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UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON BENEFITS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

THURSDAY, JULY 24, 2003

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

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 334, Cannon House Office Building, Hon. Henry Brown (chairman of the subcommittee) presiding.

Present: Representatives Brown, Quinn, Miller, Brown-Waite, Michaud, and Davis.

Also present: Representative Boozman.

OPENING STATEMENT OF CHAIRMAN BROWN

Mr. BROWN. Good morning. We will now come to order.

I am pleased today to join with Ranking Member Michaud and subcommittee members to examine the Department of Labor's Uniformed Services Employment and Reemployment Rights Act, otherwise known as USERRA. We will examine the direct effect that this law has on those who it applies to, mainly Guard and Reserve members and their employers.

This truly is a public hearing, as the audio portion is being broadcast live around the world through the committee's award-winning website.

USERRA is the law that provides protections for both Reservists and National Guard members who are mobilized or are on active duty for training and applies to all employers—federal, state and private.

Today, over 200,000 Reserve and Guard members are mobilized around the world. These servicemembers left their jobs to defend our Nation. Our goal this morning is twofold: first, to determine if USERRA is working; and second, to determine if it needs improvements in the eyes of servicemembers, commanders, or employers.

I extend a warm welcome to all of today's witnesses, many of whom represent world-class organizations. With our first panel, we will hear from a recently returned Reservist and the wife of a mobilized National Guard member, herself a disabled Gulf War veteran. These folks have faced the challenges of mobilization.

USERRA not only protects Reserve and Guard members and their families, but it also gives corporate America a chance to be a part of an ongoing effort to protect our Nation. In a recent ceremony, Secretary Rumsfeld thanked 20 top business leaders for their support of their employees who are members of the Guard

and Reserve, some of whom are with us today. Noted Secretary Rumsfeld, "Employers have become inextricably linked to our national economy."

Forbes Magazine has recognized several of the corporations testifying in our second and third panels because they dramatically exceed the law in helping their Reservist-employees. We want to both commend and learn from these outstanding companies. In our concluding panel, we will hear testimony from the Departments of Labor and Defense, public stewards of the USERRA program.

I am delighted to be working with Ranking Member Michaud on this issue, and now I recognize him for his opening remarks.

OPENING STATEMENT OF HON. MICHAEL H. MICHAUD

Mr. MICHAUD. Thank you, Mr. Chairman. As this is the last hearing scheduled for this legislative session, I would like to commend you for your leadership and the professional manner that you exhibited as chairman of this committee in a bipartisan manner. I really appreciate that. I would also like to thank your subcommittee staff for their cooperation and their great work, as well as my subcommittee staff and Mike Brownlie, who handles my Veterans' Affairs committee, who has done an outstanding job as well.

Mr. Chairman, I believe this is an extremely timely hearing as we come together, as our brave military personnel are selflessly risking their lives overseas. It is well-established that our Guard and Reserve, who now comprise nearly 50 percent of our total force, are an integral part of our national defense policy. Many of these individuals are leaving behind families who depend on them. These family members must endure not only the emotional strain of knowing loved ones are in harm's way but in many cases they must fight through increasing difficulties with these hard economic times we are now faced. In my district alone double-digit unemployment is very common, particularly in mill towns, leaving people to struggle to make ends meet. And this is the climate in which we are asking many Guard and Reserve members to leave their families.

It is my hope USERRA will be enforced by the Department of Labor to provide soldiers and their families with the support and employment protection that they have earned and will definitely need upon their return.

I am very pleased that today we will not only receive testimony from government agencies running USERRA programs but we will also hear from individuals and organizations who are affected by this law. And I would like to thank each and every one of you now for your testimony that you will be presenting to this committee. I especially look forward to hearing Michelle Dumond, who has made a long trip from northern Maine, which is along the Canadian border, for taking her time to come to Washington to tell her story to this committee.

And I look forward to hearing from the U.S. Department of Labor's efforts in administrating USERRA, as well as progress in developing and publishing clarifying USERRA regulations. Committee staff has informed me that you plan to have draft regulations published by the end of the year. And I strongly urge you to try to get those regulations published by that time if not sooner. And, lastly, I would like to note my disappointment that Secretary

of Labor Chao was unable to appear before this subcommittee. And, as I stated earlier, I find no other subject as important as the well-being and employment protection for our men and women in uniform.

I might have to apologize, I might have to leave. We have a markup in another committee, which I might be called away. So I apologize if I do have to leave to attend that markup. And, Mr. Chairman, I would like to revise and extend my remarks for the record.

Mr. BROWN. Without objection.

Mr. MICHAUD. Thank you.

[The prepared statement of Congressman Michaud appears on p. 37.]

Mr. BROWN. Thank you, Mr. Michaud. It is certainly a pleasure working with you on the many issues facing our veterans community. I was telling somebody earlier today that when we walk through this door, this is a non-partisan committee and we don't have room for partisanship in veterans' issues. Veterans are either Democrats or Republicans but they are all Americans. And so I appreciate the spirit in which we serve together.

I would like to extend an especially warm welcome to our first panel this morning. Starting us off is Ms. Michelle Dumond, wife of Warrant Office Dean Dumond, a member of the Maine Army National Guard. Warrant Officer Dumond flies Black Hawk MediVac helicopters. Michelle is herself a disabled veteran and served in the Persian Gulf War during Desert Storm as a medic. Mrs. Dumond, we are honored to have at the table with Mrs. Dumond 2nd Lt. Taylor Adams of the U.S. Air Force Reserve, 315th Airlift Wing at Charleston, SC. Lt. Adams, an employee of McNaughton-McKay Electrical Company, was mobilized for almost a year. I look forward to hearing from a fellow Charlestonian.

Ms. Dumond, is your husband with you today? Is your husband with you? Okay. I see, thanks. Okay.

The final member of this distinguished panel is Col. Robert Norton, Co-Chair of the Veterans' Committee for The Military Coalition. Col. Norton retired from the U.S. Army in 1995 after a very distinguished career, including a tour in Vietnam and overseeing the Reserve call-up during the Persian Gulf War. Thank you, Col. Norton, for joining us this morning.

The prepared statement of each witness will appear in the record in full. Please limit your oral statements to no more than 5 minutes. The red light will let you know when the 5 minutes is up.

Ms. Dumond, we will hear from you first.

STATEMENTS OF MICHELLE COMEAU-DUMOND, PERSIAN GULF WAR VETERAN AND MILITARY SPOUSE; 2ND LT. TAYLOR E. ADAMS, 315TH AIRLIFT WING, MAINTENANCE SQUADRON, U.S. AIR FORCE RESERVE; AND COL. ROBERT F. NORTON (U.S. ARMY, RETIRED), CO-CHAIRMAN, VETERAN'S COMMITTEE, THE MILITARY COALITION

STATEMENT OF MICHELLE COMEAU-DUMOND

Mrs. COMEAU-DUMOND. Good morning, ladies and gentlemen. My name is Michelle Comeau-Dumond. I am a disabled veteran from

Operation Desert Storm, a wife of a Maine Army National Guard member currently serving in Operation Iraqi Freedom, and a mother of two beautiful little girls. I am here before you today as a person who has been on both sides of the uniform. I have seen the effects of combat and the effects of military families torn apart by deployment. I have watched hundreds of hours of TV concerning various stories about the war on terrorism, but what I want to see today is the effects it is having in our own backyards of the United States of America.

My story and family are not unique. My girls and I are but one of some 200,000 Guard and Reserve families affected by this current situation in the world. And not just in Iraq but Kuwait, Afghanistan, Bosnia, Kosovo, and several other countries and locations where Guardsmen and Reservists are deployed, stateside and abroad. Much like what happened to us happens to most family servicemembers. They get a call any hour, night and day, and are expected to respond. The families rush around to wash clothes, pack bags, wives hold back their own tears and wipe away those of their children. We do our best to do our jobs, give them a big hug, and put our best face forward as we watch them roll down the road. We proudly send them off to war while dealing with emotions of anxiety, confusion, uncertainty, and overall stress and concern about how our family will survive.

Our family lifestyle is now drastically changed without our loved one and breadwinner, as I found out firsthand the day I returned home after the send-off. It was February in northern Maine. We had been hit with one of the worst blizzards in many decades. Aroostook County had been declared a disaster area. I arrived home to find six feet of snow in my driveway and 10 feet on my garage roof. I could not open the garage door to get the shovels out because the beams were buckling. The snow blower would not start, and I could not find anyone to immediately repair it.

My girls and I dug out the door with our hands to get into the house, and I started to make phone calls for help. We had not had any family support briefing yet so I did not have the phone numbers to reach them, and I could not find any other help. I managed to haul our suitcase through the snowbank and drive the car into the bank in the front of the driveway, hoping no one would hit it.

The next day I got a path dug to the house. The temperature had dropped to 40 degrees below zero. The day after that I was taken by ambulance to the hospital with pneumonia. I forced the doctors to release me from the hospital after promising I would not shovel, as I had no one to take care of the girls now.

Mr. BROWN. That is just giving notice that the House is going in session.

Mrs. COMEAU-DUMOND. Thank you. It took me a week and a half to clear the snow, and I had to pay people to do the work my spouse would normally have done. The snow blower was easily fixed, but it cost me $50 when my spouse always fixes those items. Now that the snow is removed, it is revealed that the deck on top of my garage needs to be repaired and the siding on the house needs to be replaced. These are things my spouse would have done for cost, but now I have to pay somebody to do them. These things cannot wait for my husband to return because winter is coming

again and things will only get worse. Yet I have no help and not enough money to have the work done.

In March, my spouse temporarily returned to his home unit in Bangor to train with the aircraft and fly them to their port of departure. He made arrangements to stay at a local hotel in Bangor, a 4-hour distance from our home. My husband was told his military credit card could be used for the room and to save all receipts for travel and food for reimbursement. When he checked out of the room, the card would not work. We were forced to use our personal money to pay for the room, food, and travel, a cost of almost $1,700 to the family, which put a huge financial burden on us.

As a result, I fell behind monthly payments on every bill and ran out of heating oil during the coldest winter in northern Maine history. We had purchased a heating oil plan, but this was the first year we did not make it through the winter. I was forced to beg for oil when 2 months earlier I had a perfect credit history and had never missed a payment. I knew the family support program was there to help, but I knew there were families even worse off than us, knew that they were very limited on the funds and staff available. After all, we did still have food, a roof, and now heat, at least for now. But it was not long before I was forced to go to the church and ask for food. On two occasions they assisted me with food for my children.

It seemed like every day something was breaking down—the driver's window in the truck, an oil leak in the car, the screen door was falling off, the faucet in the sink had been replaced with a pair of pliers. Just when I thought I could not take any more, my grandfather passed away. I had no way to get there. I had no money and no clothes because I had lost 40 pounds from stress and was working on my third bout of pneumonia.

I had reached my breaking point. I picked up the phone and asked our state family support coordinator, who was located in Augusta, 6 hours away, for help. I told her I needed enough money to get there and back, a 500 mile trip, plus meals on the road one way. Once there I could stay with family and borrow clothes. The state family support coordinator asked if I had money to get to Augusta. I had one gas card that had not yet maxed out. And 6 hours later, me and my girls were in her office and she gave me $200 for travel and a new outfit to wear to the funeral. I never thought I could be so happy to go to a funeral, but now I would be able to say goodbye to my grandfather and my children's great grandfather.

We returned home thinking things were looking up, to find out my husband was losing his job because of this little-known clause in the USERRA law. This clause says you can leave your employer to defend your country, leave your family to fend for themselves, and there is no job protection if the employer has a company-wide layoff. Yes, you heard me correctly. When my husband returns from Kuwait, he will be unemployed. How will he be able to seek employment in northern Maine while he is honorably defending his country and the freedom of others in Iraq? The paper mill he works for is laying off 100-plus employees, two of which are currently deployed. Do you not think the other 98-plus will have a head start in filling the available jobs in the area where we live? If they wait

until they return home, what kind of luck will we have in selling a house in a community where high unemployment exists? There must be a way to protect our country's protectors.

I have a few ideas. Schooling for new trades, job placement at deployment stations and real estate opportunities for the ones who are forced to relocate.

My stories seem comical now and perhaps they are small compared to others, but in Maine alone we have felt the pains of the war on terrorism. Many spouses and families have suffered. Many spouses left behind have been fired or quit their jobs because their employer would not accommodate them with shorter hours to care for their family's special needs or simply to manage the day-to-day matters. Why are the families of Guard and Reserves fighting just as hard at home to support their spouses and yet have no legal representation themselves? There are spouses who can't drive due to visual handicaps and live in rural areas away from central commands and no way to help them. They are left to the wolves. Why do we not have special provisions set aside for these special needs people when their spouse is called away to serve our country? If provisions were set aside, they could arrange for extra help for their and rides to get groceries. I am not asking for Disney World. I am simply asking for basic life provisions.

You are probably thinking we pay your spouse for military service. Yes, you do. But here is a fact I do not know if you realize. In my family alone we have lost $12,000 for one year while my spouse is serving. In a family that makes under $50,000 a year, that is a large reduction in our income.

Families need protection as well as soldiers. My children were chastised at school. Teachers singled them out simply because their father went to war. My 8-year-old desperately needs counseling, and the support group did try to find us some in the area, but to no avail. There are no qualified civilians to deal with children and real war problems.

Guard and Reserve families need family support during deployment. They are the only ones that know what each other is going through. Words cannot say what family support coordinators and family support programs do for those left behind. But Maine has the only one coordinator that does the work of 10 people, 24 hours a day, 7 days a week, with very little money and assistance. Oftentimes, they rely on local donations. Outreach to all the families is difficult, too. The state of Maine alone has 417 miles of interstate, and another 120 miles north of that from north to south, with several Guard and Reserve units activated overseas and abroad, some 1,000 citizen-soldiers from Maine alone. We are a very rural state and our coordinator does her best with what she is given.

What must be done is to protect and provide both our soldiers and their families support and protection by federal law. Without that, many of our families will suffer and struggle through many of the same problems that can be avoided.

Family Assistance Centers have been set up during this mobilization. It consists of a person on the other end of the phone to refer us to outside sources. They do a fine job with what they have but are not established until war and are only equipped to refer. We need inside resources, trained professionals. They do not have the

training to deal with what we have been exposed to. We need professional staff on hand like an active duty base would have. The family program should be staffed like an Army Community Center, with counselors for both child and adult, financial counseling services, job placement help, legal counseling, and more.

The family program schedules dinners and informational meetings throughout the state at different times and locations. They try very hard to reach us all. They also schedule events for children and adults so we may socialize and just be together.

Being able to talk to people who are in the same situation, having the same feelings make a huge difference for me emotionally and physically. The family program would be able to reach more of us with more funding and assistance. I live an hour and a half away from the closest meeting and cannot always make it due to financial reasons. That one trip could mean 2 weeks of gas in my car. I am the only one in this part of the county, so it would not make sense for them to change the meeting. However, if they could assist me with gas, I would be fine. And I know other families are in the same position.

