran must be given the benefit of the doubt by the VA in resolving that issue.

The manner in which the VA has seen fit to treat the changes wrought by your enactment of the **Veterans Judicial Review Act** is creating an adversarial relationship between the veteran and the VA the likes of which has not been seen before. The creation of the adversarial process has led to barriers where no barriers stood before. What were at one time referred to as "requests" are now "motions." Suddenly, with the onset of Judicial Review, the Board of Veterans' Appeals has need for a "Bailiff" instead of a secretary or other less judicial sounding name.

The Court of Veterans Appeals opinions reflect VA's move to a more adversarial system. Of great concern, are the Court of Veterans Appeals decisions we see being issued on a daily basis. The Court of Veterans Appeals has found much lacking with the fact finding and rationale supporting the VA's denial of numerous benefit claims. The Court, reluctant to interpose itself in an area where

the VA is presumed to have the expertise, typically remands these cases to the VA for corrective action.

The Court, when it remands a case, admonishes VA that its remands are not merely for the purposes of rewriting the BVA opinion so that it will superficially comply with the "reasons or bases" requirement. Yet, all too often the VA does not use this opportunity to evenhandedly correct an error in the adjudication nor to assist the veteran in locating evidence to bolster his claim. Rather the VA takes the newly given opportunity to search for evidence that would support its denial of the claim. In short, the BVA uses the opportunity of the Court's remand to make its next denial "Court proof."

This attitude creating an adversarial process at the Board of Veterans' Appeals has taken the form of motions to the Court by counsel for the Secretary of Veterans Affairs which routinely petition the Court for remands to the BVA when errors in the record are apparent. The General Counsel's office requests remands even though they are not requested by the veteran and in some cases actively opposed by the veteran. Most unfortunately, this adversarial attitude is creeping into the Regional Offices when they first adjudicate the claims of veterans. Quite simply this attitude must be changed. If the VA itself does not move quickly to stem this growing attitude, this Committee may be asked to fashion a legislative guarantee of liberal treatment of the claims of veterans by establishing statutory presumptions in the veterans favor once the threshold of a plausible claim has been crossed by the veteran.

The second point I want to make is one we have made before, but demands repeating. If this Committee wants to reduce processing time for claims adjudication, it must take its focus off of the Board of Veterans' Appeals and place its attention squarely on the Regional Offices. Even more critical than change at the top of the administrative adjudication system, change at the bottom is crucial

to the veteran receiving a fair and swift adjudication of his or her claim. There are two reasons for this.

First, only about fifteen percent of the claims filed at the various Regional Offices are appealed to the Board of Veterans' Appeals. Consequently, for the vast majority of veterans, there will only be one look at their case. If the Regional Office is not properly equipped to thoroughly and properly adjudicate claims, the veteran suffers. VA also suffers when claims are not adjudicated properly.

Second, veterans who appeal their initial Regional Office decisions face further delay in the adjudication of their claims. It means that the case will come back to the Regional Office to be done over, adding unnecessary time to the adjudication of that claim and detracting from attention given to new claims. My grandfather would have put it this way: "If there is not time to do it right, when will there be time to do it over."

Over one-half of all cases sent to the Board of Veterans' Appeals were returned to the Regional Offices as deficient. This is an illustration of the poorly trained Regional Office staffs. This slip-shod work further illustrates the quality of adjudication. One wonders how competently the claims of the 95 percent of veterans who chose not to appeal their cases were processed.

If the Regional Offices have an adequate number of properly trained adjudicators with sufficient clerical and material support, the backlog will take care of itself. There must be an adequate number of trained personnel to deal with the growing backlog of cases pending at the Regional Offices. Shiny, new computers will not alone solve this problem.

The backlog of cases will continue to grow if there is insufficient personnel to process the claims. The VA plans call for new computers, procedures, and work methods. These new computers must

be learned. The new procedures and work methods must be established and implemented. In the meantime, the veteran remains left to await the determination of his benefit claim. For many veterans, those VA benefits mean the ability to survive at the minimum standard of living. It is the individual who can least afford to wait who must bear the burden of the system and the extraordinary wait for benefits.

The VA has produced a number of changes that it intends to carry out in the coming months. PVA salutes those changes. Many of them are long awaited. These changes should not, however, be regarded as a panacea to VA's woes.

Mr. Chairman, a television commercial touting a national law firm proclaims that "somewhere in these dusty law books, a great idea was lost." I am afraid that that statement is becoming all too true with regard to the adjudication of claims filed by veterans for benefits to which they are entitled. In May 1993, PVA and other veterans service organizations submitted a joint letter to the members of this Committee recommending a series of actions to improve VA's adjudication procedures. In addition to the joint letter, PVA on May 24, 1993, submitted a lengthy list of recommendations in a letter to this Committee. We appeared before you on November 17, 1993, on this same subject.

Our testimony on November 17 concerned H.R. 3269, **The Veterans Adjudication Procedures Act of 1993**. Most of the provisions in proposed H.R. 3269 incorporated the recommendations of the veterans service organizations. At that time, we expressed our appreciation for the Committee's responsiveness in addressing these pressing matters. We reiterate our heart-felt thanks. We also recognize that you have heard the same thoughts expressed in different words before. This is because the problem remains the same, the VA response remains the same, and the results of the VA response remains the same.

Our concerns in May 1993 and November 1993 remain unchanged. I referred earlier in testimony this morning about the backlog of cases which continues to grow. We must again repeat that there is an unconscionable delay in processing veterans' claims. This delay cannot be permitted to continue. Yet, VA says the delays will continue and estimates further increase in delays during the coming year.

Mr. Chairman, VA is asking for 75 year old veterans to wait three years and more while their claims can be adjudicated. Our PVA National Service Officers obtain aid and attendance benefits only to find out that the veteran died while waiting for help. Those statistics are people, Mr. Chairman, not numbers. Yet, there is no movement on VA's part to reduce the number of veterans waiting for their turn to be considered for benefits. VA intends to do nothing with respect to increasing personnel to process these claims.

PVA and other service organizations asked that VA change its work management standards. PVA said that VA must revise Regional Office and BVA work measurement standards to give credit only for "final" decisions. PVA's support for the recommendation was based on the belief that this would serve as a means to reward and reinforce complete, correct claims adjudication. A claim processed correctly the first time takes far less time to adjudicate than a claim subject to remands from the Board and the Court of Veterans Appeals to correct deficiencies.

