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H.R. 241, H.R. 533, H.R. 761, H.R. 850, H.R. 966, AND H.R. 1048

HEARING

BEFORE THE

SUBCOMMITTEE ON BENEFITS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHT CONGRESS

FIRST SESSION

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THURSDAY, APRIL 10, 2003

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BENEFITS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 334, Cannon House Office Building, Hon. Henry Brown (chairman of the subcommittee) presiding.

Present: Representatives Brown, Bradley, Brown-Waite, Davis, Evans, Michaud, Miller, and Reyes.

OPENING STATEMENT OF CHAIRMAN BROWN

Mr. BROWN. Good morning. The hearing will now come to order.

Welcome to our first legislative hearing of the 108th Congress. Many of you were here yesterday for the oversight hearing on the Troops to Teachers program. I expect today's meeting will be just as informative.

We have a full plate, so we'll highlight each bill briefly before turning to our ranking member, Mr. Michaud, for his comments.

H.R. 241, the Veterans Beneficiary Fairness Act of 2003, would repeal current law restricting a surviving spouse to no more than 2 years of accrued benefit if a veteran dies while a claim for VA monetary benefit is being processed.

H.R. 533, the Agent Orange Veterans' Disabled Children's Benefits Act of 2003, would extend benefits to a veteran's child born with spina bifida when the parent can establish that he or she was exposed to the type of herbicide used in Vietnam. Currently, these benefits are accorded to those eligible children whose parents served in the Republic of Vietnam.

H.R. 761, the Disabled Servicemembers Adapted Housing Assistance Act of 2003, would permit severely disabled servicemembers to apply for a VA special adapted housing grant prior to separating from the military.

H.R. 850, the Former Prisoners of War Special Compensation Act of 2003, would establish a three-tier special monthly pension based on the length of the former POW's captivity. The bill would also repeal a 2001 federal appeals court decision permitting compensation for a substance abuse illness or injury when it is caused by a primary service-connected disability.

In a few minutes, we will be hearing from the chief sponsor of this bill, the former chairman of the Benefits Subcommittee, Representative Mike Simpson.

H.R. 966, the Disabled Veterans' Return-to-Work Act of 2003, would reinstate a pilot program which ended in 1995 to provide vocational rehabilitation to veterans receiving non-service-connected pension benefits.

Finally, H.R. 1048, the Disabled Veterans' Adapted Benefits Improvement Act of 2003, would increase the amounts for both specially adapted automobile and housing grants.

I look forward to hearing from today's witnesses on the broad range of bills. At this time, I'd like to welcome the ranking member, Mr. Michaud, for any remarks that he might make.

OPENING STATEMENT OF HON. MICHAEL H. MICHAUD

Mr. MICHAUD. Thank you very much, Mr. Chairman. I also would like to welcome Mr. Simpson. Glad to see you're going to be still interested in veterans and family issues.

We have six bills to consider today. I'm pleased to support most of these bills before us. I hope that we will also consider amendments to some of these bills to address issues of additional concerns.

I support the removal of the 2-year limit on accrued benefits, but believe we should not stop there. I hope that we will also be able to consider amendments to allow family members to continue the claims when veterans, or other beneficiaries die—to allow family members of a deceased veteran to claim benefits which have not been paid.

For example, in my district in Maine, there is a veteran whose most recent claim was filed in July of 1989. It's been pending for almost 14 years. The claim was remanded by the United States Court of Appeals for a veterans' claim in 1992. Since that time there has been continued failure to comply with the remand orders of the court in the Board of Veterans' Appeals.

Fortunately, this veteran is not terminally ill, but the failure to comply with the various orders for specialist examinations and opinions has resulted in extraordinary delays of the claim.

After the most recent remand, in November of 1999, the entire C-file was lost. Luckily, the attorney for the veterans had a copy of that file. If this veteran were to die while his claim is pending, I believe that his family should be able to continue the veteran's claim. If justice delayed is justice denied, a veteran's claim should not be extinguished because it was not properly adjudicated in a timely manner.

I support the bill to allow the children, such as Michael Ruzalski, whose father was exposed to Agent Orange at the DMZ in Korea, to receive the same benefits for spina bifida as the children whose parents were exposed in Vietnam.

The VA claims that over 3,000 additional children would be eligible for spina bifida benefits in fiscal year 2004 if this bill were to pass. This claim is extraordinary. I would—it would also require an additional 9 million veterans to have been exposed in locations outside of Vietnam—3 million more than those who served during the Vietnam era.

I have seen no evidence that there are such widespread use of herbicides associated with spina bifida. How can we continue to deny benefits to children with spina bifida simply because their

parents were exposed to Agent Orange in a country other than Vietnam?

I support the changes made by Mr. Evans' bill, H.R. 761, and Mr. Brown's bill, H.R. 1048, to improve the program for especially adaptive housing and automobiles for our most severely disabled veterans.

H.R. 966 will allow wartime veterans with non-service-connected disabilities to receive vocational rehabilitation services from the VA. I support this bill and want to thank the subcommittee chairman for introducing it.

While I support our former prisoners of war, along with many other witnesses testifying today, I am opposed to taking away benefits from veterans with service-connected disabilities by reversing the court's decision in *Allen* v. *Principi.* Once a man or woman has been disabled by service to our nation, I believe that it is our obligation to compensate them for all disabilities which flow from that service-connected disability.

I understand that we will be receiving testimony today on all these bills; and I welcome Admiral Cooper and all of our witnesses from the veterans service organizations. And, Mr. Chairman, I want to thank you and am looking forward to the testimony today. Thank you.

Mr. BROWN. Thank you, Mr. Michaud. And let me tell you, I'm real pleased to have you as the ranking member of this subcommittee and look forward to working with you through the balance of this Congress.

Our ranking member of the full committee, Mr. Evans, is with us today. And, Mr. Evans, we're pleased to have you and look forward to your opening statement.

OPENING STATEMENT OF HON. LANE EVANS, RANKING DEMOCRATIC MEMBER, COMMITTEE ON VETERANS' AFFAIRS

Mr. EVANS. All right, thank you, Mr. Chairman. I'm proud that you're hosting this hearing today. We've got a lot of work to do, this is an important step forward.

I want to thank our colleague Mike Simpson. We've lost him from this committee, but he's going over to the Appropriations Committee. It's good to know that he has sought out the subcommittee on Veterans' Affairs. He'll be very helpful to us, I know, as this legislation proceeds.

I support the provisions of H.R. 850, providing access to dental care for former prisoners of war. Whenever a servicemember is disabled, our nation should compensate that veteran for all service-connected disabilities. I therefore oppose the repeal of the *Allen* decision.

And I want to thank the Chairman of the committee, and the subcommittee ranking member, for considering several other bills that I'm introducing, most recently in the last few days.

I'm impressed by Michael Ruzalski. He wrote to me last Congress. He expressed the unfairness of the VA denying benefits to him for spinal bifida because his parent's exposure to Agent Orange occurred in the Republic of Korea.

We have men and women fighting across the world today. The VA's testimony tells Michael, and those servicemen, that when our

nation places members in harm's way, they should not expect our nation to compensate their children for harm which results.

This is morally and ethically wrong. We should not deny benefits to the children of veterans just because their parents were exposed to Agent Orange in the wrong country. I encourage the subcommittee to act favorably on this legislation.

I support H.R. 241, to eliminate the time limitation for payment of accrued benefits. I would hope that we would go further, as H.R. 1681 does, which I've also introduced, allowing surviving members and family members to continue the claims of a veteran who dies while that claim is pending.

With over 14,000 claims in remand status for over 15 months—many claims have been pending for many years—we should not penalize the families of our nation's veterans because our veterans die while awaiting action on a claim.

Now this is a problem with the perception of a lot of veterans out there that in many cases they think that the VA is just waiting for them to pass on. That's why we think this legislation is so valuable. And I hope we will treat our nation's veterans fairly—at least as fairly as Social Security beneficiaries.

I support the remainder of bills under consideration today. I welcome all of our witnesses, and look forward to your testimony.

I yield back the balance of my time. Thank you, Mr. Chairman, for your indulgence.

Mr. BROWN. Thank you, Mr. Evans, and thank you for your dedication to veterans for such a long, long period of time. I'm certainly pleased to have your testimony this morning—with us and to look forward to continue working with you through the 108th Congress.

We're pleased this morning to welcome our first witness, Mr. Mike Simpson, who used to chair this same subcommittee. Mike, I think it's fitting that we welcome you as the first witness as we discuss legislative matters. We did have a hearing yesterday, but we weren't discussing legislative matters—the Troops to Teachers program, which was a great hearing.

But thank you for being with us this morning and thank you for your dedication to being sure that the veterans receive their proper due—and as with all of us on the Veterans' Committee, we're advocates for the veterans, particularly during this time when so many of our young men and women are over in harm's way. I know we always continue to offer them up in our prayers.

But anyway, thank you for being here, and thank you for your service.

STATEMENT OF HON. MIKE SIMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. SIMPSON. Thank you, Mr. Chairman. It is a pleasure to be here and back before this committee. It seems like we have some competition from the construction outside, but we'll get through that. But I do appreciate the opportunity to be back before this committee. This was always one of my favorite committees. I enjoyed serving on this probably more than any other committee, and ultimately had to make the decision of whether to be on the authorizing committee or the one that appropriates the money for this committee. And, as you all know, being able to get the money for

the programs for the veterans that we think is important is just as important as the authorizing.

So having this background on this committee is very important to me as I sit on the VA-HUD Appropriations Subcommittee.

Mr. Chairman, members of the subcommittee, I am pleased to appear before you today to discuss my bill, H.R. 850, the Former Prisoners of War Special Compensation Act. This legislation, which I introduced last year, establishes a special compensation for former prisoners of war. I believe there are currently 30 Republican and Democratic co-sponsors of this legislation.

As you know, I was privileged to serve as chairman of this subcommittee in the last Congress and I can tell you from my experience as chairman, this subcommittee plays a vital role in authorizing and protecting the federal benefits that American veterans and their dependents receive for their service to this nation.

Today, I want to talk about a group of veterans who are truly America's heroes—former prisoners of war. There are approximately 40,000 surviving former POWs, a majority of whom served during World War II. The average age of surviving former POWs is 80 years old. Eighty years old. Most endured inhumane treatment and conditions during an average captivity of 16½ months. Many were subjected to interrogation and forced slave labor. The physical and psychological effects on these individuals persist throughout their lifetimes, impacting their health, their families, and their social relationships.

In conversations with my good friend, Secretary Principi, veterans' groups, and others, I came to realize that there is a gap in the benefits with respect to former POWs. I strongly believe a special compensation program is warranted for these American heroes.

Although we can never hope to fully compensate these brave men and women for their suffering, H.R. 850 recognizes and pays tribute, in some small way, to the real sacrifices by our former prisoners of war who were forcibly detained by our enemies of the United States.

Specifically, the bill establishes a three-tiered special monthly pension. Those who were detained between 30 and 120 days would receive $150 a month; those detained between 121 and 540 days would receive $300 per month; those who were detained for 540 or more days would receive $450 per month. The pension would be delivered through the Department of Veterans Affairs.

In addition, the bill contains provisions to provide outpatient dental care—being a former dentist, that's important to me—outpatient dental care for all former POWs. Current law requires a period of internment of not less than 90 days in order to qualify for this benefit.

It is important to note that my legislation would apply to ex-POWs from all wars—not from any specific war, but from all wars—including more than 39,700 surviving POWs from World War II, 2,400 from the Korean War, 601 former POWs from the Vietnam War, three from Kosovo; and one from Somalia.

Offsets to this bill would come from the repeal of a 2001 court decision, *Allen* v. *Principi*, which some of you have mentioned as opposing in your opening statements.

The court clarified, in this decision, that VA may pay compensation for an alcohol or drug abuse condition when it is secondary to a primary service-connected condition, such as, in Mr. Allen's case, post-traumatic stress disorder. An article published in the New England Journal of Medicine in 1995—let me repeat—this was an article that was published in the New England Journal of Medicine in 1995—concluded, and I quote:

"The cyclical pattern of drug use strongly suggests that it is influenced by the monthly receipt of disability payments."

Let me repeat that: "The cyclical pattern of drug use strongly suggests that it is influenced by the monthly receipt of disability payments."

I do not believe that the VA should compensate for a service-connected condition and abusing oneself with illegal drugs or narcotics. Further, such behavior should be treated medically, not rewarded financially. We should treat these individuals medically, not reward them with additional benefits. That's why the repeal of this, I think, is necessary.

This special pension that we recommend in House Resolution 850 is similar to the pension that the VA pays to Medal of Honor recipients, recognizes the hardships faced by the veterans during his or her captivity, and would be paid without regard to any other payment made under the laws of the United States. We must never forget their sacrifices.

Mr. Chairman, with our military now engaged in Iraq, and with the war on terrorism, this committee has a special responsibility to our future veterans. As I noted earlier, former U.S. POWs have often experienced inadequate food and medical care and physical and psychological trauma. As a result, I strongly believe the time is right for a program of special compensation for POWs.

This job oftentimes places us in a position where we have to decide on any given issue whether to be on the right side or the winning side. And I can tell you, with your support, this is one of the times that we can be on both the right side and the winning side. I can't tell you how strongly I believe that this is the right time to pass this piece of legislation.

Again, thank you for the opportunity to testify on H.R. 850, and I'd be happy to answer any questions.

[The prepared statement of Congressman Simpson appears on p. 54.]

Mr. BROWN. Thank you very much, Mike. We appreciate very much your coming. I don't have any questions at this time. Mr. Michaud, do you have any?

Mr. MICHAUD. I just want to thank you again, Mr. Simpson, for coming today. I've heard a lot about you, being a freshman. Try to find out members who've been there before. So I want to thank you for what you've done for veterans in the past.

Mr. SIMPSON. Thank you.

Mr. BROWN. All right, thank you very much for coming. Thanks for all you do.

Mr. SIMPSON. Thank you.

Mr. BROWN. Will the second panel come forward?

Good morning, Admiral. I'm especially pleased to welcome you this morning to this hearing, and we appreciate very much all you

do for the veterans at the Veterans Benefits Administration as the Under Secretary.

Also with you is Mr. John Thompson and Mr. Ron Henke; we certainly welcome you all this morning. Admiral, we normally allow 5 minutes, but we'll waive that rule this morning. Thanks for coming.

STATEMENT OF DANIEL L. COOPER, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY JOHN H. THOMPSON, DEPUTY GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS; AND RONALD J. HENKE, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION

Mr. COOPER. Thank you very much, Mr. Chairman. I appreciate the opportunity to testify today on several bills of great interest to veterans.

I sincerely apologize for the late submission of our statement. Unfortunately, as you may guess, it was a catalyst for much discussion.

Mr. Chairman, I respectfully request that my full statement be entered into the record.

Mr. BROWN. Yes, so moved.

Mr. COOPER. VA supports enactment of H.R. 761, the Disabled Servicemembers' Adapted Housing Assistance, which would permit VA to provide the specially adapted housing assistance to disabled veterans of the Armed Forces who remain on active duty pending medical separation.

This bill would enable veterans to move into an adapted house as soon as they are separated from active duty, which will improve their quality of life and independence immediately.

We oppose H.R. 1048, the Disabled Veterans' Adaptive Benefits Improvement Act, which would increase the maximum amounts for specially adapted housing and automobile grants. These rates were increased 16 months ago. We will make recommendations for increases if it appears that inflation significantly erodes these benefits.

We support Section 4 of H.R. 850, the Former Prisoners of War Special Compensation Act, which would require VA to provide outpatient dental services to former POW veterans. However, we oppose Section 2 of H.R. 850, which would authorize special compensation for former POWs. This benefit is not in the President's budget. We are sensitive to the contributions and needs of the ex-POWs, and will consider additional benefits for them as we formulate the future budget requests.

Secretary Principi believes very strongly that there is no group more deserving of our nation's gratitude than our ex-POWs. Last year I was with him as he hosted the ex-POWs from the Philippines who had been interned there during World War II.

We support H.R. 241, the Veterans Beneficiary Fairness Act, which would allow dependents to receive all accrued benefits of deceased veterans, once the veterans' claims are adjudicated. The law currently limits the award to 2 years even though the veteran might have received larger amounts if he or she were still alive.

H.R. 241 would remove that 2-year limit for accrued benefits and allow the survivor to receive the entire amount of benefits. We estimate the cost as $5 to $6 million in the first year, and $65 million in the following years.

We strongly support Section 3(a) of H.R. 850, which would prohibit payment of compensation for a disability resulting from a veteran's personal abuse of alcohol or drugs if the abuse were secondary to service-connected disability. By law, VA pays compensation for disabilities resulting from injury or disease incurred or aggravated in the line of duty in active service, and also for secondary disabilities caused by the original service-connected disability.

Because the law currently states that, "No compensation shall be paid if the disability is the result of the veteran's own willful misconduct or abuse of alcohol or drugs," VBA did not pay compensation for such secondary disabilities prior to fiscal year 2002.

In February 2001, the United States Court of Appeals for the Federal Circuit, in a decision, *Allen* v. *Principi*, interpreted the law to allow compensation for an alcohol or drug abuse-related disability if it arose secondary to a service-connected disability.

It also held that VA must consider whether an alcohol or drug abuse itself is evidence of the increased severity of the service-connected disability. This bill would amend the language of that statute to make it clear that compensation is not payable for disabilities resulting from veterans' abuse of alcohol and drugs.

We support this bill because we're concerned that payment of compensation on this basis is contrary to congressional intent and is clearly not in the veterans' best interests if payment removes an incentive to veterans to refrain from debilitating and self-destructive behavior.

The federal circuit's interpretation in *Allen* v. *Principi* could also dramatically increase the amount of compensation that VA pays for service-connected disabilities. Under the court's interpretation, any veteran with a service-connected disability who abuses alcohol or drugs is potentially eligible for an increased amount of compensation if he or she can offer evidence that the abuse is the result of service-connected disability. That is, if the substance abuse is a way of coping with the pain or the loss the disability causes.

Once alcohol or drug abuse is service-connected, then service connection could be established for any disability that is a result of that abuse—for instance, cirrhosis of the liver. We estimate that this provision could result in benefit cost savings of $127 million over the first year; and possibly up to $4.5 billion over 10 years; with administrative cost savings of $97 million over that 10-year period.

VA does not support H.R. 533, the Agent Orange Veterans' Disabled Children's Benefits Act. Since 1979, Congress has enacted laws to ensure that the Federal Government compensates Vietnam veterans for disabilities they suffer as a result of exposure to herbicides containing dioxins, such as Agent Orange.

In 1996, Congress enacted legislation to provide a monetary allowance and other benefits to the children of Vietnam veterans who were born with spinal bifida, as well as to children with certain other birth defects born to women Vietnam veterans.

H.R. 533 would amend that law to authorize VA to provide the same monetary allowance and other benefits to natural children born of non-Vietnam veterans who have spinal bifida, provided the parent had performed "qualifying herbicide risk service."

Through prior legislation, Congress has recognized the unique circumstances of service in Vietnam, including the special sacrifices made by veterans in that war. It recognizes the dangerous effects of exposure to aerially applied herbicides. H.R. 533 would extend those benefits to the children of veterans who did not serve under those same circumstances.

In addition, I'm concerned that H.R. 533 language is so vague as to make it extremely difficult to write the regulations to establish qualifications for entitlement.

We estimate that 9.1 million veterans are the potential veteran population this change in law could affect, particularly because there is no definitive information on the numbers of veterans who could have been exposed to Agent Orange-like herbicides.

Finally, VA does not support H.R. 966, the Disabled Veterans Return-to-Work Act, which would re-instate a previously unsuccessful program of vocational training for certain pension recipients.

The earlier program was in place for 10 years, from February 1985 through December 1995. That decade-long program required that VA evaluate all pension recipients under the age of 50—and later changed to age 45—to determine their potential for rehabilitation. If a veteran refused to participate in the evaluation, pension benefits were suspended. Subsequent participation in the training itself was voluntary.

In 1995, the program ended when it was not renewed by Congress. The results of the first 5 years were quite poor. We evaluated 9,400 veterans and determined that training was feasible for about 2,800 of them—or about one-third. Four hundred and sixty-eight began training, 65 completed training, and 58 started employment. We know of only 22 of those 58 that left.

H.R. 966 would reinstate that program for a new 5-year period. We estimate that VA would review approximately 1300 records each year to determine feasibility; and approximately 144 veterans would be expected to enter training. Additionally, it's a voluntary program for those over 45, which might add another 25. So we are looking at approximately 169 cases per year.

Mr. Chairman, given VA's disappointing experience in administering the original program during that 10-year duration—and I've been assured that it was pushed very hard at that time—as well as the small number of veterans who benefited from it, we believe that the finite resources available to us would be better used to support our current program of vocational rehabilitation for service-disabled veterans, especially in light of the current combat activities in Iraq. Thus, the department does not support enactment of H.R. 966.

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions from the members of this committee.

[The prepared statement of Admiral Cooper appears on p. 61.]

Mr. BROWN. Thank you, Admiral. We certainly appreciate your sharing these thoughts with us this morning.

My first question would be, are you able to provide this subcommittee with the Secretary's position on H.R. 850?

Mr. COOPER. As I stated earlier, sir, the Secretary is extremely interested in the POWs and anything that we can do for them. This was not in the President's budget.

Mr. BROWN. So let me see if I can clarify. He would be in favor of the repeal, but would he be willing to compensate some additional monies for the time served as a POW?

Mr. COOPER. I personally think it's a good idea. However, as I say, it was not in the President's budget.

Mr. BROWN. I understand no money has been appropriated, but, I guess, if the will of the Congress would be to set some funds aside to provide funding for this, there certainly wouldn't be any objection then?

Mr. COOPER. Absolutely not.

Mr. BROWN. Okay. Thank you.

Mr. Michaud, you have a question?

Mr. MICHAUD. Yes. Thank you once again, Admiral, for coming here this morning.

Based upon the number of current children with spina bifida, compared to the number of veterans who served during the Vietnam era, all 9,200,000 Vietnam-era veterans deployed worldwide, plus an additional 3 million veterans of another time period, would have been exposed to Vietnam-era herbicides, in order to obtain the costs estimated provided in your testimony—my question is what evidence does the department have that such massive exposure in previously unreported use of these herbicides occurred?

Mr. COOPER. We had to take into consideration the potential for exposure. We don't know where it might have occurred. I have seen information that indicates that herbicides were used in the DMZ and some place else. We have gone back to OSD to ask for that information.

Our concern is that herbicides might have been used in other places, but the further concern is trying to write regulations and understand how we can determine whether a specific exposure occurred.

Mr. MICHAUD. Thank you. Yes, another question. According to VA data, approximately 3.1 million veterans served in southeast Asia. One thousand one hundred fifteen children born to these veterans following their service in Vietnam will receive VA benefits in fiscal year 2004 for spina bifida, or, you know, another covered birth defect.

Applying this same relationship to the maximum number of veterans the Department of Defense has identified as having been exposed in the DMZ in Korea, about five children with spina bifida could be expected to qualify for benefits.

Your testimony also indicates that more than an additional 3,000 children would be expected to be eligible for these benefits in fiscal year 2004 under the bill, provided each additional location you have identified at which veterans were exposed and the number of veterans exposed at the location—my question is, can you provide your basis for the projected additional 2,995 eligible children that you expect to be covered?

Mr. COOPER. I have no ability to tell exactly where veteran were exposed. We used as a baseline the number of people that were in the service in periods other than Vietnam. I have no reason to use another J-factor. That's the reason I'm very concerned about how we can write a regulation and properly adjudicate these claims. Frankly, sir, I do not question the fact that there are not going to be 9,000. I do say that there are going to be a lot, but I can't put my finger on the number. I don't know of a better J-factor that would produce a more precise result.

But we will look into it very closely and we will write regulations based on whatever legislation is enacted. I'm just saying it'll be very difficult.

Mr. MICHAUD. I guess my concern is that you're using, you know, figures that you really can't justify with a high, you know, fiscal note; and that's, you know, what really concerns me with your statement. And can you—you mentioned the J-factor, what is the J-factor?

Mr. COOPER. What I mean is a factor that would reduce the potential number of claimants to a more precise figure. I don't know how to come up with a factor to get to that certain precise figure. Any factor I pick would be an arbitrary one. We're trying to say, "This is the maximum potential predicated on the spina bifida across the country—or that results from exposure to Agent Orange." I'm sorry, I can't give you a better answer than that.

I understand the concern and I, too, am concerned. I'm not sure how I can clarify that until we actually get a regulation that is enforceable.

Mr. MICHAUD. Yes, but I guess my concern is it's the United States Government that sent these servicemen and women over there, and I think we have an obligation to make sure that they're taken care of, and their children.

Mr. COOPER. I do not question that.

Mr. BROWN. Admiral, if I could help you out a little bit. I understand that CBO agreed that they couldn't estimate the cost of the bill at this time, so I guess there's a lot of unknowns out there they can't identify.

Mr. COOPER. It's a very difficult process, I agree. I've looked at the assumptions. They're as good as we can come up with without reporting some kind of a factor over which I have no control and don't understand. So we stated it as a maximum potential. Common sense is not always common.

Mr. BROWN. Any further questions, Mr. Michaud?

Mr. Evans, do you have a question?

Mr. EVANS. Yes, sir, Mr. Chairman. Thank you.

When the VA was asked for technical review of H.R. 533, VA's Office of General Counsel indicated that they had no technical comments. When did the VA determine that the language of H.R. 533 was vague? And, for that matter, was your cost estimates developed by the Department or the Office of Management and Budget? And could you explain what assumptions and calculations were used in establishing your cost estimates?

Mr. COOPER. All right. Excuse me just a second, sir. Let me ask Mr. Thompson to address us, please.

Mr. THOMPSON. Yes. Mr. Evans, my office did review this bill when it was drafted. Our comments back then were that it appeared to be consistent with what the drafter intended. I don't believe we were asked to comment with respect to the difficulty of applying it to particular claims.