I stand before you as a proud spouse and American. I will continue to stand behind my husband and my country. I appreciate the opportunity to address you today and ask you to stand also for the issues that are affecting our military families.

Thank you.

Mr. BROWN. Thank you very much for your testimony. Now, Lt. Adams, we certainly welcome you from the low country of South Carolina.

STATEMENT OF 2ND LT. TAYLOR E. ADAMS

Lt. ADAMS. Mr. Chairman, distinguished members of the subcommittee, thank you for the invitation to testify before you today. I am an Air Force Reservist proudly assigned to the 315th Maintenance Squadron, part of the 315th Airlift Wing at Charleston. I also work for McNaughton-McKay Electrical Company in Charleston, SC, also home of the distinguished chairman. McNaughton-McKay is an electrical distributor that sells all electrical commodities and especially automation products to industrial manufacturers. I have worked for McNaughton-McKay since I graduated from Appalachian State University in 1994.

Before 9/11 and the activation, I was one of four account managers in a branch of 15 employees. When I was activated, I left behind 25 percent of the company's accounts. Out of necessity, they hired a new account manager to ensure seamless customer service. Since deactivation, my new title is automation consultant, not only covering Charleston, SC but Savannah, GA as well.

I enlisted in the Air Force Reserve in 1989. I had always thought seriously about becoming an officer if the opportunity arose. And, ironically, it finally did in 2001 while on active duty for Operation Enduring Freedom.

In the uncertainty after the attacks of 9/11, it looked more and more as if we were going to go to Afghanistan. My employer frequently asked me if he thought I would be activated or not. All I could offer was that if I got the call, I would probably have a few days before I had to report to duty. That would be enough time for

account planning and transitioning the accounts to new account managers.

Sunday night, October 6th, about 10 o'clock at night, I got the call to activation, and I immediately called my boss to let him know. I told him we had to meet in the morning because instead of a few days to report, I only had a few hours. He was very accommodating and cleared his schedule to handle the planning.

Just a week earlier, David Beattie, president of McNaughton-McKay, had come up with a new policy to pay anyone called to active duty their normal pay minus their military pay for a period of 6 months. This was enormous, since I was going to be taking about a 30 percent pay cut going from an account manager at McNaughton-McKay to E–5 for the Reserve. Along with the pay differential, all benefits remained intact, as well as my seniority with the company.

I was deactivated on August 15, 2002 and immediately returned to work. The first day back I met with the sales manager, as well as the general manager, to discuss my future. They first explained how glad they were to have me back and asked if I would be leaving again any time soon. I said yes, I needed time off again in October and November to attend the Academy of Military Science in order to get my commission. Once again, they were very accommodating and said it was not a problem. I was also given my new position of automation consultant since they needed to hire somebody in my absence to handle my accounts.

Since then I have asked for time off to be here for this incredible opportunity as well as for a month next year to attend aircraft maintenance officers' school. As well as with all other requests, McNaughton-McKay has accommodated without question and without reserve. Mr. Beattie has now expanded his company policy on activated Reservists to provide pay differential and benefits for as long as needed by the Reservists. I am pleased to be an integral part of two great teams who value me, my family. And I would hope that any employers who are able to do so would consider providing the same benefits to their Reservists.

Again, I would like to thank you for the opportunity to be here. Thank you for your continued support of our military men and women around the world, and for recognizing the contributions of my boss, David Beattie, as a true patriot.

Thank you, sir.

[The prepared statement of Lt. Adams appears on p. 43.]

Mr. BROWN. Thank you, Lieutenant. It would be appropriate at this time if you wanted to introduce your boss and the other members of the team who accompany you.

Lt. ADAMS. This is Dave Beattie, president of McNaughton-McKay. (Applause.)

Mr. BROWN. Thank you. Thank you, Mr. Beattie. Glad to have you here today, too. Colonel.

STATEMENT OF COL. ROBERT F. NORTON

Col. NORTON. Thank you, Mr. Chairman and distinguished members of the subcommittee. On behalf of The Military Coalition, I am very grateful for this opportunity to express our collective views on

improving the Uniformed Services Employment and Reemployment Rights Act.

Before I begin my remarks, though, Mr. Chairman, I would like to say that it is a great honor for me to sit with these fine young patriots, servicemembers, and their families. I think their testimony points out two things. First, the essential role of the National Guard and the Reserve Forces in our national security. And, secondly, the fact that today, unlike any other mobilization in our history, and certainly unlike the mobilization of World War II, mobilization today of the National Guard and the Reserve involves the call up of families as well as the call up of individual servicemembers. The families bear a tremendous burden, a financial burden and other responsibilities that the mostly single men of World War II did not face. And so the USERRA is extremely important to the work that you and this committee and the Congress does in terms of protecting the reemployment rights of families.

Mr. Chairman, The Military Coalition is a consortium of nationally-prominent uniformed services and veterans organizations, which represent approximately 5.5 million current and former members of the uniformed services, plus their families and survivors.

There are three areas I would like to discuss concerning improving the USERRA. First, there is a need to tighten enforcement mechanisms for federal and state employees who are members of the National Guard and Reserve Forces. Second, there is a need to bolster outreach and support activities to ensure that USERRA is understood in the workplace by Reservists and employers alike. And, third, is to bring to the subcommittee's attention the importance of providing some measure of guarantees to the many student Reservists who have no protections under the law when they return to their work as students in academic institutions or training programs.

I would like to emphasize, Mr. Chairman, the importance of the USERRA to the men and women of our Armed Forces. Since 9/11 there have been nearly 300,000 men and women called to federal active duty. And based upon the remarks of the Commander-In-Chief yesterday (July 23, 2003), many thousands more are likely to be mobilized in the coming weeks, months, and years ahead. Because this mobilization is the largest protracted call-up since World War II, it is extremely important for Congress, employers, and Reservists themselves to understand and support the reemployment protections provided under the USERRA.

That leads to the Coalition's first point. As indicated in our prepared statement, the enforcement mechanisms in USERRA for Guard and Reserve servicemembers who work in the Federal Government and state governments are broken and exist essentially only on paper. For example, Congress passed an amendment to the USERRA in 1998 which was intended to provide reemployment protections for Reservists employed by state governments. But going back nearly 5 years, there have been no reported cases where the Department of Justice or the U.S. Attorneys have sued a state on behalf of a USERRA state employee complainant. If a state refuses to waive its sovereign immunity under the Eleventh Amendment of the Constitution—and we understand that states routinely

do this in a variety of situations—if that doesn't happen, the state employee Reservist has absolutely no place to turn to seek relief in a reemployment rights case against a state.

We recently learned, for example, of an activated Air Force Reserve professor at Alabama State University who has been denied reemployment. Unless and until the U.S. Attorney officially receives the case from the Department of Labor through the Department of Justice, or that the State of Alabama waive its sovereign immunity, the Reservist will have absolutely no chance to argue a violation of the USERRA.

With hundreds, if not thousands, of state employees being mobilized, the Coalition strongly recommends that the USERRA be amended to require—that is require, rather than permit, the Department of Justice to accept USERRA cases that the Department of Labor deems to have merit. We further recommend that the subcommittee impose a reporting requirement on the Departments of Labor and Justice regarding the number of such referrals and the outcome of the litigation.

Similarly, the section in the statute concerning federal executive agency reemployment rights cases is also in need of repair. Since Congress enacted an amendment to the USERRA in 1994 no Reservist employees have been represented by the Office of Special Counsel as intended in the statute. It is our understanding that the Office of Special Counsel has neither the resources nor the intention of taking on such cases. Therefore, The Military Coalition recommends that Congress strengthen Section 4324 so that the Office of Special Counsel will have a legitimate, even mandatory role, to accept such cases. And, Mr. Chairman, additional resources may be needed to put teeth into the Office of Special Counsel's role.

Our second area of interest is support and outreach for the USERRA. Given the scope and the unknown conclusion of this mobilization, it goes without saying that all stakeholders need better tools to understand the USERRA. The Department of Labor Veteran's Employment and Training Service needs to publish a USERRA handbook, not only for its own staff but as a reference manual for the Department of Justice, the Office of Special Counsel, employers, Reservists, and even the media. The Department of Labor also should be required, rather than permitted, to publish implementing regulations in the Code of Federal Regulations for the USERRA, to write and present to help educate and inform employers, the media, and the general public about the USERRA. Right now, Mr. Chairman, in the statute, the departments "may" publish implementing regulations. We strongly recommend that they be required to publish regulations to help get the word out on USERRA.

The Coalition believes that the Veterans Employment and Training Service is grossly under-funded for the likely demand that is surely going to occur as tens of thousands more Guard and Reserve servicemembers cycle back and forth on active duty.

Finally, Mr. Chairman, the Coalition would like to urge the subcommittee's attention to the plight of some student Reservists who are treated like dropouts when they incur financial obligations and have other problems with their academic reinstatement. A number of bills have been introduced this session that address aspects of

this situation, reflecting the fact that Reservists are greatly concerned with the second-class treatment they occasionally get from colleges and universities. Some would say that the solution is to give the Secretary of Education greater policy authority in this arena. But we believe that based upon the experience of Gulf War I, that hasn't worked. And we recommend that statutory guarantees, rather than policy authority be provided to federal Reservists who are students, to help them with their student loan, Federal student loan repayment problems and related issues that must be dealt with either by making changes to the USERRA itself or perhaps to the Soldiers and Sailors Civil Relief Act.

Thank you, Mr. Chairman, for this opportunity to testify today on behalf of The Military Coalition. And I look forward to your questions.

[The prepared statement of Col. Norton appears on p. 50.]

Mr. BROWN. Thank you, Colonel. Let me thank all the members of the panel for coming today to give their testimony. I think if you stay around for the rest of the proceedings, we are trying to link the employee and the employer and also the Department of Labor all in one setting. So if you all would be kind enough to stay.

Mrs. Dumond, I certainly want to thank you for your selfless service and that of your husband. Both of you make us proud. And the assistant secretary is with us this morning, Mr. Fred Juarbe. He has spent his whole career, I understand, working on veterans' issues, and we are grateful for his service. On behalf of Mr. Michaud and myself, we have asked him to look at your husband's case. And I think you have had a chance to chat with him. So maybe something will come from that.

We had the privilege, Mr. Michaud and myself, about 3 weeks ago, to go to the Pentagon and meet with the Secretary of Labor, Ms. Chao, and the Secretary of Defense, Mr. Rumsfeld, and witness them signing a memorandum of understanding to help find jobs for those members of the service who are coming out of the service without employment. And so we are real proud to be part of that and to make an impact on that particular regulation.

Lt. Adams, it is certainly good to have you with us this morning and to testify in a good way, what a great company you work for and what a great area you live in.

And, Mr. Beattie, we certainly appreciate your coming and being a part of this and for your contribution. I was just mentioning earlier that sometimes corporate America is looked at as a cold box that is out there just collecting cash. But I think as you find in the testimony this morning and also in further testimony of some of our great corporate citizens, that you find that they really do have compassion for their workers. And I am grateful to have the opportunity to give them the privilege to be able to gain some recognition. Sometimes good things sort of go under water. But at least this morning we will have a chance to bring some recognition to those people who are doing good things.

Col. Norton, it is always good to have you here. And after today's hearing, I will consult with Mr. Michaud, and all of you witnesses, ask you to view the Coalition's recommendations and report back to the subcommittee in 30 days. We really want to take some action on those concerns that you brought forward.

Mr. Michaud, do you have any questions?

Mr. MICHAUD. Yes, I, too, would like to thank the panel. I really appreciate your telling your story, Ms. Dumond and Lt. Adams. They are really heart-warming, and I appreciate everything both you and your family have done for the citizens of the United States of America. And Col. Norton, I also appreciate your comments as well. And it will be interesting in knowing, as far as the recommendations, the Coalition's recommendations, what you envision are the top priorities in those recommendations. But also whether or not you feel that the Office of Veterans Employment and Training Service has sufficient resources to administer the many programs that they have to administer. If you could address that.

And the other issue is you heard Ms. Dumond talk about her situation, where she lives in the northern part of the state. Maine is a very rural state. You have to travel many hours to get to actually the central part of the state. And it really is a burden for those who live in the rural area with only one person to assist. And I want to know if there are any suggestions you might have, whether or not there is a toll-free number for situations that were faced in Maine and other rural areas that we might be able to have to assist the families of our military?

Col. NORTON. Thank you, Mr. Ranking Member. Yes, I think we feel very strongly that because the National Guard and the Reserve are widely scattered across tens of thousands of American communities, that much more needs to be done in terms of family and financial support services. These individual servicemembers and their families, in most cases, are not associated with particular active-duty bases or posts or camps or stations. And so we need to bring these support services closer to the point of need. I think, as Mrs. Dumond properly and correctly pointed out, you are out there, you need the support. A 1–800 number would be very helpful.

I could draw an analogy, if I could, sir. A couple of years ago, funeral honors for deceased veterans' family members to provide adequate funeral honors was a big problem in the Department of Defense. And one of the solutions was that the local funeral directors became involved, and they are in a network. There is a 1–800 number that any family member can call to get that kind of service.

In The Military Coalition we believe that a whole range of family support services for National Guard and Reserve servicemembers needs to be established. So it is not just USERRA but it is also financial counseling. It is help with adjusting to the absentee servicemember. The stresses on these families are tremendous. One of our 35 members, the National Military Families Association, specializes in this kind of work. And I am sure if you had any follow-up questions in particular, they would be happy to provide insight, through the Coalition, on some of these issues.

Mr. MICHAUD. Great. Thank you very much, Colonel. Appreciate it.

Mr. BROWN. Okay, thank you, Mr. Michaud. We have been joined by Congressman Quinn from New York, upstate New York. Congressman Quinn, do you have a question?

Mr. QUINN. Thank you, Mr. Chairman and Mr. Michaud. And thank the panelists. It cannot be coincidence that we have got a

South Carolinian and a Mainian. I am just hoping maybe Col. Norton might be from New York. (Laughter.)

Col. NORTON. I can help you on that, sir. Yes, I have some relationship, as you know, with Keuka College in Buffalo, NY.

Mr. QUINN. Exactly. Exactly my point. And if you flew over New York to get here today, that would qualify. Thank you very much.

Mr. Chairman, I have a statement and ask unanimous request that it be included in the record.

Mr. BROWN. Without objection.

[The prepared statement of Congressman Quinn appears on p. 41.]

Mr. QUINN. But I did want to come over to thank the panelists. And to mention that I have been a member of the subcommittee and the committee for 11 years now and find myself doing some railroad and transportation work.

But the issue and the reason I came over this morning, the issue that you are talking about today is critically, critically important. Michelle and Taylor, your stories this morning, I have heard many times, Mr. Chairman, when I sat in your chair about the families that are effected. All of us already know that about 65 percent of the soldiers are married at the time that they separate from the service. So that your point, Colonel, that we are talking about families, not individual people now, really needs us to pay attention to that.