The adoption of improved work rate standards need not be by legislation. PVA expressed the view that these standards should remain an internal management tool to determine productivity. Industry has adopted a number of work management measures over the years. VA's "Blue Ribbon Panel on Claims Processing" made recommendations that would permit a variety of work configurations to adjudicate claims. These changes may well result in new methods of determining worker productivity. Therefore, care must be taken

in implementing work rate standards for these new work configurations.

In November 1993, an annual report on the status of claims for benefits was recommended. All of the reports, prepared by VA, show a statistical portrait of delays which can only be described as abysmal. There are more than enough statisticians. That's not the problem. The problem is that there are not enough claim adjudicators and those that are there, are not adequately trained.

This Committee is concerned with the delay in the adjudication of claims filed by veterans for the benefits which they have earned by virtue of their service to their country, as is PVA. PVA has testified a number of times regarding the causes for this delay and what it believes will be solutions. I belabor this point today. It is too important to dismiss. The problem of delays is well spread on the record of hearings before this Committee. Yet, nothing is being done or planned to reduce the delays.

Mr. Chairman, PVA remains opposed to one recommendation made in the name of efficiency. The recommendation would permit the use of single member rating determinations of VA benefits. PVA in the past opposed the idea of single member rating "boards". Our opposition continues. Losses in quality brought about by the proposed change could occur. We do not believe that any significant increase in "efficiency" will occur.

The change to a one-member "board" would bring about a fundamental change in the entire nature of the VA's initial decision making process. Most VA claims involve questions of a medical nature. Claimants would lose the opportunity to have their cases reviewed by a physician. The veteran will thus lose the medical expertise desirable in resolving the claim. Also, the physician would not be available to make observations at hearings.

PVA does not believe that the change to one member rating decisions will increase significantly the efficiency of VA. VA now estimates that efficiency will increase only by 10% with the change from three to one member rating boards. We are not sure how this figure was determined. We have reservations as to the effect of this change on the quality of decision-making. We will continue to oppose this reduction until we are satisfied that the efficiencies achieved are not made by the sacrifice of quality.

PVA has no objection to one member Board of Veterans' Appeals decisions in certain circumstances. PVA has no objection to the use of one member decisions in the case of remand decisions and decisions which are fully allowed. PVA continues to support retention of three member panels at the Board of Veterans' Appeals in cases which are denied. PVA would note that the need for three member panels would occur in less than one-third of appeals to the Board. More than half of all cases are remanded by the Board and the remaining number are allowed.

PVA has no objection to the use of three member BVA reconsideration panel cases provided none of the original members are on the reconsideration panel. PVA is adamantly opposed to granting the Chairman of the Board of Veterans' Appeals membership on the Board.

Considered by this Committee at the time of the November 17, 1993, hearing was a draft bill "to make improvements in the VA adjudication process." The bill drew heavily from the VA "Blue Ribbon Panel on Claims Processing." PVA at that time recommended that the Secretary should be accorded a reasonable period of time to implement the proposals he adopted.

The VA is now moving to implement the recommendations of the "Blue Ribbon" panel. This Committee should provide the VA with the necessary assets to carry out those recommendations. Further, this Committee should not change the system of claims adjudication until

such time as the reforms at the Regional Office level have been given an adequate opportunity to succeed or fail.

Thank you, Mr. Chairman. That concludes my testimony today. I will be happy to answer any questions.

Non Commissioned Officers Association of the United States of America

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STATEMENT OF

LARRY D. RHEA

DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS

BEFORE THE

SUBCOMMITTEE ON COMPENSATION,

PENSION AND INSURANCE

COMMITTEE ON VETERANS AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

ON THE

FY 95 VETERANS ADMINISTRATION BUDGET

FOR THE

VETERANS BENEFITS ADMINISTRATION

AND

BOARD OF VETERANS APPEALS

FEBRUARY 23, 1994

Mr. Chairman and members of the Subcommittee, thank you for inviting the Non Commissioned Officers Association (NCOA) to appear and participate in this important hearing today. NCOA deeply appreciates the distinguished Chairman's continued emphasis and genuine concern to improve the quality of compensation and pension (C&P) decisions and to the timeliness with which original decisions and appeals thereof are rendered.

Many of NCOA's 160,000 members have experienced the frustrations associated with the entire process of filing, adjudication, and appeal of C&P claims. It is all too clear from the FY95 Veterans Administration (VA) Budget request that, if enacted as proposed, the situation will only worsen in FY95. The implications of this budget beyond FY95 are indeed grim. The VA is swiftly moving from days in measuring to years and months the time required to adjudicate and appeal a C&P claim. Unless this Committee intervenes to reverse an already deplorable situation, we should commence now to tell veterans that their C&P entitlement for service-connected injuries or illness are essentially hollow.

THE SITUATION

Prior to commenting on the VBA and BVA portions of the FY95 VA Budget Request, NCOA believes a quick summation of the current situation is in order.

Currently, some 535,000 (more than half a million) C&P claims are pending an original decision by the VA for compensation. Properly submitted original claims now take nearly 200 days for an initial decision. By VA's own estimates the number of C&P cases pending is projected to increase to nearly 900,000 by the end of 1995 and, concurrently, the time to process and render an original decision is projected to increase.

Currently, more than 40,000 cases are before the BVA and average response time is approaching 700 days. Without any changes, by the end of 1995 appellants can expect response time to exceed 1700 days.

THE IMPACTORS

Along with the situation described above, NCOA respectfully reminds the Subcommittee of the following impactors which must be considered in analyzing the FY95 VA Budget request:

> The C&P program will continue to experience an increase in caseload for veterans, primarily as a result of downsizing active military forces.

> As a factor of pre-discharge counseling (TAP & DTAP), the complexity of original claims has increased and will continue to become more complex as RO's are confronted with more disabilities per claim.

> The diseases and medical conditions for which initial claims are allowed is expanding.

> RO's, by mandate of the Court of Veterans Appeal (CVA), are required to address every contention and related issue in each claim against applicable regulations and CVA rulings.

> VA personnel costs are subjected to the discretionary spending restraints of OBRA 93.

THE BUDGET

NCOA believes that the FY95 VA Budget falls far short of that which is required. Not only is the budget insufficient to reverse the downward trend of the last several years, if enacted as proposed, the budget will only escalate the spiral.

The FY95 VA Budget seeks 4,163 full time employees (FTE) for the C&P and education portions of VBA, a reduction of 342 FTE from the 1994 estimate. This is not inconsequential when considered in context with the stated goal of the VA, this Subcommittee, and Veterans Service organizations - that of improving the accuracy and timeliness of claims processing and decisions. Certainly, many of the procedural changes previously addressed by this Subcommittee, along with the recommendations of the Blue Ribbon Panel, are needed and would help reverse the situation currently confronting the VA. But the bottom line is that a minimum

number of qualified employees are needed to do the work. NCOA does not believe that a larger, more complex workload in FY95 can be undertaken with fewer employees and expect to achieve anything more than dismal results.