I personally didn't take part in those conversations. This was at a sort of mid-level in my office, but I'm certain we did not communicate any opinion with respect to the merits of the provision.

Mr. EVANS. Basically, I'm asking that you develop a cost estimate so that we can determine the dollars that may be available or not for a meritorious claim.

Mr. THOMPSON. The difficulty with the legislation, obviously, is that under current law you have a defined geographic area and a defined period of time for service that qualifies individuals for eligibility. Under this bill, you have temporal and spatial standards that are extremely vague, and I'm not sure how you would apply them, as the admiral said.

For example, if we determine that a herbicide was used on a particular military installation, do you assume that anybody who served on that installation at the time of application, was exposed, or do you try to limit it to a certain area of the base where the application occurred? And, if so, how do you determine that area and who was at the particular location on the base at a particular time?

With respect to the period of application of the herbicide, is it only for the few minutes that the spraying actually occurred? Is that the period of time we're talking about? Is it some period of time after that where the effects may have lingered? How do you determine what is the period during which the herbicides were used under the standards of this bill?

So it would be very, very difficult to apply this to the adjudication claims.

Mr. EVANS. Well, we've been down this road before in terms of whether Agent Orange could be determined by unit diaries, for example. National Institute of Medicine looks into these issues and reports to us every 2 years about the scientific information that's available. And at least that would be, I would think, some kind of a basis for coming up with a realistic assessment.

Mr. COOPER. If I may address that for just a second. In trying to determine where it was done, or how it was used, and so on, we obviously are dependent on what information we can get from DOD. We would have to go back to them and ask that questions

In the short tenure that I've had in this job, one of the things I've become involved in is Project Shad. It was very difficult to get information, although we've been working very closely with OSD on that. We are making a lot of progress, but all the machinations we have had to go through to ensure that we have the information and the right names, and that sort of thing—I'm just saying it will be a very difficult and very long process.

Mr. EVANS. Well, you know, we had the same problem going back with the VA's attitude toward offering realistic cost estimates to us. They at one point said that, for Agent Orange costs—costs of the program—that you would have to take every serviceman or woman that served in southeast Asia during the period of 1968, I think, until after the war ended, and—I guess, my feeling is every genera-

tion of veterans who served in southeast Asia has to basically prove it themselves whether their exposure caused an illness. Because I think they've been kept on the outside and not involved in the decision-making process. This also leads to a very cynical attitude among Vietnam veterans, in particular.

We think there's enough evidence to show, at least according to the IOM studies, that there is at least a minimum amount of Agent Orange that one can be exposed to and get disabilities from. That changes every 2 years, so I wish we had something more concrete to tell these veterans, more than just that we can't come up with the scientific approaches. We ought to be giving the veterans the opportunities to show that there's a reasonable assumption that the person in, for example, the DMZ was exposed to Agent Orange.

My time is up. I didn't leave you any time for response——

Mr. COOPER. Let me just mention one thing. I certainly understand what you're saying and I agree. On the other hand, the thing that concerns me is the Veterans Claims Assistance Act, which says that VA must do everything we can to help veterans. I'm merely saying it is a very difficult problem.

Mr. EVANS. All right, Admiral. Thank you.

Mr. COOPER. Thank you.

Mr. BROWN. Thank you, Mr. Evans.

Admiral, I have one final question. I reviewed the CBO estimates, as well as the department estimates for the savings that would be garnered by repealing the *Allen* decision. The VA estimate far exceeds that of CBO. CBO stated in their methodology that VA reported to them that most of the veterans who would apply for increased compensation under *Allen* would be those with mental health conditions.

Yet, VA then based the estimated savings on the service-connected pool, regardless of the disability—bad knees, bad back, bad hearing, and so forth. Could you comment on the disparity in those estimates?

Mr. COOPER. Yes, sir. I'd like Mr. Henke to actually comment, but I would like to say something.

Again, I have looked specifically at the assumptions in this, and the assumptions we've taken into account, and the primary difference is the number of people that we feel might apply predicated on the *Allen* decision. The CBO says that they think just those who have mental problems will apply. We are very concerned and think that there are a lot of people out there who will apply because they have other physical disorders and, therefore, have alcohol problems. So our estimate is a great deal higher than that.

The CBO also says that they came to VBA for a factor; and, unfortunately, I don't know exactly to whom they came. I certainly didn't provide a factor for assuming that only veterans with mental health conditions would apply. So I have a concern that they probably did call into my organization and ask for a factor; but, I think using that factor is not quite correct.

So I would ask Mr. Henke to discuss the differences in estimates, but I do think the basic assumptions we made are correct.

Mr. HENKE. Mr. Chairman, as Admiral Cooper said, we did consider far more veterans than the CBO estimate considered. And we did that primarily based on the knowledge of previous history, that

there are many factors involved—not only mental disorders. Many of the physical disabilities that we considered have a lot of pain associated with them, and very often, a veteran will self-medicate to alleviate the pain.

We also took a higher claim rate based on our experience with the diabetes cases. We also took a higher rate for Vietnam-era veterans based on the study by the National Vietnam Veterans Readjustment Survey. We did take into account those that were not Vietnam-era veterans and did have a lower rate. So we looked at as many factors as we possibly could to come up with what we thought was the very best estimate possible.

Mr. BROWN. Admiral, thank you very much for coming, and we certainly look forward to working with you through this 108th Congress. And also, Mr. Thompson and Mr. Henke for being part of this discussion.

Thank you so very much.

Mr. COOPER. Thank you.

Mr. BROWN. We're joined by another Member of Congress, the young lady from Florida, Ms. Brown-Waite. We're happy to have you as part of our panel.

On our third panel this morning is—and welcome, gentlemen—Mr. Peter Gaytan, representing The American Legion; Mr. Rick Surratt, representing the Disabled American Veterans; Mr. Paul Hayden is with the Veterans of Foreign Wars; Mr. Leslie Jackson is from the American Ex-Prisoners of War; and Mr. Carl Blake is representing Paralyzed Veterans of America.

When you're ready, we will begin with Mr. Gaytan, and members will hold their questions until all witnesses have completed their testimony.

Without objection, the witnesses' full statements will be included in the printed records of the hearing, so I'd appreciate you limiting your remarks to 5 minutes, but certainly we're not going to hold you completely to that.

But let me tell you, thank you very much for your contribution to the freedom of this great country. We appreciate very much your service, and I know in light of what's happening in America—everybody is watching TV 24 hours a day and seeing the effects of some of the same, you know—positions you all were in some time back.

But anyway, thank you all for being here today, and thank you for all you do, and we'll start with Mr. Gaytan.

STATEMENTS OF PETER S. GAYTAN, PRINCIPAL DEPUTY DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; RICK SURRATT, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; PAUL A. HAYDEN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; LESLIE H. JACKSON, EXECUTIVE DIRECTOR, AMERICAN EX-PRISONERS OF WAR; AND CARL BLAKE, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

STATEMENT OF PETER S. GAYTAN

Mr. GAYTAN. Yes, sir. Thank you, sir. I'd also like to thank you for your leadership on this committee.

Mr. Chairman, thank you for the opportunity to present the American Legion's views on the legislation being considered by the subcommittee this morning. The American Legion commends the subcommittee for holding a hearing to discuss these important issues.

H.R. 241, the Veterans Benefit Fairness Act of 2003, would repeal the 2-year limitation on the payment of accrued benefits to which a deceased veteran would have otherwise been entitled to at the time of the veteran's death that's currently set forth in Title XXXVIII, USC, Section 5121.

The American Legion's long-standing position has been that any limitation on the payment of accrued benefits is unfair. The enactment of Public Law 104–275 in 1996, which extended entitlement to accrued benefits from one year to 2 years, was a much-needed step in the right direction; however, it still fell short of providing appropriate compensation to the veteran's family in a claim that had been pending for more than 2 years prior to the veteran's death. VA currently has over 313,000 pending claims and another 134,000 cases requiring some type of action. Very often veterans filing these claims and appeals are very ill, and because of the long processing times, many die before a final decision is ever made on their claim. The delays they and their families experience can result in adverse health effects and financial hardships.

Regardless of how long the veteran's case had been pending, whether at the regional office level or the Board of Veterans' Appeals, an eligible survivor can only receive 2 years of retroactive benefits, rather than the full amount entitled to the veteran had he or she lived.

Mr. Chairman, H.R. 241 would remove this inequity, and the American Legion fully supports this measure.

H.R. 533, the Agent Orange Veterans' Disabled Children's Benefits Act of 2003, would amend the current definition of a child eligible for spina bifida benefits set forth in Title XXXVIII. It would provide that any natural child of a veteran who performed qualifying herbicide risk service, and who has this disability, is eligible for such benefits—not just those whose parents, or parents, served in Vietnam between January 9, 1962, and May 7, 1975.

The American Legion strongly endorses the expansion of the spina bifida program provided for by the enactment of H.R. 533.

H.R. 761, the Disabled Servicemembers' Adapted Housing Assistance Act, would authorize the Secretary of Veterans Affairs to provide adapted housing assistance to disabled members of the Armed Forces who are still on active duty and in the process of being separated for medical reasons.

Currently, this program of assistance is only available to those service-disabled individuals who have already become veterans. Although we do not have a formal position on this proposal, the American Legion believes this additional statutory authority will enable VA to help better facilitate a service-disabled individual's transition to civilian life. This type of proactive approach is consistent with the concept of VA's Benefit Delivery at Discharge Program to reach out to service personnel prior to their separation and provide direct assistance, rather than waiting upon discharge from service.

H.R. 850, the Former Prisoners of War Special Compensation Act, proposes the establishment of a special compensation program for former Prisoners of War based on the length of their confinement. In the absence of a mandate on the subject of special compensation, the American Legion takes no formal position on this provision of the bill.

H.R. 850 also seeks to remove the current requirement in Title XXXVIII that an individual had to have been detained or interned for a period of not less than 90 days in order to be entitled to VA outpatient dental treatment. The American Legion has no objection to this provision. Studies have shown that there can be long-lasting adverse health effects resulting from even a relatively short period of confinement as a prisoner of war.

Given their experiences and hardships, access to dental care becomes an important factor in helping maintain these veterans' over-all good health; and we support the proposed change.

Mr. Chairman, the American Legion is very concerned with Section 3 of this bill, which is entitled "Certification of Prohibition on Payment of Compensation for Alcohol- or Drug-Related Disability." It would amend Title XXXVIII to specifically state that disability compensation will not be paid to a former prisoner of war, or any other veteran, who is suffering from alcohol or substance abuse which is secondary to a service-connected disability.

The American Legion has always held the position that veterans who succumb to alcohol or drug abuse caused by their service-connected disability are indeed entitled to a level of compensation that reflects all aspects of their disability. The American Legion believes these veterans are in a very different category from those who engage in conscious, willful wrong-doing and become alcoholics and/or drug abusers. The American Legion is therefore categorically opposed to any attempt to legislate away the rights of veterans who are suffering from disabilities resulting from their military service.

Scientific studies over the years have highlighted the fact that there is a higher incidence of substance abuse among veterans who suffer from severe physical or psychiatric disabilities. A recent article by Dr. Andrew Meisler, "Trauma, PTSD, and Substance Abuse," from the PTSD Research Quarterly, notes that "Studies of individuals seeking treatment for PTSD have a high prevalence of drug and/or alcohol abuse. Research suggests that 60 to 80 percent of

treatment-seeking Vietnam combat veterans with PTSD also meet the criteria for current alcohol and/or drug abuse."

Cited was a study of Persian Gulf War veterans that found a "PTSD diagnosis was strongly linked to problems with depression and substance abuse, supporting earlier research on co-morbidity."

Section 3 of H.R. 850, if enacted, would penalize veterans whose service-connected condition has caused them to develop an alcohol or drug abuse disability.

The United States is again sending men and women into harm's way. As a consequence, some may sustain life-long physical or mental disability. Should they subsequently develop a substance abuse problem, which VA recognizes as being related to a service-connected condition, there should be no question that this additional disability is also service-connected. The American Legion believes Congress should not be seeking ways to deprive these veterans of their right to compensation benefits earned by virtue of their service to this nation.

H.R. 966, the Disabled Veterans' Return-to-Work Act of 2003, proposes to reinstate the program of entitlement to vocational training for certain pension recipients that expired on December 31, 1995. It afforded disabled veterans who were awarded pensions an opportunity to pursue vocational training with a goal of regaining employability or employment.

The American Legion supported this program during its 10 years of existence and believes it would be worthwhile to now make this type of training and employment assistance available to those individuals who are both interested and able.

H.R. 1048, the Disabled Veterans Adaptive Benefits Improvement Act of 2003, seeks to increase the special adapted housing assistance allowance and the allowance for acquiring residences with existing disability modifications. The automobile and adaptive equipment allowance would also be increased.

The American Legion has no objection to the proposed increases since these allowances have not been regularly adjusted to reflect rising building and automotive costs over the past several years. As the conflict with Iraq continues, it is important for Congress to address these essential veterans programs that can assist these men and women to transition back into the civilian world.

Again, I appreciate the opportunity to present testimony here this morning, and the American Legion looks forward to working with you and members of this subcommittee. Thank you.

[The prepared statement of Mr. Gaytan appears on p. 75.]

Mr. BROWN. Thank you Mr. Gaytan. Mr. Surratt.

STATEMENT OF RICK SURRATT

Mr. SURRATT. Thank you, Mr. Chairman and members of the subcommittee. Good morning.

We have good benefit programs for veterans, but the members and staff of this subcommittee recognize that these programs can be improved, and you've been receptive to the recommendations the veterans organizations make.

Several of the bills under consideration today address recommendations of the *Independent Budget*. One of our top priorities this year is repeal of the 2-year limitation on accrued benefits.

When a veteran, or other beneficiary, dies, the law operates to reduce benefits of the veteran or beneficiary to only those covering the 2 years immediately preceding death. We think that is arbitrary and unfair. We think eligible survivors should receive all benefits the government actually owed a deceased veteran, for example.

Generally, a veteran is owed more than 2 years' retroactive benefits only because of administrative delays or errors beyond the veteran's control. In a mass adjudication system such as VA's, some delays and mistakes are inevitable. However, the detrimental effect of such delays or mistakes should not be compounded by a statute that reduces what would otherwise be due merely because the delay was so long the veteran died before VA could properly finalize the claim and pay the veteran.

To the extent veterans awaiting decisions on disability benefits suffer economic hardships, their family members suffer economic hardships. Those hardships may be made worse by the veteran's death. H.R. 241 will correct this inequity and the DAV urges this subcommittee to favorably report the bill.

H.R. 533 would also remove an inequity in current law. Current law authorizes benefits for a child suffering from spina bifida related to a parent's exposure to Agent Orange in Vietnam, but not a child suffering from spina bifida related to a parent's exposure to Agent Orange in Korea, for example. This disparate treatment of two groups of children who are equally entitled to benefits is obviously an unintended consequence, but it is certainly unfair.

H.R. 761 will make the specially adapted housing program more flexible to better serve the seriously disabled veterans who qualify by allowing VA to provide assistance with specially adapted housing as soon as the need arises, rather than delaying until the entitled person technically attains veteran's status upon military separation; this will improve the program.

The DAV fully supports H.R. 761, as it does H.R. 1048, which would increase the amount of grants for specially adapted housing and automobiles.

While the DAV believes that former POWs deserve special benefits because of the extraordinary sacrifices they have made, we have concerns that the special compensation scheme provided in H.R. 850 does not compensate former POWs proportionate to their individual sacrifices.

We support its provision to make VA dental care available to all former POWs; however, we strongly oppose its provision to prohibit compensation to former POWs and disabled veterans who have innocently acquired alcohol or substance abuse secondary to a service-connected mental or other disorder. Such secondary substance abuse must be distinguished from primary substance abuse that results from a person's free choice to use alcohol or drugs for pleasurable effects.

A former POW who uses alcohol to escape the horrifying memories of torture, for example, is not choosing to use it for pleasure. We urge you not to report H.R. 850 with this provision included.

We have no position on H.R. 966, which would reinstate a vocational training program for veterans receiving disability pensions.

We note, however, that its objective is a beneficial one for some of our most disadvantaged veterans.

Mr. Chairman, that concludes my statement. I'll be happy to answer any questions you have.

[The prepared statement of Mr. Surratt appears on p. 79.]

Mr. BROWN. Thank you, Mr. Surratt. Mr. Jackson. Welcome.

STATEMENT OF LESLIE H. JACKSON

Mr. JACKSON. Good morning. I'm Les Jackson, Executive Director of the American Ex-Prisoners of War. My statement today will be confined to pending bill H.R. 850, Former Prisoner of War Special Compensation Act of 2003.

All former prisoners of war, whether from World War II, Korea, Vietnam, or more recent conflicts, feel—and have always felt—a great pride in serving our country in time of danger. We really understand and deeply value the freedom this country has always guaranteed its citizens. We've never asked to simply be rewarded for the privilege of serving our country.

We are well aware, however, that many who serve, whether they be captured or not, have paid a significant price for living with immediate and long-term disabling consequences of that service. Like all good Americans, we support any legislation now before your committee which addresses these concerns, and urge that it be granted the highest priority which it deserves.

We are puzzled and deeply concerned, however, that you have not included our priority bill, H.R. 348, introduced by Congressman Bilirakis, and a companion bill, S. 517, introduced by Senator Patty Murray, that specifically addresses known, long-term disabling consequences of the brutal and inhumane captive experience. Since POWs are now dying at a rate greater than 10 a day, and many have had no help for more than 50 years, we urge your committee to add it to the legislation that you are considering today.

We thank the committee for its continuing concern in providing benefits for those whose service resulted in disabling consequences.

I'd be happy to answer any questions.

[The prepared statement of Mr. Jackson appears on p. 96.]

Mr. BROWN. Okay. Thank you, Mr. Jackson. Mr. Hayden.

STATEMENT OF PAUL A. HAYDEN

Mr. HAYDEN. Mr. Chairman, members of the subcommittee, on behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States and our Ladies' Auxiliary, I would like to thank you for the opportunity to present our views on this most important legislation.

In the interest of time, I would like to express our strong support for H.R. 241, the Veterans' Beneficiary Fairness Act of 2003, that would repeal the inequitable 2-year limitation on accrued benefits; H.R. 761, the Disabled Servicemembers' Adapted Housing Act of 2003, as it will authorize adaptive housing assistance to members of the Armed Forces who are on active duty pending medical separation; H.R. 966, the Disabled Veterans' Return-to-Work Act of 2003, to reinstate a VA pilot program that expired in December 1995 to provide vocational training to newly eligible non-service-connected pension recipients; and finally, H.R. 1048, the Disabled

Veterans' Adaptive Benefits Improvement Act of 2003, that would increase the specially adaptive housing grant, and also increase the one-time reimbursement VA may provide to certain severely disabled veterans to assist them in their purchase of an automobile.

I would respectfully refer the subcommittee to our written statement for a more in depth analysis of our position regarding the aforementioned legislation.

With respect to H.R. 533, the Agent Orange Veterans' Disabled Children's Benefit Act of 2003, it is our understanding that VA is in the process of issuing regulations under the authority of Public Law 102–4, the Agent Orange Act of 1991, that would extend the presumption of exposure to veterans who served in locations other than Vietnam which also involved the use of herbicides—primarily Agent Orange.

For example, veterans serving in the demilitarized zone between north and south Korea, and in Panama, may have been exposed to the use of these agents in the late 1960s. That authority, however, does not extend to those claimants under Chapter 18, Title XXXVIII, because their entitlement was not established until after Public Law 102–4 was enacted.

With this in mind, the VFW strongly supports this legislation that would now equitably include the eligible child of any veteran who was exposed to herbicides used in certain other locations during the veteran's active military service on the same basis as veterans who are eligible under Chapter 11.

Finally, the VFW is pleased to support Section 2 of H.R. 850, the Former Prisoners of War Special Compensation Act of 2003, that would establish a three-tiered special monthly compensation to former prisoners of war based upon their length of captivity.

While we support special monthly compensation, this section highlights an injustice that has long bothered us. We have never understood the delimiting factor of 30 days, which in this bill is just a reflection of the definition stipulated in Title XXXVIII, United States Code, Section 1112(b) for presumptions relating to service-connected disabilities for POWs.

The VFW feels that all POWs should be included in this special monthly compensation. Often the first hours and days of captivity are the most difficult. For example, in a recent Washington Post article, former POW and retired Marine, Maj. Joseph Small, described his captivity in the 1991 Persian Gulf War. The first few hours are the worst. Your senses are so overwhelmed by the physical and mental shock. Your environment has completely changed, and you aren't free anymore.

Maj. Small and others, like Pfc. Jessica Lynch, however, are not eligible for compensation under this provision, or for any presumptions in Section 1112 of Title XXXVIII, because they were held for less than 30 days.

We strongly suggest eliminating the 30-day requirement for eligibility—not just in this bill, but also as a part of Title XXXVIII, Section 1112(b). By eliminating the 30-day requirement in the first year so that eligibility starts from the moment of capture, you will include those POWs who have been held for shorter intervals but have certainly suffered most of the same physical and psychological trauma as other POWs.

The VFW objects to Section 3 of H.R. 850, which would amend the clarification of payment of compensation for alcohol- or drug-related disability to preclude service connection on a secondary basis. Physicians often consider alcohol- and drug-related disabilities to be secondary conditions of post-traumatic stress disorder resulting from such situations as internment as a POW, or from severe combat war wounds, such as an amputation.

Many of these veterans use drug and alcohol to self-medicate themselves in order to combat the depression caused by their war experiences. This, coupled with their primary condition, impairs their ability to manage day-to-day activities like holding a job. Accordingly, their earning potential is limited. Disability compensation was intended to compensate the veteran for that limited earning potential due to injuries suffered while defending this nation.

Further, restricting veterans from receiving these benefits, which were granted in relation to a primary service-connected condition, directly opposes the principles behind service-connected disability compensation.

The VFW is pleased to support Section 4, that would extend outpatient dental care to all former POWs regardless of their length of captivity.

Mr. Chairman and members of the subcommittee, this concludes my statement, and I'll be happy to answer any questions you may have.

[The prepared statement of Mr. Hayden appears on p. 87.]

Mr. BROWN. Thank you, Mr. Hayden.

And, Mr. Blake, before you begin, we have Mr. Bradley, from New Hampshire, joining us. Thank you for coming.

Mr. Blake, after all the witnesses have given their testimony, we'll have a chance to have questions. Mr. Blake.

STATEMENT OF CARL BLAKE

Mr. BLAKE. Chairman Brown, Ranking Member Michaud, and subcommittee members, PVA would like to thank you for the opportunity to testify today on the proposed benefits legislation. It is important that we address much-needed benefits improvements at a time when we will have new veterans coming home from war soon to partake of these benefits.

Under current law, if a veteran dies while a claim is being processed by the Department of Veterans Affairs, and before his or her claim becomes final, the surviving spouse is entitled to no more than 2 years of accrued benefits when the claim is decided in the veteran's favor. H.R. 241 repeals this 2–year limitation, and PVA fully supports this bill.

H.R. 533 provides health care, vocational training and rehabilitation, and a monthly disability allowance from the VA to the natural child suffering from spina bifida of a veteran who had active military service in an area in which a Vietnam-era herbicide agent was used. PVA supports H.R. 533.

H.R. 761 has been an important initiative for PVA. This legislation authorized the VA to provide adaptive housing assistance to military personnel on active duty who have a qualifying disability such as the loss of certain extremities or sight which is the result of an injury or disease aggravated or contracted in the line of duty.

This assistance is given primarily through grants to use either in the construction of a new, accessible home, or in the remodeling of an existing home for accessibility.

Currently, a servicemember must wait until he or she has been separated from active duty before he or she can take advantage of this benefit.

PVA fully supports H.R. 761. PVA would also like the record to reflect our thanks to Ranking Member Evans for introducing H.R. 761.

H.R. 850 would allow the VA to pay a monthly special compensation to veterans who were prisoners of war. The amount of this compensation would be based on the length of time that the veteran was actually held as a prisoner. The bill would also allow the VA to provide dental care to all former prisoners of war, not just those who were held captive for more than 90 days.

Although PVA supports these provisions of H.R. 850, we are troubled by and see no need for Section 3 of this legislation, as written. The narrowness of the Federal Circuit Court of Appeals holding in *Allen* v. *Principi*, a narrowness repeatedly referenced by the court, would enable compensation only when there is "Clear medical evidence establishing that an alcohol or drug abuse disability is indeed caused by veterans' primary service-connected disability and where the alcohol and drug abuse disability is not due to wilful wrongdoing."

We're concerned that this section would erase the important distinction between wilful and involuntary acts—a concern also expressed by the federal court.

I would like to express our appreciation to Chairman Brown for introducing H.R. 966, the Disabled Veterans' Return-to-Work Act of 2003. The program would re-authorize a 5-year program of vocational rehabilitation for certain non-service-connected disabled pension recipients that was first established by the 98th Congress. The program became effective on February 1, 1985, and was terminated in December of 1995.

PVA felt strongly at that time that the VA failed to provide the proper outreach and support to make this program fully successful. We greatly appreciate language placed in this legislation providing direct guidance to the VA in this regard.

H.R. 966, in reinstating this program, amends language in Title XXXVIII, USC, that calls for an extension of pension benefits once income has risen above the pension limitation, but for one year only. We believe this time period is too short to give the newly trained and newly employed former pension recipient the initial confidence that financial support will be there for an adequate period of time while he or she is trying to achieve employment security.

We have suggested in the past that a 3-year extension of benefits would be ideal. However, we would like to work with the subcommittee to achieve some compromise or solution based on new or existing models deemed to be successful in other federal programs.

H.R. 1048 would increase the one-time reimbursement the VA may provide to certain severely disabled veterans to assist their purchase of an automobile from $9,000 to $11,000. It would also increase the specially adapted housing grant from $48,000 to $50,000

for the most severely disabled veterans, and from $9,250 to $10,000 for other severely disabled veterans.