One of the issues that I have worked on since I have been here and on the subcommittee has been the transition for our servicemen and women from active duty into the civilian world. And how we can't better license and certify and make certain that not only as Reservists return to their job, and you happen to have a wonderful employer and we are going to hear some more testimony later, but that that transition be as seamless as possible. And we have had resistance from the Department of Defense over the years because they want to always talk about retaining their membership.

But I believe that from the minute that a man or a woman enters the service, we should be preparing them to exit into a job. Because as soon as that break happens where there is not work and, Michelle, as soon as you start going in debt, we end up with situations of unemployment and homelessness and bills and things that cause marital problems and all kinds of other social problems that we have to deal with and aren't equipped. And rather than have to deal with that problem, it is my thought that we ought to be working on it from the day men and women enter the service of our country for them to leave.

And so while it is not exactly the topic this morning, Mr. Chairman, I applaud you and the Ranking Member for holding this hearing and for making certain that we have got panelists this morning and individuals like we have at the table right now who are going to testify to the need for that. And then it is our job as members of the Veterans' Committee to lobby our colleagues on both sides of the aisle and to lobby this administration to make certain that we not only make the headlines about this war but that we make certain we make the families whole as well.

And for whatever work that I and my colleagues have done, Mr. Chairman, we stand ready to help you, both of you, in that job. And

that is why I took some time to come over and say that myself. Thank you.

Mr. BROWN. I appreciate that, Jack. And certainly it is a pleasure of mine to work alongside you on this committee and also on the Transportation and Infrastructure Committee and try to meet the needs of this great Nation. Thank you for your dedication.

I thank you, panel, and we look forward to hearing from the second panel.

Good morning and welcome. This is the first of two panels of essentially corporate citizens. First, we have Mr. John Ryan, former Army Reservist and senior vice president for human resources at Schering-Plough. Mr. Ryan is responsible for overseeing Schering-Plough's human resources programs worldwide.

Mr. Jim Rouse is vice president of ExxonMobil and is a former Army officer who has served in a leadership position with Exxon since 1962.

And William Timmerman is my friend from South Carolina—no, wrong panel. Where is Mr. Timmerman? Did he come up? Okay. Third on the panel is my good friend from South Carolina, Mr. William Timmerman, the chairman and CEO of SCANA Corporation since 1997. Bill served in the U.S. Navy from 1968 to 1972 and is a Vietnam veteran. And I would be amiss if I didn't go to the next step and introduce his wife, Debbie. Debbie, would you stand? And with Debbie is Polly Cosco from Columbia. Did Polly show up or did she leave? Hey, Polly. Thank you all for being here.

Our final witness on the second panel is Susan LaChance, the manager of selection, evaluation and recognition for the U.S. Postal Service. She is a career civil servant and a member of the Postal Service Executive Management Team.

You folks represent the very best of the business world, and we are honored to have you with us.

Mr. Ryan, you may begin.

STATEMENTS OF JOHN RYAN, SENIOR VICE PRESIDENT FOR HUMAN RESOURCES, SCHERING-PLOUGH CORPORATION; JIM ROUSE, VICE PRESIDENT, WASHINGTON OFFICE, EXXONMOBIL CORPORATION; WILLIAM TIMMERMAN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, SCANA CORPORATION; AND SUSAN LACHANCE, MANAGER OF SELECTION, EVALUATION, AND RECOGNITION, U.S. POSTAL SERVICE

STATEMENT OF JOHN RYAN

Mr. RYAN. Good morning, Mr. Chairman and members of the subcommittee. I am John Ryan, senior vice president for human resources at Schering-Plough, a research-based pharmaceutical company headquartered in New Jersey.

As a human resources professional for 42 years, I applaud the subcommittee for drawing attention to how employers' policies toward Reservists can make it possible for talented men and women to serve in the Reserves, to be assured of support during military service, and return with a stronger commitment to their employer and their job.

Over the decade since enactment of USERRA, we have seen increasing demand for skilled workers at the same time as our Na-

tion's Armed Forces have become more reliant on the National Guard and Reservists.

It has been my responsibility to position Schering-Plough to recruit and retain talented, skilled, and motivated employees in this more competitive hiring environment. The assurance we make to men and women who have chosen to serve in the Guard and Reserves is one important element of our program to attract and retain qualified employees. We also view it as a part of our civic responsibility to support our Nation and the men and the women who serve it.

As a company, we are aware of our obligations under USERRA and we consider them a floor for what we provide our employees. The USERRA requirements effectively freeze time for the employee who is called to active duty. The 224,000 Reservists called to service in Iraq know that this time is anything but frozen. Today, the majority of professional soldiers and Reservists have families at home. Sixty percent are married and 30 percent have children. For many, active duty means giving up a regular paycheck, or even part of a paycheck, and trying to secure other forms of health and life insurance to protect their families while they are protecting the rest of us.

While a lot of these employees have a right to return to their job, or a similar one, with the same pay and health benefits as when they left, the right simply to return to work does not meet the family's needs while the employee is away on active duty. We think companies should do more. And, in fact, many do.

Since 1991, Schering-Plough has had a policy to provide full support to Guard members and Reservists called to active duty. As you can see in the copy of our policy attached to my prepared testimony, we provide the Guard and Reservist employee the following: full pay for the duration of service without offset of their Schering-Plough by their military pay; all company-provided and optional employee benefits, including health and life insurance for the soldiers and their dependents for the duration of their service; job protection and the opportunity for the same or a comparable position upon returning to work; continued accumulation of all seniority-based benefits, such as vacation, profit-sharing, and sick pay allowance, throughout their tour of duty as if still employed.

And, finally, for the families of employees called to active duty, there is an employee assistance program which is available to provide counseling and support to help the family members deal with the disruptions and the issues arising from the extended absence of a spouse, a son or a daughter or other family member.

We believe these policies are not just the right thing to do. They also make good business sense. Our Guard and Reserve members are good employees. They are generally mature, dedicated and committed people who come with a deep sense of loyalty to their country and to their employer. And have learned how to manage their dual obligation as an employee and as a citizen soldier. They also may have benefitted from educational and training benefits that the Guard and Reserve units provide to them at no cost. With the $14 billion the Department of Defense spends each year on training and education, regular military and Reservists who join or re-join

the civilian labor force tend to be highly skilled and extensively trained.

While the level of support we provide to Reservists is easier to sustain in a large organization like ours, some level of support can also work in medium and small enterprises. At the very least, companies should be encouraged to publicly affirm their support for their Reservist and Guard employees by signing the statement of support provided by the Defense Department's Employment Support of the Guard and Reserves, otherwise known as ESGR. I know from our own experiences the talented people at ESGR are more than willing to help companies clearly understand their obligation and to communicate their support.

We at Schering-Plough are proud of our Reservists and our policies to support them. The Reserve Officers of America recognized our pursuit of these policies just this year when Schering-Plough was ranked first among the employers for Reservists. Most of all, we are proud that working together with our Reservist employees, we have been able to offer a benefit that, as substantial as it may be, still pales in comparison to the honor our Reservist and National Guard employees reflect on our company.

Thank you, Mr. Chairman and members of the subcommittee, for the opportunity to appear before you today. I am very happy to answer any questions you may have. Thank you.

[The prepared statement of Mr. Ryan appears on p. 58.]

Mr. BROWN. Thank you. Mr. Rouse.

STATEMENT OF JIM ROUSE

Mr. ROUSE. Good morning, Mr. Chairman and members of the committee. My name is Jim Rouse. I am a vice president of ExxonMobil and the Corporation's senior official here in Washington, DC. I feel qualified to talk to you today about my company's military leave policy for two reasons. First, before coming to Washington some 7 years ago, I managed the human resources function for Exxon Company USA for more than a decade. And, secondly, going all the way back to 1962, about a year after I joined the company, I was called to active duty as a lieutenant in the U.S. Army and was the direct beneficiary of the program I am about to describe for 2 years on active duty and then another 6 years in the U.S. Army Reserve.

As you know, ExxonMobil is the world's largest publicly traded petroleum and petrol-chemical company, with operations in nearly 200 countries and territories across the world. More than 36,000 of our employees are residents of the U.S. And our military leave policy dates back more than 60 years, being initiated in the 1940's and includes the following basic provisions.

First, if an employee is inducted into or recalled to full-time active service with the Armed Forces of the United States or the Reserves, they qualify for both a lump sum payment, 2 months' pay, and the difference between their military and their company pay, up to 50 percent of their company pay for the duration of their tour. Now, a special provision was adopted in October of 2001 in response to Operation Enduring Freedom and then expanded to include Operation Liberty Shield and Operation Iraqi Freedom, which increased the employee pay match from a maximum of 50

percent of their company pay to 100 percent of their company pay, which it is today.

Further, if an employee is called up in an emergency situation or full-time temporary duty for military training purposes that will not exceed 2 months, the normal things that we run into often times in Reserve training, they receive 100 percent of their company pay less any military pay that they might receive.

Participation in ExxonMobil benefits continues for the employee on military leave. Examples of the continued benefits would be the service credit for our retirement program, which is fully paid for by the company; a makeup of the company contributions to the savings plan if the employee chooses to remain in a savings plan when they return from active duty; life insurance plans, medical and dental coverage for the employee and their families; even pay in lieu of vacation; and our employee company discount program when they buy gasoline.

Of course, upon return, employees are placed in a position in the company where they would have normally achieved if they had remained active with the company while they were gone. In other words, if an individual is a sales representative and would have been promoted to senior sales representative when they went off on active duty, then they are promoted to that position when they return from active military service. There are no company service requirements to participate in these programs while employees are on military leave.

More than 50 U.S.-based ExxonMobil employees were on active duty in connection with Homeland Security activities, with the war in Afghanistan, and the war in Iraq. Interestingly, ExxonMobil employees in the UK who participated in the Afghanistan operation and operations in Iraq were also similarly treated under a policy like this.

Turning to USERRA, the requirements of the Act seem very reasonable to us. Guidelines that have been written for it create, we think, pretty much an administrative ease in terms of implementation of the policy. Our employees or the company have experienced no difficulties in implementing the program as it is designed.

Complying with USERRA has not come without its challenges. For example, as the employees are called to active duty, uncertainty exists about the expected duration of their call up. Sometimes we have individuals called up multiple times over a period of time. And, of course, the duration of the call up itself is often a mystery, which poses some opportunities for us in the planning and staffing of our organization.

We believe the current requirements of USERRA are reasonable, and the Department of Labor's administration of the Act has been practical and efficient.

Again, I want to thank the subcommittee for this opportunity to share a brief overview of our company military leave policies. And I can assure you as a beneficiary of those many years ago, it was very important to me.

[The prepared statement of Mr. Rouse appears on p. 65.]

Mr. BROWN. Thank you, Mr. Rouse. Mr. Timmerman.

STATEMENT OF WILLIAM B. TIMMERMAN

Mr. TIMMERMAN. Chairman Brown and members of the committee, I am honored to be here today representing 5,500 employees of SCANA Corporation to share in the recognition of our company as an exemplary employer of our valued Reservists.

A few quick facts about our company will provide some context for the rest of my testimony. SCANA Corporation is a successor to a company founded 157 years ago in Charleston, SC. Today we are a Fortune 500 company, serving electricity and natural gas to significant portions of South Carolina, North Carolina, and Georgia. Thirteen percent of our outstanding common stock is owned by our employees. Our average employee owns 2,000 shares of our stock, which is freely tradeable by them, has a market value of $66,000 and pays them an annual dividend of $2,800. Our average employee has been with us 14 years and expects to work with us until retirement.

Our business success as a service company is built on six corporate values relating to service to communities, achievement, open communications, respect and caring for all people, excellence in our operations and safety, and, finally, always doing the right thing. I am especially proud that the veterans' organizations have recognized our company for doing the right thing. I sincerely believe we walk the talk with respect to our values, especially doing the right thing.

There is also an unwritten business principle which we diligently follow: Employees treat customers as well or as poorly as they perceive they are being treated by the company. It is human nature. It is a very powerful and a very real predictor of our employee behavior in the workplace. Our business success depends on serving nearly 1.2 million natural gas customers and 600,000 electric customers everyday. In today's world, it takes a massive amount of teamwork, personal communications, and attention to detail to make our efforts all come together so that our customers can take reliability, safety, integrity, and caring energy service for granted.

So what do we do for Reservists who are called away to active duty? First, we continue all pay at current levels until their return, reduced only by the amount of their military pay. Their total pay, including military pay, qualifies for matching in our 401(k) savings plan and counts toward their retirement plan, which the company pays for. We keep them eligible for all bonuses. And, in fact, recently paid incentive bonuses to Reservists on active duty, which were earned by company employees for the performance of the company in 2002. Obviously, their job is protected upon their return.

Beyond this, though, we work very hard to keep them a part of our corporate family. We organize support groups for the families left behind. Managers and other leaders in our company monitored those families' needs while the Reservists were gone. From time to time, we sent care packages, including a lot of company publications and other news to those overseas. Finally, each Reservist got a letter from me, which provided them with my direct e-mail address and encouraged them to let me know of any problems their families were incurring which I could fix. Throughout their deployments, I have received many notes and letters. And, thankfully, I have not had to intervene. But it always feels good to know that

the lines of communication are wide open with our Reservists. Other leaders in our company did the very same thing, I should point out that these policies as well were substantially in place for our last major deployment, which occurred in the 1990 to 1991 time frame.

So why do we do this? The first reason is my personal commitment to members of the Armed Forces. From 1968 to 1972, I was an enlisted man in the U.S. Navy. And served in 1972 aboard the USS *America* then deployed to Vietnam. I do not have many happy memories of the treatment of military personnel during that era or upon their transition and re-entry into the civilian world. That is history. None of us can change it. Some of us will never forget, even though we may have gotten over it. However, I do use my sphere of influence to ensure all my fellow employees never feel a lack of support or caring, especially those called to active duty.

Going beyond my personal convictions, our treatment of Reservists parallels our treatment of other good employees who might be having a significant temporary personal issue. For example, we work closely with employees who might be going through an extended series of chemotherapy or other treatments or other physical rehabilitation. They might have had a house fire. They might have experienced a sudden loss of an immediate family member or other catastrophic situation that impacts their ability to work a normal schedule for a while.

We take a long-term view with respect to employment of our company members. We are able to do this because our operating assets and our relationships with our customers are very long-lived. So our policies and practices in this area fit our general business model.

I could not in good conscience, however, proscribe these policies for all organizations. There are many businesses which are not of our size and scope. There are many businesses perhaps who are in the development stage or are much smaller. But all businesses can communicate with their employees in a very direct and clear manner as to what the expectations are and what employee family's expectations should be. And all businesses can communicate and work very hard to support the families that are left behind. It doesn't matter whether you have five people in your company or 5,500 people in your company.