It is noted that the budget provides for 449 FTE's for BVA in FY95, three more than provided in 1994. Optimistically assuming that BVA decisions in FY95 will average 60 per FTE (59.9 in FY93), it does not take a mathematical wizard to determine that virtually no reduction will be realized in the 40,000 cases before the Board. It is important to remember that decisions per FTE was 114.7 in FY90. The decline, in part, is a factor of the impactors noted above. Equally significant is the turnover experienced by the BVA and the 'train-up' time required for new staff to reach proficiency.

RECOMMENDATIONS

NCOA requests that this Subcommittee, as an authorizing committee, fund VBA's personnel costs for veterans' services, compensation, pension, education, and vocational rehabilitation and counseling through transfers from mandatory spending accounts.

NCOA requests that, as a minimum, the 342 FTE deleted by the FY95 budget be restored.

NCOA requests that the Subcommittee include a line item in VBA's budget for VBA-wide training. NCOA supports the Independent Budget of Veterans Organization (IBVO) estimates of $8 million for this purpose.

NCOA requests that the issue of salary disparity between the BVA and Administrative Law Judges (ALJ) be addressed and acted upon to close the gap. As long as the disparity exists, the decimation of BVA's most talented members will continue in favor of the more lucrative ALJ positions. NCOA supports the IBVO cost estimate of approximately $700,000 for FY95 for BVA-ALJ pay comparability.

NCOA recommends that the Subcommittee consider additional BVA FTE from 446 to a level of 632 as recommended by the IBVO.

NCOA recommends that the Subcommittee seek immediate enactment of the one-member BVA decision authority. Although acted upon as a part of a larger bill by the House during the First Session, NCOA asks that the Subcommittee consider a separate initiative to expedite this legislative change that is now desperately needed. VA estimates that the one-member authority could produce a potential 25% increase in productivity.

CONCLUSION

NCOA readily recognizes and acknowledges that there are no quick and easy solutions to a situation that has been allowed to digress to its present day state. One thing is abundantly clear, unless the trends of the past are reversed, and done so now with resolve, the future will not only be more of the same but increasingly worse.

The Association appreciates fully your earnest consideration of the comments and recommendations expressed herein.

Thank you.

STATEMENT OF CARROLL WILLIAMS, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
before the
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

February 23, 1994

Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates the opportunity to share its views and concerns with you regarding the proposed VA budget for FY 1995 in light of increasing time required to process cases at both the regional offices and the Board of Veterans Appeals.

We understand that there are many important and diverse issues such as health care reform and deficit reduction facing the Congress in the remaining months of this legislative year. However, we are firmly convinced that debate on these subjects must not be allowed to overshadow the need to address the crisis which exists in VA's claims adjudication and appeals process. In the current fiscal year, the backlog of pending claims in the regional offices is projected to reach almost three quarters of a million. The Department of Veterans Affairs clearly is facing the most serious operational crisis in its history.

This situation, however, did not just develop overnight. Over the past twelve years, the American Legion has repeatedly spoken to this and other Congressional Committees about the consequences of VA's repeated unrealistic budget requests and inadequate staffing levels. Over the past four years, in particular, we have seen a steady deterioration in the quality and timeliness of the service being provided veterans due to persistent cutbacks in personnel in the regional offices and the slow pace of the implementation of new ADP systems and programs. It is of no comfort to veterans that recent statements by Secretary Brown and other VA officials finally acknowledge the seriousness of the backlog problem which he projects will reach 700,000 cases this year and, if nothing changes, will be 900,000 by the end of FY 1995. The sheer size of these numbers are indeed shocking, but what is particularly shocking and frightening is the fact that each of these cases is a disabled veteran or a widow or dependent who has filed a claim and is now waiting for a decision.

The current backlog is the most important problem facing VA as a whole and the Veterans Benefits Administration in particular. VA's basic mission is service to veterans. However, the increasing delays in providing that service has resulted in a lingering financial crisis for hundreds of thousands of veterans and their families who are left waiting months and months for needed compensation, pension, and education assistance benefits. How are they supposed to get along during this period which can easily stretch to six months or longer? We are not aware that other Federal agencies responsible for programs of financial assistance and income support for the disabled and needy have experienced long-term severe reductions in personnel and resources similar to that imposed on VA. It is no wonder that many veterans are justifiably outraged that Congress and VA have not done more to avert the current crisis.

The problems affecting the operations of the regional offices and the Board of Appeals demand urgent congressional attention and action. We, therefore, wish to commend you, Mr. Chairman, for scheduling this oversight hearing early in this final session of the 103rd Congress and commend you for your continuing personal efforts to try and find solutions to the many long-standing problems confronting the regional offices and the Board of Veterans Appeals.

Since 1989, VA's own statistics have clearly shown a marked decline in the number of claims adjudicated versus the number of claims filed with corresponding response times for all types of claims becoming longer and longer. Yet each year's budget imposed further staffing cuts on the regional offices. ADP improvements and other management initiatives

never offset the loss of personnel. A high percentage of trainees in the adjudication division also adversely affected production. In addition to these factors, workloads across the country became heavier due to an increasing number of new and reopened claims being filed, more complex medical and legal issues, new benefit legislation enacted, additional due process requirements imposed by Congress, and the Court of Veterans Appeals' dramatic effect on the claims adjudication and appeals process.

The proposed funding level for FY 1995 will, in our view, do little to stem the continued deterioration in the level of service being provided veterans and their families. The increase in appropriations for the various benefit programs reflects a projected increase in the overall caseload as well as a higher benefit payment level, including a proposal for a three (3) percent cost-of-living adjustment. However, under General Operating Expenses, staffing in the Veterans Benefits Administration (VBA) will be reduced by 622 FTE with 342 FTE scheduled to be cut in regional office adjudication personnel. This will mean there will be only 4,505 FTE to handle not only an influx of thousands of new and reopened compensation, pension, DIC, and education claims, but also to continue processing the hundreds of thousands of cases already filed and waiting.

One program which will again be especially hard hit by this staffing cut is Vocational Rehabilitation and Counseling (VR&C). This program provides vocational counseling and assistance to disabled veterans including employment services as well as education counseling to veterans, survivors, active duty and reservists through the DTAP programs and also through the Service Members Occupational Conversion and Training Act (P.L. 102-484). In FY 1995, staffing will be reduced by 29 FTE, despite the projected substantial increases in the workload in all types of services provided under the vocational rehabilitation program.