These are initiatives that PVA has worked on for many years, along with the other *Independent Budget* veterans' service organizations, to ensure that these grants keep pace with inflation, as well as living up to their original intent. These grants are a necessary tool to allow the most severely disabled veterans to live their lives in the most independent manner possible.

PVA fully supports the provisions of H.R. 1048 and, in accordance with the recommendation of the *Independent Budget*, PVA would also like to encourage the subcommittee to consider including an automatic annual adjustment for inflation in this legislation.

Mr. Chairman, PVA thanks you for making these benefits measures a priority. At a time when we have troops in the field and severely disabled soldiers returning home from combat as veterans, we must insure that the benefits that they will be entitled to will properly meet their needs.

PVA looks forward to working with the subcommittee on these and other benefits issues, and I would be happy to answer any questions that you might have.

[The prepared statement of Mr. Blake appears on p. 90.]

Mr. BROWN. Thank you very much, Mr. Blake.

Mr. Michaud, do you have a question?

Mr. MICHAUD. Yes. Thank you, Mr. Chairman.

Before I ask my question, Mr. Chairman, I do have some data I'd like to submit for the record. It deals with benefits to children with spina bifida and other covered disabilities, the number of veterans who served during the Vietnam era, and different information from the Institute of Medicine concerning herbicides and spina bifida.

Mr. BROWN. Thank you, Mr. Michaud. Without objection, we'll allow that to happen. And also, we'd like to report all members have 3 days in order to submit additional reference material.

Mr. MICHAUD. Thank you very much, Mr. Chairman.

(The provided material follows:)

Compensation
Summary of Mandatory Appropriation Highlights
(dollars in thousands)

Mandatory	2002 Actual	2003 Budget Estimate	2003 Current Estimate	2004 Estimate	Increase(+) Decrease(-)
Veterans:					
Cases	2,356,592	2,431,323	2,466,212	2,543,600	+77,388
Average Payment	$7,870	$7,940	$8,564	$8,975	$+411
Obligations	$18,546,021	$19,303,703	$21,120,999	$22,829,533	$+1,708,534
Survivors:					
Cases	308,024	314,384	312,109	316,747	+4,638
Average Payment	$12,320	$12,473	$12,647	$12,819	$+172
Obligations	$3,794,771	$3,921,297	$3,947,369	$4,060,390	$+113,021
Total:					
Cases	2,664,616	2,745,707	2,778,321	2,860,347	+82,026
Average Payment	$8,384	$8,459	$9,023	$9,401	$+378
Obligations	$22,340,792	$23,225,000	$25,068,368	$26,889,923	$+1,821,555
Other Obligations:					
Special Benefits for Children	$16,901	$14,596	$18,418	$19,166	$+748
Clothing Allowance	44,628	43,721	49,632	52,938	+3,306
REPS	10,444	12,446	13,983	8,527	-5,456
Automobiles and Adaptive Equipment	39,350	36,095	37,832	38,532	+700
Retired Officers	10	19	10	10	0
Special Allowance for Dependents	369	284	359	327	-32
EAJA	2,214	3,403	3,098	3,172	+74
Medical Exam Pilot Program	36,593	29,258	50,192	50,439	+247
OBRA Payments [1]	$1,286	$1,267	$1,267	$1,179	$-88
Total Obligations: [2]	**$22,492,587**	**$23,366,089**	**$25,243,159**	**$27,064,213**	**$+1,821,054**
Funding:					
Offsetting Collections	-15,000	-12,446	-9,427	-8,527	+900
Unobligated balances (SOY)	-130,099	-26,162	-424,351	-720,328	-295,977
Unobligated balances (EOY)	424,351	0	720,328	0	-720,328
Budget Authority (net)					
Appropriation	$22,771,838	$23,327,481	$25,529,710	$26,335,358	$+805,648
Total Mandatory:					
Budget Authority (net)	$22,771,838	$23,327,481	$25,529,710	$26,335,358	$+805,648
Outlays (net)	$22,417,890	$23,240,480	$25,012,753	$26,907,091	$+1,894,338
Other Workload:					
Special Benefits for Children Cases	1,035	959	1,088	1,115	+27
Clothing Allowance Recipients	81,738	80,650	84,409	86,681	+2,272
REPS Trainees	616	831	611	541	-70
Automobile Grants	1,093	1,000	1,093	1,093	0
Adaptive Equipment Items	8,539	7,800	8,700	8,700	0
EAJA Settlements	519	1,100	715	715	0
Total Other Workload:	93,540	92,330	96,616	98,845	+2,229

[1] *OBRA FTE/Obligations: Under account restructuring, discretionary FTE obligations, previously funded under discretionary OBRA reimbursements (from mandatory accounts) are now shown in mandatory only. FTE totals, in discretionary accounts, however, include FTE funded under OBRA.*

[2] *Dollars may not add due to rounding in this and subsequent charts.*

Department of Veterans Affairs

America's War

Office of Public Affairs
Washington, DC 20420
(202) 273-5700

Issue Date: November 2002

American Revolution (1775-1783)

Total Servicemembers 217,000
Battle Deaths 4,435
Non-mortal Woundings 6,188
Last Veteran, Daniel F. Bakeman, died 4/5/1869, age 109
Last Widow, Catherine S. Damon, died 11/11/06, age 92
Last Dependent, Phoebe M. Palmeter, died 4/25/11, age 90

War of 1812 (1812-1815)

Total Servicemembers 286,730
Battle Deaths 2,260
Non-mortal Woundings 4,505
Last Veteran, Hiram Cronk, died 5/13/05, age 105
Last Widow, Carolina King, died 6/28/36, age unknown
Last Dependent, Esther A.H. Morgan, died 3/12/46, age 89

Indian Wars (approx. 1817-1898)

Total Servicemembers 106,000*
Battle Deaths 1,000*
Last Veteran, Fredrak Fraske, died 6/18/73, age 101

Mexican War (1846-1848)

Total Servicemembers 78,718
Battle Deaths 1,733
Other Deaths in Service 11,550
Non-mortal Woundings 4,152
Last Veteran, Owen Thomas Edgar, died 9/3/29, age 98
Last Widow, Lena James Theobald, died 6/20/63, age 89
Last Dependent, Jesse G. Bivens, died 11/1/62, age 94

Civil War (1861-1865)

Total Servicemembers (Union) 2,213,363
Battle Deaths (Union) 140,414
Other Deaths in Service (Union) 224,097
Non-mortal Woundings (Union) 281,881
Total Servicemembers (Conf.) 1,050,000
Battle Deaths (Confederate) 74,524
Other Deaths in Service (Confederate) 59,297**
Non-mortal Woundings (Confederate) Unknown
Last Union Veteran, Albert Woolson died 8/2/56, age 109
Last Confederate Veteran, John Salling died 3/16/58, age 112

Spanish-American War (1898-1902)

Total Servicemembers (Worldwide) 306,760
Battle Deaths 385
Other Deaths in Service (Non-Theater) 2,061
Non-mortal Woundings 1,662
Last veteran, Nathan E. Cook, died 9/10/92, age 106

World War I (1917-1918)

Total Servicemembers (Worldwide) 4,734,991
Battle Deaths 53,402
Other Deaths in Service (Non-Theater) 63,114
Non-mortal Woundings 204,002
Living Veterans ..... Less than 500*

World War II (1941 –1945)

Total Servicemembers (Worldwide) 16,112,566
Battle Deaths 291,557
Other Deaths in Service (Non-Theater) 113,842
Non-mortal Woundings 671,846
Living Veterans 4,762,000*

Korean War (1950-1953)

Total Servicemenbers (Worldwide) 5,720,000
Battle Deaths 33,686
Other Deaths (In Theater) 2,830
Other Deaths in Service (Non-Theater) 17,730
Non-mortal Woundings 103,284
Living Veterans 3,734,000*

Vietnam War (1964-1975)

Total Servicemembers (Worldwide) 9,200,000
Deployed to Southeast Asia 3,100,000
Battle Deaths 47,410
Other Deaths (In Theater) 10,788
Other Deaths in Service (Non-Theater) est.. 32,000
Non-mortal Woundings 153,303
Living Veterans 8,295,000*

Gulf War (1990-1991)

Total Servicemembers (Worldwide) 2,322,332
Deployed to Gulf 1,136,658
Battle Deaths 147
Other Deaths (In Theater) 235
Other Deaths in Service (Non-Theater) 914
Non-mortal Woundings 467
Living Veterans 1,852,000

America's Wars Total

Military Service During War 42,348,460
Battle Deaths 650,954
Other Deaths in Service (In Theater) 13,853
Other Deaths in Service (Non-Theater) 229,661
Non-mortal Woundings 1,431,290
Living War Veterans 17,578,500***
Living Veterans 25,625,000*

** VA estimate, as of September 30, 2002*
*** Does not include 26,000 to 31,000 who died in Union prisons.*
**** Approximately 1,065,00 veterans had service in multiple conflicts. They are counted in each period, but only once in total.*

America's Wars Page 1 Notes

Source: Department of Defense (DoD), unless otherwise indicated.

Living veterans estimates are based on Census 2000 figures. Sum of veterans shown for each war period does not equal total number of war veterans, since approximately 1,065,000 veterans served in more than one conflict, including more than 139,000 who served in three conflicts. They are shown for each period in which they served, but are counted only once in total war veterans figure.

Periods of service used in Census data may differ slightly from those of DoD. For compensation and pension purposes, the Gulf War period has not yet been terminated and includes those discharged from 1991 to date. The living Gulf War veterans estimate is for the peak 1990-1991 period only.

"Other deaths in Service" is the number of servicemembers who died while on active duty, other than those attributable to combat, regardless of the location or cause of death.

It is estimated that the number of living World War II veterans will be:

9/30/02.	4,762,000	9/30/03	4,269,000	9/30/04	3,893,000
9/30/05.	3,525,000	9/30/06	3,168,000	9/30/07	2,824,000
9/30/08	2,494,000	9/30/09	2,181,000	9/30/10	1,887,000
9/30/11	1,614,000	9/30/12	1,363,000	9/30/13	1,137,000
9/30/14	935,000	9/30/15	757,000	9/30/16	604,000
9/30/17	474,000	9/30/18	366,000	9/30/19	277,000
9/30/20	206,000				

☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆

Veterans and Dependents on the Compensation and Pension Rolls as of October, 2002

	VETERANS	CHILDREN	PARENTS	SURVIVING SPOUSES
Civil War	-	7	-	1
Indian Wars	-	1	-	-
Spanish-American War	-	198	-	262
Mexican Border	5	23	-	139
World War I	56	5,220	1	17,984
World War II	580,110	17,812	838	259,715
Korean Conflict	242,611	3,869	1,044	62,443
Vietnam Era	927,656	12,147	5,136	124,048
Gulf War****	426,865	9,332	366	7,663
TOTAL WARTIME	2,177,303	48,609	7,385	472,255
Nonservice-connected	346,173	24,988	-	212,641
Service-connected	1,831,130	23,621	7,385	259,614

Veterans and Agent Orange

Update 2000

Committee to Review the Health Effects in
Vietnam Veterans of Exposure to Herbicides
(Third Biennial Update)

Division of Health Promotion and
Disease Prevention

INSTITUTE OF MEDICINE

NATIONAL ACADEMY PRESS
Washington, D.C.

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8

Reproductive Effects

INTRODUCTION

This chapter summarizes the scientific literature published since *Veterans and Agent Orange: Update 1998* (hereafter, *Update 1998*; IOM, 1999) on exposure to herbicides and adverse reproductive or developmental effects. The literature includes papers describing environmental, occupational, and Vietnam veteran studies that evaluated herbicide exposure and the risk of adverse outcomes, including spontaneous abortion, birth defects, stillbirths, neonatal and infant mortality, childhood cancer, low birthweight, and sperm quality and infertility. Besides studies of herbicides and 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD), studies of populations exposed to polychlorinated biphenyls (PCBs) are also reviewed when relevant, since TCDD is a ubiquitous contaminant of PCBs.

The primary emphasis is on the potential adverse reproductive effects of herbicide exposure in males, because the vast majority of Vietnam veterans are men, but since approximately 8,000 women served in Vietnam (H. Kang, U.S. Department of Veterans Affairs, personal communication, December 14, 2000), findings relevant to female reproductive health are also included.

In addition to studies of specific health and developmental outcomes associated with reproduction, there have been several reports investigating reproductive hormones in relation to exposures to TCDD or related compounds such as PCBs, which are contaminated with TCDD when they occur in the human environment. Sweeney et al. (1998) measured several reproductive hormones, namely serum testosterone, luteinizing hormone (LH), and follicle-stimulating hormone (FSH) in workers exposed to TCDD through their involvement in chemical pro-

duction. These authors found that among 479 male workers, as the serum concentration of 2,3,7,8-TCDD increased, so did the odds of having a high level of LH or FSH; the odds of having a low testosterone level also increased with the concentration of TCDD. A study of women from Seveso is in progress (Eskenazi et al., 2000). This investigation will examine serum TCDD concentration in relation to (1) endometriosis, (2) menstrual cycle characteristics, (3) age at menarche, (4) birth outcomes, (5) time to conception and infertility, and (6) age at menopause.

The following specific categories of reproductive effects have been reviewed in previous Veterans and Agent Orange *(VAO)* reports (IOM, 1994, 1996, 1999): fertility, sex ratio, spontaneous abortion, stillbirth and infant mortality, low birthweight and preterm delivery, and birth defects. New data since *Update 1998* are available for spontaneous abortion, sex ratio, birth defects, childhood cancer, low birthweight, and early postnatal growth.

BIRTH DEFECTS

Background

The March of Dimes defines a birth defect as "an abnormality of structure, function or metabolism, whether genetically determined or as the result of an environmental influence during embryonic or fetal life" (Bloom, 1981). Other terms often used interchangeably with birth defects are "congenital anomalies" and "congenital malformations." Major birth defects are usually defined as those abnormalities that are present at birth and severe enough to interfere with viability or physical well-being. Major birth defects are seen in approximately 2 to 3 percent of live births. An additional 5 percent of birth defects can be detected with follow-up through the first year of life. The cause of most birth defects is unknown. In addition to genetic factors, a number of other factors and exposures including medication, environmental, occupational, and life-style have long been implicated in the etiology of some birth defects (Kalter and Warkany, 1983). Historically, most etiologic research focused on the effect of maternal and fetal exposures, but work on paternal exposures is receiving increased attention. Paternal exposures could exert an effect through direct genetic damage to the male germ cell that is transmitted to the offspring and expressed as a birth defect; through transfer of chemicals via seminal fluid, with subsequent fetal exposure; or by indirect exposure from household contamination.

Summary of *VAO*, *Update 1996*, and *Update 1998*

The committee responsible for *VAO* found there to be inadequate or insufficient information to determine whether an association existed between exposure to herbicides used in Vietnam or the contaminant dioxin and birth defects among

offspring. Additional information available to the committee responsible for *Update 1996* led it to conclude that there was limited or suggestive evidence of an association between the exposures and spina bifida in the children of veterans; there was no change in the conclusions regarding other birth defects. There was no change in these findings in *Update 1998*. Reviews of the studies underlying these findings may be found in the earlier reports.

Update of the Scientific Literature

Garcia et al. (1998) conducted a case-control study based on births in eight hospitals located in agricultural areas in Spain. Cases consisted of infants with any of the following malformations: nervous system defects, cardiovascular defects, epispadias or hypospadias, musculoskeletal defects, and unspecified defects. Some cases fell into more than one group. Controls were matched (1:1) with cases by hospital and date of birth. Interviews were conducted with parents of the cases and controls by telephone where possible and inperson otherwise. The questions covered potential confounders and activities that would involve potential exposure to pesticides. The critical exposure period for fathers was considered to be 3 months before conception through the first trimester of pregnancy, and for mothers, 1 month before conception through the first trimester. Interviewees who were involved in agricultural activities during this critical period were interviewed a second time to collect detailed information about their work and their potential exposures. Reliability and accuracy were assessed by gathering information from several sources, including employers and previously completed questionnaires. Several experts independently reviewed the interview information on exposures, and when discrepancies arose, a meeting was held to reach consensus. Overall, the adjusted odds ratio (OR) was 0.9 (95 percent confidence interval [95% CI] 0.3–2.7) for exposure to organochlorines. 2-Methyl-4-chlorophenoxyacetic acid (MCPA), a chlorophenoxy herbicide, showed an adjusted OR of 1.2 (0.4–3.8). When analyzed by a semiquantitative scale based on probability and intensity of exposure, the highest category of exposure to chlorophenoxy herbicides, compared to no exposure, showed an adjusted OR of 2.1 (0.5–9.8); the OR for MCPA was 2.6 (0.4–17.1). When analyzed according to an index based on months of work in agriculture and intensity of exposure, chlorophenoxy herbicides above the median had an OR of 3.1 (0.6–16.9), while for MCPA, the OR was 3.5 (0.6–21.8). When analyzed for involvement in pesticide treatments, those above the median level of exposure to chlorophenoxy herbicides had an OR of 0.6 (0.1–2.9), and a similar OR was seen for MCPA. Overall, this study provides little evidence for an association between herbicides chemically related to or potentially contaminated by TCDD and the risk of nervous system, cardiovascular, genital, musculoskeletal, or unspecified defects. However, because of the small number of exposed cases ($N = 21$), the statistical power and precision were poor.

In July 1998, the National Technical Information Service (NTIS) released a report that was apparently completed in 1984 regarding reproductive outcomes in Air Force personnel exposed to herbicides (Michalek et al., 1998a). The data concern the Ranch Hand cohort and a corresponding comparison group; comparisons are made for conceptions taking place in two time periods: pre- and post-Southeast Asia. The fathers were interviewed, and their reports of birth defects in their children were verified by reviewing birth and other medical records and birth and death certificates. The most common defects were of the musculoskeletal and the circulatory systems. About one-third of the reported defects had not been verified; this percentage was equal for Ranch Hands and comparisons. The analysis used only verified defects. No verification had been conducted for those responding that their children had no defects. In the pre-Southeast Asia period, those in the Ranch Hand group had a lower percentage of children with birth defects than the comparison group (OR = 0.7). In the post-Southeast Asia period, the percentage of children with birth defects was higher (OR = 1.5). These were significantly different; however, after adjustment for occupation; the test for homogeneity gave a p-value of 0.6. The differences between Ranch Hands and comparisons were found for the enlisted flying and enlisted ground crews but not for officers. When stratified by smoking, the strongest differences were found among children whose mothers smoked. Overall, this study suggests a possible association between service in Southeast Asia and birth defects but is limited because of the low verification of reported birth defects and the lack of verification of reports of no defects. The use of a heterogeneous group of defects could have reduced statistical power if exposure were associated with malformations in one system or of one type only.

The Australian Vietnam veterans Validation Study also examined spina bifida in the offspring of male Vietnam veterans (AIHW, 1999). In this study, an attempt was made to validate self-reported medical conditions. For each condition or disease, medical documents, physician certification, and records on disease or death registers were used. Three categories were created: (1) a condition was considered "validated" if sufficient information was found that confirmed the existence of the condition; (2) a condition was considered "not validated" if information from the validation source indicated that the condition did not or had not existed to the best of its knowledge; (3) a condition was considered "not able to be validated" when the source could not be contacted or accessed, or the source indicated was not able to confirm or deny the existence of the condition. The study made an adjustment to estimate the number that fell in the third category but would be expected to be validated based on information in reports in the first two categories. A total of 34 spina bifida cases were validated, and the adjustment brought this figure to an estimated 50. The expected number of cases, for comparison, was 33, for which a CI of 22–44 is given in the report. Thus, there appears to be a significant excess of spina bifida cases in children born to Australian Vietnam veterans. Cleft palate also showed an excess, with 94 estimated validated conditions, where 64 were expected.

Conclusions

Strength of Evidence in Epidemiologic Studies

The committee continues to believe that the available scientific literature provides limited/suggestive evidence of an association between exposure to herbicides (2,4-D, 2,4,5-T and its contaminant TCDD, cacodylic acid, and picloram) and spina bifida in offspring. The Australian veterans Validation Study lends further support to this conclusion. Given the limitations in this study, including the extrapolation of validation rates to cases with inadequate data, the information available is not strong enough to reclassify this outcome in the category of "sufficient evidence."

There is no information contained in the research reviewed for this report to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides (2,4-D, 2,4,5-T and its contaminant TCDD, cacodylic acid, and picloram) and other birth defects.

Biologic Plausibility

Laboratory studies of potential male-mediated developmental toxicity of TCDD and herbicides, specifically with regard to birth defects, are too limited to permit conclusions. Research on chemical production workers with TCDD exposure suggests that some hormonal changes are associated with such exposure, but it is unclear whether these changes could be responsible for an increase in spina bifida or other birth defects.

A summary of the biologic plausibility for the reproductive effects of TCDD and the herbicides in general is presented in the conclusion to this chapter. A discussion of toxicological studies that concern biologic plausibility is contained in Chapter 3.

Increased Risk of Disease Among Vietnam Veterans

The new data from the Validation Study of Australian Vietnam veterans provides further evidence of an elevated risk for spina bifida among the offspring of men who served in Vietnam. Other data that have come to the attention of the committee are contained in a report from the Air Force Health Study, which indicates that among children conceived after service in Southeast Asia, birth defects may have been greater in the Ranch Hand group than in the comparison group. However, about one-third of reported birth defects were of unknown verification status, severely limiting the conclusions that can be drawn. Thus, the previous conclusion that there is limited/suggestive evidence for an increased risk of spina bifida among offspring of Vietnam veterans remains, but there are no changes with regard to other birth defects.

TABLE 8-1 Selected Epidemiologic Studies—Neural Tube Defects

Reference	Study Population	Exposed Cases[a]	Estimated Risk (95% CI)[a]
OCCUPATIONAL			
Studies reviewed in *Update 1998*			
Blatter et al., 1997	Offspring of Dutch farmers—spina bifida		
	Pesticide use (moderate or heavy exposure)	9	1.7 (0.7–4.0)
	Herbicide use (moderate or heavy exposure)	7	1.6 (0.6–4.0)
Kristensen et al., 1997	Offspring of Norwegian farmers—spina bifida		
	Tractor spraying equipment	28	1.6 (0.9–2.7)
	Tractor spraying equipment and orchards or greenhouses	5	2.8 (1.1–7.1)
Dimich-Ward et al., 1996	Sawmill workers		
	Spina bifida or anencephaly	22[b]	2.4 (1.1–5.3)
	Spina bifida	18[b]	1.8 (0.8–4.1)
Garry et al., 1996	Private pesticide appliers		
	Central nervous system defects	6	1.1 (0.5–2.4)
ENVIRONMENTAL[c]			
Studies Reviewed in *VAO*			
Stockbauer et al., 1988	TCDD soil contamination in Missouri		
	Central nervous system defects	3	3.0 (0.3–35.9)
Hanify et al., 1981	Spraying of 2,4,5-T in New Zealand		
	Anencephaly	10	1.4 (0.6–3.3)
	Spina bifida	13	1.1 (0.6–2.3)
VIETNAM VETERANS			
New Studies			
AIHW, 1999	Australian Vietnam veterans—Validation Study (spina bifida)	50	1.5 (NR)
Studies Reviewed in *Update 1996*			
Wolfe et al., 1995	Follow-up of Air Force Ranch Hands		
	Neural tube defects among Ranch Hands children[d]	4	
	Neural tube defects among comparison children	0	
Studies Reviewed in *VAO*			
CDC, 1989	Vietnam Experience Study		
	Spina bifida among Vietnam veterans' children	9	1.7 (0.6–5.0)
	Spina bifida among non-Vietnam veterans' children	5	
	Anencephaly among Vietnam veterans' children	3	
	Anencephaly among non-Vietnam veterans' children	0	

TABLE 8-1 *Continued*

Reference	Study Population	Exposed Cases[a]	Estimated Risk (95% CI)[a]
Erickson et al., 1984a,b	Birth Defects Study		
	Vietnam veterans: spina bifida	19	1.1 (0.6–1.7)
	Vietnam veterans: anencephaly	12	0.9 (0.5–1.7)
	EOI-5: spina bifida	19[e]	2.7 (1.2–6.2)
	EOI-5: anencephaly	7[e]	0.7 (0.2–2.8)
Australia Department of Veteran Affairs, 1983	Australian Vietnam veterans—Neural tube defects	16	0.9

NOTE: EOI = score based on interview; NR = not reported; 2,4,5-T = 2,4,5-trichlorophenoxyacetic acid.

[a] Given when available.

[b] Number of workers with maximal index of exposure (upper three quartiles) for any job held up to 3 months prior to conception.

[c] Either or both parents potentially exposed.

[d] Four neural tube defects among Ranch Hand offspring include two spina bifida (high dioxin level), one spina bifida (low dioxin), and one anencephaly (low dioxin). Denominator for Ranch Hand group is 792 and for comparison group 981.

[e] Number of Vietnam veterans fathering a child with a neural tube defect given any exposure opportunity index.

FERTILITY

Background

Male reproductive function is a complex system under the control of several components whose proper coordination is important for normal fertility. There are several components or end points related to male fertility, including reproductive hormones and sperm parameters. Only a brief description of male reproductive hormones is given here; more detailed reviews can be found elsewhere (Yen and Jaffe, 1991; Knobil et al., 1994). The reproductive neuroendocrine axis involves the central nervous system, the anterior pituitary gland, and the testis. The hypothalamus integrates neural inputs from the central and peripheral nervous systems and regulates gonadotropins (luteinizing hormone and follicle-stimulating hormone). Both of these hormones are necessary for normal spermatogenesis. Luteinizing hormone and follicle-stimulating hormone are secreted in episodic bursts by the anterior pituitary gland into the circulation. LH interacts with receptors on the Leydig cells, which leads to increased testosterone synthesis. FSH and testosterone from the Leydig cells interact with the Sertoli cells in the seminiferous tubule epithelium to regulate spermatogenesis. Several agents, such

Mr. MICHAUD. A couple questions and designed as so—I know there are several different service organizations here, so it could be a yes or a no answer—and I do appreciate each of the veterans' organizations for coming here today to give your testimony. I appreciate all that you do for your members. I'll bet the members really appreciate that.