In summary, I do think employers must provide a clearly-written delineation of how Reservists on active duty would be treated. A clear and explicit set of expectations and policies for the employer, the Reservist and their family would go a long way towards helping Reservists find employers who support the Reservist's commitments.

My personal thanks to this committee for allowing me to testify today regarding SCANA's experiences with the treatment of our employees who also serve in the Armed Forces Reserve. And I, too, would be pleased to answer any questions.

[The prepared statement of Mr. Timmerman appears on p. 68.]

Mr. BROWN. Thank you, Bill. Ms. LaChance.

STATEMENT OF SUSAN LACHANCE

Ms. LACHANCE. Good morning, Mr. Chairman and members of the subcommittee. My name is Susan LaChance, and I am the manager of selection, evaluation, and recognition for the U.S. Postal Service.

The Postal Service has a long tradition of employing America's veterans in large numbers. As our Nation's military deployment needs have evolved, including the greater reliance on its Reserve components, our efforts in support of those needs have evolved as well. We continue to innovate as times change and as we identify areas where we can provide additional support. I am particularly pleased to have this chance to hear firsthand how other employers are innovating to meet employee needs with regard to the Uniformed Services Employment and Reemployment Rights Act.

For the Postal Service, the most important part of our efforts is ensuring that our employees, who serve the Nation in both a civilian and a military capacity, receive the employment benefits and protection that they are entitled to under USERRA. So I take my responsibility for developing the Postal Service's implementation policies for USERRA very seriously.

We understand that USERRA is an essential tool that our Armed Forces need to be able to continue to recruit and retain qualified men and women. We strongly and publicly support USERRA. In fact, during last year's Postal Service's Veterans Day ceremonies, our Postmaster General, Jack Potter, re-pledged our commitment by signing a statement of support for the Guard and Reserves.

The Postal Service employs more than 212,000 veterans, including more than 70,000 who are disabled. And of that number, nearly 18,000 have a disability rating of 30 percent or more. We have some 13,000 men and women who are proudly serving our country twice, both as Postal employees and as members of the Reserve components of the Armed Forces. Additionally, approximately 30,000 other Postal Service employees completed their service in a Reserve component while working for the Postal Service and are members of the Retired Reserve. Since September 11, 8,000 of our employees have been called to duty to assist in the defense of the Nation in various capacities, both here and abroad. In fact, for the most recent two week pay period, more than 3,400 employees of the Postal Service were on military duty. That means approximately one-quarter of our entire Reserve component was on military duty during the first 2 weeks of July.

These employees serving the Armed Forces receive military pay benefits like those provided by other federal agencies. And as in the administration of any Postal policy, the Postal Service has developed a number of pro-active steps to ensure both Reservists and our managers understand USERRA. For example, we have in-house labor and human resource publications which highlight and explain our policies on a regular basis to those field personnel with the responsibility to see to it that they are properly implemented. This year we began offering very specific USERRA training to our human resource and labor relations specialists in the field. So far we have provided training to 125 of these specialists, and we intend to provide additional outreach education in 2004.

Postal Service managers also keep in contact with the Department of Labor to review information and to obtain advice on applying USERRA in specific situations. We actively support the Employer Committee for support of the Guard and Reserve and maintain a liaison with its national office. We are also in the process of identifying and assigning a liaison to work with each of the ESGRs state committees.

The Postal Service is the Nation's second largest employer of men and women who also serve in the National Guard and Reserve. Clear communications with our employees is critical at every stage of the process if they are called up for service. We are constantly looking for ways to provide information quickly and conveniently to our employees.

One tool is our Internet site, which lists a number of publications and has links to military affairs offices to assist our employees with any questions they may have about this very complex topic. Of course, our local personnel officers are also available to answer employee questions directly.

In addition, our Employment and Placement Handbook defines very specifically how we administer USERRA. The handbook spells out our position very clearly. It states, and I quote, "The Postal Service supports employee service in Reserve or National Guard. And no action is permitted to discourage, either voluntarily or involuntary participation."

We have a standard operating procedure for all employees that we issue as they enter USERRA-covered military service. This includes providing them with a letter with very specific information providing detail about their leave, benefits, and status while on military duty. We work hard to accommodate their needs of our employees that are called to duty by our Nation's military. We also provide support to their families, particularly those spouses which are struggling with the separate stresses.

Our Employee Assistance Program offers a number of counseling options for employees and their family. And the Employee Assistance Program website has helpful information o a variety of topics related to military deployment and its effects on the family.

We continually look for ways on how to improve the services we provide to our employees. And as we see ways to improve communications and programs for USERRA-covered employees, we continue to implement them nationwide.

We will continue these efforts to assist employees who serve in the Guard and Reserve, both as co-workers and through our USERRA responsibilities. We don't do this because it is mandated but because these are dedicated employees who deserve our full support and our commitment because of their dual duties on behalf of the American people.

Thank you, Mr. Chairman. And I would be happy to address any questions you may have.

[The prepared statement of Ms. LaChance appears on p. 77.]

Mr. BROWN. Thank you, Ms. LaChance. And it proves that the Postal Service is a good corporate citizen, too. Thank you very much for your testimony.

I also have some post-hearing questions that I will submit to each of you in writing regarding possible legislative changes to

USERRA. I, too, came from the corporate world and I served some 9 years in the National Guard. So I guess I have got kind of both sides, just like you, Mr. Rouse. We are grateful that you all would come and exemplify what true America is all about.

Mr. Ryan, you are modest, sir. Forbes Magazine and ABC News recently named Schering-Plough as the number one company in America as far as doing right by it Reservists. Thank you for your leadership in getting that accomplished.

Mr. RYAN. You are welcome.

Mr. BROWN. Mr. Rouse, what is so impressive about Exxon and your 41 years of service, that speaks very highly of your longevity and your "stickability." And your relationship—not your relationship, but Exxon's relationship—with the Reservists goes back to World War II, and we are grateful for that longstanding and particularly effective relationship. That is pretty outstanding. Thank you for coming and testifying this morning.

Bill, thank you very much for coming. I personally know what a great outstanding corporate citizen that SCANA is to our state. I commend your leadership, and particularly your service in Vietnam and knowing the handicaps that service personnel have, particularly returning back into the workforce. Thank you for your continued commitment to the service personnel who work for your company. And thanks for coming to Washington this morning. And particularly thank you for bringing Debbie with you.

Mr. TIMMERMAN. Thank you very much, sir. I am honored to be here.

Mr. BROWN. Ms. LaChance, you are part of an executive management team of the Postal Service that indeed is a nationwide, municipal corporation. The Postal Service's website for spouses and Reservists is something I consider very helpful. In fact, I have asked my committee to link our website to your website. I appreciate your coming today and being a part of this process. It was amazing to learn that so many of your personnel, your retirees I guess or service personnel, 30 percent of them, have some disability. And so we are grateful for giving those people a second chance.

Mr. Michaud, do you have any questions?

Mr. MICHAUD. Thank you very much, Mr. Chairman. I, too, would like to thank the panel. You definitely are outstanding corporate citizens and we appreciate all that you do for our Reservists. You are all to be commended for what you do and you definitely do walk the talk. And I really appreciate that very much.

I, too, Mr. Chairman, have some questions I will be submitting in writing as well. But I do want to say that, Mr. Timmerman, as you heard me say earlier in my comments about Chairman Brown, I have been in the Maine legislature for over 22 years, and what I said about the chairman earlier, I mean it. He definitely treats members of the minority on this committee exceptionally well. And he works very hard in a bipartisan manner to fight for veterans' issues. And I wish other Members of Congress on both sides of the aisle would look at Mr. Brown as a true leader and emulate some of his actions in this committee. And you should be very proud of him in South Carolina for all that he does for South Carolina and for the veterans.

So thank you, Mr. Chairman.

Mr. BROWN. Thank you, Mr. Michaud. I certainly appreciate those remarks. And I can second that for you, too. It is absolutely a great pleasure to work with you. I have never known anybody from Maine before, but you certainly represent your state very, very well. And thank you for your cooperative spirit in working in this committee.

Do we have any other questions? We have been joined by Congressman Miller from Florida. And Congressman Boozman from Arkansas. Do you all have any questions of the panel? And Ms. Susan Davis from the State of California. Glad to have you, Susan. Do you have any questions?

Mrs. DAVIS. Thank you, Mr. Chairman. I think I will just wait until the next panel, because unfortunately I missed it. Like all of us, I am doing twofold duty today. But I want to thank you again for being here. What we need to do is protect our brave Reservists and be sure that we take a look at the law and see what we can do differently. I didn't have an opportunity to hear your testimony, but I appreciate your being here.

Mr. BROWN. Thank you, Susan. It is absolutely a crazy process trying to logistically go to all the spots you are supposed to go to. I know I serve on three different committees, and I guess five different subcommittees. So it makes it almost impractical sometimes. I know that you notice around, you see some signs and empty chairs. It is not any disrespect to this panel or this committee. It is the fact that there is so much activity going on, it is difficult just to be at all those places you are supposed to.

In fact, as we speak, if you hear a funny bell go off on the clock or anything, it means that we have to run over to the Capitol and vote. The House is actually in session, unlike in the state legislature, where we would actually go to the floor and sit and listen to the debate. Here, through the line of communication, we are able to monitor what is happening on the floor. Somebody on our staff, back in our offices, is actually tracking what is happening on the floor. So if we get called for a vote, know that we will need to leave.

But anyway, thank you all for coming and being a part of this process. What a great testimony on what true corporate America is about. Thank you all.

Mr. MILLER (presiding). Our first witness on the third panel this morning is Mr. Peter Perez. Mr. Perez is the senior vice president for human resources at W.W. Grainger, Inc., the largest supplier of facilities maintenance products in North America. Mr. Perez is in charge of all the human resource programs and functions at W.W. Grainger.

Our next witness on this panel is Lt. Gen. Norman Lezy, an Air Force retiree and vice president for National Governmental Relations for Wal-Mart stores. In a minute I will turn to my good friend from Arkansas and member of this committee, John Boozman, who will introduce the General. In fact, I think I will do that now. John, would you introduce the General?

OPENING STATEMENT OF HON. JOHN BOOZMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. BOOZMAN. Well, thank you, Mr. Chairman, and the Ranking Member. I am very pleased to be part of the full committee. I don't have the honor of being part of the Benefits Subcommittee. So thank you for allowing me to do that.

And it really is an honor to have somebody that I not only enjoy working with but is also a very good friend. Lt. Gen. Norm Lezy is currently vice president of National Government Relations for Wal-Mart stores. Most importantly though, the General is a United States veteran. And Gen. Lezy honorable served this country for 34 years in the U.S. Air Force. In his final assignment, he served as the deputy assistant secretary of Defense for military personnel policy at the Pentagon. He retired 5 years ago and has continued his commitment to serve people through hard work while representing well over a million Wal-Mart associates.

Gen. Lezy joined Wal-Mart in May of 1999 as director of federal and international relations in Washington, DC. He was appointed to his current position in April 2000. He represents Wal-Mart with the executive branch, Congress, and foreign governments on legislative, regulatory, and legal issues in support of the company's global business interests.

Mr. Chairman, it has been an honor to be able to work with Gen. Lezy. He represents a company that is dedicated to serving the American public while successfully pursuing the American dream. Wal-Mart is an extremely generous corporation and a role model for other American businesses. I am sure the General's testimony will be useful and insightful to the subcommittee.

Thank you very much.

Mr. MILLER. Thank you, John. And, unfortunately, another member of our panel, Mr. Jerome Carter, who is the senior vice president for Human Resources at International Paper, will not be testifying in person this morning. His flight out of Nashville was canceled. He will be submitting his testimony for the record.

[The statement of Jerry Carter appears on p. 83.]

Mr. MILLER. Mr. Perez, if you would, you may begin whenever you are ready.

STATEMENTS OF PETER PEREZ, SENIOR VICE PRESIDENT, HUMAN RESOURCES, W.W. GRAINGER, INC. AND LT. GEN. NORMAND LEZY, (U.S. AIR FORCE, RETIRED), VICE PRESIDENT, NATIONAL GOVERNMENT RELATIONS, WAL-MART STORES, INC.

STATEMENT OF PETER PEREZ

Mr. PEREZ. Thank you. Distinguished members of the subcommittee, I am pleased to appear before you today on behalf of my employer, W.W. Grainger, Inc., to provide testimony on USERRA. I represent 15,000 employees throughout North America; some of them are currently on active duty on the Iraqi Freedom mission. We are proud of their service to our country, and we support their commitment to a safer, more peaceful future.

Grainger is the largest supplier of facilities maintenance products in North America. Our products are not glamorous, but they are essential. They are the hammers, cleaning supplies, safety gear, and equipment that are crucial to keep facilities up and running. We are headquartered in Lake Forest, Illinois and have nearly 400 branches across the United States, with branches in every state in the Union.

Supporting our Reservist personnel during not only this critical time but at all times is important to us as a company. Our commitment to them goes beyond what we consider to be our duty. Grainger is committed to helping them and their families because we have a deep respect and admiration for their selfless service to our country.

Since September 11, nearly 40 Grainger employee Reservists have been called to duty. In total, there are 130 Reservists in our company and we are proud of every one of them.

USERRA is an important measure to guarantee Reservist confidence. Grainger's policy fully agrees with the spirit of this Act because it is designed to ensure financial security and well-being of not only the employee Reservist but, just as importantly, their families. We have extended benefits to these Reservists that is beyond that which is required by law. Our practice is to provide full benefits for up to 1 year. We provide full pay in addition to their military pay for up to a year for Reservists who are called to active duty. We also continue to provide group term life insurance and continue to make contributions into the retirement profit-sharing fund. And upon their return from active duty, employee Reservists are guaranteed the same or an equivalent job.

As we all know, while Reservist members are often deployed to locales far from home, their hearts remain with their families. Of all the Reservists stationed abroad, 60 percent are married and 30 percent have children. That means this is not just an issue with employees. It affects spouses, children, parents, and those Reservists hold dear, who are never far from their thoughts.

To ease the financial hardships on our Reservist families, we believe it is important to provide health and dental coverage for eligible dependents of Reservists for up to one year. In addition, as time goes on, emotional strain can take its toll on the family and on the Reservists. We also offer family members access to our Employee Assistance Program, which offers a variety of services such as counseling, to be able to help.

Over the last year, we have come to understand just how unique our program is. A survey conducted by the Reserve Officers' Association of the United States cites Grainger one of three companies providing the most generous support to employees called into military duty. And *Forbes* recently recognized us among the top three employers for Reservists. Recently, Illinois Congressman Mark Kirk wrote to us to recognize our policy, stating that it "does much to boost troop morale and focus."

We know that it is Grainger that benefits the most from these policies, as we are able to attract and retain exceptional employees. We have a clear example in Orlando McGee. He is a dedicated Reservist who was called to action during the Gulf War. However, at the time he worked for a company that did not offer comparable

benefits. And one of the reasons Orlando came to us is because of our Reservist policy. Today he is a safety analyst at our distribution center in Niles, IL. Our policy attracts quality employees like Orlando whose military experience only enhances their value to the company.