The total number of veterans in the evaluation and planning phase will increase by about 2,200. Those receiving rehabilitation services will increase by some 4,300. Those receiving employment services will increase by almost 400. The number of interrupted cases will go up by about 700 and the number of those receiving vocational/education counseling will go up by some 2,000. The net effect of the increased projected caseload and loss of personnel is reflected in the substantial rise in number of days an veteran must wait before receiving an appointment to discuss their application for training or services. It will have gone from 74 days in 1992 to 81 days in this fiscal year and is expected to be up to 90 days in 1995. The goal is a waiting time of only 30 days. The average caseload of veterans in a course of vocational training or education has jumped from 229 in 1992 to 230 in 1993 and will be 286 per counsel in 1995. This is an impossible and totally unacceptable situation both for the VR&C staff and the veterans they are trying to help. Furthermore, once having completed a vocational rehabilitation program or where the veteran needs employment assistance, the veteran can expect to wait 290 days which is more than 9.5 months.

We believe this is a totally unacceptable situation for both for the VR&C staff and the veterans they are trying to assist. Given the further proposed reduction in staff and increasing delays, it will be impossible for the VR&C Service to provide disabled veterans the type of assistance and counseling and case management they need and are entitled to in an effective and timely manner. Of equal concern is the fact that taxpayers money may be wasted if veterans are not placed in viable vocational or educational programs. In addition, there are insufficient resources currently to assist them find suitable employment. Our disabled veterans deserve far better.

Compensation claims make up over three quarters of the 3.2 million claims which are expected to be filed this year. Original compensation cases are now taking an average of six months to complete. In FY 1995, this is expected to increase to seven and a half months, even though the VA standard for measuring performance continues to be only 106 days. Processing times for all other types of claims have also increased significantly with pension and DIC claims taking over four months on average to complete which far exceeds the respective standard.

Regional office processing times continue to be adversely affected by frequent changes in adjudication procedures and regulations necessitated

by decisions of the Court of Veterans Appeals. At the same time as the regional offices are trying assimilate and implement the various changes, they must also cope with the additional workload associated with the thousands of cases remanded by the Board of Veterans Appeals for further development and readjudication. New decisions by the Court made subsequent to the certification of the appeal on the case as well as the lack of essential development and poor quality decisions are the underlying reasons for the increasing number of remanded cases.

In FY 1993, an average of 44% of the 26,400 cases decided by the BVA had to be returned to the regional offices for additional required adjudication. In the first quarter of FY 1994, the BVA found it necessary to remand over 68.7% or 2215 cases back to the regional offices.

Current and planned program changes, new management initiatives, and continued ADP improvements may eventually help VBA reverse the prolonged decline in timeliness. However, in reviewing the personnel cuts slated for FY 1995 together with insufficient resources in other key areas, such as support for various ADP and management improvements, strongly suggests that the Administration has essentially given up trying to do anything substantive in this budget year to slow or stop the rising backlog. In our opinion, it will be impossible for VBA to take the action that will be necessary to begin the slow process of bringing processing times down to some reasonable and fair level beginning in FY 1995.

Despite the seriousness of the present situation, we believe in looking back that 1993 represented something of a watershed in terms of a positive change in VA's attitude and the prospects for real progress in addressing the backlog crisis.

This Subcommittee, under your leadership, Mr. Chairman, has over the past several years focused attention on the continuing problems confronting the regional offices, the Board of Veterans Appeals, and those seeking VA benefits. We believe your efforts served as the catalyst for the beginning of a constructive dialogue between the veterans service organizations and VA officials on needed changes in the claims adjudication and appeals process. VA has publicly acknowledged that the growing backlog of pending claims in the regional offices and more recently at the Board constitutes a real crisis. The gravity of the situation has energized the Secretary and his staff, unlike previous administrations, to look at basic changes in the way the regional offices have traditionally gone about their work of adjudicating claims. Since the hearing held in November 1993, the Secretary has released the report of the VA's Blue Ribbon Panel on Claims Processing which contains some 43 recommendations involving sweeping organizational, operation, administrative, and regulatory changes. We have been advised that some of these recommendations are already in the process of being implemented and that a formal action plan will soon be completed and released detailing the process by which VBA will implement the many changes which will be required over the next 12-24 months.

The recommendations of the Blue Ribbon Panel on Claims Processing were developed under the guidelines that the proposed changes could be accomplished without additional personnel or an increase in budget. If VA is going to follow through on its promise of improved service to veterans, we believe it is extremely important that all of these recommendations be fully implemented within the projected time-frame. If it is demonstrated that some additional funding is needed to provide for the cost of expanded training of adjudication personnel or construction to physically reconfigure rating activities at some stations, or reclassify certain personnel positions, Congress should be ready and willing to ensure that the Secretary's action plan is carried out. We are concerned that this long- overdue program of changes may be delayed or otherwise jeopardized by insufficient funding and staffing cuts called for in the FY 1995 budget request.

With respect to the operations of the Board of Veterans Appeals, despite staffing increases over the past three years, the time required to decide a case has grown dramatically. Currently, there are over 40,300 cases pending at the Board. In this fiscal year, the number of appeals decided is expected to be only about 13,000. This is down significantly from FY 1993 when the Board rendered some 33,000 decisions. At the time the FY

1994 budget was developed, the projected response time for FY 1994 was 733 days. However, based on data from the first quarter of FY 1994, the revised estimated response time will increase to approximately 1,683 days which is 4 years 8 months. In FY 1995, if nothing changes, the response time will be 6 years 7 months or 2,397 days.

One of the principal factors contributing to the dramatic increase in the Board's response time has been impact of the precedent decisions of the Court of Veterans Appeals on VA's basic claims adjudication rules, regulations, and procedures. The Court's findings have necessitated fundamental changes in the Board's decision-making process and extensive modification of the format and content of all its decisions. As a direct result the Board is completing fewer and fewer decisions over the last three years.

The effect of the Court can also be seen in the sharp number of cases being remanded back to the regional offices for additional action. In the first quarter of FY 1994, 68.7 percent (2215 cases) were remanded back to the regional offices for further development and readjudication. The rising percentage of remands represents an additional workload for the regional offices.

While it is true that the decisions of the Court of Veterans Appeals are having a profound effect on the claims adjudication and appeals process, we do not believe the Court is the real cause of the VA's current problem. The Court's decisions have been directed toward remedying long-standing inconsistencies and deficiencies in VA's rules, regulations, and policies governing the way claims are adjudicated and appeals decided. Both the Board and the regional offices have been faced with the difficult painful, and time-consuming task of incorporating the required changes and new standards into their existing decision-making process. As the backlog has grown, so too has the concern for certain legislative changes to improve the adjudication and appeals process in other areas.