My first question—and I know some of you have already addressed it in your statement—is should the survivor of veterans and other claimants who die while a claim is pending before the Department of Veterans Affairs be permitted to continue the deceased's claim, including the ability to submit additional evidence in support of the claim?

And my second question would be are you aware of any massive, widespread use of herbicides outside of Vietnam suggested by the VA's testimony?

Mr. SURRATT. On your first question, if I understand it—would it be beneficial to allow a survivor to become the claimant in the event of the death of the veteran, for example? The answer to that is yes. If the claim were before the Board of Veterans' Appeals, or before the court, it wouldn't have to come back and start all over to proceed to its end. It would seem to be efficient both for the system, and beneficial in the administrative system and the judicial system, and it would certainly benefit the surviving claimant.

On the Agent Orange issue, Korea is the only place that I've heard of. Perhaps one military base in the United States, I may have read something about sometime, but nothing to the extent that the VA has indicated.

Mr. MICHAUD. Thank you.

Mr. GAYTAN. I'd like to add that the American Legion also supports the family continuing to pursue the claim of a deceased veteran.

Also, the exposure question that you asked—adding to what Mr. Surratt said—yes, Korea, there was an amount of exposure there; and there were some facilities in the United States that had limited exposure to Agent Orange; and we would like for any servicemembers who were exposed to Agent Orange to be considered in this legislation.

Mr. BLAKE. PVA would certainly support the surviving spouse taking up the claim for the veteran that might have deceased before the claim was decided.

On the issue of the Agent Orange, outside of what my colleagues have already added, I couldn't add any additional information to that.

Mr. HAYDEN. The VFW feels the surviving spouse should be allowed to continue the claim for benefits that otherwise the veteran would have been entitled to.

In response to your second question we have attached in our testimony an article that we ran in the February 2000 Magazine of the VFW on Agent Orange exposure—specifically in Korea. I am also aware that Agent Orange was used in Panama in the late 1960s.

Mr. JACKSON. The Ex-POWs feel that the survivor should be able to continue the same claim.

Mr. BROWN. Thank you, Mr. Michaud.

Mr. Bradley, do you have a question?

Mr. BRADLEY. Thank you very much, Mr. Chairman. Just so that I'm clear with regard to H.R. 850, are all organizations urging that we delete—I believe it's Section 3?

Mr. GAYTAN. I can say that the American Legion is urging that you delete Section 3.

Mr. SURRATT. DAV strongly opposes that and would like to see you delete that.

Mr. JACKSON. We're neutral, the Ex-POWs.

Mr. HAYDEN. The VFW strongly objects to that section.

Mr. BLAKE. PVA would also like to see that section deleted.

Mr. MICHAUD. Thank you. That's all I have.

Mr. BROWN. And I guess I might make a comment. I know there's been some differences of estimates on how much that section might save, or it would cost if we didn't repeal it, right? Okay.

The CBO estimates that if you left it in there, it would cost $180 million over a 10-year period. The VA estimates it would cost $4.6 billion over that same 10-year period. We're not quite sure exactly. We're still seeking the best estimate on that.

Gentlemen, thank you very much for coming and being a part of this hearing this morning. Your information is valuable to this committee and we certainly look forward, as we proceed further with other issues, to have your testimony. And thank you very much for coming.

Without objection, I'm submitting the following witness statements into the printed record of the hearing: Mr. Michael Ruzalski, on behalf of House Resolution 533; Ms. Matilda Bonny, on behalf of House Resolution 241; Ms. Dorothy Brasher, also on behalf of H.R. 241; as well as Mr. Richard Jones of AMVETS; and Mr. Rick Weidman of the Vietnam Veterans of America.

Members have copies of these statements in their folders.

(See pp. 96 to 107.)

Mr. BROWN. I appreciate your attendance this morning. This committee has a long-standing tradition of bipartisanship, and we look forward to working with each of you to ensure a productive year.

I might also state that Admiral Cooper stayed with us throughout the hearing, gentlemen, just to identify that the Veterans Administration Under Secretary and the Secretary are concerned about the issues and concerned about your thoughts. Admiral Cooper, thank you and your team for being with us through the whole deliberation.

Without any other business to come before the committee, we stand adjourned.

[Whereupon, at 10:53 a.m., the subcommittee was adjourned.]

APPENDIX

I

108TH CONGRESS
1ST SESSION

H. R. 241

To amend title 38, United States Code, to repeal the two-year limitation on the payment of accrued benefits that are due and unpaid by the Secretary of Veterans Affairs upon the death of a veteran or other beneficiary under laws administered by the Secretary.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2003

Mr. SMITH of New Jersey (for himself and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to repeal the two-year limitation on the payment of accrued benefits that are due and unpaid by the Secretary of Veterans Affairs upon the death of a veteran or other beneficiary under laws administered by the Secretary.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Veterans Beneficiary
5 Fairness Act of 2003".

1 **SEC. 2. PAYMENT OF ACCRUED BENEFITS.**

2 (a) REPEAL OF LIMITATION ON PAYMENT.—Sub-
3 section (a) of section 5121 of title 38, United States Code,
4 is amended by striking "for a period not to exceed two
5 years" in the matter preceding paragraph (1).

6 (b) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall take effect with respect to deaths oc-
8 curring on or after the date of the enactment of this Act.

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I

108TH CONGRESS
1ST SESSION

H. R. 533

To amend title 38, United States Code, to provide for health benefits and certain other benefits to be furnished by the Department of Veterans Affairs to any individual who has spina bifida and is the natural child of a veteran who, while in military service, was exposed to a herbicide agent.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2003

Mr. EVANS (for himself, Mr. RODRIGUEZ, Mr. FILNER, Mr. GUTIERREZ, Ms. CORRINE BROWN of Florida, Mr. SNYDER, Mr. MCINTYRE, Mr. SANDERS, Mr. SERRANO, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to provide for health benefits and certain other benefits to be furnished by the Department of Veterans Affairs to any individual who has spina bifida and is the natural child of a veteran who, while in military service, was exposed to a herbicide agent.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Agent Orange Vet-
5 erans' Disabled Children's Benefits Act of 2003".

1 **SEC. 2. EXTENSION OF SPINA BIFIDA BENEFITS FOR CHIL-**
2 **DREN OF VETERANS.**

3 (a) ELIGIBLE CHILDREN.—Subchapter I of chapter
4 18 of title 38, United States Code, is amended by inserting
5 before section 1802 the following new section:

6 **"§ 1801. Persons eligible for benefits**

7 "(a) ELIGIBLE CHILD.—An individual is an eligible
8 child for purposes of this subchapter if the individual is
9 suffering from spina bifida and is—

10 "(1) a child as defined in section 1821(1) of
11 this title; or

12 "(2) the natural child, regardless of age or mar-
13 ital status, of a parent who performed qualifying
14 herbicide-risk service, if the individual was conceived
15 after the parent performed such service.

16 "(b) QUALIFYING HERBICIDE-RISK SERVICE.—(1)
17 An individual performed qualifying herbicide-risk service
18 if (as determined by the Secretary) the individual, while
19 performing active military, naval, or air service (without
20 regard to the characterization of that individual's serv-
21 ice)—

22 "(A) served in an area in which a Vietnam-era
23 herbicide agent was used during a period during
24 which such agent was used in that area; or

25 "(B) otherwise was exposed to a Vietnam-era
26 herbicide agent.

1 "(2) For purposes of paragraph (1), the term 'Viet-
2 nam-era herbicide agent' has the meaning given the term
3 'herbicide agent' in section 1116(a)(3) of this title.".
4 (b) HEALTH CARE.—Section 1803(a) of such title is
5 amended by striking "a child of a Vietnam veteran who
6 is suffering from spina bifida" and inserting "an eligible
7 child".
8 (c) VOCATIONAL TRAINING AND REHABILITATION.—
9 Section 1804(a) of such title is amended by striking "a
10 child of a Vietnam veteran who is suffering from spina
11 bifida" and inserting "an eligible child".
12 (d) MONETARY ALLOWANCE.—Section 1805(a) of
13 such title is amended by striking "any child of a Vietnam
14 veteran" and inserting "any eligible child".
15 (e) CONFORMING AMENDMENTS.—
16 (1) The heading of chapter 18 of such title is
17 amended to read as follows:
18 **"CHAPTER 18—DISABILITY BENEFITS FOR**
19 **CHILDREN OF VIETNAM VETERANS**
20 **AND OTHER VETERANS EXPOSED TO**
21 **HERBICIDE AGENTS".**
22 (2) The heading of subchapter I of such chap-
23 ter is amended to read as follows:

I

108TH CONGRESS
1ST SESSION

H. R. 761

To amend title 38, United States Code, to authorize the Secretary of Veterans' Affairs to provide adapted housing assistance to disabled members of the Armed Forces who remain on active duty pending medical separation.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2003

Mr. EVANS (for himself, Mr. SMITH of New Jersey, Mr. RODRIGUEZ, Mr. FILNER, Mr. RENZI, Ms. CORRINE BROWN of Florida, Mr. REYES, Mr. MICHAUD, Ms. JACKSON-LEE of Texas, Mr. LANGEVIN, and Mr. SANDERS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to authorize the Secretary of Veterans' Affairs to provide adapted housing assistance to disabled members of the Armed Forces who remain on active duty pending medical separation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Disabled Servicemembers Adapted Housing Assistance Act of 2003".

SEC. 2. AUTHORIZATION TO PROVIDE ADAPTED HOUSING ASSISTANCE TO CERTAIN DISABLED MEMBERS OF THE ARMED FORCES WHO REMAIN ON ACTIVE DUTY.

Section 2101 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(c)(1) The Secretary may provide assistance under subsection (a) to a member of the Armed Forces serving on active duty who is suffering from a disability described in paragraph (1), (2), or (3) of that subsection if such disability is the result of an injury incurred or disease contracted in or aggravated in line of duty in the active military, naval, or air service. Such assistance shall be provided to the same extent as assistance is provided under that subsection to veterans eligible for assistance under that subsection and subject to the requirements of the second sentence of that subsection.

"(2) The Secretary may provide assistance under subsection (b) to a member of the Armed Forces serving on active duty who is suffering from a disability described in subparagraph (A) or (B) of paragraph (1) of that subsection if such disability is the result of an injury incurred or disease contracted in or aggravated in line of duty in the active military, naval, or air service. Such assistance shall be provided to the same extent as assistance is pro-

1 vided under such subsection to veterans eligible for assist-
2 ance under that subsection and subject to the require-
3 ments of paragraph (2) of that subsection.".

○

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108TH CONGRESS
1ST SESSION

H. R. 850

To amend title 38, United States Code, to provide special compensation for former prisoners of war, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2003

Mr. SIMPSON (for himself, Mr. COX, Mr. BOEHNER, Mr. DREIER, Mr. HYDE, Mr. KOLBE, Mr. LEACH, Mr. OTTER, Mr. SENSENBRENNER, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to provide special compensation for former prisoners of war, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Former Prisoners of War Special Compensation Act of 2003".

1 **SEC. 2. SPECIAL COMPENSATION FOR FORMER PRISONERS**
2 **OF WAR.**

3 (a) IN GENERAL.—Chapter 11 of title 38, United
4 States Code, is amended by adding at the end the fol-
5 lowing new subchapter:

6 "SUBCHAPTER VII—FORMER PRISONERS OF
7 WAR

8 **"§ 1181. Special compensation: former prisoners of**
9 **war**

10 "(a)(1) The Secretary shall pay monthly to each vet-
11 eran who is a former prisoner of war and who while a
12 prisoner of war was detained or interned for not less than
13 30 days special compensation at the rate specified in sub-
14 section (b).

15 "(2) For the purposes of this section, the term 'vet-
16 eran' includes an individual serving on active duty.

17 "(b) The rate of special compensation for purposes
18 of this section shall be as follows:

19 "(1) If the former prisoner of war was detained
20 or interned for a period of not more than 120 days,
21 the monthly amount of special compensation payable
22 shall be $150.

23 "(2) If the former prisoner of war was detained
24 or interned for a period of more than 120 days and
25 not more than 540 days, the monthly amount of spe-
26 cial compensation payable shall be $300.

"(3) If the former prisoner of war was detained or interned for a period of more than 540 days, the monthly amount of special compensation payable shall be $450.

"(c) If a former prisoner of war was detained or interned on two or more separate occasions, the cumulative length of all occasions of confinement or internment as a prisoner of war shall determine the monthly compensation rate payable under subsection (b).

"§ 1182. Provisions relating to special compensation for former prisoners of war

"(a) Special compensation payable under this subchapter shall be paid in addition to any other payment under the laws of the United States. Amounts paid to an individual under this subchapter shall not be considered to be income or resources for purposes of determining eligibility to receive benefits under any Federal or federally assisted program.

"(b) Special compensation payable under this subchapter shall not be considered to be compensation within the meaning of that term in section 101(13) of this title.

"(c) The provisions of subsection (c) of section 1562 of this title shall apply to special compensation under this subchapter in the same manner as to special pension under that section.".

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such chapter is amended by adding
3 at the end the following new items:

"SUBCHAPTER VII—FORMER PRISONERS OF WAR

"1181. Special compensation: former prisoners of war.
"1182. Provisions relating to special compensation for former prisoners of war.".

4 **SEC. 3. CLARIFICATION OF PROHIBITION ON PAYMENT**
5 **OF COMPENSATION FOR ALCOHOL OR DRUG-**
6 **RELATED DISABILITY.**

7 (a) CLARIFICATION.—Sections 1110 and 1131 of title
8 38, United States Code, are each amended by inserting
9 ", even if the abuse is secondary to a service-connected
10 disability" before the period at the end.

11 (a) APPLICABILITY.—The amendments made by sub-
12 section (a) apply to any claim—

13 (1) filed on or after the date of the enactment
14 of this Act; or

15 (2) filed before the date of the enactment of
16 this Act and not finally decided as of that date.

17 **SEC. 4. OUTPATIENT DENTAL CARE FOR ALL FORMER**
18 **PRISONERS OF WAR.**

19 Section 1712(a)(1)(F) of title 38, United States
20 Code, is amended by striking "and who was detained or
21 interned for a period of not less than 90 days".

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108TH CONGRESS
1ST SESSION

H. R. 966

To amend title 38, United States Code, to reinstate the vocational training program of the Department of Veterans Affairs for certain low-income veterans in receipt of pension from that Department.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2003

Mr. BROWN of South Carolina (for himself, Mr. RODRIGUEZ, Mr. SMITH of New Jersey, and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to reinstate the vocational training program of the Department of Veterans Affairs for certain low-income veterans in receipt of pension from that Department.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Disabled Veterans' Return-to-Work Act of 2003".

1 **SEC. 2. REINSTATEMENT OF VETERANS VOCATIONAL**
2 **TRAINING PROGRAM FOR CERTAIN PENSION**
3 **RECIPIENTS.**

4 (a) ESTABLISHMENT OF NEW PROGRAM PERIOD.—
5 Subsection (a)(3) of section 1524 of title 38, United
6 States Code, is amended by striking "the period beginning
7 on February 1, 1985, and ending on December 31, 1995"
8 and inserting "the five-year period beginning on the date
9 of the enactment of the Disabled Veterans' Return-to-
10 Work Act of 2003".

11 (b) CONFORMING AMENDMENT.—Subsection (b)(4)
12 of such section is amended by striking "December 31,
13 1995" and inserting "the end of the program period".

14 (c) OUTREACH.—Such section is further amended by
15 adding at the end the following new subsection:

16 "(f) The Secretary shall ensure that the availability
17 of vocational training under this section is made known
18 through a variety of means, including the Internet and an-
19 nouncements in Department publications and other vet-
20 erans' publications.".

21 (d) REPORTS.—Such section is further amended by
22 adding at the end the following new subsection:

23 "(g) Not later than two years after the date of the
24 enactment of the Disabled Veterans' Return-to-Work Act
25 of 2003, and each year thereafter, the Secretary shall sub-
26 mit to the Committees on Veterans' Affairs of the Senate

1 and House of Representatives a report on the operation
2 of this section. The report shall set forth an evaluation
3 of the vocational training provided under this section for
4 the period involved, and shall include an analysis of the
5 cost-effectiveness of the vocational training provided under
6 this section as well as data on the entered-employment
7 rate of veterans pursuing such vocational training.".
8 (e) STYLISTIC AMENDMENTS.—Such section is fur-
9 ther amended—
10 (1) by striking "of Veterans Affairs" in sub-
11 section (a)(1); and
12 (2) by striking "of this section" in subsections
13 (a)(2), (b)(1), (b)(4) (both places it appears), (c),
14 (d), and (e).

○

I

108TH CONGRESS
1ST SESSION

H. R. 1048

To amend title 38, United States Code, to increase the amount of assistance for certain disabled veterans for specially adapted housing and automobile and adaptive equipment.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 2003

Mr. BROWN of South Carolina (for himself, Mr. RODRIGUEZ, Mr. SMITH of New Jersey, and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

---

A BILL

To amend title 38, United States Code, to increase the amount of assistance for certain disabled veterans for specially adapted housing and automobile and adaptive equipment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Disabled Veterans Adaptive Benefits Improvement Act of 2003".

SEC. 2. INCREASE IN ASSISTANCE AMOUNT FOR SPECIALLY ADAPTED HOUSING.

Section 2102 of title 38, United States Code, is amended—

(1) in the matter preceding paragraph (1) of subsection (a), by striking "$48,000" and inserting "$50,000"; and

(2) in subsection (b)(2), by striking "$9,250" and inserting "$10,000".

SEC. 3. INCREASE IN AMOUNT OF ASSISTANCE FOR AUTOMOBILE AND ADAPTIVE EQUIPMENT FOR CERTAIN DISABLED VETERANS.

Section 3902(a) of title 38, United States Code, is amended by striking "$9,000" and inserting "$11,000".

○

Statement of Representative Mike Simpson (R-ID)
before the
Subcommittee on Benefits
House Committee on Veterans Affairs
H.R. 850
"The Former Prisoners of War Special Compensation Act of 2003"

April 10, 2003

Mr. Chairman, Members of the Subcommittee, I am pleased to appear before you today to discuss my bill, H.R. 850, "The Former Prisoners of War Special Compensation Act of 2003". I introduced this legislation on February 13, 2003 and it is identical to the bill I introduced in the 107th Congress, H.R. 5235, with one additional provision which I will describe later. There are currently 29 Republican and Democrat cosponsors on the bill

As you know, I was privileged to serve as Chairman of this Subcommittee in the last Congress. I can tell you from my experience as Chairman, this Subcommittee plays a vital role in authorizing and protecting the federal benefits that American veterans and their dependents receive for their service to the nation.

Today, I want to talk about a group of veterans who are truly America's heroes: former U.S. Prisoners of War (POWs). As I said when I introduced the bill, it is hard to envision the horror endured by our nation's POWs. They were subjected to conditions most of us could never imagine: painful interrogation, sleep deprivation, torture and forced manual labor. We must never forget their sacrifices.

In conversations with my friend, Secretary Principi, veterans groups and others, I came to realize there is a gap in benefits with respect to former POWs. I strongly believe a special compensation program is warranted, similar to that paid by the VA to Medal of Honor recipients.

H.R. 850

My bill would establish a three-tiered special monthly pension based upon length of internment and would be in addition to any other service-connected disability compensation or pension that a former POW may be receiving. The new compensation system would be delivered through the Department of Veterans Affairs. Under this system, POWs detained 30 to 120 days would receive $150 per month, those detained 121 to 540 days would receive $300 per month, and those detained for 540 or more days would receive $450 per month.

In addition, section 4 of the bill contains a provision that was not in last year's bill: to provide outpatient dental care for all POWs without a minimum period of internment. Under current law, a period of internment of not less than 90 days is required in order to qualify for such benefits.

It is important to note that my legislation would apply to POWs from all wars. There are an estimated 42,781 surviving ex-POWs in the United States today: more than 39,700 from World War II; 2,400 from the Korea War; 601 from the Vietnam War; three from Kosovo and one from Somalia. In my home state of Idaho, there are approximately 80 ex-POWs. Of course, the bill would also apply to U.S. POWs now being held by Iraq.

CBO Cost Estimate and Offsets

The Congressional Budget Office prepared a cost estimate on H.R. 5235 as introduced last Congress. I would ask the Chairman if I could submit the text of the CBO letter for the hearing record. In summary, CBO estimated that enacting the POW compensation provisions of H.R. 5235 would increase direct spending by $24 million in 2003, $345 million over the 2003-2007 period, and $634 million over the 2003-2012 period.

I believe that this is a modest cost in light of the sacrifice and hardships POWs endured while held captive by a hostile power. However, H.R. 850 also contains an offset: a provision in Section 3 which would clarify that disability compensation for alcohol and drug abuse arising secondarily from a service-connected disability could not be paid.

CBO has said this provision would decrease direct spending by $180 million over the 2003-2012 period. However, the President's budget proposal for fiscal year '04 contains

this provision and claims savings of $127 million a year. The budget already assumes enactment of the Allen repeal.

But there is another kind of offset we must consider: the offset of equity, the offset of justice for our veterans. The bill I introduced last year did save on some government spending, and it did so not by eliminating a benefit that our veterans are entitled to, but rather by cutting back on an incorrect and, frankly, excessive court interpretation of benefits for certain service-related drug and alcohol abuse. I believe a court made a mistake, and it was a mistake in veterans' favor, but that doesn't mean the mistake should not be corrected.

U.S. International Obligations

Let me briefly address the issue of POW compensation and U.S. international obligations. It is important to recognize that, as a general principle of international law, wars between nations are ended by governments, not private individuals. Reparations and claims are negotiated through government-to-government agreements and treaties. Every country has a duty to provide benefits and compensation to its own veterans.

A case in point is our obligations under the 1951 Treaty of Peace with Japan signed in San Francisco between United States, Japan and 47 other Allied countries. This Treaty has not only provided the basis for our security relationships in the Asia-Pacific region, it also set up a system of compensation for former Prisoners of War held by Japan.

As you may know, former U.S. POWs interned by Japan during World War II have filed numerous class action lawsuits against Japanese corporations in U.S. courts seeking compensation, damages and reparations resulting from forced labor and mistreatment by Japan. Although a federal appeals court upheld the dismissal of some of the suits in January, this issue is far from resolved as appeals and state court cases are still pending. These lawsuits concern me.

Further, last Congress, legislation was introduced (H.R. 1198) which would have the effect of abrogating the Treaty because it would create a new right for former members of the Armed Services to sue Japanese corporations based on actions taken during WWII. I believe this legislation was well-intentioned and I agree that we should compensate these POWs who were forced to work. However, private lawsuits for reparations are not the answer. That is why I believe my legislation is so compelling. In fact, the Treaty actually contemplates that signatory governments would take care of their own veterans. I understand that Allied governments have made payments to their former POWs as well.

I would like Members to hear the quote from the testimony of the Assistant Attorney General, Robert McCollum, U.S. Department of Justice, before the House Judiciary Committee last September in opposition to H.R. 1198:

> Under the 1951 Treaty, Japan waived all claims against the Allies and their nationals and gave the Allies the right to seize and dispose of approximately $4 billion in Japanese assets located within their territories-including the assets of Japanese corporations. In return, in Article 14 of the Treaty, the Allied nations expressly waived-on behalf of themselves and their nationals-claims arising out of actions taken by Japan and its nationals in the course of the prosecution of the war. This waiver included the claims of United States and Allied prisoners of war.
>
> In waiving all such claims against Japan and its nationals, each Allied government assumed the responsibility for using the seized Japanese assets to provide compensation to its nationals in a manner it deemed fair and equitable. In the United States, the seized assets were placed into the War Claims Fund established pursuant to the War Claims Act, 50 U.S.C.App. 2001, *et seq.*, and distributed through the War Claims Commission. Among those eligible for payments from the War Claims Fund were Americans held as prisoners of war by Japan, who received payments based on the conditions of their imprisonment, including whether they were forced to perform labor

> without pay in contravention of the Geneva Convention. *Hearing before the Subcommittee on Immigration, Border Security and Claims, Committee on the Judiciary, House of Representatives, September 25, 2002, Serial No. 106, p.15.*

Our relationship with Japan has grown out of this Treaty. Our military and security interests in Asia, including a substantial military presence in Japan would be jeopardized by reopening the Treaty. In fact, Japan has become one of our closest allies and strongly supports the U.S. in the war with Iraq.

This issue of POW compensation was also recently addressed by Secretary of State Colin Powell in a colloquy before the House Budget Committee with Representative Doc Hastings. The Secretary said as follows:

> I am familiar with the issue and have studied it on a number of occasions over the past few years because these were our folks and they suffered mightily during the Baatan Death March. And are further entitled to compensation for their suffering.
>
> The difficult legal situation we find ourselves in is that the 1951 Treaty by its terms, resolved all outstanding claims and as a precedent of international law, we have to defend that principle of the treaty trumping all other claims in this matter. And that is the reason that the State Department has held firmly to the position that the Treaty resolved these claims and these issues. At the same time, we have been trying to find creative ways outside of the law and outside of the treaty whereby a form of compensation might be provided to these veterans. I can't speak specifically to the legislation that you might have in mind, but I would be more than willing and anxious to take a look at it to see if it is a way forward.
>
> But I have to stand on the principle of the treaty resolving the claims. Otherwise it would open up all sorts of opportunities for claims that were settled by other treaties or by this treaty *(unofficial transcript, House Budget Committee Hearing, February 6, 2003).*

As you can see, the Bush Administration strongly supports the Peace Treaty and its system of POW compensation. I believe we can work with the Departments of State and Veterans Affairs to work out a new compensation program like the one I have proposed.

Conclusion:

Mr. Chairman, with our military now engaged in Iraq and with the war on terrorism, this Committee has a special responsibility to our future veterans. As I noted earlier, former U.S. POWs have often experienced inadequate food and medical care and even physical and psychological trauma. As a result, I strongly believe the time is right for a program of special compensation for former U.S. POWs. I ask your support for this important legislation.