Fellow Grainger employees also appreciate and respect military experience. We have a very positive response from our workforce to this policy and how we supported Reservists. When employee Reservists are called into service, Grainger employees ban together in support. It may include sharing duties and cross-training to cover responsibilities of the Reservist who left.

Our pride extends to all Grainger employees, many of whom have been working hard over the last year to provide essential items to our troops. In fact, one of our San Diego account managers, Paul Bill, is currently stationed in Kuwait. He recently wrote to us to thank us for our benefits and support. Paul wrote, "There is not a person in my unit of 125 that does not know I work for Grainger. We get our Gatorade, generators, boots, safety stuff, all from Grainger." That makes a statement about the business impact of our policy.

We will continue to support Paul and other activated Grainger Reservists. And we remain committed to examining our Reservist benefit program to determine whether or not we need to refine, revise, or extend our benefits to provide additional support to them.

Grainger is committed to sending a clear message to our employees in the Armed Forces: While they are serving their country, they don't have to worry about the financial support of their families or whether there will be a job for them when they return.

We wish them well and pray for their continued health and safe return to their families and to us.

Mr. Chairman, this concludes my statement. Thanks for your time and consideration. If you have any questions, I will be glad to answer them.

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

Mr. MILLER. Thank you, Mr. Perez. I think what we will do is we will move to the General's testimony and then give the members an opportunity to ask some questions after that.

General, good to see you again, sir.

STATEMENT OF LT. GEN. NORMAND LEZY

Gen. LEZY. Good morning, Mr. Chairman, Congressman Michaud, and Congresswoman Davis. Thank you very much for giving Wal-Mart the opportunity to spend some time with you this morning to tell you a little bit about what we do for our Guard and Reservists, our treasured Wal-Mart associates. And it is really an honor to share this table with my new-found friend here from Grainger, as well as the other corporate members, who told you a little bit about what they do to take care of our troops in this great country of ours.

Before I talk about Wal-Mart, just let me take a couple of seconds to thank you, each and every one of you on this subcommittee and also the members of the committee at large, the Veterans' Affairs Committee. As my friend, Congressman Boozman told you, I had the pleasure and the honor of spending over 34 years in the

United States—in your U.S. Air Force. My last job in NOSD was the military personnel policy guy. I really got a deep appreciation of what the committee has done to provide for the health, morale, and welfare of not only our troops but of equal importance to their families, our families. And I want to thank you for that. And want to convey to you from the Wal-Mart leadership that we really appreciate what you do in this very difficult job that you carry out each and every day as you serve this country of ours.

At Wal-Mart we do share the same commitment that you have. And I have been working with the company, I am now in my fifth year. And I can tell you from our chairman, Mr. Rob Walton, to our CEO, Mr. Lee Scott, to the Wal-Mart leadership permeating down to we have got about 3,500 stores and Sam's Clubs and about 100 distribution centers around the continental United States, and I can tell you that everybody involved at Wal-Mart in a leadership position is a strong supporter of what the Guard and Reserves and our military is all about. We are deeply committed to trying to do what is right.

Recognizing that—in fact, somebody asked me, "Well, how many Guard and Reservists do you have?" I can't tell you. We don't track them. But I can tell you though that in this year alone, we have 1,200 of our associates who are on leave of absence serving either the Guard or the Reservists somewhere around the globe.

You have heard some of the stories this morning from Michelle Dumond is a good example and from the lieutenant of what happens. And so at Wal-Mart we gave some thought to making sure that we do what is right, as I said. We basically follow the precepts of the law in all cases. But there is a couple of things we do that go beyond the law, much like my friends from the other companies enumerated. But I would just like to tell you about two of them.

One is we certainly do the pay differential. We match the difference between the military pay and what the Wal-Mart pay is. And also recognizing that perhaps the second most important thing after pay is health, medical, and dental benefits. We make sure that those are continued uninterrupted and Wal-Mart picks up the majority of the tab for the premium. And we do this, by the way, not only for those that are deployed in an active duty role, also those who go to extended training camps, we do the same thing, provide the pay differential for them also.

In addition to being concerned and really lay awake at night, thinking about what we can do to support our Guard and Reservists, we do spend a lot of time trying to figure out what it is we can do to help our Armed Services members, the active duty folks at large. Since 9/11, the Wal-Mart Foundation, and I am really proud of our Wal-Mart Foundation, it is run by a lovely woman named Betsy Reesemire, whose dad was a career Naval person. In fact, I need to mention Congressman Boozman, our third district's Congressman's dad was a career Air Force also. But we have given more than $3 million since 9/11 to the Navy, Marines, Army, Air Force, and Coast Guard relief and aid societies. We found that there was tremendous networking capability to reach out to help people like Michelle, who told you this gut-wrenching story here, to try to help families, particularly in really a time of need.

So we find that it is a great vehicle and a way where we can channel money that we raise from our associates and from our customers and from the company to try to do what we can to help. We also provide funds to the USO. The USO does a great job of taking care of troops and their families. And we make sure that we want to take care of them.

In concert with our friends of the VFW, I have been really impressed with what the VFW is doing for deployed troops and their families, as well as AT&T. We have bought well over $1 million worth of phone cards that we have distributed at least two times, maybe three. And we try to get a phone card to every single person that is deployed overseas so they can call home. We find that the troops and the families really appreciate that.

At the local level, we have a network of some 3,500 stores and 100 distribution centers, our associates in concert with our customers do lots of things to try to help out. We have outreach programs where we adopt families of those who are deployed to make sure that they are taken care of and get help when they need it. We provide lots of support to youth clubs, like Boys and Girls Clubs of America, who play a vital role in taking care of our kids when we are away from home and can help wives and husbands with those sorts of things.

We do photos, Walls of Heroes, every one of our thousands, there are thousands of stories I could tell you about what we do to try to reach out and make our Armed Forces members and their families feel good about what is going on.

The most recent thing we have gotten into, we have earmarked a $5 million grant. We will be doing this every year throughout our Foundation that will be aimed at civic groups, such as the Rotary Club, and also veterans' organizations, such as the American Legion, VFW, and et cetera, where we will award grants around the country through our stores to try to help particularly the veterans' organizations. They will be getting the lion's share of the monies going out to our stores and our clubs to help veteran organizations to take care of them.

I could go on and on. And, again, it is pleasure to sit here and listen to big and small companies who really are doing what is right in this great country of ours to take care of those who serve. And we are proud to be a small part of that. And, again, we thank you for giving us the opportunity to be here today. And I am ready to answer any questions that you might have.

[The prepared statement of General Lezy appears on p. 93.]

Mr. BROWN. Thank you, General. I will have questions for you folks as well and I will submit them to each of you in writing regarding possible legislative changes to USERRA.

Mr. Perez, apart from Grainger's very responsive personnel policies, you also help Reservists' family members through your Employee Assistance Program. And that is pretty impressive. Thank you very much for coming and sharing that this morning.

Gen. Lezy, what can I say about Wal-Mart? I think it touches the lives of every American, and we are grateful for your support of our Reservists and military, and particularly for the $5 million that you mentioned that goes to the Servicemen's Aid Society. That speaks volumes about your company and your corporate commit-

ment. Thank you very much for coming and giving your testimony this morning. We will send you a list of those questions. We want to be sure that USERRA is working and is something that you all can fit in. A lot of corporations don't suggest impovements but if there are some parts of current flaw that do need improvement, we certainly want to do that.

Mr. Michaud, do you have any questions?

Mr. MICHAUD. Thank you, Mr. Chair. I, too, want to thank both you gentlemen for your outstanding efforts when it comes to veterans' issues. I really appreciate how you do treat the Reservists. Also, General, I would like to thank Wal-Mart for your assistance in the State of Maine. I know the biggest employer in my district when it filed bankruptcy and shut its doors, we have over 38 percent unemployment and Wal-Mart was very helpful in assisting the displaced workers there. So I want to thank you for your assistance.

And I, too, Mr. Chairman, have some post-hearing questions I will submit in writing. Thank you.

Mr. BROWN. Did Mrs. Davis leave? Okay, gentlemen, thank you very much for coming.

Mr. Perez, aren't there some members of the Grainger team with you today?

Mr. PEREZ. Yes, Mark Plesby and Renee Young.

Mr. BROWN. Thank you all for coming.

I am delighted to welcome Assistant Secretary Juarbe, who has dedicated his career to serving veterans. He is accompanied by Col. Alan Smith, a distinguished career Marine Corps officer who directs the National Committee for the Employer Support for the Guard and Reserve.

Secretary Juarbe, please begin.

STATEMENT OF FREDERICO JUARBE, JR., ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING SERVICE, DEPARTMENT OF LABOR; ACCOMPANIED BY COL. ALAN R. SMITH, DIRECTOR, MILITARY MEMBER SUPPORT, NATIONAL COMMITTEE FOR THE EMPLOYER SUPPORT OF THE GUARD AND RESERVE

Mr. JUARBE. Good morning, Mr. Chairman. If I may, before I begin my prepared comments, I would like to just make a couple of observations.

First of all, I think it is very meaningful that you have had this hearing today and have given an opportunity for these witnesses to speak. And I value my opportunity to have heard directly from them. We have heard from employer witnesses who speak about their value of the Guard and Reservists and veterans who are their employees. We have heard from the advocacy witnesses, Col. Bob North, in who I personally rely on tremendously, for their input and their guidance in directing how we—in gauging—how we are providing services. I think most importantly, we have heard from the employee witnesses and also family witnesses. And I can't help but feel that, from everything that I have heard here today, Congress, in its wisdom, constructed a law that is comprehensive and far-reaching. And what we have heard here today is good news,

tempered of course, by the eloquent expression of the poignant experience that Mrs. Dumond is experiencing.

But USERRA works. And USERRA works because—not only because it is comprehensive but because America's Guards and Reservists and its veterans represent the best of qualities that employers are seeking and employers value them. And USERRA also works because America's businesses and America's employers are responsive and they value those employees. So I want to express my appreciation for the previous witnesses and my commendations to the excellent support that Guards and Reservists are receiving.

Mr. Chairman and Ranking Member Michaud and other distinguished members of the House Veterans' Affairs Subcommittee on Benefits, the Department of Labor is pleased to have this opportunity to provide comments on USERRA, the Uniformed Services Employment and Reemployment Rights Act. We face an enormous challenge enforcing USERRA, a law that had been very much in the news for nearly 2 years. Since September 11, 2001, almost 300,000 members of the Guard and Reserve have been called to serve in operations globally. Approximately 200,000 of these citizen-soldiers remain on active duty today. USERRA provides reemployment rights and prohibits employers discrimination against veterans and Reservists on account of their military service or obligations.

USERRA's roots go back to the 1940 Veterans' Reemployment Rights law. USERRA enforcement follows two legal principles, the law should be interpreted to benefit those it protects, the returning servicemembers to be reemployed in the position he or she would have occupied had employment continued during the period of service, the Escalator Principle. When USERRA was enacted on October 13, 1994, the overarching goal of Congress was, as stated in the House report, "to clarify, simplify, and where necessary strengthen the existing veterans employment and reemployment rights provision."

With USERRA experiencing its greatest test ever during the current national security challenge, I can tell you that your goal was accomplished. As compared the VRR, USERRA is clear. It is simple. And it is strong.

Let me review the USERRA experiences and activities, particularly since September 11, 2001. Since enactment in October 1994, we have reported to this committee on the administration and enforcement of USERRA. For Fiscal Years 1995 through 2001, USERRA cases steadily declined. I have submitted a written statement for the record that includes detailed statistics and supporting information.

As expected, following the large-scale mobilizations resulting from the tragic events of September 11, we saw an increase of just under 35 percent of new cases over Fiscal Year 2001. It should be noted, however, that this increase was not proportional to the number of men and women of the Guard and Reserves called to duty. By June 30, 2003, we had opened 953 cases. And we expect more when those now serving are released in large numbers.

Secretary Chao has made compliance assistance a priority for the entire Department, and USERRA is a major part of that effort. The Department's Office of the Solicitor has provided comprehensive

support in addressing technical questions. The Wage and Hour Division of Employment Services Administration has been instrumental in formulating a policy that for activated Reservists, active duty time is counted towards eligibility to take time off from work under the Family and Medical Leave Act. This position was articulated in a joint memorandum signed by the Solicitor, the wage and hour administrator, and myself. The Employment Benefits Security Administration has also been extremely helpful in providing information concerning pension benefits. And there have been a number of other offices within the Department that have also been very supportive.

Outside the Department, efforts by the National Committee for Employer Support of the Guard and Reserves are extraordinary. With their small national staff and over 4,000 volunteers nationwide, they promote understanding between employers and their Reservist employees and help informally resolve disputes. I am pleased to have their representative, Col. Al Smith, with me as a witness today.

Overall, the Nation's employer community is overwhelmingly supportive of their employees in the ongoing mobilization. Since 9/11 we have responded to over 15,000 requests for information and have provided USERRA presentations to more than 91,000 people nationwide, including mobilized Guard and Reserve units, employers and employer groups, including the U.S. Chamber of Commerce and the Society for Human Resource Management.

Secretary Chao, as well as my staff and I, have participated in webcasts, radio broadcasts, newspaper interviews, and television appearances to help get the USERRA message out.

Finally, I want to mention that Secretary Chao has made the decision for the Department to begin drafting proposed regulations that will be promulgated for USERRA. I expect these will provide clear and consistent guidance for all employers and servicemembers and will greatly help our compliance efforts.

In summary, the Department of Labor will continue to inform employers about USERRA. And we will continue protecting the reemployment rights of our servicemembers.

Mr. Chairman, Mr. Michaud, that concludes my statement. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Juarbe appears on p. 94.]

Mr. BROWN. Thank you, Mr. Juarbe. We notice you had to make a lot of changes in your schedule to be with us today, and we appreciate your testimony and certainly give our regards to Secretary Chao. We appreciate her efforts and cooperation the other day as we met with her and Secretary Rumsfeld to sign that memorandum of understanding.

Mr. JUARBE. Well, if I may, Mr. Chairman, that event and that effort, the Joint Memorandum between the Department of Defense and the Department of Labor underscores the focus that this administration has on not just supporting our military, not just supporting veterans but improving the quality of life for the military and veterans with the very issue that is being addressed here today.

Mr. BROWN. Well, I know it is a major concern of our leader, President Bush. In fact, we had the privilege yesterday to visit

with him on the Truman Porch and he certainly is talking about the many issues around the world where all the fighters are and the concerns of his to try to bring peace to those countries, particularly where so many citizens are under hardships everyday. We are grateful to have him as our leader. Thank you for coming and being a part of this today.

Col. Smith, did you have any comments?