Of the various legislative proposals discussed at the hearing before this Subcommittee last October, we believe this Congress should give priority to the timely enactment of legislation authorizing single signature Board decisions. We testified in support of proposed legislation in October of last year. According to revised estimates by the Board, the resulting increased productivity along with the implementation of other initiatives will only enable the Board to reduce its response time in FY 1995 from 2,397 to days to 1,843 days. This is still far too long by any standard.

In conclusion, The American Legion believes that this nationwide crisis within the VA claims adjudication and appeals process demands immediate and effective action by this Congress.

Mr. Chairman, that concludes our statement.

SERVING
WITH
PRIDE

STATEMENT OF

MICHAEL F. BRINCK
AMVETS NATIONAL LEGISLATIVE DIRECTOR

before the

SUBCOMMITTEE ON COMPENSATION & PENSION
of the
COMMITTEE ON VETERANS' AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

on
The Budgetary Needs of the
Veterans Benefits Administration
(specifically the Compensation
and Pension service and
the Board of Veterans' Appeals)

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Wednesday, February 23, 1994
Room 334
Cannon House Office Building

Mr. Chairman, AMVETS is grateful to you and the members of the subcommittee for holding this hearing to consider the budgetary needs of the Veterans Benefits Administration (VBA), with particular attention to the Compensation and Pension (C&P) Service and the Board of Veterans' Appeals (BVA).

Not much has changed since we came before you a few months ago, except for the increase in VA the claims backlog, the further degradation in timeliness of claims processing, and a new administration's budget that continues VA underfunding and understaffing.

When we look at the Department of Veterans' Affairs (VA) budget as a whole, we are again disheartened by the apparent tunnel vision exhibited in the VA appropriations process. The FY '95 Independent Budget (IB), on the other hand, is a no-nonsense, honest assessment of what it will take for VA to carry on its wide-ranging mission. The President's budget request of $37.1 billion, by undercutting the IB by $4 billion, sends a message to veterans that they are not very high on the list of Administration budget priorities.

VA has a wide variety of programs and services designed to meet the needs of our veterans, and no one program should have to compete with others within VA for funding. Those designating VA accounts for underfunding obviously fail to acknowledge the many ways VA must serve veterans in general, and particularly disabled veterans, homeless veterans, and the thousands of veterans and their families being displaced by the defense drawdown. Cutting the VA health care budget by $2 billion below current levels of service is unacceptable.

In light of the steadily climbing adjudication case backlog in VA regional offices and the rapidly increasing average time for BVA to render decisions on cases, the Blue Ribbon Panel analyzed the system and zeroed in on the critical nodes in VA adjudication. Their recommendations, including rating board automation, bar code claim file tracking, and on-line reference materials, will begin to show positive results once the VA employees overcome the learning curve. But these things take money and time; money that is not in the administration's latest VA budget request, and time that will only see a worsening of the problem.

Remand rates have sky-rocketed because in many cases regional offices fail to follow through on their responsibilities of initial claim development. The Blue Ribbon Panel found that roughly 40% of all claims coming to BVA were not final decisions but rather claims requiring additional development. Establishing a team concept at regional offices for development and rating of initial claims and changing the work rate standards to award work credit only after a final decision is reached on a claim will motivate the entire spectrum of VA employees to work together and look out for each other. At regional offices everyone from file clerks to adjudicators will be encouraged to "get it right the first time." With new work rate standards, individual regional office employees will no longer be pressured by the "hot potato" effect of what is now an assemply-line quota system.

As the number of backlogged cases in BVA increase, workloads also increase. With no additional FTEE, the backlog under current conditions can only be expected to worsen.

The implementation of single-member ratings with oversight of the BVA chairman will streamline the process of decision making and allow for quicker processing. Another cause for the increased average handling time of claims in BVA is the fact that delinquent development is performed there. By identifying such faults and directing the development to be done at regional offices, processing time of BVA claims would be significantly reduced.

A lot can happen to a veteran in six years it takes BVA to reach a decision on a pending claim. At the very least the claimed condition could deteriorate. Aside from that, secondary conditions could become manifest. Worst of all, the veteran may die before receiving a final decision on his/her disability claim. There is no justification for such injustice that in many cases could have been avoided altogether by proper initial development.

Once back at the office of original jurisdiction, the regional office, remands must be given priority treatment over the waiting list of original claims. To do otherwise is unfair those veterans whose remanded claims will essentially start from the very beginning again.

The key to much of the envisioned improvements in VA adjudication is training of VA employees at regional offices. The high rate of employee turnover and the crunch to continue cranking out decisions is a dangerous combination that has had disastrous results. The mechanism for much of the training is already in place. The National Veterans Training Instutite (NVTI) is an asset whose time has come. Therefore, it is incumbent on Congress to ensure that it remains fully staffed and funded to provide VA employees the quality of education and training that will ensure like service to veterans. And VA must also be able to develop and conduct training at regional offices, especially to coincide with anticipated automation and or personnel functional shifts. At the very least a training package devoted specifically to claims development to include lesson plans and training manuals is a must if we expect to turn regional office claims development around.

The Blue Ribbon Panel also recommended rating "help teams" to come into regional offices with the greatest backlogs. These help teams would provide short-term relief to beleaguered regional offices. To further streamline regional office claims processing procedures the panel also recommended using automated resources to eliminate a significant amount of paperwork generated throughout the adjudication process.

While the administration acknowledged the panel's recommendations and indicated interest in the concept of automated modernization of veterans claims management and adjudication, the President's budget request for VBA does not follow through. Furthermore, reduction in FTEE will exacerbate an already overburdened VA adjudication staff.

The current initial claims backlog is approaching 700,000. According to VA statistics, the average time for a BVA decision has jumped from an average of six months in 1990 to nearly six years now. In fiscal terms that means the average cost to process a claim has nearly tripled, up from $421 in 1990 to an estimated $1,127 in FY '94. It has become quite clear over the past decade that "business as usual" is not getting the job done.

Once legislation is enacted to implement the Blue Ribbon Panel's recommendations, we will no doubt see an increase in the quantity of claims being processed, as well as a vastly improved turn-around time. But more importantly, both VA employees and the veterans they serve will enjoy a level of quality never before possible in claims adjudication.

I stress the words "never before possible" because unless VA receives funding dedicated to these essential upgrades, that anticipated level of quality won't "ever" be possible.