I would be happy to answer any questions.

Opening Statement of the Honorable Michael Michaud
Ranking Democrat – Subcommittee on Benefits
House Committee on Veterans Affairs
April 10, 2003

Welcome Mr. Simpson. It is good to see former Members of this Committee retaining their interest in benefits for our Nation's veterans and their family members.

We have six bills to consider today. I am pleased to support most of the bills before us today. I hope that we will also consider amendments to some of these bills to address issues of additional concern. I support removal of the two-year limit on accrued benefits, but believe we should not stop there. I hope that we will also be able to consider amendments to allow family members to continue the claims when veterans or other beneficiaries die and to allow family members of a deceased veteran to claim benefits which have not been paid.

In many cases, the missing evidence at the time of a veteran's death is documentation of the nexus between the claimed disability and the veteran's military service. I believe that family members should be allowed to continue the claims and have the ability to supply the missing evidence. Of course, where the veteran's death prevents critical evidence needed to establish entitlement to benefits is lacking, the claim would be denied.

For example, in my district, there is a veteran whose most recent claim was filed in July of 1989. It has been pending for almost 14 years! The claim was remanded by the United States Court of Appeals for Veterans Claims in 1992. Since that time, there has been continued failure to comply with remand orders of the court and the Board of Veterans Appeals. Fortunately this veteran is not terminally ill, but the failure to comply with the various orders for specialist examinations and opinions has resulted in extraordinary delays in his claim. Following the most recent remand in November of 1999, the entire C-file was lost. Luckily, the attorney for the veteran had a copy of the file which he was able to provide to VA. If this veteran were to die while his claim is pending, I believe that his spouse should be able to continue the veteran's claim. There is ample medical evidence in the file of the veteran's medical condition and what is needed is an evaluation of the relationship between the veteran's military service, including documented loss of vision during service and his subsequent medical and eye problems. Currently the veteran is awaiting examination by some of the same physicians whose reports were deemed inadequate previously.

In another claim brought to the Committee's attention, the veteran's claim had been pending for seven years. The veteran was terminally ill with prostate cancer attributed to Agent Orange exposure in Korea. Fortunately, the Board agreed to accept evidence the Committee received from the Department of Defense identifying his unit as one of the units assigned to the demilitarized zone (DMZ), and the claim was processed without further delay. Had this veteran died while confirmation of his location was being

obtained from the Department of Defense, I believe that his spouse should have been able to proceed on the claim. As long as veterans have claims pending for many years, I believe that the delay in processing should not be a basis for denying benefits to family members, including adult children, if the veteran fails to outlive the claims process. If justice delayed is justice denied, a veteran's claim should not be extinguished because it was not properly adjudicated.

Two surviving spouses of World War II veterans have provided eloquently written testimony on the need to revise the bill to allow surviving spouses to qualify for accrued benefits even if the veteran died before enactment of the bill. While I realize that this would limit the cost of the bill, I believe that it is more equitable to allow the bill to be applied to any decision on accrued benefits made on or after the date of enactment of any decision which is not final as of the date of enactment. I also believe that we should amend the bill to allow all surviving family members, not just surviving spouses and dependent children, to receive the benefits which were wrongfully not paid during the veteran's lifetime.

I fully support the bill to allow the children, such as Michael Ruzalski, whose father was exposed to Agent Orange and similar herbicides at the DMZ in Korea to receive the same benefits for spina bifida as the children whose parents were exposed in the Republic of Vietnam. Michael's written testimony has been submitted for the record. VA has acknowledged Mr. Ruzalski was exposed to herbicides in Korea, but denied Michael's claim because under current law, only parental exposures in Vietnam are eligible for benefits.

The VA claims that this bill would cost $60.8 million in fiscal year 2004 if this bill were passed. In order for this amount to be reached, more than 3,000 additional children would have to meet the criteria based upon VA's current costs for children entitled to benefits under chapter 18 of title 38. This claim is extraordinary!

It would require an additional 9 million veterans to have been exposed in locations outside of Vietnam, 3 million more than those who served during the entire Vietnam era. I have seen no evidence that there was such widespread use of the herbicides associated with spina bifida. How can we continue to deny benefits to children with spina bifida, simply because their parents were exposed to Agent Orange in a country other than Vietnam?

Mr. Evans, your bill, H.R. 761 will allow servicemembers who become severely disabled during military service to apply for specially adapted housing grants while awaiting a medical discharge from the service departments. This is a humanitarian and cost effective bill. If servicemembers who qualify for this benefit are medically ready for discharge from hospitalization, they should be able to obtain an accessible home. This bill will allow them to do so without waiting for the wheels of the bureaucracy to turn.

H.R. 966 will allow wartime veterans with nonservice connected disabilities to receive vocational rehabilitation services from the VA. If totally disabled veterans can be

rehabilitated to the point where they can obtain employment or improvements in independent living, we should do all that we can to provide them with access to rehabilitation services. I support this bill and thank our Subcommittee Chairman for introducing it.

I also support the increases in housing and automobile allowances for our severely disabled service-connected veterans. This year's benefits can not adequately be provided with past year dollars. As inflation increases the cost of specially adapted housing and automobiles, we should increase the benefit amounts. I support H.R.1048 introduced by our Subcommittee Chairman, Mr. Brown.

While, I support our former Prisoners of War, along with many of the witnesses testifying today, I am opposed to taking away benefits from veterans with service-connected disabilities by reversing the court's decision in Allen v. Principi. Once a man or woman has been disabled by service to our Nation, I believe that it is our obligation to compensate them for all disabilities which flow from that service-connected disability.

I understand that we will be receiving testimony today on all of these bills. I welcome Admiral Cooper and all of our witnesses from the veterans service organizations. Thank you Mr. Chairman, I look forward to today's testimony and yield back the balance of my time.

STATEMENT OF

DANIEL L. COOPER,

UNDER SECRETARY FOR BENEFITS,

BEFORE THE

SUBCOMMITTEE ON BENEFITS,

HOUSE COMMITTEE ON VETERANS' AFFAIRS

APRIL 10, 2003

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on several bills of great interest to veterans.

H.R. 241

H.R. 241, the "Veterans Beneficiary Fairness Act of 2003," would eliminate a discrepancy regarding the limitation on the period for which retroactive benefits due and unpaid a claimant may be paid to others after the claimant's death. In the interest of fairness, we support enactment of this bill.

Under 38 U.S.C. § 5121, periodic monetary benefits to which an individual was entitled at death under existing ratings or decisions or based on evidence on file with the Department of Veterans Affairs (VA) at the time of death are paid upon the death of the individual to specified classes of survivors according to a prescribed order of preference. Prior to a recent court decision, VA had construed section 5121 to limit the payment of any benefits under that section to the retroactive period specified in the statute, regardless of whether the payment was based on an existing rating or decision or on evidence on file at the date of death. The retroactive payment period, originally one year, was extended to two years by Public Law 104-275, the "Veterans' Benefits Improvements Act of 1996."

On December 10, 2002, the United States Court of Appeals for Veterans Claims (CAVC) issued its decision in *Bonny v. Principi*, 16 Vet. App. 504 (2002). In that decision, the court held that 38 U.S.C. § 5121(a) specifies two kinds of

benefits: benefits that have been awarded to an individual in existing ratings or decisions but not paid prior to the individual's death, and benefits that could be awarded based on evidence in the file at the time of death. The court held that, in the case of the first type of benefits, the statute requires that an eligible survivor is to receive the entire amount of the award; only the latter type of "accrued" benefits is subject to the two-year limitation in 38 U.S.C. § 5121(a). The court based its interpretation of the statute primarily on the punctuation of section 5121(a).

The CAVC's *Bonny* decision has resulted in differing entitlements under section 5121 based on the status of the deceased's claim at the time of his or her death. H.R. 241 would eliminate this distinction by amending section 5121 to eliminate the two-year limitation on payment of retroactive benefits for all classes of beneficiaries under that statute.

The distinction the *Bonny* decision draws between the two categories of claimants—those whose claims had been approved and those whose entitlement had yet to be recognized when they died—is really one without a difference. In either case, a claimant's estate is deprived of the value of benefits for which he or she was, in life, eligible. H.R. 241 would remove this inequitable distinction, and we support its enactment.

We estimate the cost of complying with the *Bonny* decision for fiscal year (FY) 2004 to be $1.7 million and $18.2 million for the period FY 2004 through FY 2013. We estimate the incremental cost to implement H.R. 241, that is, the difference between the cost of complying with the court's decision and the cost of enactment of H.R. 241, to be $5.9 million for FY 2004 and $65.8 million for the period FY 2004 through FY 2013.

In addition, we note one technical change needed in H.R. 241 should it be enacted. The comma in current section 5121(a) following "existing ratings or decisions" should be deleted to clarify, for purposes of 38 U.S.C. §§ 5121(b) and (c) and 5122, that the term "accrued benefits" includes both benefits that have

been awarded to an individual in existing ratings or decisions but not paid prior to the individual's death, as well as benefits that could be awarded based on evidence in the veteran's file at the time of death.

H.R. 533

H.R. 533, the "Agent Orange Veterans' Disabled Children's Benefits Act of 2003," would amend chapter 18 of title 38, United States Code, to authorize VA to provide a monetary allowance and other benefits to a person suffering from spina bifida who is natural child, regardless of age or marital status, of a parent who performed "qualifying herbicide-risk service," if the person was conceived after such service. A parent would be considered to have performed "qualifying herbicide-risk service" if, while performing active military, naval, or air service, he or she "served in an area in which a Vietnam-era herbicide agent was used during a period during which such agent was used in that area; or . . . otherwise was exposed to a Vietnam-era herbicide agent." The term "Vietnam-era herbicide agent" would be defined by reference to current 38 U.S.C. § 1116(a)(3). VA does not support this bill.

Congress has repeatedly acted since 1979 to ensure that the Federal Government investigates the health effects of exposure to herbicides containing dioxin and compensates veterans who served in the Republic of Vietnam during the Vietnam era and suffered disability as a result of that exposure. Because of the "concern and apprehension among veterans regarding the health effects of herbicides," Congress mandated an epidemiologic study by VA of the effects of exposure to dioxin in the Veterans Health Programs Extension and Improvement Act of 1979. Congress also required VA to review and scientifically analyze literature relating to possible long-term health effects of human exposure to dioxin. In 1981, Congress authorized VA to provide hospital and nursing home care to certain veterans exposed during service to dioxin or ionizing radiation for conditions which, although not shown to have resulted from such exposure, are not found to have resulted from a cause other than such exposure. The Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984

directed VA to issue regulations to establish guidelines and, where appropriate, standards and criteria for the resolution of benefit claims based on exposure to herbicides containing dioxin in service in the Republic of Vietnam during the Vietnam era. The act also required VA to make specific findings, either positive or negative, regarding service connection as to three diseases, chloracne, porphyria cutanea tarda, and soft-tissue sarcoma.

In 1991, Congress added section 1116 (formerly section 316) to title 38, United States Code, establishing a presumption of service connection, applicable to veterans who served in the Republic of Vietnam during the Vietnam era, for three diseases. The act also called for VA to contract with the National Academy of Sciences to perform a review and evaluation of the scientific evidence regarding the association between disease and exposure to herbicides used in connection with the Vietnam War and each disease suspected of association with such exposure. Congress amended section 1116 in 1994 and 2001 by adding five conditions to the list of diseases presumed to be service connected in Vietnam veterans.

More recently, Congress has enacted legislation to provide a monetary allowance and other benefits to the children of Vietnam veterans who were born with spina bifida, as well as to children with certain other birth defects who are the natural children of women veterans who served in the Republic of Vietnam during the Vietnam era.

Congress' legislative enactments indicate its recognition of the unique circumstances of service in Vietnam—circumstances including the special sacrifices made by veterans of that war, and the great uncertainties regarding exposures of individual veterans to aerially applied herbicides. H.R. 533 would extend benefits Congress bestowed upon the affected children of those veterans to children of veterans who did not serve under those circumstances. In addition, H.R. 533's language is so vague as to be almost impossible to administer. Under that language, an individual would be considered to have performed "qualifying herbicide-risk service" if he or she, while performing active

service, "served in an area in which a Vietnam-era herbicide agent was used during a period when such agent was used in that area." The vagueness of the terms "area," "was used," and "during a period when" is sure to generate substantial litigation over what Congress intended by this language.

VA estimates that enactment of H.R. 533 would result in direct costs of $60.8 million in FY 2004 and $760.7 million over the ten-year period FY 2004-2013. In addition, VA estimates administrative costs of $357,000 for FY 2004 and $ 1.73 million for the ten-year period FY 2004-2013.

H.R. 761

Mr. Chairman, you also requested our comments on two proposals that would affect the Specially Adapted Housing program authorized by chapter 21 of title 38, United States Code. Under current law, veterans who are entitled to compensation for certain permanent and total service-connected disabilities described in section 2101 of title 38 are eligible for a grant to adapt their homes with features made necessary by the nature of their disabilities.

The first proposal, Mr. Chairman, is H.R. 761, the "Disabled Servicemembers Adapted Housing Assistance Act of 2003," which would permit VA to provide Specially Adapted Housing assistance to disabled members of the Armed Forces who remain on active duty pending medical separation. VA favors enactment of H.R. 761.

This bill would permit members of the Armed Forces with the service-connected disabilities described in section 2101 to apply for Specially Adapted Housing benefits and permit VA to process their applications and award benefits without having to wait for the servicemembers to be released from active duty. H.R. 761 could provide some affected veterans the opportunity to move into an adapted home as soon as they are separated from active duty, or at least much sooner than is possible under current law. With this accelerated determination of eligibility and assistance, veterans could avoid continued institutional care, thus improving their quality of life and increasing their independence. This could also reduce the cost to VA of in-patient healthcare for some affected veterans.

Because Specially Adapted Housing grants are a one-time-only benefit, the enactment of this measure should not materially increase either the total number of grants provided under this program or the dollar amount of such grants. Rather, H.R. 761 would merely accelerate the payment of this benefit to certain individuals who, under current law, would become entitled to the same benefit upon their release from active duty. Accordingly, VA estimates that the enactment of H.R. 761 would produce insignificant costs or savings.

H.R. 1048

Specially Adapted Housing

The other Specially Adapted Housing proposal is contained in section 2 of H.R. 1048, the "Disabled Veterans Adaptive Benefits Improvement Act of 2003." This section would increase the maximum Specially Adapted Housing grants. VA favors such increases, provided offsetting savings may be found.

Under H.R. 1048, the maximum Specially Adapted Housing grant authorized by section 2101(a) would be increased from $48,000 to $50,000. In addition, the maximum Special Housing Adaptations grant authorized by section 2101(b) would be increased from $9,250 to $10,000. These grants were last increased by Public Law 107-103, enacted December 27, 2001.

VA estimates that approximately 600 veterans per year will receive specially adapted housing assistance, of which about 92.5 percent will qualify for the grant authorized by section 2101(a). VA estimates the cost of enacting section 2 of H.R. 1048 would be $1.14 million per year, with a total 10-year cost of $11.4 million.

Assistance for Automobile and Adaptive Equipment

Section 3 of H.R. 1048 would increase from $9,000 to $11,000 the maximum amount that VA may pay under 38 U.S.C. § 3902(a) to provide or assist in providing an automobile or other conveyance to eligible persons.

The maximum automobile allowance was also last increased to the current $9,000 on December 27, 2001.

VA estimates the total benefits cost of both provisions of H.R. 1048 would be $3.3 million for FY 2004 and $33.3 million for the ten-year period FY 2004-2013. Because these benefits were last increased just 16 months ago, and these costs are not included in the President's budget request, we are unable to support enactment of H.R. 1048. However, we will remain vigilant and recommend increases if there is a significant erosion in the value of these benefits due to inflation.

H.R. 850

Special Compensation for Former Prisoners of War

Section 2 of H.R. 850, the "Former Prisoners of War Compensation Act of 2003," would add a new subchapter at the end of chapter 11 of title 38, United States Code, to authorize special compensation for former prisoners of war (POWs). This special compensation would be separate from any service-connected disability compensation or pension to which a former POW may be entitled and is exempted from attachment, execution, or levy in the same manner as special pension paid to recipients of the Medal of Honor pursuant to 38 U.S.C. § 1562(c). The bill would authorize the Secretary of Veterans Affairs to pay monthly to each former POW, including active duty personnel, special compensation at a rate of payment determined by the cumulative length of confinement or internment as a POW. Thirty days would be the minimum period of confinement for which a former POW would be eligible to receive special compensation. The bill would establish three rates of special compensation based on the length of the period of the former POW's detainment or interment, as follows:

Length of Former POW's Detainment or Interment	Special Compensation Monthly Rate
30-120 days	$150
121-540 days	$300
541 days or more	$450

We estimate that benefit-costs for the POW portion of the bill would be $134.4 million for FY 2004 and $839.5 million for FY 2004 through FY 2013. We estimate administrative costs to be an additional one-time cost of $632 thousand in the first year. These amounts are not included in the President's FY 2004 budget request, and the Department cannot support this provision's enactment. However, we are sensitive to the contributions and needs of former POWs and will consider additional benefits for them in formulating future budget requests.

Prohibition Against Compensation for Substance-Abuse Disabilities

Section 3(a) of H.R. 850 would amend 38 U.S.C. §§ 1110 and 1131 to clarify that the prohibition on payment of compensation for a disability that is a result of the veteran's own abuse of alcohol or drugs applies even if the abuse is secondary to a service-connected disability. Section 3(b) would make that amendment applicable to claims filed on or after the date of enactment and to claims filed prior to, but not finally decided as of that date. We strongly support this provision, which is also proposed in the President's budget.

Sections 1110 and 1131 of title 38, United States Code, authorize the payment of compensation for disability resulting from injury or disease incurred or aggravated in line of duty in active service, during a period of war or during other than a period of war, respectively. Sections 1110 and 1131 also currently provide, "but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs." Before their amendment in 1990, the provisions currently codified in sections 1110 and 1131 prohibited compensation "if the disability is the result of the veteran's own willful misconduct." In 1990, they were amended to also prohibit compensation if the disability is a result of the veteran's own alcohol or drug abuse.

VA had long interpreted those provisions to authorize compensation not only for disability immediately resulting from injury or disease incurred or aggravated in service, but also for disability more remotely resulting from such injury or disease. That interpretation is embodied in 38 C.F.R. § 3.310(a), which provides that, generally, disability which is proximately due to or the result of a

service-connected disease or injury shall be service connected. Thus, VA does pay, in specific cases, compensation for primary service-connected disability and for secondary service-connected disability. However, consistent with the plain meaning of sections 1110 and 1131, if a disability, whether primary or secondary, is a result of the veteran's own alcohol or drug abuse, VA did not pay compensation.

This has changed. On February 2, 2001, a three-judge panel of the United States Court of Appeals for the Federal Circuit interpreted section 1110 as allowing compensation for an alcohol or drug-abuse-related disability arising secondarily from a service-connected disability. *Allen v. Principi*, 237 F.3d 1368, 1370 (Fed. Cir. 2001). More specifically, the panel held that section 1110 "does not preclude compensation for an alcohol or drug abuse disability secondary to a service-connected disability or use of an alcohol or drug abuse disability as evidence of the increased severity of a service-connected disability." *Id.* at 1381. The Government filed a petition for rehearing and rehearing en banc, which the panel and full court denied on October 16, 2001. *Allen v. Principi*, 268 F.3d 1340, 1341 (Fed. Cir. 2001). However, five of the eleven judges who considered the petition for rehearing en banc dissented from the order denying rehearing, opining that the court's interpretation is wrong. 268 F.3d at 1341-42.

We are concerned that payment of additional compensation based on the abuse of alcohol or drugs is contrary to congressional intent and is not in veterans' best interests because it removes an incentive to refrain from debilitating and self-destructive behavior.

The Federal Circuit's interpretation in *Allen* could also greatly increase the amount of compensation VA pays for service-connected disabilities. Under the court's interpretation, any veteran with a service-connected disability who abuses alcohol or drugs is potentially eligible for an increased amount of compensation if he or she can offer evidence that the substance abuse is a result of a service-connected disability, *i.e.*, that the substance abuse is a way of coping with the

pain or loss the disability causes. Under this interpretation, alcohol or drug abuse disabilities that are secondary to either physical or mental disorders are compensable.

The potential for increased costs is illustrated by mental disorders, which are frequently associated with alcohol and drug abuse. Almost 421,000 veterans are currently receiving compensation for a service-connected mental disability. About 324,000 of those disabilities are currently rated less than 100 percent and could potentially be rated totally disabling on the basis of secondary alcohol or drug abuse. Even if the service connection of disability from alcohol or drug abuse does not result in an increased schedular evaluation, temporary total evaluations could be assigned whenever a veteran is hospitalized for more than twenty-one days for treatment or observation related to the abuse. Even the 97,000 cases of a service-connected mental disability evaluated at 100 percent disabling have potential for increased compensation for secondary alcohol or drug abuse if the statutory criteria for special monthly compensation are met.

The potential increase in compensation does not end there. Under the Federal Circuit's interpretation, VA is required to pay compensation for the secondary effects of the abuse of alcohol or drugs. Once alcohol or drug abuse is service connected as being secondary to another service-connected disability, then service connection can be established for any disability that is a result of the service-connected abuse of alcohol or drugs. If alcohol or drug abuse results in a disease, such as cirrhosis of the liver, then that disease would also be service connected and provide a basis for compensation under the court's interpretation.

Of course, an increase in the amount of compensation VA pays for service-connected disabilities will increase the benefit cost of the compensation program. Section 3 of H.R. 850 would avoid those increased costs. Our estimate of savings that would result from enactment of this provision is based on the payment of only basic compensation for alcohol or drug abuse disabilities secondary to service-connected disabilities. We estimate that this provision would result in benefit cost savings of $127 million and administrative cost

savings of $44 million in FY 2004 and benefit cost savings of $4.6 billion and administrative cost savings of $97 million for the ten-year period FY 2004 through FY 2013. This amount does not include the savings that would be associated with payment of compensation for temporary total evaluations, special monthly compensation, or compensation for the secondary effects of alcohol or drug abuse.

Dental Care for Former Prisoners of War

Section 4 of H.R. 850 would require VA to provide outpatient dental services and treatment, and related dental appliances, for any non-service-connected dental condition or disability from which a veteran who is a former POW is suffering. Currently, a veteran who is a former POW may receive dental benefits for non-service-connected dental conditions or disabilities only if the veteran was incarcerated for 90 days or more. By eliminating the 90-day requirement, section 4 would authorize VA to treat all former POWs the same, regardless of their length of captivity, with respect to dental care for a non-service-connected condition or disability. It would also make the eligibility rules for dental benefits for former POWs the same as for other health-care services for former POWs.

VA has strongly supported similar provisions in the past, and we continue our strong support for this provision. We believe this amendment is needed to ensure that former POWs receive all needed care for conditions that may be attributable to the privations of their service.

Costs resulting from enactment of this provision would be insignificant.

H.R. 966

Mr. Chairman, H.R. 966, the "Disabled Veterans' Return-to-Work Act of 2003," would amend provisions of 38 U.S.C. § 1524 to reinstate a program of vocational training for certain pension recipients that was in place between February 1, 1985, and December 31, 1995. That temporary program, established pursuant to the Veterans' Benefits Improvement Act of 1984, Pub. L.

No. 98-543, required the Secretary of Veterans Affairs to determine whether the achievement of a vocational goal was reasonably feasible in the case of certain veterans awarded pension during the program period. If the achievement of such a goal was found to be feasible, these veterans were offered the opportunity to pursue programs of vocational training consisting of vocationally oriented and other services and assistance of the same kind provided under the vocational rehabilitation program authorized under chapter 31 of title 38, United States Code. These services and assistance did not include subsistence allowances, loans, or automobile adaptive equipment. Once a program of training was completed, a veteran could also receive employment assistance. The law limited the number of evaluations to be performed to not more than 3,500 veterans during any 12-month period. The initial program period ran from February 1, 1985, to January 31, 1992.

Initially, the law required that a veteran under the age of 50 who was awarded pension during the program period be evaluated with respect to his or her potential for rehabilitation. It required that the evaluation include a personal interview by a VA employee trained in vocational counseling. If the veteran refused to participate in the evaluation, his or her pension was suspended until he or she participated in an evaluation. Subsequent participation in the vocational training itself was voluntary. For a veteran pension recipient 50 years of age or older, the program of vocational training was totally voluntary. If, upon application by such a veteran-pensioner, VA made a preliminary finding on the basis of information in the application that, with the assistance of a vocational training program, the veteran had good potential for achieving employment, VA was authorized, upon the veteran's request, to evaluate the veteran to further determine whether the achievement of a vocational goal was reasonably feasible.

In 1992, Public Law 102-562 eliminated the limitation on the number of program participants who may be evaluated annually and amended the program for veterans under age 45, rather than under age 50, who were awarded pension

during the program period so as to (A) require the Secretary, based on information on file with VA, to make a preliminary finding whether the veteran, with the assistance of a VA vocational training program, had a good potential for achieving employment; (B) if that potential was found to exist, required the Secretary to solicit from the veteran an application for VA vocational training; and (C) if the veteran applied for training, required the Secretary to provide an evaluation to determine whether the achievement of a vocational goal was reasonably feasible. In addition, the program was opened to veterans age 45 and older who had been awarded pension before the program period. That Public Law also extended the program ending date until December 31, 1995. No further action was taken by Congress, and by operation of law, the program ended on December 31, 1995.

During the period February 1, 1985, through January 31, 1989, VA evaluated approximately 9,468 veterans under the program. Of these, 2,838 were found to be feasible for training. Some 468 veterans participated in programs of vocational training. Sixty-five veterans completed that training. Fifty-eight obtained employment. Between fiscal year 1989 and fiscal year 1992, VA conducted 9,140 evaluations under the program, with 937 veterans participating in training.