Col. SMITH. I have no prepared remarks, Mr. Chairman. But on my desk yesterday arrived a request. And the request was written so well that I thought I would take this opportunity to follow through on that. The request came from four folks. One from Maj. Joe Grubacki, U.S. Air Force Reserve. And he wanted you to know that he has put you in for an ESGR as My Boss is a Patriot Award. Maj. John Gallagher, U.S. Air Force Reserve, for Representative Miller, who has left, but he has put in for My Boss is a Patriot Award, for Representative Davis, Cdr. Michael Valasquez, U.S. Navy Reserve, and for Representative Sylvestre Reyes, Petty Officer Golyamo Valenzeula, U.S. Navy Reserve.

And I think those awards are pretty important. They are just saying from the individual soldier, sailor, Airman, Marine, or Coast Guardsman is that it is important that the employment situation and the defense goes both ways. And I think that is a pat on the back to all of you.

Mr. BROWN. Thank you. And certainly Joe Glebocki, I guess colonel now, maybe, or is it major, is a great asset to our office. He came as a fellow and worked a year. And now he is—this week he is somewhere in Europe as part of his Reserve training. But he is an outstanding individual, and we certainly are glad to have him part of our team. I thank you for those remarks, and I certainly will thank him for that recommendation.

Mr. Juarbe, I will send you some recommendations for legislative revisions to USERRA proposed by the Military Coalition. Would you please submit DOL's views on these recommendations within 30 days?

Mr. JUARBE. Yes, Mr. Chairman, we will.

Mr. BROWN. And Col. Smith, does USERRA need tweeking or an overhaul? How have employers and servicemembers reacted to mobilization and/or training duty in terms of USERRA?

Col. SMITH. Mr. Chairman, at ESGR during Fiscal Year 2001, we had about 11,000 requests for assistance. The following year we hit 17,000. This year we are fully expecting between 20,000 and 22,000 calls for assistance with USERRA.

What I think is important is that this is really, and I think Secretary Juarbe used these words, this is its real test. This is the first time since it has—since 1994 with revisions of 1996 and 1998, that it is actually being put to the test other than just drill weekends and annual training. Right now, we are dealing with situations that are long-term mobilizations. There are mobilizations that don't happen once. There are mobilization, de-mobilization and then a second event. Mobilization unlike Desert Storm, where it was a quick six month hit. They were mobilized very quickly, went off to war, returned, and then were back to the workforce.

That is not the case now. Now we have one year, two year mobilizations. We have a different ball of wax. And what I can tell you

is from the calls that I get and from my ombudsmen in the field, we have 500 ombudsmen out in the states, is that their sense is that the USERRA is broad enough to handle the multiple types of inquiries that we get, yet narrow enough to handle each individual servicemember and employer. And of all those calls that I explained to you, about 34 percent of those are from employers.

Mr. BROWN. Thank you. Col. Smith, since we have Congressman Miller back, do you want to repeat what you——

Col. SMITH. Certainly, Mr. Chairman. Representative Miller, Maj. John Gallagher, U.S. Air Force Reserve, has put you in for, and you will be so awarded at a later date, the My Boss is a Patriot Award. And that is clearly a statement of how he feels about you and your cooperation with his Reserve service.

Mr. MILLER. Mr. Chairman? I obviously was not expecting any type of recognition. Maj. Gallagher is an integral part of the team in our office. He happens to be a hurricane hunter and has been on active duty. He was called up and is now, hopefully, on his way home to Keysler and will be returning to the office very soon. And I certainly am honored with this. And we are doing our best to do our job and support our men and women in what they are doing. And we appreciate, sir, also what you do and Mr. Juarbe, also.

Mr. BROWN. Thank you. Mr. Juarbe, I know that you had a chance to speak to Ms. Dumond, and I hope that you will be able to help in her situation.

Mr. JUARBE. Yes, Mr. Chairman. In fact, I am pleaed to report that my state director for veterans' employment and training, John Guay, is already working with Ms. Dumond, and we will be following it very, very closely from my office.

Mr. BROWN. Thank you so very much. Mr. Michaud.

Mr. MICHAUD. Thank you very much, Mr. Chair. I have some post-hearing questions I will submit in writing but I would like to actually ask two brief ones right now to the Assistant Secretary. One, you had mentioned about the beginning drafting regulation. My first question is when do you think that will be done? My second question is you talked about the compliance assistance as a priority of the Department. Does your Department have the resources, ability or inclination to aggressively enforce USERRA?

Mr. JUARBE. On the first question, Mr. Michaud, as you can well understand, USERRA is a comprehensive law and the drafting of regulations is quite a project. The Solicitor of Labor's office has been working diligently for some time now in drafting those regulations. They hope to have them completed for us to issue a Notice of Proposed Rulemaking towards the end of this year. And since it affects all employers in America, they will be provided ample opportunity for comment and response. And we hope then to issue the final rules towards the end of the following year 2004.

On the second question, compliance assistance has been an emphasis that Secretary Chao has placed on all of the Department. And we have taken on that effort with a major commitment. The outreach efforts that we have carried out this year are representative of that. We have requested the resources necessary to execute the claims. We have estimated the number of claims. We have projected the rate of growth of those claims and have requested the resourcs to do that.

In addition, Mr. Michaud, we are constantly reviewing how we do our job and how we can do it better, what training is required by our staff, how can we have the most skilled people doing the most critical parts of that effort. All of our state staff will be prepared to do the initial investigative work and we are preparing a team that will do the more sophisticated and more detailed levels of work so that we can offer the highest levels of expertise in addressing USERRA claims.

Mr. MICHAUD. Great. Thank you very much.

Mr. BROWN. Col. Smith, I am going to put you back on again. Mrs. Davis just came back in. Did you want to make some notation of that?

Col. SMITH. Sure.

Mr. BROWN. Okay.

Col. SMITH. Representative Davis, Cdr. Michael Valasquez, U.S. Navy Reserve, has put you in for, and you will be awarded, a My Boss is a Patriot Award. It is again a demonstration of your support of his military support and his appreciation for that.

Mrs. DAVIS. Thank you very much. I appreciate that. I have really been honored to have Mr. Valasquez working with me. And it has been very special to have his past experience and the kind of relationships that he has built up over the years. I think we all know how much that makes a difference in our ability to do our job here. And so I think him and I thank you. I appreciate it. Thank you.

Mr. BROWN. Do you have any questions, Mrs. Davis? Do you have any questions?

Mrs. DAVIS. Well, perhaps you have already addressed this. But I am wondering about the impact that a turn down in the economy has in your ability to make sure and maintain that people can go back to their jobs or at least be put in comparable positions. Perhaps you have addressed that. But greater challenges do you see and is it a problem?

Mr. JUARBE. These are very real challenges, Mrs. Davis. Of course, USERRA provides protection through the seniority provision within the Act; it would protect Guards and Reservists who would be eligible to retain their jobs had they been on the job during the layoffs or during the down-scaling of any workforce, had they been given an opportunity to take a lower position or transfer to another location, they still have to be considered the same as if they had been there. And they would be protected by that.

But having said that, we do recognize that there are some that will come back and their former employers will no longer be there and their position may have been abolished. And that is why we are prepared with the full resources of the Department of Labor and the Veterans Employment and Training Service through our LVERs and DVOPs to provide employment and training assistance services.

As you know, under the Jobs for Veterans Act, which this committee sponsored and brought to fruition, you provide priority of services for veterans in all Department of Labor employment and training programs.

Secretary Chao and the entire Department has taken on that effort with major commitment. This very week and last week we

have been running a series of conferences in Denver, Colorado with all state workforce agency representatives and my state staff in preparation for the full implementation of that law. And I can tell you, Mrs. Davis, that there is a high-level of excitement, not just among my staff but among the state workforce agencies because of the greater flexibility that you have allowed them. And that we are truly working as effective partners to maximize the effectiveness of the resources we have to serve America's veterans. And Guards and Reservists that are eligible as veterans now also will be provided services through transition assistance workshops.

Albeit it is much more difficult to capture them for these workshops because some of them are discharged within very short periods of times or they are not all at one location like we have at bases. But we are working in trying to provide them with the workshops that are available through transition assistance.

Mrs. DAVIS. Thank you. I appreciate that. Is it possible to characterize that 10 percent, 20 percent are just very difficult to be successful with?

Mr. JUARBE. Are you saying about what percentage of those that are losing their jobs?

Mrs. DAVIS. Yes.

Mr. JUARBE. I don't have that information right now but if it is available, I will certainly make it available to the committee.

Mrs. DAVIS. Thank you. I certainly appreciate the work that you all do. Thank you very much, and thank you for being here.

Mr. JUARBE. Thank you.

Mr. BROWN. Mr. Juarbe, as we look at the regulations, I believe that USERRA protects the jobs up to 2 years, is that correct?

Col. SMITH. Sir, could you rephrase the question again, please?

Mr. BROWN. The amount of time that the job is protected if a Reservist goes on active duty, I see somebody raising a five, I assume that is 5 years.

Col. SMITH. Yes, sir. USERRA protects up to 5 years of military service.

Mr. BROWN. Okay.

Col. SMITH. Service during a presidential call-up or any kind of call up does not count toward those 5 years.

Mr. BROWN. Okay, all right. Thank you. I believe Congressman Miller has a question.

Mr. MILLER. No questions, sir. But at the appropriate time I have two introductions I would like to make.

Mr. BROWN. Okay, if there are no further questions, go ahead and do that.

Mr. MILLER. Thank you. You often hear me talk about serving one of the finest congressional districts in the country. And with me today, I just want to introduce two of the constituents that I have the great pleasure and honor of representing. In fact, we just happen to be sitting in my office talking about some issues when the call came to come back to the committee room. So with the panel's indulgence and the folks in the audience, if you would, I would like to introduce retired Lt. Col. Robert Renley. And I am going to ask them both to stand in just a second. But I will introduce them both and then ask them to stand up.

Col. Renley served in the Army and Air Force between 1942 and 1967. He is a 25-year veteran. He flew 30 missions as a B–17 navigator over Europe during World War II, including three missions over Normandy on D–Day. He is a veteran of not only World War II but Korea and Vietnam. He has spent about $15,000 of his own money for medical care during the years after which coverage was withdrawn. And he and countless other veterans of World War II and Korea are currently fighting another battle, not against the Axis powers but ironically against our own government. And he is a lead plaintiff in the class action lawsuit whereby World War II vets are trying to get a promise restored for lifetime free health care benefits.

The other individual that is with him is probably no stranger or the name is certainly no strange name to this committee. But Col. George E. "Bud" Day, retired. Col. Day is a veteran of more than 30 years of service in the Armed Services of the United States. He was shot down over North Vietnam on August 26, 1967 and spent 67 months as a prisoner of war. Col. Day was the only POW to escape from prison in the South. He is also credited with living through the first no-shoot bailout from a burning jet fighter in England in 1955.

Col. Day holds every significant combat award and is the Nation's most highly decorated officer, as well as the most decorated since Gen. Douglas MacArthur. He holds nearly 70 military decorations and awards, of which more than 50 are for combat. He is a member of the Medal of Honor Society, Legion of Valor, and was the first president of Nam POWs, president of the Misty Superfac Association and a member of numerous military and fraternal organizations. Col. Day was a member of the Code of Conduct Review Board established by DOD in 1976 to review POW conduct.

I would like to introduce you both, Col. Renley and Col. Day. (Applause.)

Mr. BROWN. Thank you very much, gentlemen, for your service to this great country. In fact, we were honored last week to have the Band of Brothers come by. That is the 101st Airborne troops who landed in Normandy. And we are grateful, we are grateful. We say all the time, if you enjoy your freedom, thank a veteran. And so thank you all very, very much.

Gentlemen, thank you for being here today with us. And I would also like to note that we will be receiving testimony for the record from the veterans' service organizations, Mrs. Lynn Guimond, the spouse of a mobilized Reservists and various businesses.

All of the witnesses this morning have provided a wealth of information. And I want to thank you all very much, all the witnesses, for coming.

If there is no other business, we stand adjourned.

[Whereupon, at 11:35 a.m., the subcommittee was adjourned.]

APPENDIX

Statement for the Record
The Honorable Michael H. Michaud
Ranking Member – Benefits Subcommittee
House Committee on Veterans' Affairs
July 24, 2003

Thank you, Mr. Chairman.

As this is the last Subcommittee hearing scheduled for this legislative session, I would like to begin by commending you for your leadership and professional manner that you exhibit as Chairman.

I also want to thank your Subcommittee staff – Darryl Kehrer, Paige McManus and Devon Seibert, for their cooperation and good work.

Mr. Chairman, I can think of no other topic for a hearing as relevant or as important as the Uniformed Services Employment and Reemployment Rights Act, otherwise knows as USERRA.

As we hold this hearing, our brave men and women of the military are selflessly risking their lives in Iraq and Afghanistan.

Many of these individuals, who answered their country's call, are leaving behind family who depend on them.

These family members must endure not only the emotional strain of knowing a loved one is in harm's way, but in many cases, they must fight through increasingly difficult economic times.

In my district in Maine, unemployment has skyrocketed to 38% in one labor market area and double-digit unemployment is common throughout the district.

Paper mills are closing, and individuals are struggling to make ends meet.

This is the climate in which we are asking many Guard and Reserve members to leave their families.

I would like to read briefly from a statement written by Lynn Guimond who lives in my district and whose husband, Steven, is currently serving in Iraq.

Unfortunately, Mrs. Guimond could not join us but her entire statement has been included in the record and I would ask that a letter from her husband also be included.

"The time right after Steve left was probably the hardest, as I also worried about the security of his job at the mill. USERRA offers some good job protection, but it doesn't

protect you from downturns in an industry. These months have been hard, while layoffs and rumors of others have rocked this area. Some days, there are too many unknowns... Northern Maine is like the other end of the world from Washington, DC, as much as Kuwait is. I am writing to you from a place where people don't lock their doors, leave the keys in their cars, and trust and depend on their neighbors for help. It is a tightknit community, but like thousands of other communities across the country, they need help dealing with the families of Guard members who have been activated. Please keep all of those who have been left behind in mind as you make decisions on support for these programs."

It is my hope that USERRA will be enforced by the Department of Labor to provide people like Mr. and Mrs. Guimond with the support and employment protections they have earned and will definitely need upon their return.

USERRA is intended to minimize the disadvantages that occur to our "citizen-soldiers" and by extension to their families, as they leave their civilian life to put on the uniform of this nation and protect us from the world's dangers.

It is well established that our Guard and Reserve forces are an integral part of the "national defense policy," – they comprise nearly fifty percent of our "total force."

If we as a country wish to continue and encourage quality men and women to pursue non-career uniformed service, we must ensure that they are not overly burdened.

USERRA, if effectively administered and enforced, helps recruiting and retention of servicemembers.

I am very pleased that today we will not only be hearing from government agencies charged with administering and enforcing USERRA, but also individuals who are living through this and corporate entities that are affected by this important law.

I welcome all of you and appreciate your testimony.