AMVETS has participated, along with the Disabled American Veterans, the Paralyzed Veterans of America and the Veterans of Foreign Wars, in the development and publication of this, the eighth, submission of the IB. We believe the figures reflected in the IB for VBA are a reasonable approach to funding VA's mission.

The IB has repeatedly demonstrated quite clearly the futility of "robbing Peter to pay Paul." The challenge to Congress is to break with the tradition of marginal tinkering and fund VA at a level that will allow it to do its job.

Granted, the president's VBA budget request contains an overall increase of $237 million, reflecting modest increases in C&P and readjustment benefits programs. But veterans loan guaranty programs will suffer substantial cuts. This is particularly disturbing, as more and more veterans are being forced out of the military as a consequence of Department of Defense base closures and reductions in force. As thousands of veterans and their families return to civilian life, probably their first and foremost concern will be finding a home, and their chances of becoming first-time buyers is being diminished.

Agreeably, there are alternatives to owning a home, including renting as well as other non-VA loan programs. It is extremely difficult for AMVETS to accept the fact that each year VA is forced to condemn certain programs to promote others. Arbitrary reductions in VA loan programs will do nothing to gain the confidence and peace of mind of veterans who will be counting on VA to help them buy a home.

Mr. Chairman, sacrifice is a term all veterans know and understand. It is something they do willingly with pride, knowing they contribute to the security of our nation. Their honorable service in our armed forces is their way of keeping the promise they make to willingly go in harms way. For their sacrifices we, as a grateful nation, have also promised to provide benefits unique to their veteran status. As the final tabulations are made on the FY '95 VA budget, let us all remember that veterans have never failed to keep their promise to serve our country. Realistic funding for the full scope of VA programs is the essence of America's promise to them.

As a member of the IB team, AMVETS asks that the IB be taken seriously this time and that appropriations for VA in FY '95 reflect accordingly. As always, we look forward to working with you and your staff to ensure that VA continues to meet the needs of America's veterans. Mr. Chairman, thank you again for allowing AMVETS to testify today. This concludes my statement.

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STATEMENT OF

VIETNAM VETERANS OF AMERICA

Submitted by

Paul S. Egan
Executive Director

To the
House
Veterans Affairs
Committee

Subcommittee on
Compensation and Pension

on the

1995 Budget
for the
Veterans Benefits Administration

February 23, 1993

DISCUSSION

Mr. Chairman and members of the Subcommittee, Vietnam Veterans of America (VVA) appreciates the opportunity to present its views on the proposed 1995 budget for the Veterans Benefits Administration (VBA) of the Department of Veterans Affairs (VA), with particular emphasis on the adjudication divisions of the Compensation and Pension Service.

The Current Mess at VBA

Nobody has spoken out more strongly than VVA on the need for major change in VBA, where an institutional bias against granting veterans' claims has created a 600,000 appeals backlog that is growing rather than shrinking. Throughout the past year we have spoken in favor of increasing personnel and upgrading training in the adjudication divisions as one way of attacking this monster, which puts as much as three years between individual veterans and the resolution of their claims for compensation and pension. We have, like our fellow veterans service organizations (VSOs), pointed to the deepening problem of burnout among the seasoned adjudicators.

The prospect of staffing cuts -- rather than sorely needed increases -- strikes VVA as unlikely to ease these problems. The proposed elimination of 342 FTEE in Compensation and Pension would be a serious blow to an organization that is struggling to keep its feet.

What these numbers do not express is how great an outrage it is to propose stretching out this gap in service delivery that is already so grotesque. Veterans do not apply for compensation or pension because they are bored. Most of them need the money very badly because their service-related disabilities keep them from holding fully productive jobs. They and their families depend on these payments which the VBA is so reluctant to grant. They appeal the denial of their

claims not because the creation of the Court of Veterans Appeals gives them a useful way to get back at the VA for turning down their claims, but because they must press on with claims they know to be well-founded, even if the wait is as long as three years -- and three years of waiting for a check from the VA can be very long.

The Balanced Budget Amendment

We might point out here VVA's vehement opposition to the so-called Balanced Budget Amendment, which will do such unrestricted damage to the whole VA system, and to VBA in particular. This irresponsible device, which will finance the governmental operations of the United States as if it were a mom-and-pop store, frankly gives up on the responsibility of Congress and the Executive branch to arrive at real figures, slashing as wildly as a pulp novel barbarian to bring down hordes of unruly numbers.

We estimate that the enactment of such a radical proposal would extend the delay time for adjudication of cases in appeal to anywhere from five to ten years. This would place the burden of balancing the federal budget on the backs of disabled veterans. The proposed budget is tough enough; such an amendment would be destructive beyond our comprehension.

What Will the Proposed Budget Do?

The summary prepared by the staff of the House Committee on Veterans Affairs gives a worst case -- and likely -- scenario for the effects of the budget cuts the Administration proposes for VBA. We are not surprised to see the prediction that "Unless a significant number of FTEE are provided, or drastic action is taken to modify existing procedures, timeliness will only deteriorate further." Adding FTEE has always been the favored solution, though it is one that is oblivious to budget trends in the past several years.

VVA has championed the second approach -- taking drastic action to modify existing procedures that have clearly been models for mismanagement. Again and again, in step with our fellow veterans service organizations (VSOs), we have urged administrative reforms so obvious they receive united acclaim. Starting with the rewriting of work rules that encourage case-churning rather than case resolution, these reforms aim at resolving claims before they are denied and appealed. Handling claims correctly from the outset rather than bouncing them back and forth through Regional Offices, the Board of Veterans Appeals and the Court of Veterans Appeals would serve both the veteran and the taxpayer well, but it is a solution that seems to find little support in this room or at VBA.

As we testified in October, the BVA case backlog problem has two aspects: one is the staggering and growing load of unresolved cases being shuffled back and forth between BVA and the ROs, and the second is that the quality of the work at the ROs is inadequate. The latter is the source of the former. Stop denying valid claims, and the case backlog will stop growing. That was the central thrust of the VSO recommendations.

Currently, time requirements reward quick-and-dirty denials, and punish thorough casework. The VSOs called for a revision of work measurement standards to give credit only for a "final" decision in both appealed and non-appealed cases, with no work credit taken until the appellate period has expired. This will give adjudicators an interest in correct decisions, which will reduce the backlog. The 53 percent remand rate speaks eloquently to this contention.

Every attempt this subcommittee has made to write legislation to resolve the case backlog has ignored the idea of working right to solve the problem. BVA can never find time to handle the cases right the first time, but it can always ask for more FTEE to handle them right somewhere down the road.