H.R. 966 would reinstate the program and provide that a new program period would run for five years beginning on the date of enactment of the Act. In addition, it would require the Secretary to ensure that the availability of vocational training under section 1524 be made known through a variety of means, including the Internet and announcements in VA publications and other veterans' publications. Finally, the bill would require the Secretary, within two years after the date of enactment of the Act, to report to the Committees on Veterans' Affairs of the Senate and House on the operation of the program to include an evaluation of the vocational training provided and an analysis of the cost-effectiveness of the training provided, as well as data on the entered-employment rate of veterans pursuing such training.

If H.R. 966 were to be enacted, we estimate that VA would conduct approximately 1,300 record reviews each year, based on new accessions to the pension rolls, to determine whether each veteran so evaluated has good potential for achieving employment. We estimate that the achievement of a vocational goal will be determined to be feasible in about 1/3 (433) of those cases. Of that number, it is estimated that approximately 1/3 of these, 144 veterans, will actually end up participating in the program. In addition, because the program is also available to veterans over age 45 on a voluntary basis, we estimate that an additional 25 participants may participate, for a total of 169 cases per year. Based on those numbers, VA estimates that the enactment of H.R. 966 would cost $3 million for fiscal years 2004 through 2008 and an additional $3.6 million for fiscal years 2009 though 2013, totaling $6.6 million.

Mr. Chairman, given our experience in administering the temporary program during its ten-year duration, and the fact that only a small number of veterans benefited from the program, VA believes that the finite resources available to us for program administration would be best used to support our current program of vocational rehabilitation for service-disabled veterans, as authorized under chapter 31 of title 38, United States Code. Thus, the Department does not support the enactment of H.R. 966.

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you or the members of the Subcommittee may have.

STATEMENT OF
PETER S. GAYTAN, PRINCIPAL DEPUTY DIRECTOR
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
H.R. 241, THE VETERANS BENEFICIARY FAIRNESS ACT; H.R. 533, THE AGENT ORANGE VETERANS' DISABLED CHILDREN'S BENEFITS ACT; H.R. 761, THE DISABLED SERVICEMEMBERS ADAPTED HOUSING ASSISTANCE ACT; H.R. 850, THE FORMER PRISONERS OF WAR SPECIAL COMPENSATION ACT; H.R. 966, THE DISABLED VETERANS RETURN-TO-WORK ACT; AND H.R. 1048, THE DISABLED VETERANS ADAPTIVE BENEFITS IMPROVEMENT ACT.

APRIL 10, 2003

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present The American Legion's views on H.R. 241, the Veterans Beneficiary Fairness Act; H.R. 533, the Agent Orange Veterans' Disabled Children's benefits Act; H.R. 761, the Disabled Servicemembers Adapted Housing Assistance Act; H.R. 850, the Former Prisoners of War Special Compensation Act; H.R. 966, the Disabled Veterans Return-to-Work Act; and H.R. 1048, the Disabled Veterans Adaptive Benefits Improvement Act. We commend the Subcommittee for holding a hearing to discuss these important issues.

H.R. 241, the "Veterans' Beneficiary Fairness Act of 2003"

This bill would repeal the two-year limitation on the payment of accrued benefits to which the deceased veteran would have otherwise been entitled to at the time of the veteran's death, as currently set forth in title 38, United States Code, section 5121.

The American Legion's longstanding position has been that any limitation on the payment of accrued benefits is unfair. The enactment of PL 104-275 in 1996, which extended entitlement to accrued benefits from one year to two years, was a much needed step in the right direction. However, it still fell short of providing appropriate compensation to the veteran's family in a claim that had been pending for more than two years prior to the veteran's death.

VA currently has over 313,000 pending claims and another 134,000 cases requiring some type of action. While considerable progress has been made over the past year in reducing the overall backlog with particular attention to the older pending claims, a substantial number of these cases have essentially been "in process" for a year, two years, or more. In addition, there are also currently 118,000 pending appeals. These claims, by their very nature, are several years old, at a minimum. Very often, veterans filing these claims and appeals are very ill and, because of the long processing times, many die before a final decision is ever made on their claim. The delays they and their families experience can result in adverse health effects and financial hardship. Upon the veteran's death, the pending claim or appeal also dies, unless a claim for accrued benefits is filed within one year of the veteran's death. Regardless of how long the veteran's case had been pending, whether at the regional office level or the Board of Veterans Appeals, an eligible survivor can only receive two years of retroactive benefits, rather than the full amount entitled to the veteran had he or she lived.

Mr. Chairman, H.R. 241 would remove this inequity and The American Legion fully supports this measure.

H. R. 533, the "Agent Orange Veterans' Disabled Children's Benefits Act of 2003"

This legislation would amend the current definition of a child eligible for spina bifida benefits set forth in Title 38, United States Code, section 1801. It would provide that any natural child of a veteran who performed qualifying herbicide-risk service and who has this disability is eligible

for such benefits, not just those whose parent or parents served in Vietnam between January 9, 1962 and May 7, 1975. It defines qualifying herbicide-risk service to include an area in which a Vietnam-era herbicide was in use or where a veteran was otherwise exposed to such agents.

The American Legion believes this legislation is important in recognizing that Agent Orange was used in places other than Vietnam and that United States armed forces personnel were at risk of exposure. Spina bifida in their offspring is one of the potential consequences of such herbicide exposure. It has been known for sometime that during the Vietnam Era, Agent Orange was tested or used in the United States at locations such as Fort Drum, New York and used overseas in locales such as the Korean Demilitarized Zone from 1967-68. We wish to commend Ranking Member Lane Evans of the Full Committee for his efforts to encourage VA and DOD to follow up on any non-Vietnam veterans who may have been exposed to Agent Orange in such areas.

The American Legion strongly endorses the expansion of the spina bifida program provided for by the enactment of H.R. 533. It will ensure that the child of any veteran who suffers from this crippling birth defect resulting from their parent's exposure to Agent Orange during military service receives compensation, medical care, and entitlement to vocational training and rehabilitation.

H.R. 761, the "Disabled Servicemembers Adapted Housing Assistance Act of 2003."

The bill would authorize the Secretary of Veterans Affairs to provide adapted housing assistance to disabled members of the Armed Forces who are still on active duty and in the process of being separated for medical reasons. Currently, this program of assistance is only available to those service disabled individuals who have left active duty and become veterans.

Under this legislation, individuals who are undergoing medical board proceedings would become eligible for VA assistance in making certain modifications to their residence to accommodate their service-related disability. Although we do not have a formal position on this proposal, The American Legion believes this additional statutory authority will enable VA to help better facilitate a service-disabled individual's transition to civilian life. This type of proactive approach is consistent with the concept of VA's Benefits Delivery at Discharge (BDD) program to reach out to servicepersonnel prior to their separation and provide direct assistance, rather than waiting upon discharge from service.

H.R. 850, the "Former Prisoners of War Special Compensation Act of 2003."

This legislation proposes the establishment of a special compensation program for former prisoners of war based on the length of their confinement. It would authorize payment of $150 monthly for those held up to 120 days; $300 monthly, if held more than 120 days but less than 540 days; and $450 monthly, if held more than 540 days. This benefit would not be affected by any other benefits to which the veteran may be entitled and would not be considered as income or resources for purposes of determining eligibility for any Federal or federally assisted program. In the absence of a mandate on the subject of special compensation, The American Legion takes no formal position on this proposal.

This bill would remove the current requirement in title 38, United States Code, section 1712, that an individual had to have been detained or interned for a period of not less than 90 days in order to be entitled to VA outpatient dental treatment. The American Legion has no objection to this provision. Studies have shown that there can be long lasting adverse health effects resulting from even a relatively short period of confinement as a prisoner of war. Given their experiences and hardships, access to dental care becomes an important factor in helping maintain these veterans' overall good health and we support the proposed change.

Mr. Chairman, The American Legion is very concerned by Section 3 of this bill, which is entitled "Clarification of Prohibition on Payment of Compensation for Alcohol or Drug-related Disability." It would amend title 38, United States Code, sections 1110 and 1131, to specifically state that disability compensation will not be paid to a former prisoner of war or any other veteran who is suffering from alcohol or substance abuse which is secondary to a service connected disability. The American Legion has always held the position that veterans who succumb to alcohol or drug-abuse caused by their service-connected disability are entitled to a level of compensation that reflects all aspects of their disability. The American Legion believes

these veterans are in a very different category from those who engaged in conscious, willful wrongdoing and become alcoholics and/or drug abusers. The American Legion is, therefore, categorically opposed to any attempt to legislate away the rights of veterans who are suffering from disabilities resulting from their military service.

The intent of this proposal seemingly is to overturn the 2001 decision of the United States Court of Appeals for the Federal Circuit (the Federal Circuit or the Court) in *Allen v. Principi* (F.3d 1368). In *Allen*, the Court held that Congress, in enacting PL 96-466, the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), did not intend to preclude compensation for an alcohol or drug-related disability resulting from or secondary to a non-willful misconduct service-connected disability. Prior to OBRA 90, VA considered alcoholism and drug abuse disabilities unrelated to a service connected psychiatric disorder as willful misconduct. The term "willful misconduct" was defined in VA regulations as a deliberate and intentional act involving conscious wrongdoing or known prohibited action, with knowledge of or wanton and reckless disregard of the probable consequences. However, the definition noted that mere technical violation of police regulations and ordinances will not per se constitute willful misconduct and that willful misconduct will not be determinative unless it is the proximate cause of injury, disease, or death. VA's policy was that the misconduct bar to benefits did not apply to those veterans whose alcohol or drug addiction was secondary to a service connected mental or physical disability.

OBRA 90 specifically provided in Title 38, United States Code sections 1110 and 1131 that an injury or disease that is the result of the abuse of alcohol or drugs is not considered to have occurred in the line of duty and VA may not pay compensation for disabilities that are the result of "the veteran's own willful misconduct or alcohol or drug abuse." Under OBRA 90, VA as a matter of policy and practice, would not grant secondary service connection for substance abuse, but would, where appropriate, incorporate the symptoms of alcohol and drug abuse into the overall evaluation of the primary service connected disability. As an example, a veteran may be rated for "PTSD with alcoholism." In 1998, the United States Court of Appeals for Veterans Claims (CVAC), in *Barela v. West* (11 Vet.App. 280), held that, while OBRA 90 provided for service connection of alcohol and drug-related disabilities as being secondary to a service connected disability, VA could not pay compensation for such disabilities.

As a result of the Federal Circuit's interpretation of title 38, United States Code, sections 1110 and 1131, in the *Allen* decision, there are now three possible categories of disabilities involving alcohol and drug abuse: 1) Alcohol or drug abuse disability, developed during service, which results from the voluntary and willful abuse of alcohol or drugs and OBRA 90 still bars service connection for primary alcoholism or drug addiction and any associated disability; 2) Alcohol or drug abuse disability is recognized as secondary to a service connected condition; And, 3) Disabilities that result from or are aggravated by an alcohol or substance abuse disability for which secondary service connection has been established.

Scientific studies over the years have highlighted the fact that there is a higher incidence of substance abuse among veterans who suffer from severe physical or psychiatric disabilities. A recent article by Dr. Andrew Meisler, "Trauma, PTSD, and Substance Abuse, from the PTSD Research Quarterly". (Attachment) notes, "Studies of individuals seeking treatment for PTSD have a high prevalence of drug and/or alcohol abuse." Research suggests "that 60-80 percent of treatment seeking Vietnam combat veterans with PTSD also met the criteria for current alcohol and/or drug abuse." Cited was a study of Persian Gulf War veterans that found a "PTSD diagnosis was strongly linked to problems with depression and substance abuse, supporting earlier research on comorbidity." Section 3 of H.R. 850, if enacted, would penalize veterans whose service connected condition has caused them to develop an alcohol or drug-abuse disability.

The United States is again sending men and women into harms way. As a consequence, some may sustain lifelong physical or mental disability. Should they subsequently develop a substance abuse problem, which VA recognizes as being related to a service connected condition, there should be no question that this additional disability is also "service connected." The American Legion believes Congress should not be seeking ways to deprive these veterans of their right to compensation benefits earned by virtue of their service to this nation.

Mr. Chairman, the basic intent of H.R. 850 is to assist veterans who are former prisoners of war. Many of these veterans suffer physical and mental disabilities related to their traumatic experiences during their confinement. As a result, some may have developed substance abuse problems. Section 3 of this bill would expressly deny compensation to such former prisoners of war or any other veteran for a substance abuse disability that is secondary to a service connected disability or for conditions caused or aggravated by a substance abuse condition for which secondary service connection has been established. The American Legion believes that this would be inherently unfair. It clearly sends the wrong message to past, present, and future generations of veterans. The American Legion recommends that Section 3 be stricken, so that the merits of the other benefit provisions of this legislation can be clearly considered.

H.R. 966, the "Disabled Veterans' Return-to-Work Act of 2003."

The bill proposes to reinstate the program of entitlement to vocational training for certain pension recipients that expired on December 31, 1995. It afforded disabled veterans who were awarded pensions an opportunity to pursue vocational training with the goal of regaining employability and employment. The American Legion supported this program during its ten years of existence and believes it would be worthwhile to now make this type of training and employment assistance available to those individuals who are both interested and able. Within two years of enactment, VA would also be required to provide Congress a report on the cost-effectiveness and outcomes of this training program.

H.R. 1048, the "Disabled Veterans' Adaptive Benefits Improvement Act of 2003."

Under this legislation, the special adapted housing assistance allowance would be increased from $48,000 to $50,000 and the allowance for acquiring a residence with existing disability modifications would be increased form $9,250 to $10,000. The automobile and adaptive equipment allowance would be increased from $9,000 to $11,000. The American Legion has no objection to the proposed increases, since these allowances have not been regularly adjusted to reflect rising building and automotive costs over the past several years.

As the conflict with Iraq continues, it is important for congress to address these essential veterans' programs that can assist these men and women to transition back into the civilian world.

Again, I appreciate the opportunity to present testimony before the Subcommittee and The American Legion looks forward to working with each of you on these important issues. That concludes my testimony.

STATEMENT OF
RICK SURRATT
DEPUTY NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON BENEFITS
APRIL 10, 2003

Mr. Chairman and Members of the Subcommittee:

I am pleased to present the views of the Disabled American Veterans (DAV) on the six bills under consideration in today's hearing. These bills concern benefits for some of our most deserving beneficiaries—prisoners of war, disabled veterans and their survivors, and veterans' children afflicted with spina bifida related to the veterans' exposure to Vietnam-era herbicide agents during their service in the Armed Forces. The DAV supports most of the provisions in these bills. However, we have some concerns about the appropriateness of some measures, and we strongly object to a provision that would take benefits away from disabled veterans and former prisoners of war.

H.R. 241

The short title of H.R. 241, the Veterans Beneficiary Fairness Act of 2003, aptly states its meritorious purpose. Recognizing the serious inequity in current law, House Veterans' Affairs Committee Chairman Chris Smith and Ranking Democratic Member Lane Evans introduced this bill to repeal provisions that impose a 2-year limitation on retroactive benefits payable to an eligible survivor by reason of death of the entitled beneficiary before adjudication can be finalized or payment can be disbursed. Section 5121 of title 38, United States Code, authorizes the Department of Veterans Affairs (VA) to pay to immediate surviving family members the benefits due a veteran or due an eligible dependent at the time of death, but the statute restricts payment to those benefits "due and unpaid for a period not to exceed two years."

Other than an arbitrary limitation, there is no rational basis to pay benefits for a fixed period that is less than the period for which benefits are actually and rightfully due. No circumstances or factors inherent in the merits of the matter warrant nullification of all a veteran's entitlement to benefits except for the 2 years immediately preceding death simply because, by the chance of time and perhaps administrative variations, a veteran's death occurs before VA can issue payment of all benefits owed.

Workload variations and differentials in efficiency between VA field offices can result in different outcomes and unequal treatment of identically situated survivors. The widow of one veteran might get the benefit of a full retroactive award because the VA regional office decided the veteran's claim and made full payment of all amounts due to the veteran just a day or so before the veteran's demise, while the unfortunate widow of another veteran may get the benefit of only a 2-year retroactive award because her regional office took enough extra days to dispose of the claim that the veteran's death occurred before VA could pay him the benefits he was due. Although the same as the first widow in all respects, the second widow's accrued benefits would be subject to the 2-year limitation solely because of administrative variations.

With the persistence of high error rates in VA's adjudication of claims, correct decisions only follow from appeals that take years, in many instances. With an aging veteran population and protracted claims and appeals processing times, seriously ill and aged veterans may die before VA can properly finalize their claims. Because effective dates for beginning benefit entitlement are tied to the dates veterans file their claims, retroactive awards spanning more than 2 years almost always occur because of some administrative error or delay beyond the veteran's control.

Compensation and other benefits provide economic assistance for loss of earning power or other reasons. To the extent the veteran was deprived of the income from benefits due, his or her immediate family members are also deprived of the value of that income. A surviving

spouse or child, who shared and suffered the effects of economic deprivation for an extended period while the claim was pending, should not be barred from receipt of a substantial portion of the relief the veteran would have received but for his or her death merely because the veteran did not live long enough to see his or her claim properly resolved by VA.

To remedy this injustice, H.R. 241 strikes from section 5121 the limiting phrase "for a period not to exceed two years," thereby authorizing payment of all accrued benefits to eligible family members. This legislation addresses DAV Resolution No. 22 that calls for repeal of the limitation on payment of accrued benefits and a recommendation by *The Independent Budget* that Congress remove this unfair restriction. Accordingly, the DAV fully supports H.R. 241 and urges the Subcommittee to favorably report the bill for action by the full Committee. I also want to take this opportunity to thank Chairman Smith and Ranking Member Evans for their introduction of this measure.

H.R. 533

Along with several cosponsors, Congressman Evans introduced The Agent Orange Veterans' Disabled Children's Benefits Act of 2003, H.R. 533, to extend benefits for spina bifida to children of veterans who were exposed to Vietnam-era herbicide agents in places other than Vietnam. Currently, these benefits are available only to children suffering from spina bifida related to a parent's exposure to herbicides in Vietnam. The DAV does not have a mandate from its membership on this issue and therefore does not have a position. However, we note, as a matter of fundamental fairness, benefits provided on account of exposure to herbicides should not be granted one group and denied another solely because those in the first group were exposed in Vietnam and members of the second group were exposed elsewhere. We understand that this bill would expand eligibility to only a small but deserving number of veterans' children, but the purpose of the bill is a compelling one nonetheless.

H.R. 761

Ranking Democratic Member Evans, along with Chairman Smith and several other members, introduced H.R. 761, the Disabled Servicemembers Adapted Housing Assistance Act of 2003, to make housing and home adaptation grants better serve their intended purposes. For veterans with service-connected disabilities consisting of certain combinations of loss or loss of use of extremities or loss or loss of use of extremities and blindness or other injuries or organic diseases, VA is authorized to provide grants for the construction or purchase of specially adapted homes. For veterans with service-connected blindness or with loss or loss of use of both upper extremities, VA is authorized to provide a home adaptation grant. This bill would amend section 2101 of title 38, United States Code, to authorize this same assistance to persons with qualifying service-related disabilities who have not attained veteran status because they are awaiting medical separation from the Armed Forces.

Disabled servicemembers may remain hospitalized for extended periods of time. No practical purpose is served by delaying assistance with specially adapted housing until an otherwise entitled servicemember technically becomes a veteran. An award while the servicemember is awaiting military separation would aid in speeding transition into independent living. *The Independent Budget* recommends this legislation, and the DAV strongly supports it.

H.R. 850

Congressman Mike Simpson and several cosponsors introduced H.R. 850, the Former Prisoners of War Special Compensation Act of 2003. As the short title indicates, this bill would establish a special compensation benefit for former prisoners of war. For servicemembers and veterans who were held as prisoners of war (POWs) for at least 30 days, monthly benefits would be paid at three different rates, based upon the length of time an individual was in POW status. Those held 30 to 120 days would receive $150 monthly; those held 121 to 540 days would receive $300; and those held more than 540 days would receive $450. This special compensation would not be considered income or resources for purposes of determining

eligibility to any other Federal or federally funded program and would not be subject to attachment, execution, levy, tax lien, or detention under any process whatever.

In addition to special compensation for POWs, the bill would remove the requirement that a POW must have been a prisoner of war for not less than 90-days to be eligible for VA dental care. This provision addresses a legislative proposal in the VA budget for fiscal year (FY) 2004.

Also in response to a legislative proposal in the VA budget, the bill would amend the law to prohibit compensation for disability from alcohol or drug abuse that was caused by a service-connected disability. Currently, the law bars compensation for disability that is the result of abuse of alcohol or drugs, except when alcohol or drug abuse is secondary to a service-connected disability. Unlike the other provisions of the bill, which are beneficial to POWs, this provision in H.R. 850 is not specifically related to POW benefits, although it will adversely affect some disabled POWs as it does other disabled veterans.

Veterans in no other group as a whole have borne a greater burden on behalf of our Nation and deserve more in return than our former POWs. Many suffered unimaginable horrors from torture, humiliation, other physical and psychological trauma and abuse, deprivation, isolation, and malnutrition. In addition to the effects of physical and mental trauma, many suffered from diseases caused by unsanitary conditions and inadequate diets. Many, perhaps, never fully recover from a life experience that is far more traumatic than most in society ever have to endure. The families of POWs also suffer, especially families of those confined for long periods of time under uncertain circumstances, families of those who never recover after they return to civilian lives, and the families of those who never return at all. To the extent we can provide former POWs benefits that address their special needs or afford some general recompense in proportion to their suffering and sacrifices, we should never hesitate to do so, but the special benefits we provide should have some equitable correlation to their degree of sacrifice.

Although the DAV fully supports, in principle, special compensation for former POWs, we have some doubts about the appropriateness of the formula in H.R. 850 under which special compensation would be provided. The three tiers of monthly benefit rates appear to be designed to provide higher monetary amounts for longer periods of confinement, i.e., $150 for 30-120 days, $300 for 121-540 days, and a maximum of $450 for any number of days in excess of 540. A former POW imprisoned for 30 days would receive the same monthly rate as a POW imprisoned 120 days, or four times as long. A former POW imprisoned for 120 days would receive $150 monthly while a former POW imprisoned 1 day longer would receive $300, or twice as much. A former POW who was confined 121 days, or roughly 4 months, would receive $300, while a former POW imprisoned 540 days, or 18 months, would also only receive $300. A former POW who was detained or interned for 121 days would receive $300 while a former POW imprisoned for any period more than 540 days would receive $450, only $150 more per month.

At a monthly rate of $150, the former POW held for 30 days would receive $5 monthly for each day of confinement. A former POW held for 120 days would receive $1.25 for each day of confinement, while a former POW held for 121 days would receive $2.47 for each day of confinement. A former POW held for 540 days, or 18 times as long as a 30-day POW, would receive only $0.55 for each day of confinement, as compared with $5 per day for the 30-day POW. A POW held for 541 days would receive $0.83 for each day of confinement, with that rate per day of confinement dropping with each additional day after 541 days.

According to VA statistics, there were 42,781 living former POWs as of January 1, 2002. Data from the VA in a report entitled "Study of Former Prisoners of War" from the Studies and Analysis Service of the Office of Planning and Program Evaluation, shows the estimated average length of internment of World War II POWs in Europe as 347 days or .95 years; World War II POWs in the Pacific, 1,148 days or 3.15 years; and the Korean Conflict, 737 days or 2.02 years. This report notes that the 82 crew members of the naval intelligence ship U.S.S. *Pueblo* were interned by North Korea for 11 months. Although the report does not provide average internment times for Vietnam veterans, it acknowledges that they were held "longer than any other POW group—up to seven years." However, Navy pilot, Everett Alverez, was imprisoned by North Vietnam for more than eight and a half years. Under the formula in H.R. 850, he

would receive a few pennies a month for each day of his captivity. Moreover, this formula provides no special benefit for the families of the hundreds of heroic POWs who died in captivity, and thus made the ultimate sacrifice.

Any special benefit for former POWs that differentiates between groups and provides different benefit rates according to the time they were held as POWs should have a more meaningful correlation to their degree of sacrifice and suffering and be money well-spent by grateful American taxpayers. The three classifications and benefit rates for POWs in H.R. 850 do not equitably compensate POWs proportionate to their varying lengths of detainment or internment.

The removal of the 90-day internment or detainment eligibility threshold for dental care is straightforward, however, and makes requirements for dental care consistent with requirements for other medical services provided to POWs.

Generosity to POWs commensurate with their service to the Nation is commendable, but the provisions to bar compensation for the effects of secondary service-connected disabilities from alcohol abuse blemish this otherwise benevolent and well-intentioned bill for POWs. In seeking this change, VA ignores the distinction between alcohol abuse arising from the use of alcohol to enjoy its intoxicating effects and alcohol abuse that results from a service-connected disability. A review of the pertinent statutory and regulatory provisions is helpful to understanding this issue.

Under general provisions of law, a disability incurred during active military, naval, or air service is deemed to have been incurred in the line of duty unless the disability was the result of the affected person's own willful misconduct. Under section 3.310(a) of title 38, Code of Federal Regulations, "disability which is proximately due to or the result of a service-connected disease or injury shall be service connected," and when "service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition."

In section 8052 of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, Congress amended section 105 of title 38, United States Code, regarding line of duty and misconduct, and sections 1110 and 1131 of that title, that govern payment of wartime and peacetime disability compensation, to provide that, in addition to disabilities resulting from willful misconduct, disabilities from abuse of alcohol and drugs are not in the line of duty and that compensation shall not be paid for disability that is a result of the veteran's abuse of alcohol or drugs.