It will provide valuable insight into how actual servicemembers and families are affected by call-ups and how we can improve USERRA, as well as other services.

As the witnesses will testify, the effect deployment has on families can be markedly different depending upon whether the reservist resides in a rural economically depressed area or in a more urban setting with supportive employers and access to resources.

I especially look forward to hearing from Mrs. Michelle Dumond who has made the long trip here from Maine and I would like to thank Major Steven Hatt of the Maine National Guard for assisting Mrs. Dumond with her trip.

I had the pleasure of earlier meeting Mrs. Dumond, a Persian Gulf veteran and wife of a Maine National Guard Member currently serving in Operation Iraqi Freedom.

I want to personally thank her for coming today, and for her and her husband's service to this country.

Additionally, I would like to express my thanks and appreciation to the business entities appearing before us today.

You are indeed examples of "corporate responsibility," something that we hear far too little of these days.

Hopefully your testimony will provide a catalyst for others to step up and offer further support to our Guard and Reservists.

Without cooperation and understanding from the employer community, our servicemembers are likely to be distracted from their military duties – you are a key component in this nation's self-defense strategy.

I also want to welcome Colonel Alan Smith, representing the National Committee for the Employer Support of the Guard and Reserve (ESGR) and Assistant Secretary Frederico Juarbe, Jr. of the U.S. Department of Labor, Veterans' Employment and Training Service (DOL/VETS).

I look forward to hearing about Labor's efforts in administering USERRA, as well as any progress in developing and publishing clarifying USERRA regulations.

Committee staff has informed me that you plan to have draft regulations published by the end of the year.

I strongly urge you to meet or exceed that deadline.

Lastly, I note my disappointment that the Secretary of Labor, Elaine Chao, was again unable to appear before the Subcommittee.

As I stated earlier, I find no other subject as important as the economic well-being and employment protections of our men and women in uniform.

I hope that the next time this Committee invites Secretary Chao to testify she will be available to do so.

Thank you Mr. Chairman.

Brownlie 1 page

July 9, 2003 ST. JOHN VALLEY TIMES, Madawaska, Maine 04756

The Families left behind

To the editor,

I write this letter in Kuwait, serving my country with 1136th Transport Company from Bangor.

Since I have been here we have heard stories from fellow soldiers who have come down from Iraq.

The stories range from the battles in Baghdad to the heroics of certain individuals.

In months to come you will start seeing the stories on the History Channel, Learning Channel, and Discovery Channel.

One story you won't see on those channels, or on any other channel, are the stories about the families left behind.

Oh sure, you'll see Dan Rather pick a family whose husband or wife went to war but that's about it.

They won't talk about the wife or husband who stayed home and the difficulties taking care of their children.

You won't hear how the wife had difficulties getting food stamps because the pay is a lot less than before.

That's because the state only looks at previous employment pay stubs and doesn't take into consideration the present situation.

In any war there are two kinds of dedication; the dedication a soldier has towards his troops and the mission at hand.

The other is the families and community dedication to the soldier's family that he leaves behind.

While I am here in Kuwait it astounds me how much support my wife and children have received from our families and our community.

Many soldiers will receive awards and medals for being here.

They should also give awards and medals to the families and communities left behind.

Thank you to the friends and to the families that helped my family while I am here.

You will always be our heroes.

Sgt. Steven Guimond
St. Agatha

Prepared statement of Hon. Jack Quinn

Thank you Mr. Chairman.

And thank you for holding this hearing.

I want to thank each of today's panelists, for both the presentations that they are about to give, but also for the work that they do to ensure that the men and women returning from active duty in the armed services are guaranteed a smooth transition back into civilian employment.

Serving on this committee and as its Chairman for 4 years has been a great pleasure. I have had the good fortune to work with Active duty soldiers, Reservists, National Guardsman and Veterans and talk with them about the issues they face. In my time on this committee no issue has been more important to me than ensuring the seamless transition for soldiers from active duty into civilian employment.

The men and women who wear the uniform make up one of our greatest national assets. Their skills, dedication, and can-do attitude make our military the strongest in the world. Those same attributes directly translate into success in the civilian workforce.

Today's hearing will focus on the employment and reemployment rights of soldiers returning from duty. I am eager to hear of the steps that each of you are taking to make this transition as smooth as possible and how we in Congress can improve the program.

As many of you may know, about 65 percent of soldiers are married at the time of their separation from the services. This makes this transition crucially important because it is a family issue. As these brave men and women return from defending our country they should be welcomed home to the jobs and careers that they so honorably left behind to answer the call to defend America.

The burden that the families of activated soldiers bear can be great. We have all heard the stories of families forced into financial dire straits as a result of the activation of the family's breadwinner. While that is an issue certainly in need of discussion, we can today focus on ensuring that there is a light at the end of the tunnel for these families.

As the military continues to modernize we are seeing a steep increase in deployment of Reserve and National Guard Forces. As of last week over 200,000 Reserve and National Guard forces had been activated. These men and women will need all of our help when they return. It is up to us to make sure that they are rewarded for their sacrifice and that the rights provided to them under the Uniformed Services Employment and Reemployment Rights Act are protected.

DEPARTMENT OF THE AIR FORCE

PRESENTATION TO COMMITTEE ON VETERANS AFFAIRS
SUBCOMMITTEE ON BENEFITS
UNITED STATES HOUSE OF REPRESENTATIVES
108TH CONGRESS

SUBJECT: "Requirement that Employers Rehire Returning Service Members"

STATEMENT OF: 2nd LT. TAYLOR E. ADAMS, USAFR

NOT FOR PUBLICATION
UNTIL RELEASED BY THE
HOUSE VETERANS AFFAIRS COMMITTEE

INTRODUCTION

Mr Chairman, and distinguished Members of the Subcommittee, thank you for the invitation to testify before you today. I am an Air Force Reservist, assigned to the 315th Maintenance Squadron, part of the 315th Airlift Wing, at Charleston. I also, work for McNaughton-McKay Electrical Co., in Charleston, S.C., also home to the distinguished Chairman. McNaughton-McKay is an electrical distributor that sells all electrical commodities and especially automation products to industrial customers. I have worked for McNaughton-McKay since I Graduated from Appalachian State University in 1994. Before 9/11 and the activation I was one of four Account Managers in a branch of 15 employees. When I was activated, I left behind 25 percent of the company's accounts. Out of necessity, they hired a new account manager to ensure seamless service to the customers. Since de-activation, my new title is "Automation Consultant" covering not only Charleston SC but Savannah Ga. as well.

I enlisted in the Air Force Reserve in 1989 to help offset college expenses and gain a little perspective on my future. I had always been very good at fixing

things so I took on propulsion in my military career. For about nine years I worked on C-141's in Charleston and around Europe during my annual two weeks. Eventually the 141's left and I transitioned over to the C-17. I had always thought seriously about becoming an officer, if the opportunity arose and, ironically it finally did in 2001, while on active duty for Operation Enduring Freedom.

In the uncertainty after the attacks of 9/11, it looked more and more as if we were going to Afghanistan, and my employer frequently asked me if I thought I would be activated or not. I wanted to give him a definite answer, but there was none. I called the base weekly and sometimes bi-weekly to see if there was any type of definitive answer. McNaughton-McKay wanted to know so that they could start planning to cover my accounts while I was gone. All I could offer was that if I got called up, I would probably have a few days before I had to report to duty. That would be enough time for account planning and transitioning them to new Account Managers.

Sunday night, October 6th, my wife Traci, one of her friends, and I, were having dinner out when my best friend in the Reserve called and told me he just got a call from the base and had been activated. At first I thought he

was joking but then heard the concern in his voice. I quickly called the house to see if I had any messages. There were not any at the time so we finished our dinner and headed home. On the way home we checked the messages again and sure enough there was a message to call the base immediately. I called the section and they told me to report for duty the next day at 4:00 pm. It was about 10:00 at night when I got off the phone and immediately called my boss to tell him I got my call. I told him we had to meet in the morning because instead of a few days to report, I only had a few hours. He was very accommodating and cleared his morning schedule to handle the planning. Just a week earlier David Beattie, President of McNaughton-McKay, had come up with a new policy to pay any one called to active duty their normal pay minus military pay and expense account for a period of six months. This was enormous since I was going to be taking about a 30 percent pay cut from Account Manager to E-5. Along with the pay differential, all benefits remained in tact, as well as my seniority with the company. Unfortunately I had no idea how long the activation would last, but my employer made me feel at ease, they told me to do my job and that they would be looking forward to my return.

The importance of moving people and vehicles, and supplies is the key to winning any war. The number one reason our military is so powerful is because we can get to the war unlike anyone else. Our unit was called up to ensure that C-17's were available at all times. This was evident the first night of Enduring Freedom when our aircraft dropped thousands of meals to the starving people of Afghanistan.

January 27th I was deployed to Germany for 108 days. During that time Traci had many phone calls from people at work checking on her and making sure she didn't need anything in my absence.

When I finally returned to Charleston in May, McNaughton & McKay was curious about how much longer I would be gone from work. Unfortunately I did not have an answer.

I was de-activated on August 15, 2002 and immediately returned to work. The first day back I met with the Sales Manager as well as the General Manager to discuss my future. They first explained how glad they were to have me back and asked if I would be leaving again. I said, "yes, that I needed time off again in October and November to attend the Academy of

Military Science in order to get my commission." Once again they were very accommodating and said it wasn't a problem. I was also given my new position of Automation Consultant since they needed to hire someone in my absence to handle my accounts.

Since then I have asked for time off to be here for this incredible opportunity, as well as for a month next year to attend Aircraft Maintenance Officers School. As with all of the other requests, McNaughton-McKay has accommodated me, without question.

On a visit to the Charleston branch June 25, 2003, I thanked David Beattie again for his policy on activations. He then told me that when activation happens again, as it inevitably will in today's world, he will make sure that I am paid the same benefits as before, except that they will not end until I return from Active Duty.

I am pleased to be an integral part of two great teams, who value me and my family, and I would hope that any employers who are able to do so, would consider providing the same benefits to their Reservists.

Again, I'd like to thank you for the opportunity to be here and to thank you for your continued support of our military men and women, and for recognizing the contributions of my boss, David Beattie, as a true patriot.

THE MILITARY COALITION
201 North Washington Street
Alexandria, Virginia 22314
(703) 838-8113

STATEMENT

of

THE MILITARY COALITION

on the

Uniformed Services Employment and Reemployment Rights Act

Before the

Subcommittee on Veterans' Benefits
House Committee on Veterans' Affairs

July 24, 2003

Presented by

Colonel Robert F. Norton, USA-Ret.
Co-Chairman, Veterans' Committee
The Military Coalition

Biography of Robert F. Norton, COL, USA (Ret.)
Deputy Director, Government Relations, MOAA
Co-Chair, Veterans' Committee, The Military Coalition

A native New Yorker, Bob Norton was born in Brooklyn and raised on Long Island. Following graduation from college in 1966, he enlisted in the U.S. Army as a private, completed officer candidate school, and was commissioned a second lieutenant of infantry in August 1967. He served a tour in South Vietnam (1968-1969) as a civil affairs platoon leader supporting the 196th Infantry Brigade in I Corps. He transferred to the U.S. Army Reserve in 1969 and pursued a teaching career at the secondary school level. He joined the 356th Civil Affairs Brigade (USAR), Bronx, NY and served in various staff positions from 1972-1978.

Colonel Norton volunteered for active duty in 1978 and was among the first group of USAR officers to affiliate with the "active Guard and Reserve" (AGR) program on full-time active duty. He specialized in manpower, personnel, and quality-of-life programs for the Army's reserve forces. Assignments included the Office of the Deputy Chief of Staff for Personnel, Army Staff; advisor to the Asst. Secretary of the Army (Manpower & Reserve Affairs); and personnel policy and plans officer for the Chief, Army Reserve.

Colonel Norton served two tours in the Office of the Secretary of Defense (OSD). He was responsible for implementing the Reserve Montgomery GI Bill as a staff officer in Reserve Affairs, OSD. From 1989 –1994, he was the senior military assistant to the Assistant Secretary of Defense for Reserve Affairs, where he was responsible for advising the Asst. Secretary and coordinating a staff of over 90 military and civilian personnel. During this tour, Reserve Affairs oversaw the call-up of more than 250,000 National Guard and Reserve component troops for the Persian Gulf War. Colonel Norton completed his career as special assistant to the Principal Deputy Asst. Secretary of Defense, Special Operations / Low Intensity Conflict and retired in 1995.

In 1995, Colonel Norton joined Analytic Services, Inc. (ANSER), Arlington, VA as a senior operational planner supporting various clients including United Nations humanitarian organizations and the U.S. Air Force's counterproliferation office. He joined MOAA's national headquarters as Deputy Director of Government Relations in March 1997.

Colonel Norton holds a B.A. in philosophy from Niagara University (1966) and a Master of Science (Education) from Canisius College, Buffalo (1971). He is a graduate of the U.S. Army Command and General Staff College, the U.S. Army War College, and Harvard University's Senior Officials in National Security course at the Kennedy School of Government.

Colonel Norton's military awards include the Legion of Merit, Defense Superior Service Medal, Bronze Star, Vietnam Service Medal, Armed Forces Reserve Medal, Army Staff Identification Badge and Office of the Secretary of Defense Identification Badge.

Colonel Norton is married to the former Colleen Krebs. The Nortons have two grown children and reside in Derwood, Maryland.

MISTER CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE, on behalf of The Military Coalition, a consortium of nationally prominent uniformed services and veterans' organizations, I am grateful for this opportunity to express our views on issues concerning the Uniformed Services Employment and Reemployment Rights Act (USERRA). This testimony provides the collective views of the following military and veterans' organizations, which represent approximately 5.5 million current and former members of the seven uniformed services, plus their families and survivors.

- Air Force Association
- Air Force Sergeants Association
- Air Force Women Officers Associated
- American Logistics Association
- AMVETS (American Veterans)
- Army Aviation Association of America
- Association of Military Surgeons of the United States
- Association of the United States Army
- Chief Warrant Officer and Warrant Officer Association, U.S. Coast Guard
- Commissioned Officers Association of the U.S. Public Health Service, Inc.
- Enlisted Association of the National Guard of the United States
- Fleet Reserve Association
- Gold Star Wives of America, Inc.
- Jewish War Veterans of the United States of America
- Marine Corps League
- Marine Corps Reserve Officers Association
- Military Chaplains Association of the United States of America
- Military Officers Association of America
- Military Order of the Purple Heart
- National Association for Uniformed Services
- National Guard Association of the United States
- National Military Family Association
- National Order of Battlefield Commissions
- Naval Enlisted Reserve Association
- Naval Reserve Association
- Navy League of the United States
- Non Commissioned Officers Association
- Reserve Officers Association
- The Retired Enlisted Association
- The Society of Medical Consultants to the Armed Forces
- United Armed Forces Association
- United States Army Warrant Officers Association
- United States Coast Guard Chief Petty Officers Association
- Veterans of Foreign Wars
- Veterans' Widows International Network

The Military Coalition, Inc., does not receive any grants or contracts from the federal government.