This budget serves clear notice that there will not be either an increase in

FTEE or even the same level of FTEE with which to piddle away at resolving the backlog while fresh appeals are added constantly. This budget will either make the backlog bigger and longer than ever, or it will force upon a reluctant VBA the notion of doing things very differently. We urge this subcommittee not to wring its hands over these numbers, but to listen at long last to the recommendations that the experienced VSOs keep making. Straighten out this mess at the Regional Offices. Stop turning down valid claims. Do this and the backlog will decline.

Mr. Chairman, this concludes our testimony.

RESPONSES OF THE HONORABLE CHARLES L. CRAGIN
CHAIRMAN, BOARD OF VETERANS APPEALS
TO QUESTIONS FROM
THE HONORABLE LANE EVANS

QUESTION ONE

The *Manio* decision regarding new and material evidence stands for the proposition that when a veteran reopens his claim with new and material evidence, the Board of Veterans Appeals (BVA) must evaluate the merits of the claim in light of all the evidence both new and old. The CVA stated that "A contrary rule would inevitably lead to absurd results. A veteran who was clearly entitled to disability benefits could be denied those benefits solely because he presented his evidence in the course of two proceedings rather than one." *Manio,* 1 Vet.App. at 145.

Do you believe that it would be fair to deny claims of veterans clearly entitled to benefits because they needed two opportunities to submit supporting evidence?

Response:

It has never been the Department's policy, nor, as far as we know, the law, that claims for veterans benefits can be denied because the claimant needed two opportunities to submit supporting evidence.

I cited *Manio* in my testimony in support of the proposition that Court decisions require application of more formalistic legal analysis and adherence to procedure. I believe that enhanced adherence to procedure is one of the major benefits of the Veterans' Judicial Review Act (VJRA). Nevertheless, the enhancement can slow processing time.

In *Manio,* the error the Court found in the Board's decision of this reopened claim was the Board's statement that "the evidence reported in the prior Board decision will be briefly discussed for clarification purposes only." The Court read this statement to mean that the Board had not considered the evidence submitted by appellant in the course of prior appeals. *Manio,* 1 Vet. App. at 146.

As a result of *Manio,* the Board now articulates more clearly the fact that, in reopened cases, decisions are based on the entire record, as required by law and VA regulation. 38 U.S.C. §§ 5108, 7104(a); 38 C.F.R. § 19.7(a). Because that articulation does not, in my view, change the *practice* at the Board, I characterized it as a "formalistic" requirement.

QUESTION TWO

Essentially under 38 U.S.C. §§ 5104(b) and 7104(d)(1), the VA regional offices and the BVA are required to explain to veterans why their claims were denied. The CVA has also held that the VA is obligated to explain to veterans why their claims were not well grounded. *Murphy v. Derwinski,* 1 Vet.App. 78, 81 (1990). In *Grottveit,* a case you cited as having a negative impact on the claims adjudication process, the CVA determined that the VA regional office and the BVA erroneously denied a claim on the merits when the claim should have been denied as not well grounded. In this case, the CVA nullified both the regional office and BVA decisions so that the veteran could begin on a clean slate rather than have to submit new and material evidence to reopen this claim. The CVA held that in some instances a medical opinion is necessary to make a claim well grounded. *Grottveit,* 5 Vet.App. at 93.

Do you believe that it would be fair to misinform a veteran as to why his claim was denied, have the veteran pursue this claim for many years, and then make the veteran start over again? Doesn't this veteran have the right to know the true reason why his claim was denied during the original adjudication of his claim? Isn't it true that some veterans would be able to submit supportive medical opinions that would make their claims well grounded if they were informed as to why the claim was not well grounded in the first place? Isn't it

also true that some of these veterans would eventually obtain benefits from the date of their original claim if they submitted notices of disagreement with supporting medical opinions that required the VA to assist them in the development of their claims?

Response:

I trust that it goes without saying that I do not believe that it would be fair to misinform a veteran as to why his claim was denied. I must respectfully add that there is not the slightest hint in my testimony--or anywhere else, for that matter--that I would countenance such a proposition.

In *Grottveit*, the Board treated the veteran's claim as well grounded, denied the claim and told the veteran that "[t]here is simply no medical evidence of record that the fracture of the cervical spine sustained by the veteran with resulting quadriplegia was due to his service-connected rheumatoid arthritis." *Grottveit v. Brown*, 5 Vet.App. 91, 92 (1993) (citing *Lowell A. Grottveit*, BVA 91-27803, at 3 (Sept. 19, 1991)). The Court held the claim should have been denied because it was not well grounded since there was no medical evidence of record that the fracture of the cervical spine sustained by the veteran with resulting quadriplegia was due to his service-connected rheumatoid arthritis.

There was no claim in *Grottveit* that the veteran was denied the right to know the "true reason" for the denial. The Board told the veteran that his claim was well-grounded, but that he failed to supply necessary medical evidence to support it. The Court held that, because the veteran failed to supply necessary medical evidence, his claim was not well grounded. The Court, as is its right, substituted its judgment for the Board's on an issue of law. That does not mean that the Board's decision was "untrue"--it means it was legally incorrect. In the context of your question, there is a large difference between the two.

With regard to your scenario of the reactions of the veteran-claimant, I would submit that there is no difference between denying a claim for missing evidence and denying a claim as not well grounded because of missing evidence. In each case, the veteran is told what he or she needs to pursue a claim successfully.

While your "effective date" question seems to be directed more toward the agency of original jurisdiction than toward the Board, there would appear to be no difference between denial of claim as not well grounded because of missing evidence and denial of a well-grounded claim because of missing evidence--assuming the regional office properly articulated its reasons for denial--since in each case the veteran would know to submit the missing evidence with his or her notice of disagreement.

QUESTION THREE

Later in your testimony you also refer to *Grivois v. Brown*, No. 92-289 (U.S. Vet.App. Jan. 5, 1994), another case dealing with an erroneous denial on the merits when the claim should have originally been denied as not well grounded. You indicate that non-attorney VA adjudicators have trouble deciding whether claims are well grounded.

Do you believe that VA rating board members and other VA adjudicators do not have the expertise to recognize when a plausible, well grounded claim has been filed? Do you believe that VA adjudicators cannot recognize when lay statements regarding factual matters are sufficient to make a claim plausible as opposed to a lay medical theory unsupported by medical opinion?

Response:

As I stated in my testimony, I believe the question of whether a claim is well-grounded has become much more complex.