To implement these statutory changes, VA published its proposed rule in the *Federal Register* on March 1, 1994. In response, the DAV reminded VA, as already provided in its own instructions in a circular and its adjudication manual, that the changes in law did not apply to alcohol-related disabilities where the alcohol abuse is a manifestation of a service-connected disability, such as posttraumatic stress disorder, or where drug abuse arises out of therapy for a service-connected disability. We recommended that these circular and manual instructions be included in the new regulations. With the publication of its final rule in the *Federal Register* on May 24, 1995, VA addressed our comment in the preamble:

> The same commenter noted that the *Veterans Benefits Administration Manual M 21-1* and VBA Circular 21-90-12 provide that alcohol- or drug-related disabilities will be considered service-connected if alcohol abuse is a manifestation of a service-connected disability such as post traumatic stress disorder, or if drug abuse arose out of therapy for a service-connected disability. He stated that these are substantive rules that should be included in the amendment to § 3.301.
>
> The manual and circular provisions which the commenter cited are examples of the application of 38 CFR 3.310(a), which provides that disability that is proximately due to or the result of a service-connected disease or injury shall be service-connected and that when service connection is thus established for a secondary condition the secondary condition shall be considered a part of the original condition. In circumstances such as those raised by the commenter, VA

> is required by § 3.310(a) to consider conditions that it has determined are secondary to a service-connected condition to be part of that service-connected condition rather than a result of the abuse of alcohol or drugs. Since that requirement is established elsewhere in VA's regulations, it is unnecessary to incorporate those provisions into § 3.301.

VA therefore declined to incorporate its circular and manual provisions in the rule because section 3.310(a) already addressed this matter adequately, according to VA. VA's circular and manual provisions initially implementing Public Law 101-508, as reinforced by its comments in conjunction with its final rule, indicated that it interpreted the changes in Public Law 101-508 as inapplicable to alcohol abuse secondary to a service-connected disability. In the final rule, VA's definition of drug abuse, codified at 38 C.F.R. § 3.301(d), explicitly excluded addiction or the effects of drug use arising out of treatment of a service-connected disability but did not expressly exclude alcohol-related disability secondary to a service-connected disability. As noted, VA argued that section 3.310(a) adequately addressed this. The definition provided:

> For the purpose of this paragraph, alcohol abuse means the use of alcoholic beverages over time, or such excessive use at any one time, sufficient to cause disability to or death of the user; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

Without addressing or explaining why it believed its original interpretation was wrong, VA later took the position that Public Law 101-508 prohibits compensation for alcohol abuse even when due to a service-connected disability. In an April 7, 1997, letter to the VA General Counsel, Congressman Lane Evans advised VA that it was not the intent of Congress in Public Law 101-508 to bar compensation for alcohol-related disabilities when such disabilities are secondary to another service-connected disability. Congressman Evans said: "Where the addiction results from the medical condition incurred or aggravated during military service, Public Law 101-508 was not intended to preclude payment of benefits."

In *Allen v. Principi*, 237 F.3d 1368 (Fed. Cir. 2001), the court agreed with DAV's argument that the law does not bar compensation for disability from alcohol abuse when caused by a service-connected disability, and an expanded panel of judges, finding VA's argument unpersuasive, rejected VA's request that the court rehear the case. Having had its erroneous interpretation against veterans set aside by the Court and having apparently determined it unlikely that further appeal would be successful, VA now looks to Congress to reinstate its incorrect view of the law. Congress should reject VA's recommendation.

Although VA's Veterans Health Administration (VHA) is a recognized leading authority in research on and treatment of PTSD, and thus possesses extensive information and insight into the relationship between PTSD and alcohol abuse, VA's leadership and its Veterans Benefits Administration (VBA) apparently understand little about the subject, despite much puffing about the "One-VA" concept. Even before the American Psychiatric Association recognized PTSD as a distinct psychiatric disorder in 1980, those counseling Vietnam veterans suffering from its symptoms recognized alcohol abuse as a frequent component. Studies from the 1970s and later revealed that Vietnam combat veterans exhibited substantially higher levels of alcohol consumption than other veterans and nonveterans and that many combat veterans appeared to use alcohol as anti-anxiety agent to induce a form of "psychic numbing." It was observed that many combat veterans appeared to be "self-medicating" with alcohol to suppress PTSD symptoms.

Numerous studies about the relationship between psychiatric disorders, particularly PTSD, and alcohol abuse have been conducted, and VA's own National Center for PTSD recognizes the relationship. From the Center's Internet website at www.ncptsd.org, a number of fact sheets, articles, and clinical newsletters about PTSD and alcohol may be accessed. One entitled "Effects of Traumatic Experiences: A National Center for PTSD Fact Sheet," explains under the heading "How Do Traumatic Experiences Affect People?" that trauma survivors "may turn to drugs or alcohol to make them feel better." Under the heading "What are the Common Basic Effects of Trauma?" and subheading, "All of these problems can be secondary or associated trauma symptoms," the fact sheet states:

> **Alcohol and/or drug abuse:** can happen when a person wants to avoid bad feelings that come with PTSD symptoms, or when things that happened at the time of the trauma lead a person to take drugs. This is a common way to cope with upsetting trauma symptoms, but it actually leads to more problems.

Another fact sheet entitled "PTSD and Problems with Alcohol Use" observes:

> Sixty to eighty percent of Vietnam veterans seeking PTSD treatment have alcohol use disorders. Veterans over the age of 65 with PTSD are at increased risk for attempted suicide if they also experience problematic alcohol use or depression. War veterans diagnosed with PTSD and alcohol use tend to be binge drinkers. Binges may be in reaction to memories or reminders of trauma.

Other articles by various authors on the subject accessible from the Center website include the following:

- PTSD and Substance Abuse: Clinical Assessment Considerations
- Dual Diagnosis: PTSD and Alcohol Abuse
- Chronic PTSD in Vietnam Combat Veterans: Course of Illness and Substance Abuse
- Substance abuse and post-traumatic stress disorder comorbidity
- Post-Traumatic Stress Disorder and Comorbidity: Psychological Approaches to Differential Diagnosis

Under an article titled "Identifying the PTSD paradox," in the current issue of the *Vet Center Voice*, published by VA's Readjustment Counseling Service, the author presents "models" related to PTSD and its treatment. "Model A" lists "Self-medicate" as the first feature of avoidance devices and symptoms. The author, a PTSD treatment team leader at a VA Vet Center, explains in the introduction how the veteran may be unable to escape the trauma of the past and become entrapped by PTSD symptoms and consequent alcohol abuse:

> Other veterans, however, continue to experience distress as they go through life, as if they must continue to live today under the rules and regulations that were imposed upon them in the past, during moments of trauma. Not only do some veterans continue to live in the past, but new learning in the present seems to have come to a standstill: today is just like yesterday which is just like 30 years ago; there are no differences—"I am my trauma; I am my PTSD." The self becomes enmeshed with the past, exposure to traumatic events, and PTSD symptoms in the presence of such distortions. The self is surrounded by a layer of trauma, followed by a layer of PTSD symptoms, followed in some cases by a layer of substance abuse. Reins of control are in the hands of PTSD. Under these conditions, a relationship in the present with others and life and living is difficult and distressing. Indeed, a relationship with the past, trauma, and PTSD is maintained to the exclusion of one's relationship with life today and living in the present.

Under his discussion of "Model B," the author explains: "Hyperarousal also contributes to cognitive distortions, heightened emotionality and maladaptive behaviors such as aggression, isolation, sleep disturbance, lack of concentration and self-medication." Under another model, the "Negative SORC" (Situation, Organism, Reaction, Consequences), the author shows how an individual with PTSD might react to a negative event with emotional symptoms, and negative reactions, such as to "Start drinking."

The VA's 1985 edition of the *Physician's Guide for Disability Evaluation Examinations* stated that substance abuse "may be either primary, or secondary to posttraumatic stress disorder." The *Clinicians' Guide* that replaced it states that PTSD "may occur as a result of PTSD" and "when a veteran's alcohol or drug abuse is secondary to or is caused or aggravated by a primary service-connected disorder, the veteran may be entitled to compensation." Among

other things, the *Clinicians' Guide* instructs examiners to explain why "substance abuse had onset after PTSD and clearly is a means of coping with PTSD symptoms."

Many former POWs suffer from PTSD and other psychiatric disorders. These conditions are so common in POWs that anxiety, depressive, and psychotic disorders affecting former POWs are presumed service connected under section 1112 of title 38, United States Code. This provision in H.R. 850 will prohibit them from being compensated for the effects of alcohol-related disabilities caused by PTSD.

The fact sheet quoted above, "PTSD and Problems with Alcohol Use," states: "Women exposed to trauma show an increased risk for an alcohol use disorder even if they are not experiencing PTSD. Women with problematic alcohol use are more likely than other women to have been sexually abused at some point in their lives." If our women POWs in Iraq are raped, humiliated, and brutalized by an unprincipled, undisciplined Iraqi force, will we treat them as undeserving if they come home with PTSD and abuse alcohol to escape the unforgettable horrors of their experiences? Will they then become victims of the insensitivity of our own government?

Obviously, this provision to prohibit compensation for alcohol abuse, included in H.R. 850 at the urging of VA, does not have recognized medical principles and fair and equitable treatment of veterans as its bases. Regrettably, this recommendation reflects very negatively upon the agency that is charged with understanding and having insight into the effects of trauma and severe disabilities upon veterans. It evidences a narrow-minded insensitivity to the real nature of the effects of severe trauma and severe disability upon young men and women who bear these extraordinary burdens and suffer these extremely traumatic experiences. We oppose such an unwarranted, inequitable change in the strongest possible terms, and we urge that this Subcommittee not report H.R. 850 to the full Committee with this objectionable provision included.

It merits mentioning here that Congressman Michael Bilirakis, a member of the House Veterans' Affairs Committee, introduced H.R. 348 to improve benefits for former POWs. In addition to provisions to eliminate the minimum 90-day internment requirement for eligibility for dental care, the bill eliminates the currently required 30-day minimum period of internment for the presumption of service connection for POW-related diseases, adds other conditions to the list of recognized POW diseases subject to presumptive service connection, and requires the Secretary of Veterans Affairs to add other diseases to the list when warranted. This bill does not include provisions to prohibit compensation for alcohol abuse.

Congressman Tim Holden introduced H.R. 886 to extend to survivors of totally disabled POWs whose death occurred on or before September 30, 1999, the same entitlement to dependency and indemnity compensation (DIC) applicable to survivors of totally disabled POWs whose death occurred after that date. This bill does not contain provisions to take away benefits from disabled veterans and former POWs who suffer from alcohol-related disabilities secondary to other service-connected conditions.

Both of these bills have laudable purposes, without other objectionable provisions, and we urge the Subcommittee to give them consideration.

H.R. 966

Congressman Henry E. Brown, Jr., introduced H.R. 966, the Disabled Veterans' Return-to-Work Act of 2003, with cosponsorship by Congressman Ciro D. Rodriguez, Committee Chairman Smith, and Ranking Democratic Member Evans. The bill would revive a previous vocational training program for veterans receiving disability pension to rehabilitate them for employment where potential for achieving employment exists.

The DAV has no mandate from its membership on this bill, which pertains to veterans totally disabled by nonservice-connected causes, and we therefore have no position on it though it has a meritorious goal. We suspect, however, that veterans who receive disability pension are typically more disadvantaged than most veterans by reason of limited educational and vocational backgrounds. Of the nearly 340,000 veterans projected to be on the disability pension roles in FY 2004, many are older veterans. The median age of the largest group of living wartime

veterans, Vietnam veterans, is 55. The median age of Korean veterans is 71, and the median age of World War II veterans is 79. These factors may limit the number of veterans who would benefit from vocational training. Though the rehabilitation and reemployment of even a small number of veterans may be deemed a success, the program may not be cost-effective, overall. VA should be able to provide data on the veterans potentially affected and on the extent of success of the program when it previously was in operation.

H.R. 1048

Congressman Brown also introduced H.R. 1048 with original cosponsorship from Congressman Rodriguez, Chairman Smith, and Ranking Democratic Member Evans. This bill would increase the specially adapted housing grant from $48,000 to $50,000, the special home adaptation grant from $9,250 to $10,000, and the automobile grant for disabled veterans from $9,000 to $11,000. These three adjustments partially fulfill recommendations by *The Independent Budget*, as well as DAV Resolution No. 211, supporting an increase in the automobile grant, and DAV Resolution No. 136, supporting an increase in the specially adapted housing and home adaptation grants. The DAV fully supports H.R. 1048.

CLOSING

To the extent that DAV supports them, we urge the Subcommittee to favorably report these bills. We appreciate the efforts of the various members who introduced and cosponsored these bills to improve benefits and services for veterans, their dependents, and their survivors. We appreciate this Subcommittee's consideration of these bills and thank the members of the Subcommittee for hearing and considering the views of the DAV.

STATEMENT OF

PAUL A. HAYDEN, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

H.R. 241, *VETERANS BENEFICIARY FAIRNESS ACT OF 2003*;
H.R. 533, *AGENT ORANGE VETERANS' DISABLED CHILDREN'S BENEFITS ACT OF 2003*;
H.R. 761, *DISABLED SERVICEMEMBERS ADAPTED HOUSING ASSISTANCE ACT OF 2003*;
H.R. 966 *DISABLED VETERANS RETURN-TO-WORK ACT OF 2003*; AND
H.R. 1048, *DISABLED VETERANS ADAPTIVE BENEFITS IMPROVEMENT ACT OF 2003*

WASHINGTON, D.C. APRIL 10, 2003

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.6 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I would like to thank you for the opportunity to present our views on the following legislation.

H.R. 241 - *Veterans Beneficiary Fairness Act of 2003*

Last summer, the voting delegates to the VFW National Convention in Nashville, Tennessee, approved Resolution 628, which calls for the removal of the limitation on payment of accrued benefits. We would like to thank this subcommittee for addressing this issue and to express our strong support for this legislation that would repeal the inequitable two-year limitation on accrued benefits.

Under current law, if a veteran dies while a claim for VA benefits is being processed, the surviving spouse is entitled to no more than two years of accrued benefits. With the time period for processing claims and appeals often taking over two years, this law unjustly penalizes the survivor. The surviving spouse or children should not be made to suffer economically due to erroneous VA decisions or because VA has been unable to process the claim in a timely manner. This legislation, H.R. 241, will correct this wrong.

We urge Congress to enact the *Veterans Beneficiary Fairness Act of 2003* as it will ensure that the veteran's surviving spouse or child will receive the full amount of accrued benefits earned that the veteran would have been otherwise entitled had the veteran not passed away.

H.R. 533 - *Agent Orange Veterans' Disabled Children's Benefits Act of 2003*

It is our understanding that VA is in the process of issuing regulations, under the authority of P.L. 102-4, the *Agent Orange Act of 1991*, that would extend a presumption of exposure to veterans who served in locations other than Vietnam which also involved the use of herbicides, primarily Agent Orange. For example, veterans serving near the Demilitarized Zone between North and South Korea, in Panama and Johnston Island may have been exposed through the use of these agents in the late 1960s. Attached is an article from the February 2000, *VFW Magazine* discussing servicemembers' exposure to herbicides in Korea.

With this in mind, the VFW strongly supports H.R. 533, legislation that would now equitably include the eligible child of any veteran, as stipulated in Chapter 18 of Title 38, United States Code (U.S.C.), who was exposed to herbicides used in certain other locations during the veteran's active military service on the same basis as veterans who are eligible under Chapter 11 of Title 38, U.S.C. That authority, however, does not extend to those claimants under Chapter 18, Title 38, U.S.C., because their entitlement was not established until after P.L. 102-4 was enacted.

The VFW has long supported entitlements for conditions caused by herbicide exposure, and we believe this bill will correct an inequity in the current law.

H.R. 761 – *Disabled Servicemembers Adapted Housing Assistance Act of 2003*

The VFW supports this bill as it will authorize adaptive housing assistance to members of the Armed Forces who are on active duty pending medical separation. Current law states that you must be a disabled veteran in order to apply for adaptive housing assistance. Consequently, those members of

the Armed Forces who are on active duty pending medical separation are not eligible to apply for these benefits that they will eventually receive when they attain veteran status. Delaying such assistance unnecessarily impedes recovery, rehabilitation, and, most importantly, the servicemember's transition into independent living.

By giving those disabled military personnel a head start in the process, you will reduce the time they must wait to make their homes handicapped-accessible. Renovations such as wheelchair ramps, elevator construction, and bathroom adjustments are often time-consuming and expensive. Having these completed prior to discharge will dramatically improve the disabled servicemember's quality of life as well as ease the burden placed on those entrusted with their care. The VFW feels this benefits all involved.

H.R. 850 - *Former Prisoners of War Special Compensation Act of 2003*

Section 2 would establish a three-tiered special monthly compensation to former Prisoners of War to be based upon length of captivity as follows:

- Those who were detained 30-120 days would receive $150 per month
- Those who were detained 121-540 days would receive $300 per month
- Those detained 540 or more days would receive $450 per month

This section highlights an injustice that has long bothered us. We have never understood the delimiting factor of 30 days, which, in this bill, is just a reflection of the definition stipulated in Title 38, U.S.C. §1112(b) for service connected disabilities for POWs. The VFW feels that all POWs should be included in this special monthly pension.

Often the first hours and days of captivity are the most difficult. From the moment a plane or helicopter goes down or an enemy ambush occurs, such as the incident of those five soldiers from the 507th Maintenance Battalion recently captured in Iraq, the physical and psychological torture begins. For example, in a recent *Washington Post* article, former POW and retired Marine, Major Joseph Small, described his captivity in the 1991 Persian Gulf War: "The first few hours are the worst… your senses are so overwhelmed by the physical and mental shock. Your environment has completely changed… and you aren't free anymore." But, Major Small is not eligible for a pension under this provision or for any presumptions in §1112 of Title 38, U.S.C., because he was a POW for only nine days.

We strongly suggest eliminating the 30-day requirement for eligibility not just in this bill but also as a part of Title 38, U.S.C., §1112(b). By eliminating the 30-day starting period in the first tier so that eligibility starts from the moment of capture, you will include those POWs who have been held for shorter intervals but have certainly suffered most of the same physical and psychological trauma as other POWs.

The VFW objects to Section 3 of H.R. 850, which would amend the clarification of payment of compensation for alcohol or drug related disability to preclude service connection on a secondary basis.

Physicians often consider alcohol and drug related disabilities to be secondary conditions of Post Traumatic Stress Disorder resulting from such situations as internment as a POW or from severe combat war wounds such as an amputation. Many of these veterans use drugs and alcohol to self-medicate themselves in order to combat the depression caused by their war experiences. This, coupled with their primary condition, impairs their ability to manage day-to-day activities, like holding a job. Accordingly, their earning potential is limited.

Disability compensation was intended to compensate the veteran for that limited earning potential due to injuries suffered while defending this nation. Further, restricting veterans from receiving these benefits, which were granted in relation to a primary service connected condition, directly opposes the principles behind service connected disability compensation; we believe this is a grave injustice.

The VFW is pleased to support Section 4 that would extend outpatient dental care to all former POWs regardless of their length of captivity.

H.R. 966 – *Disabled Veterans' Return-to-Work Act of 2003*

The VFW supports H.R. 966, the *Disabled Veterans' Return-to-Work Act of 2003*. This measure reinstates a VA pilot program that expired in December 1995 to provide vocational training to newly eligible non-service connected pension recipients. As a long-time advocate of providing vocational opportunities for veterans, we believe that this legislation, open to those veterans age 45 years or younger, will provide these pension recipients the opportunity to develop professional career skills thus opening the door to independence.

All too often, veterans are discouraged from seeking employment because of the needs-based structure of VA's pension program, whereby every dollar they earn is offset from the monthly pension they receive. Giving them the chance to gain the skills needed to return to work will give them a sense of accomplishment as they provide for themselves and their families.

The VFW especially welcomes the language in section 2(c) that will enhance outreach for the reinstated program. Utilizing the Internet, veteran service organizations' publications along with VA's resources will create awareness for the program thus increasing its enrollment. We strongly believe that significant outreach is a primary key to the success of this program.

H.R. 1048 – *Disabled Veterans Adaptive Benefits Improvement Act of 2003*

The VFW supports this bill that would increase the specially adaptive housing grant from $48,000 to $50,000 for the most severely disabled veterans and from $9,250 to $10,000 for other disabled veterans. It will also increase the one-time reimbursement VA may provide to certain severely disabled veterans to assist them in their purchase of an automobile.

With respect to Section 2, we urge the subcommittee to allow for a second housing grant. VFW Resolution 616 supports this change. Like other families today, veterans' housing needs change with time and new circumstances. For instance, a veteran's home may become too small when the family grows or too big when children leave home. Changes in the veteran's disability may necessitate a home having to undergo other renovations for adaptation. For these reasons, the ability to obtain a second grant would be a very beneficial entitlement for the veteran.

With respect to Section 3 of this legislation, we support the increase from $9,000 to $11,000, and we ask this subcommittee to provide for an automatic annual adjustment based on the rise in the cost of living.

Congress initially fixed the amount of the automobile grant to cover the full cost of the automobile. Currently, the value of the automobile allowance represents only 35% of the average cost of a new automobile. We believe that if the benefit is to accomplish its purpose, it must be adjusted automatically to reflect an increase in line with present and future automobile costs.

We feel enacting this legislation would help restore the value and effectiveness of these grants so that the most severely disabled veterans can regain independence and improve their daily living.

Mr. Chairman and members of the subcommittee, this concludes the VFW's testimony. We again thank you for including us in today's important discussion, and I will be happy to respond to any questions you may have. Thank you.

STATEMENT OF

CARL BLAKE,

ASSOCIATE LEGISLATIVE DIRECTOR,

PARALYZED VETERANS OF AMERICA

BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS,

SUBCOMMITTEE ON BENEFITS

CONCERNING H.R. 241, THE "VETERANS BENEFICIARY FAIRNESS ACT OF 2003," H.R. 533, THE "AGENT ORANGE VETERANS' DISABLED CHILDREN'S BENEFITS ACT OF 2003," H.R. 761, THE "DISABLED SERVICEMEMBERS ADAPTED HOUSING ASSISTANCE ACT OF 2003," H.R. 850, THE "FORMER PRISONERS OF WAR SPECIAL COMPENSATION ACT OF 2003," H.R. 966, THE "DISABLED VETERANS RETURN-TO-WORK ACT OF 2003," AND H.R. 1048, THE "DISABLED VETERANS ADAPTIVE BENEFITS IMPROVEMENT ACT OF 2003"

APRIL 10, 2003

Chairman Brown, Ranking Member Michaud, members of the Subcommittee, PVA would like to thank you for the opportunity to testify today concerning the proposed benefits legislation. It is important that we address much needed benefits improvements at a time when we will have new veterans coming home from war soon to partake of these benefits.

H.R. 241, the "Veterans Beneficiary Fairness Act of 2003"

Under current law, if a veteran dies while a claim is being processed by the Department of Veterans Affairs (VA), but before his or her claim becomes final, the surviving spouse is entitled to no more than two years of accrued benefits when the claim is decided in the veteran's favor. H.R. 241 repeals this two-year limitation allowing the veteran's surviving spouse to receive the full amount of the award and not be penalized by VA's failure to resolve a claim in a timely manner. With the time period for processing claims and appeals often being a matter of years, this limitation is inequitable. A veteran's surviving spouse should not be forced to suffer the consequences of the VA's inefficiency. PVA fully supports H.R. 241.

H.R. 533, the "Agent Orange Veterans' Disabled Children's Benefits Act of 2003"

H.R. 533 provides health care, vocational training and rehabilitation, and a monthly disability allowance from the VA to the natural child of a veteran who had active military service in an area in which a Vietnam-era herbicide agent was used. This applies to children who were conceived after the veteran served in that area and who suffer from spina bifida. Under current law, these benefits are authorized only for the spina bifida care of a Vietnam veteran's natural child conceived after the veteran first entered the Republic of Vietnam. PVA supports H.R. 533.

H.R. 761, the "Disabled Servicemembers Adapted Housing Assistance Act of 2003"

Mr. Chairman, PVA would like to thank you for introducing H.R. 761, the "Disabled Servicemembers Adapted Housing Assistance Act of 2003." This has been an important initiative for PVA. H.R. 761 authorizes the VA to provide adapted housing assistance to military personnel on active duty who have a qualifying disability, such as the loss of certain extremities or of sight, which is the result of an injury or disease aggravated or contracted in the line of duty. This assistance is given primarily through grants used either in the construction of a new accessible house or in the remodeling of an existing house for accessibility. Currently, a servicemember must wait until he or she has been separated from active duty before he or she can take advantage of this benefit.

As *The Independent Budget* states:

> In authorizing specially adapted housing for "veterans," current law precludes awards to servicemembers hospitalized or undergoing rehabilitation prior to discharge because of service-connected disabilities. Servicemembers may remain hospitalized for months, occupying an acute care bed or housed in a nursing home at government expense until adequate housing can be constructed or adapted. Delaying assistance with specially adapted housing until the servicemember attains veterans' status unnecessarily delays recovery, rehabilitation, and transition into independent living. As it is with the automobile allowance, eligibility for specially adapted housing should be extended to service-disabled members of the Armed Forces who are awaiting discharge from military service.

Many PVA members have dealt with this problem in the past. A significant number of PVA members utilize the adaptive housing grants for their homes. Unfortunately, in situations where our members come directly from active duty and are waiting for separation, they are forced to stay in a hospital or live with someone else because they do not have immediate access to the grants that would allow them to become independent much faster. PVA fully supports H.R. 761.

H.R. 850, the "Former Prisoners of War Special Compensation Act of 2003"

H.R. 850 would allow the VA to pay a monthly special compensation to veterans who were prisoners of war. The amount of this compensation would be based on the length of time that the veteran was actually held as a prisoner. The bill would also allow the VA to provide dental care to all former prisoners of war, not just those who were held captive for more than 90 days. It is important that we recognize the sacrifices that these veterans made and the hardships that they faced while being held captive. PVA supports the provisions of H.R. 850.