The Board undertook a careful, longitudinal analysis of the pertinent caselaw in order to provide guidance to its Members and staff counsel on how to apply that law to the practicalities of deciding veterans' claims. That study revealed that, with only a few narrow exceptions, the Court has never set forth a "bright line" for determining what is and what is not a "well-grounded" claim. For the most part, the Court's determination of

whether a claim is "well-grounded," i.e., "plausible," turns on a case by case analysis of the particular factual situation presented.

I believe that most cases presented to regional office personnel do not present much problem with respect to the issue of whether the claim is well-grounded. Nevertheless, I also believe that, at the margins, it will become more difficult and time consuming for these individuals to make the correct determination.

QUESTION FOUR

In *Schafrath,* the CVA held that when a veteran complains about pain caused by a service-connected condition the VA is obligated to follow its own rules (38 C.F.R. § 4.40) and consider the impact of the pain when assigning a disability evaluation. The CVA held that the VA is not free to ignore its own regulations. Schafrath, 1 Vet.App. at 592.

Do you believe that the VA should be free to ignore its own regulations?

Response: No. That was not, however, the point in *Schafrath.*

In *Schafrath*, the Court ruled that when a regulation is made *potentially* applicable through assertions and issues raised in the record--even though neither party mentions the regulation--the Board's failure to consider the regulation is error. In that case, the Board did not consider 38 C.F.R. § 4.40; the Court, substituting its judgment as is its right, ruled that the regulation should have been considered, and so reversed.

I cited *Schafrath* to explain, in part, why Board decisions take longer. I did not mean to suggest that the Board should do anything other than continue to follow VA regulations.

QUESTION FIVE

The *Bernard* decision held that when the BVA considers an issue not addressed by the regional office, the BVA "must consider whether the claimant has been given adequate notice of the need to submit evidence or argument on that question and an opportunity to submit such evidence and argument and to address that question at a hearing, and, if not, whether the claimant has been prejudiced thereby." *Bernard,* 4 Vet.App. at 394.

Do you think it is fair for the BVA to deny a benefit not considered by the regional office without giving the veteran an opportunity to present evidence and argument on this new issue?

Response: No. But that is not what the *Bernard* case is about.

In *Bernard*, the veteran attempted to reopen his claim for service connection of multiple sclerosis by submitting various items of medical evidence. The regional office denied the claim, ruling in effect that the evidence was not new and material because it did not establish the onset of the condition either in service or to a compensable degree within seven years of discharge. On appeal, the Board ruled that the evidence was new and material, but that the evidence did not establish a new factual basis warranting a grant of service connection. On appeal from that ruling, the Court held, among other things, that (1) the evidence was new and material, (2) the issues of "new and material evidence" and of service connection were separate, and (3) the Board was bound by a General Counsel opinion--issued subsequent to the Board decision--which would permit the Board to rule on the issue of service connection in such a case, but only after a determination of whether or not the claimant had been given adequate notice of the need to present evidence and argument on the merits of his claim for service connection and an adequate opportunity to appear at a hearing and to present evidence and argument with respect to that question, and, if not, whether the claimant had been prejudiced thereby.

The Board has always been bound by opinions of the General Counsel. In *Bernard*, the Court ruled that the Board was bound by General Counsel opinions which did not exist at the time the decision was rendered.

QUESTION SIX

In *Gilbert*, the CVA required the VA to build a record that was adequate for judicial review. The CVA stated "A bare conclusionary statement, without both supporting analysis and explanation, is neither helpful to the veteran, nor 'clear enough to permit effective judicial review,' nor in compliance with statutory requirements." *Gilbert*, 1 Vet.App. at 57, *quoting International Longshoremen's Assoc. v. National Mediation Board*, 870 F.2d 733, 735 (D.C. Cir 1989).

Assuming that you agree that an appellate court such as the CVA needs an adequate record for effective judicial review, is it your opinion that judicial review of VA benefit determinations is unworkable because the BVA has to spend time preparing an adequate record for the CVA to review?

Response: Judicial review has been good for veterans and for VA. I do not believe--and have never expressed the opinion--that "judicial review of VA benefit determinations is unworkable."

QUESTION SEVEN

In *Thurber*, the CVA held that the BVA must provide a claimant with reasonable notice of new evidence developed by the BVA and a reasonable opportunity for the claimant to respond to this evidence. *Thurber*, 5 Vet.App. at 126.

Do you believe that it is fair for the BVA to deny a claim based on negative evidence that the veteran has never had an opportunity to review and was not discussed or even mentioned in the statement of the case?

Response: As Judge Kramer pointed out in *Thurber*, at the time of the Board's decision in that case, it was following the Court's earlier directives that, if the Board relied on a portion of a medical treatise in arriving at its decision, the Board must quote the relevant portions upon which it relies, in sufficient length so that the context may be determined. *Thurber v. Brown*, 5 Vet.App. 119, 122 (1993). The Board is complying with the holding in *Thurber*.

QUESTION EIGHT

In *Ivey*, the regional office and the BVA were put on notice of the existence of potentially relevant private medical records. The denial of this claim by the regional office was affirmed by the BVA even though no effort had been made by the regional office or the BVA to obtain these medical records. *Ivey*, 2 Vet.App. 321.

Do you believe that it is fair for the regional office or the BVA to deny a claim when the VA has been informed about potentially relevant evidence and the VA has neither requested this evidence or notified the veteran that this evidence should he submitted?

Response: When a veteran presents a well-grounded claim, the Secretary's duty to assist is triggered. As in *Ivey*, that duty can include assisting the veteran in securing private medical records.

QUESTION NINE

One of the reasons for the passage of the VJRA was to correct the unfairness in an adjudication system that, to some, seemed out of control and unfair to veterans. Do you believe that prior to the VJRA, the VA was unfair to some veterans, especially in light of the fact that prior to the VJRA,

o the VA was denying reopened claims for benefits based only on new evidence not all the evidence of record;

o the VA was not correctly informing veterans as to the reason why their claims were denied;

o the VA was ignoring or misinterpreting regulations that would have benefited many veterans;

o the VA was denying claims based on evidence that the veteran never had an opportunity to review and was not included in the statement of the case; and

o the VA was denying claims without obtaining possibly relevant evidence that had been brought to its attention?

Please discuss each bullet.

Response:

I believe that VJRA has provided a substantial service to veterans and their families. In order to insure that Board decisions pass muster with the Court, I have devoted my time to improving the quality of those decisions. And I think quality has improved.

I do not feel qualified to comment on the state of VA's adjudication system prior to my arrival at the Board in 1991. I have noted, however, the professional and caring approach of the vast majority of VA employees with whom I have been privileged to work.

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