H.R. 966, the "Disabled Veterans Return-to-Work Act of 2003"

I would like to express our appreciation to the Chairman of the Subcommittee, the Honorable Henry Brown, for introducing H.R. 966, the "Disabled Veterans' Return-to-Work Act of 2003." The program would re-authorize a five-year program of vocational rehabilitation for certain nonservice-connected disabled pension recipients that was first established by the 98th Congress. The program became effective on February 1, 1985 and was terminated in 1995. PVA felt strongly at that time that the VA failed to provide the proper outreach and support to make this program fully successful. We greatly appreciate language placed in this legislation providing direct guidance to the VA in this regard.

The program was designed primarily for younger totally disabled veterans receiving VA low-income pension. It was designed to give them a realistic opportunity to receive vocational training, enabling them to return to productive activity, rather than relying on the VA pension program for the remainder of their lives at great cost to the government. The program also addressed the disincentives many of these veterans faced in seeking training and employment by removing the threat of the immediate loss of pension benefits once employment and higher incomes had been secured.

PVA has, for years, maintained that the nonservice-connected pension program contains built-in work disincentives which have led to unnecessary government expenditures and loss of considerable human talent from America's work force. Society has, due to increased public awareness, improved technologies, and medical advancements, modernized some of these attitudes toward people with disabilities. Passage of the Americans with Disabilities Act (P.L. 101-336) has opened wide avenues for employment opportunities for these men and women. The Congress, in 1999 passed the "Ticket to Work Act" (P.L. 106-170) which sought to remove many disincentives inherent in other Federal assistance programs that kept people on public assistance when faced with loss of health care benefits. Mr. Chairman, no severely disabled American, veteran or non veteran alike, in this day and age should have to face a life-time of un-productivity and public assistance, because VA and other federal programs are designed to keep him or her in that condition.

The lack of adequate training opportunities, job placement counseling programs, along with an uncertain job market, fear of loss of health care and pension support are powerful disincentives for an individual seeking to break out of public assistance. Fortunately the Congress, some years ago, allowed for pension recipients obtaining employment to continue their health care eligibility for a period of time after leaving the pension rolls, much as the "Ticket to Work Act" provided in the 106th Congress. However, the veteran still loses pension support immediately at the point his or her earned income rises above the pension limitation. This termination of benefits mirrors the same disincentives still existing in the Social Security Disability Insurance (SSDI) program, although there are some mechanisms in that program for an extension of benefits after a period of time. The Supplemental Social

Security (SSI) program under Social Security has a much more enlightened approach phasing benefits out gradually as earned income rises.

H.R. 966, in reinstating this program, amends language in title 38 U.S.C. that calls for an extension of pension benefits once income has risen above the pension limitation, but for one year only. We believe this time period is too short to give the newly trained and newly employed former pension recipient the initial confidence that financial support will be there for an adequate period of time while he or she is trying to achieve employment security. We have suggested in the past that a three-year extension of benefits would be ideal. However, we would like to work with the Subcommittee to achieve some compromise or solution based on new or existing models deemed to be successful in other Federal programs.

H.R. 1048, the "Disabled Veterans Adaptive Benefits Improvement Act of 2003"

H.R. 1048 would increase the one-time reimbursement VA may provide to certain severely disabled veterans to assist their purchase of an automobile from $9,000 to $11,000. The bill would also increase the grant to help eligible veterans make adaptations to their homes, which are necessary because of the nature of their disability. It would increase the Specially Adapted Housing Grant from $48,000 to $50,000 for the most severely disabled veterans and from $9,250 to $10,000 for other severely disabled veterans. These are initiatives that PVA has worked on for many years, along with the other *Independent Budget* veterans' service organizations, to ensure that these grants keep pace with inflation, as well as living up to their original intent.

Many PVA members use one or all of these grants. Independent living is essential to a happy life for spinal cord injured veterans. These grants are a necessary tool to allow the most severely disabled veterans to live their lives in the most independent manner possible. The amounts of these grants have not kept pace with inflation and the ever-increasing costs of purchasing a home and automobile. It is important that these grants be increased so that severely disabled veterans are not forced to bear such a heavy burden just to become independent. PVA fully supports the provisions of H.R. 1048. In accordance with the recommendations of *The Independent Budget*, PVA would also like to encourage the

Subcommittee to consider including an automatic annual adjustment for inflation in this legislation.

Mr. Chairman, PVA thanks you for making these benefits measures a priority. At a time when we have troops in the field and severely disabled soldiers returning home from combat as veterans, we must ensure that the benefits that they will be entitled to will properly meet their needs.

PVA looks forward to working with the Subcommittee on these and other benefits issues. I would be happy to answer any questions that you might have.

American Ex-Prisoners of War
CONGRESSIONALLY CHARTERED
Leslie H. Jackson
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Statement of the American Ex-Prisoners of War with respect to proposed legislation before the Sub-Committee on Benefits, Veterans Affairs Committee, House of Representatives April 10, 2003

Good morning. I am Les Jackson, Executive Director of the American Ex-Prisoners of War. Our statement today will be confined to pending bill **H. R. 850** "Former Prisoner of War Special Compensation Act of 2003".

All former prisoners of war, whether from WWII, Korea, Vietnam, or more recent conflicts, feel - and have always felt- a great pride in serving our country in time of danger. We really understand and deeply value the freedom this country has always guaranteed its citizens. We have never asked to simply be rewarded for the privilege of serving our country.

We are well aware, however, that many who served, whether they were captured or not, have paid a significant price in living with immediate and long term disabling consequences of that service. Like all good Americans we support any legislation now before your committee which addresses this concern and urge that it be granted the highest priority which it deserves.

We are puzzled and deeply concerned however, that you have not included our priority bill, **H. R. 348** introduced by Congressman Bilirakis and a companion bill **S. 517** introduced by Senator Patty Murray, that specifically addresses known long term disabling consequences of the brutal and inhumane captive experience. Since POWs are now dying at a rate greater than ten a day, and many have had no help in more than 50 years, we urge the committee to add it to the legislation you are considering today.

We thank the committee for its continuing concern in providing benefits for those whose service resulted in disabling consequences.

TESTIMONY
of
RICHARD JONES
AMVETS NATIONAL LEGISLATIVE DIRECTOR
before the
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON BENEFITS
U.S. HOUSE OF REPRESENTATIVES
on
VETERANS' BENEFITS LEGISLATION

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present testimony to the Benefits Subcommittee on the six bills subject to this legislative hearing. AMVETS is pleased to present our views regarding H.R. 241, the Veterans Beneficiary Fairness Act of 2003; H.R. 533, the Agent Orange Veterans' Disabled Children's Benefits Act of 2003; H.R. 761, the Disabled Servicemembers Adapted Housing Assistance Act of 2003; H.R. 850, the Former Prisoners of War Special Compensation Act of 2003; H.R. 966, the Disabled Veterans Return-to-Work Act of 2003; and H.R. 1048, the Disabled Veterans Adaptive Act of 2003.

Mr. Chairman, AMVETS has been a leader since 1944 in helping to preserve the freedoms secured by America's Armed Forces. Today, our organization continues its proud tradition, providing, not only support for veterans and the active military in procuring their earned entitlements, but also an array of community services that enhance the quality of life for this nation's citizens.

H.R. 241, the Veterans Beneficiary Fairness Act of 2003

Chairman Smith introduced H.R. 241 to prevent deserving veterans and their families from losing earned benefits due to claims backlogs. Currently if a veterans' claim is not completed and the veteran passes away, the surviving spouse is entitled to no more than two years of the accrued benefits, regardless of the time it took to adjudicate the claim. H.R. 241 repeals this two-year limitation and will ensure the families of our veterans receive the benefits they are owed. AMVETS fully supports H.R. 241.

H.R. 533, the Agent Orange Veterans' Disabled Children's Benefits Act of 2003

H.R. 533, introduced by Ranking Members Evans, seeks to expand benefits for the families of those veterans exposed to the herbicide "Agent Orange" during the era of American combat in Southeast Asia. Currently, only cases of spina bifida occurring in the natural children conceived by Vietnam-era veterans who were exposed to Agent Orange after the veterans enter the territory of Vietnam are eligible for benefits. H.R. 533 expands these benefits to include any cases of

spina bifida in natural children of a Vietnam-era veteran linked to Agent Orange, regardless of service area. AMVETS believes it is proper to provide benefits to all victims of Agent Orange and fully supports the bill.

H.R. 761, the Disabled Servicemembers Adapted Housing Assistance Act of 2003

Ranking Member Evans has also introduced H.R. 761. This legislation seeks to eliminate the needless barrier preventing seriously disable active servicemembers from obtaining VA specially adapted housing. For servicemembers who find themselves severely disabled, but still part of the military, they are eligible for a VA provided motor vehicle and VA medicalcare. Yet, an adapted home provided by VA grant, a place to live, will only be approved after the servicemember receives final separation from the military. H.R. 761, by allowing these servicemembers to be eligible for these adapted housing grants prior to discharge, will improve the readjustment and recovery of these severely disabled servicemembers. AMVETS fully supports H.R. 761.

H.R. 850, the Former Prisoners of War Special Compensation Act of 2003

H.R. 850, introduced by Representative Simpson, seeks to provide a new compensation system for former prisoners of war (POWs). As we have seen in the current action in Iraq, the risks and rigors faced by our POWs continue to test the limits of the human spirit. Any of America's POWs, from any war or conflict, deserve our nation's thanks and support. AMVETS supports providing the compensation package outlined in H.R. 850 to our POWs. It is an appropriate reflection of appreciation for their service and determination by a grateful nation.

However, AMVETS has concerns over Section Three of H.R. 850 dealing with compensation for alcohol or drug-related disabilities. AMVETS believes that more study must be completed in regards to links between alcohol and drug usage as related to veterans suffering from Post Traumatic Stress Syndrome (PTSD). As the United States Court of Appeals for the Federal Circuit ruled in *Allen vs. Principi,* Title 38 *"...does not preclude compensation for an alcohol or drug abuse disability secondary to a service-connected disability or use of an alcohol or drug abuse disability as evidence of the increased severity of a service-connected disability."* The ruling further goes on to instruct that any such compensation must result from "clear medical

evidence" that a veteran's alcohol or drug abuse is caused by their PTSD. It is for these reasons that AMVETS believes further study is needed before law mandates any such preclusion of benefits.

H.R. 966, the Disabled Veterans Return-to-Work Act of 2003

H.R. 966, introduced by Subcommittee Chairman Brown, provides vocational training for newly eligible veterans receiving a VA non-service-connected disability pension. Under current law, non-service-connected disabled veterans are effectively discouraged from seeking employment due to the needs-based structure of the pension program. For every dollar these low-income veterans earn in their jobs, an equal amount is deducted from their pension.

By reauthorizing a five-year pilot program to provide vocational training for these veterans, aged 45 and younger, H.R. 966 will allow veterans receiving non-service-connected disability pensions to enter the workforce while maintaining their current standard of living. This will allow these younger veterans to improve their futures and not become wholly depend on their VA pension. AMVETS fully supports the bill.

H.R. 1048, the Disabled Veterans Adaptive Act of 2003

H.R. 1048, also introduced by Subcommittee Chairman Brown, would increase the levels of one-time assistance payments to severely disabled veterans. Specifically; H.R. 1048 would increase the payment for a specially adapted automobile by $2,000, raise the grant for adapted housing for our most severely disabled veterans by $2,000, and increase this housing grant by $750 for less severely disabled veterans. AMVETS fully supports H.R. 1048 as it recognizes the ever increasing cost of living and will allow our severely disabled veterans to live their lives with dignity and as independently as possible.

AMVETS sincerely appreciates this opportunity to present our views, and we, again, thank you for your vigilance in improving benefits and services to veterans and their families.

Statement of Matilda Bonny
before the
House Committee on Veterans' Affairs
Subcommittee on Benefits

In Support of H.R. 241, the Veterans Beneficiary Fairness Act of 2003

April 10, 2003

Mr. Chairman and Members of the Subcommittee, my name is Matilda Bonny and I sincerely thank you for this opportunity. I submit this statement in support of enactment of H.R. 241, the Veterans Beneficiary Fairness Act of 2003, as a private citizen without affiliation with any private or public organization.

As you know, the current wording of 38 U.S.C. § 5121 allows the Department of Veterans Affairs simply to keep all but two years' worth of the benefits owed to veterans who die before a final decision on their pending claim is made. Even more outrageous, until recently the VA also kept the money it admittedly owed veterans if the veteran died before the VA got around to writing the benefits check. I am proud to say that I was the appellant in *Bonny v. Principi*, 16 Vet. App. 504 (2002), which struck down that VA practice. Enacting H.R. 241 will eliminate the remainder of the unfair two-year limitation.

My late husband, William H. Bonny, joined the Army before Pearl Harbor. He served proudly in the African and European theaters during World War II, was wounded twice and received the purple heart during his service. In 1948, the VA awarded my husband a 30 percent disability because of his wounds. My husband disagreed with that decision and spent decades challenging the rating as incorrect. On August 10, 1995, the VA determined that "clear and unmistakable error" had been committed in 1948 – as my husband had contended all along – and that the VA owed him nearly 47 years of unpaid benefits because of the agency's interpretation of the "two year" limitation that H.R. 241 will eliminate.

My husband died on August 15, 1995, never receiving a penny of the benefits the VA admitted it owed him. Instead of paying the due and unpaid benefits to me as the surviving spouse, the VA denied all but two years' worth of benefits because my husband died before the VA found the time to write the check. The VA never denied he deserved those benefits, that he had been right all along, or that it took the government nearly 47 years to correct a "clear and unmistakable error," but they refused to pay my husband's benefits.

Mr. Chairman, my husband will be dead eight years this August. I have spent that entire time fighting the VA for payment of the benefits due my husband for the injuries he received during his service to this Country. And, I must say, this fight was only possible with the help of the good people at the Veterans Consortium Pro Bono Program who believed in me and my case. Today, April 10, 2003, is four months to the day that the Court of Appeals for Veterans Claims ordered the Secretary of Veterans Affairs to pay the benefits owed my husband since 1948. I am sad to say, however, that I still have not yet received any payment. VA is still "reviewing" the

Court's decision, but there is no telling how long this could take. The VA New York Regional Office is not sure of the status of my case and cannot tell me when I may receive my benefits check. At this point, I only hope that I live long enough to see the end of this fight and do not have to leave it to my children.

As unbelievable as it seems, the VA is still processing benefits claims submitted by World War II veterans. H.R. 241 is important because, under current law, these claims die with the veteran if the VA does not issue a final decision before the veteran's death. With hundreds, perhaps thousands, of World War II veterans passing every day, the two-year restriction in 38 U.S.C. § 5121 does little more than punish surviving family members by ensuring that they, as well as the veteran, do not receive due and unpaid benefits. H.R. 241 will require VA to pay a deceased veteran's family the benefits denied to the veteran because of VA errors and delays.

Mr. Chairman, H.R. 241 will not affect me directly: my right to the benefits withheld from my husband were established in court. I feel strongly, however, that other families that continue to fight for withheld benefits should not be forced to endure years of litigation with the VA to achieve the same result. I read H.R. 241 as currently written to apply only to claims based on veteran deaths occurring after enactment. I do not believe this is fair to those with claims pending before the VA. I feel it is important that these families are able to avail themselves of the benefits of H.R. 241 by including claims pending at the time of enactment within the scope of the legislation. By making such a change, the Subcommittee will provide surviving spouses, many of whom have fought for deserved benefits side by side with their veteran spouses for decades, with the benefits they so well deserve. It would be sadly ironic and unfair for the families of veterans who have already fought for many years to be denied the same benefits that the families of veterans who die shortly after enactment of H.R. 241 will receive without delay.

Mr. Chairman, I thank you and all the Members of this Subcommittee for your time and support of veterans. I trust that you will see to it that all families of deceased veterans receive the benefits that this Country rightly owes them.

Statement of Matilda Bonny
before the
House Committee on Veterans' Affairs
Subcommittee on Benefits

Curriculum Vitae

Mrs. Matilda Bonny is the surviving spouse of William H. Bonny, a decorated World War II veteran. After her graduation from high school, she worked at the Navy Department during World War II. Following the war, Mrs. Bonny enjoyed being a wife and mother. She was active in her children's school activities including the Boy Scouts and 4H Club. Mrs. Bonny currently resides in Florida.

Disclosure Statement

Mrs. Bonny is not the recipient of any federal grants or contracts.

Statement of Dorothy Brasher
before the
House Committee on Veterans' Affairs
Subcommittee on Benefits

In Support of H.R. 241, the Veterans Beneficiary Fairness Act of 2003

April 10, 2003

Mr. Chairman and Members of the Subcommittee, my name is Dorothy Brasher. Thank you for the opportunity to express my strong support for H.R. 241, the Veterans Beneficiary Fairness Act of 2003. I also want to thank Congressman Smith and Congressman Evans for introducing this simple, yet so very important, change in veteran's benefits law. At a time when our service men and women are once again placing themselves in harm's way, nothing can be more important than to assure them that no matter what may happen, the benefits that they deserve will flow, if not to them, then at least to their families. I also want to assure you that I speak only for myself, as the proud wife of a veteran, and do not have an affiliation with any public or private organization.

It has been my unfortunate experience to learn that, under the current wording of 38 U.S.C. § 5121, the Department of Veterans Affairs keeps most or all of the benefits owed to veterans who die before a final decision on their pending claim is made. Until recently, the VA kept the money owed to the veteran, even if there was a final agency decision in their favor but the VA had not gotten around to writing the benefits check. It is simply unfair, if not punitive, to single out the families of deceased veterans for such unfair treatment.

In 1943, my late husband Jesse G. Brasher, was one of the 3000 original volunteers for the 5307th Composite Unit, the famous "Merrill's Marauders," in World War II. Between 1943 and 1945, my husband's unit marched an estimated 1,500 miles across southeast Asia fighting behind enemy lines. Approximately 80 percent of the unit were casualties. Those who were not killed in action either died from disease, starvation, or the rigors of forced marches across the foothills of the Himalayas. History has rightly recognized these men as true, selfless heroes.

My husband survived the jungles of Burma, but not unscarred. He injured his back in a fall while carrying a full pack and weapons, contracted a skin fungus infection, and suffered a hearing loss from prolonged exposure to gunfire and incoming artillery. He left the service after the war, but was never able to work without pain for the rest of his life. I watched my husband suffer with these injuries for over 50 years, while the VA denied his repeated claims for benefits.

My husband filed his first claim for veterans benefits in 1946. The VA denied the claim because of a lack of evidence despite a discharge service medical record entry recording his back problem. Over the next 56 years, the VA repeatedly denied my husband's claims, although subsequent medical examinations by civilian doctors confirmed the nature of his injuries and the extent of his disabilities. It is my understanding that the VA wanted my husband to produce medical records created during the war to prove that he had been injured on active duty. We

simply could not convince the VA that there were no medical records or x-ray machines in the jungles of Burma during World War II.

On October 18, 2002, my family received a call to let us know that the Board of Veterans Appeals had finally awarded my husband the benefits for which he had fought so hard and so long. On that day Jesse was barely conscious, struggling for every breath in a VA hospital. I quietly told him that he had finally won his battle. Ho could not speak, but I thought I felt him squeeze my hand ever so slightly. He passed away early the next morning, October 19, 2002, at the age of 80. It is a small consolation that I was able to tell him about the decision. I now know that he heard me because he would not have given up a fight he thought was unfinished. When he died, he had fought the Japanese Army for two years and the American government for fifty-six.

My husband never received any of the benefits promised him for injuries suffered while serving his Country, but at least he died believing that his family would receive them. Now, the VA has told me that federal law requires them to keep most of those benefits from me and our family. According to the VA, they do not have to pay the benefits because – after 56 years – Jesse died a few hours too soon. Veterans benefits do not survive the veteran, they tell me, and since they mailed the October 18, 2002, decision on October 21, 2002 – after Jesse died – the VA has to pay only two years of benefits.

Mr. Chairman, I struggle to understand how and why the United States government has so badly treated my husband and my family. We are so proud of his service and his good and decent life. Jesse Brasher has been recognized many times by his community, which honored his bravery and sacrifice. Yet, it is hard not to be bitter. I lived with, and often supported, a man disabled in the service of this Country. His child grew up with a father in nearly constant pain and unable to share fully in her childhood. His grandchildren never knew the proud and brave man that willingly sacrificed his health for their freedom, only a man worn down from fighting his own government. The law as it is now places no value on any of these things or on the memory of veteran heroes who die before the bureaucracy chooses to recognize its own errors.

I will honor my husband by continuing his fight that, after five decades, became one of principle rather than money: no amount of money can undo the pain caused this man and his family. The recent *Bonny* decision shows that there is hope for some veteran spouses. Yet, I understand that it took Mrs. Bonny nearly eight years to win her accrued benefits case and she has yet to receive the withheld benefits because the VA is still "reviewing" the court decision that ordered payment to her. But, Mr. Chairman, I am 76 years old and cannot see enduring another eight-year legal battle with the VA. It saddens me to think that my legacy to my child may well be the same 1946 claim for benefits that my husband left me.

This is why H.R. 241 is so important. The VA is still finding errors in denied claims from World War II veterans. Thousands of these veterans die every day. Any pending VA claims are simply closed. It is a national shame that our government actually has incentive to wait out the lives of these brave men and women. H.R. 241 removes the two-year restriction on benefits that does nothing more than punish surviving family members for the death of a veteran. H.R. 241 will ensure that at least the long-suffering families will receive the benefits that the

veteran earned. Apparently 56 years of pain was not enough for the VA, Jesse needed to suffer a few more hours before the government felt it could award him benefits.

Mr. Chairman, while H.R. 241 will fix the problem in the future, I am told that H.R. 241 as written would only apply to claims based on a veteran's death occurring after enactment. I do not believe this is fair to those survivors that have fought so hard for claims that are currently in the VA system. It is only because of the efforts of people such as Mrs. Bonny that I became aware of the importance of H.R. 241. She, and the other surviving veteran spouses that continue to fight for the benefits due and unpaid to them, reflects determination undiminished by years and sometimes decades of legal battles with the VA. Congress should recognize such determination and dedication.

It is terribly important that these people, many of them elderly and in frail health themselves, are not inadvertently excluded from the benefits of H.R. 241, as the current language of the bill would have it. It seems to me that fairness requires that these people be included under H.R. 241 and I ask that the language of the bill be changed to extend relief to claims pending at the time of enactment. As with veterans, spouses who have battled and brought this important issue to the attention of this Subcommittee deserve to benefit from their efforts. This small change will mean so much to these families.

Mr. Chairman, I thank you and all the Members of this Subcommittee for your time and support of veterans.

Statement of Dorothy Brasher
before the
House Committee on Veterans' Affairs
Subcommittee on Benefits

Curriculum Vitae

Mrs. Dorothy Brasher is the surviving spouse of Jesse G. Brasher, an original volunteer member of "Merrill's Marauders" in World War II. She graduated from Decaturville High School in 1944. Mr. And Mrs. Brasher were married for over fifty-six years and raised one daughter together. Mrs. Brasher has been a auxiliary member of the American Legion for over fifty years. She is a member of the local Methodist Church near her family home in Scotts Hill, Tennessee.

Disclosure Statement

Mrs. Brasher is not the recipient of any federal grants or contracts.

STATEMENT FOR THE RECORD OF
MICHAEL RUZALSKI
House Committee on Veterans Affairs
Subcommittee on Benefits
United States House of Representatives
April 10, 2003

Chairman Brown, Ranking Member Evans and Members of the Subcommittee, I am Michael Ruzalski, the son of John J. Ruzalski, a Vietnam era veteran who served at the DMZ (Demilitarized Zone) in Korea during the Vietnam War. I live in Hawley, Pennsylvania. I am asking you to support H.R. 533, the Agent Orange Veterans' Disabled Children's Benefits Act of 2003. I know that this bill pertains to me and I figure that this bill is for all children of Vietnam Era Veterans who were exposed to herbicides and who now have spina bifida.

I was born on May 19, 1975 with spina bifida and hydrocephalus and other abnormalities related to spina bifida. I have a shunt which diverts the fluid from my brain to my abdomen. I have had many operations from the time I was born to the present. On March 13, 2003 I had a five hour operation to close an open wound. I also have a colostomy and must use a urinary catheter. I have to use a wheelchair, braces and crutches to get around.

I went to Queensboro Community College in Springfield Gardens New York, but had to leave school due to my father's illness and my medical problems. I would like to finish school.

During my father's service in Korea, he was exposed to Agent Orange, Agent Blue and other herbicides used to kill vegetation near the DMZ. The Department of Veterans Affairs (VA) agrees that my father was exposed to Agent Orange, Agent Blue and other herbicides in Korea.

I applied for benefits from the VA as a child with spina bifida. My application was denied because my father was not exposed to Agent Orange in Vietnam. The VA said that "entitlement to these benefits require that one of the biological parents must have performed active military, naval or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975. The primary requirement is duty or visitation in the Republic of Vietnam during this time period." My father was not sent to Vietnam because his brother, my uncle Stanley, was serving

in Vietnam at that time. My father was sent to Korea where he was exposed to Agent Orange and other herbicides during his service near the DMZ.

I do not believe that it is fair to provide benefits to children whose parents were exposed to herbicides in Vietnam and deny them to children like me, whose natural parent was exposed to the same herbicides in a different place. The National Academy of Sciences, Institute of Medicine has said in 1996 and again in 1998 and 2000 that there is limited or suggestive evidence between exposure to Agent Orange and spina bifida. Children of Vietnam veterans are provide benefits based upon this scientific evidence.

I am asking the Congress to pass this bill, so that I and other children whose parent was exposed in Korea or other locations may receive the same benefits as children with spina bifida whose parents were exposed in Vietnam. Thank you for allowing me to submit testimony on H.R. 533. I hope that you will pass this bill.

Sincerely,

Michael Ruzalski

Michael Ruzalski

TO WHOM IT MAY CONCERN:

I MICHAEL CHRISTOPHER RUZALSKI DOESN'T CURRENTLY RECEIVE NOR HAS EVER RECEIVED ANY FEDERAL MONY FOR GRANTS OR SERVICES.

Michael Christopher Ruzalski 3-24-03

MICHAEL CHRISTOPHER RUZALSKI

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