Importance of USERRA

Our nation is undergoing the largest protracted mobilization of National Guard and Reserve forces since World War II. According to the Defense Department (DoD), since September 11, 2001, more than 292,000 members of the National Guard and Reserve forces have been mobilized on federal orders to support ongoing military operations in the nation's war on terror at home and abroad. 204,000 Guard and Reserve servicemembers remain on active duty and about 88,000 of the total number mobilized have been released from duty back to their hometown communities. Approximately 15,000 of the servicemembers who remain on active duty have received orders extending their service obligation to a total of 24 months active duty.

Given the size and unknown conclusion of these activations, the laws that protect the reemployment rights of our nation's citizen-soldiers cannot be over-emphasized.

Job One: Protect Reemployment Rights

Under the USERRA, Reemployment rights extend to persons who have been absent from a position of employment because of "service in the uniformed services." "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service, including:

- Active duty
- Active duty for training
- Initial active duty for training
- Inactive duty training
- Full-time National Guard duty.
- Absence from work for an examination to determine a person's fitness for any of the above types of duty.
- Funeral honors duty performed by National Guard or reserve members.
- Duty performed by intermittent disaster response personnel for the Public Health Service, and approved training to prepare for such service (added by Pub. L. 107-188, June 2002). See Title 42, U.S. Code, section 300hh-11(e).

The "uniformed services" consist of the following:

- Army, Navy, Marine Corps, Air Force, or Coast Guard.
- Army National Guard or Air National Guard.
- Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve.
- Commissioned Corps of the Public Health Service.
- National Oceanic and Atmospheric Administration Corps of Commissioned Officers (NOAA Corps)
- Any other category of persons designated by the President in time of war or emergency.

Improving USERRA and Its Implementation

The Military Coalition (TMC) is grateful to Congress for revising and improving employment and reemployment rights legislation under the Uniformed Services Employment and Reemployment Rights Act of 1994 following the first Persian Gulf War, and again in 1998.

A summary of implementation and policy issues that TMC believes can strengthen the USERRA follows.

- Escalator Principle and Merit Raise Problem. The "escalator" principle of the statute requires that each returning servicemember actually step back onto the seniority escalator at the point the person would have occupied if the person had remained continuously employed. The principle applies to pay increases and other benefits arising from seniority. The escalator principle appears to work as intended regarding fixed pay or pay scale increases that are based on published pay tables, such as those used by the federal government. However, the application of the principle to merit pay increases that are based on annual evaluations is less certain. For example, if a reservist employee is activated for 12 months and is told upon return to the workplace that the employer will not award a pay increase when one is based on performance evaluations of actual work performed. [The theory in such cases is that since the mobilized reservist performed no work for the employer during the activation, an evaluation would not be performed, and therefore a merit pay increase would not be awarded when the reservist returned to the workplace]. The Reserve Officers Association (ROA), a charter member of TMC, has received a number of inquiries from mobilized reservists regarding this issue.

TMC recommends that the Subcommittee strengthen the escalator principle to ensure that reemployed servicemembers are not denied merit pay increases based on the lack of a scheduled performance evaluation during military absence. We recommend, for example, that an average of two or three previous merit increases, if awarded, be used to set a reemployment pay increase.

- State Employees. [38 USC Sec. 4323] Because of a line of US Supreme Court cases interpreting the Eleventh Amendment of the Constitution as not allowing individual state employees to sue their state government employers, without the state waiving its sovereign immunity under various federal laws, Congress amended the USERRA in 1998 (P.L.105-368), and decreed that state employees may assert their USERRA rights against their state employers by having the US Department of Justice (DoJ) sue the State Governments on their behalf.

  Going back nearly five years, there have been no reported cases where the DoJ or the US Attorneys have sued a state on behalf of a USERRA state employee complainant. This provision is seriously broken. State employees have no avenue to sue, because unlike Federal employees and private employees who may still hire private counsel as an alternative to a non-responsive "free" federal attorney, case law does not allow these individuals any remedy to sue individually to enforce the USERRA.

This issue has potentially serious consequences for potentially many hundreds and possibly thousands of returning Guard and Reserve servicemembers. The states can effectively abrogate the clear mandate of the USERRA. Down the road, reenlistment and retention programs for the National Guard and Reserve could be seriously eroded if the DoJ maintains its hands-off attitude to state-employee reemployment rights cases. With ever-growing reliance on the reserve forces, the nation cannot afford to suffer a "hollow Army" crisis through negligent handling of legitimate grievances against state employers made by reemploying Guard and Reserve servicemembers.

The Military Coalition recommends the Subcommittee review the lack of DoJ enforcement of USERRA and establish a requirement for that department to accept such cases. TMC further recommends that the Subcommittee establish a reporting requirement for the DoJ under Section 4323 to assess the effectiveness of the provision for state employee-reservists with legitimate USERRA claims against state employers that do not waive their sovereign immunity in such cases..

- Non-functioning role of the Office of Special Counsel. [38 USC Section 4324] Section 4324 provides for the enforcement of rights for Federal Executive Agencies. The statute authorizes the Secretary of Labor to refer a complaint for litigation under the USERRA before the Merit Systems Protection Board (MSPB). The Secretary "shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5". If the Special Counsel is satisfied that the servicemember's rights under the USERRA have been violated, the Special Counsel is authorized to represent the servicemember before the Merit Systems Protection Board.

  All well and good, but the Office of Special Counsel has never represented a member of the Guard or Reserve before the MSPB, and it apparently has neither the intention nor the resources to do so. Consequently, returning servicemembers who wish to file a claim under USERRA against their federal agency employer must hire their own counsel or represent themselves directly before the MSPB. It is our understanding that the MSPB has ruled on at least 100 cases brought before it by Guard and Reserve federal employees. But that record does not justify the indifference of the Office of Special Counsel, especially in cases where employees may not have the resources to pay for counsel or adequately represent themselves.

TMC urges the Subcommittee to strengthen the right to actual counsel for National Guard and Reserve servicemembers who wish to pursue a complaint against a Federal Executive Agency employer.

- Rules to Support Implementation of USERRA [38 USC Section 4331] This section permits the Secretary of Labor (DoL) in consultation with the Secretary of Defense to prescribe regulations to implement the statute. However, since 1994, DoL has never promulgated regulations to implement the USERRA. We believe that all stakeholders – reemploying reservists, employers, courts, attorneys, DoL staff, and others -- would benefit greatly

from the publication of regulations to formally implement the USERRA. The lengthy delay in issuing implementing regulations for the USERRA is unacceptable and should be remedied as quickly as possible.

It has also come to our attention that DoL / Veterans Employment and Training Service (VETS) has been reviewing a "USERRA Handbook" for a considerable period of time; it provides insight, guidance, and case histories on the application of USERRA in the workplace. Although the DoL / VETS website has a link to DoL's "A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA)" (March 2003), the Guide provides little help for interpreting the law. The Guide also does not describe the role of the Office of Special Counsel in representing reservist-employees of the Federal Executive Agencies.

TMC recommends that Congress amend the USERRA to require the Secretary of Labor to issue regulations implementing the USERRA by changing "may prescribe regulations" to "shall prescribe regulations" in Section 4331. TMC further recommends that DoL / VETS be provided the resources necessary to publish a "USERRA Handbook".

- USERRA and Family Medical Leave Act (FMLA) benefits. [29 USC Sections 2601-2654] In July 2002, the Department of Labor (DoL) issued a memorandum regarding protection of reemployed uniformed servicemembers rights to family and medical leave benefits under the provisions of the Family and Medical Leave Act of 1993 (FMLA) and the Uniformed Services Employment and Reemployment Rights Act of 1994. USERRA requires that returning veterans receive all benefits of employment that they would have obtained if they had been continuously employed, including eligibility for leave under the FMLA.

It is the sense of TMC that the linkage of FMLA benefits to USERRA is little known or understood in the Guard and Reserve community and by employers.

TMC recommends greater investment in resources to provide outreach to military reservists, families, and employers on the FMLA benefits for returning Guard and Reserve servicemembers.

- Upgrade USERRA Support and Outreach. The FY 2004 budget submission for DoL / VETS includes only a very modest increase in resources to support USERRA investigative and outreach activities. The Budget Request shows only a very modest increase of 200 new cases projected to be opened under the USERRA from FY 2003 to FY 2004. That hardly seems sufficient to handle the likely influx of claims arising from some of the nearly three-hundred thousand members of the Guard and Reserve who have been mobilized since 9/11, and the many thousands more who will be called up to replace them as rotations to Iraq and other campaigns are set.

- The total Budget request for USERRA activities for FY 2004 is only $7,451,000, a paltry sum for the likely surge in USERRA workload that is sure to occur.

> Returning reservists who are denied reemployment rights can wind up facing a second enemy when they get back home with no buddies by their side to help. Even the most well-intended employers may be tempted to deny certain rights of reemployment if they perceive that the government has neither the resources nor the intent to aggressively pursue reemployment rights claims.
>
> The consequences for retention and future recruiting could be disastrous if the word gets out that the servicemember can't get her job back and must fight alone for months and years to win her claim for reemployment.

TMC, therefore, recommends that the Subcommittee authorize an outside review of the DoL / VETS and DoJ resource requirements for adequate USERRA compliance activities.

Finally, TMC wants to bring to the Subcommittee's attention the problems often faced by student reservists when they are called to serve the nation on active duty. Although student reservists, as students, are not "employees" of academic institutions, they face re-admission problems that mirror reemployment rights situations. These problems include students being treated as drop-outs when mobilized, being required to pay interest and penalties for failing to pay federal student loans, and denial of requests for student loan deferments, and incomplete or failing grades for coursework.

Members of this Congress have responded to their reservist-constituents' concerns by introducing a number of bills during this 108th Congress to provide better academic reinstatement protections for mobilized members of the Guard and Reserve. In fact, the House version of the National Defense Authorization Act for FY 2004 includes a provision that authorizes the Secretary of Education to make policy decisions that support reservists who lose academic standing, are penalized regarding deferment of their federal student loans, and related problems.

TMC believes that academic reinstatement rights should be guaranteed either under the USERRA or the Soldiers and Sailors Civil Relief Act, as Amended. We recommend that the Subcommittee work with the Total Force Personnel Subcommittee of the House Armed Services Committee to ensure that returning Guard and Reserve servicemembers are able to be fully re-instated in the academic or training program they were required to leave when activated.

The Military Coalition appreciates this opportunity to appear before the Veterans Benefits Subcommittee on the issue of improving the Uniformed Services Employment and Reemployment Rights Act. Your work on behalf of our nation's servicemembers and veterans is very important to them and their families and we appreciate your "stepping up" to do the right thing on their behalf.

STATEMENT OF

MR. JOHN RYAN

SENIOR VICE PRESIDENT FOR HUMAN RESOURCES
SCHERING PLOUGH CORPORATION

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

OVERSIGHT HEARING ON
THE ADMINISTRATION OF THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA – PL 103-353) BY THE U.S. DEPARTMENT OF LABOR

WASHINGTON, DC

JULY 24, 2003

Mr. Chairman and Members of the Subcommittee

My name is John Ryan. I am Senior Vice President for Human Resources and a member of the Executive Management Team at the Schering Plough Corporation. Schering-Plough is a U.S. research-based pharmaceutical company headquartered in Kenilworth, New Jersey. I am here to today to tell you about the special effort we make as a company to fully support our employees who have made a commitment to their country to serve in the armed forces reserves.

Our company policy on reservists is something important to me personally. I am proud to say I served as an Army Reservist with the New Jersey 78th Lightning Division for six years. I know first hand how important it is to provide employment support for our country's armed forces, including the hundreds of thousands who serve in our military's reserve units.

As a human resources professional for the past 42 years, I applaud the Subcommittee for drawing attention to how employers' policies toward reservists can:

- Preserve and maintain the career of an employee called to active duty;
- Keep that employee and his/her family whole during their military service; and,
- Benefit the employer by strengthening their ties of loyalty with an employee.

Over the decade since enactment of the Uniformed Services Employment and Reemployment Rights Act (USERRA), we have seen increasing demand for skilled workers at the same time as our nation's Armed Forces have become more reliant on the National Guard and Reservists.

It has been my responsibility to position Schering-Plough to recruit and retain talented, skilled and motivated employees in this more competitive hiring environment. The assurance we make to men and women who have chosen to serve in the Guard or Reserves is one important element of our program to attract and retain qualified employees. We also view it as part of our civic responsibility to support our Nation and the men and women who serve it. We believe employment and reemployment rights are a critical factor in recruiting men and women to serve in Guard and Reserve units that this Nation increasingly relies to meet our national defense needs.

This country is at a critical juncture today in its ability to make good on its commitment to men and women in uniform. According to the Department of Defense, there are 1.2 million men and women in the Reserves and National Guard today, over 220,000 of whom have been called to active duty as a result of the conflict in Iraq. Many of these reserve personnel will be re-deployed home from the service over the next several months and re-enter the workforce, along with an estimated 160,000 military service personnel who separate from military service each year. While all of these personnel are protected by USERRA, how these protections are implemented can make all the difference for these men and women and their families.

As a company, while we are aware of our obligations under USERRA, we consider them a "floor" for what we provide our employees. The effect of the USERRA requirements are to "freeze time" for the employee called to active duty. For anyone who has been called up, they can tell you this time is anything but frozen.

A recent report by the Department of Defense, entitled "Profile of the Military Community," points out that a majority of professional soldiers and Ready Reservists have families at home. On average, 60 percent are married and 30 percent have children. For many of these employees, active duty means having to give up a regular paycheck, or even part of a paycheck and trying to secure other forms of health and life insurance to protect their families while they are protecting the rest of us. The right of these employees to return to their job or a similar one, with the same pay and health benefits as when they left is an important one – there is no question about that. We think companies should do more -- in many cases, they do.

Since 1991, Schering Plough has maintained a simple straightforward policy for Guard members and Reservists called to active duty. I have attached a copy of our policy, which, in summary, is to:

- Continue full pay for the duration of service without offset of their Schering Plough pay by their military pay;
- Continue all company-provided and optional employee benefits for the duration of service except for medical or dental services provided them from the military or U.S. Government;
- Project jobs for all employees who are called to active duty, placing them in the same or a comparable position upon returning to work; and,
- Upon re-employment, continue all seniority-based benefits (e.g. vacation, profit sharing and sick pay allowance) as though the employee had been actively employed during the tour of duty.

Our policies come home to us in the very real difference they make for reservist employees when they are called to active duty -- and to their families. A recent article that appeared in G.I. Jobs magazine (which I have attached) profiled one of our employees -- Lt. Col. Larry Adrian – who was called up and served in Iraq in Desert Storm in 1991 and Bosnia in 1995, and is now awaiting a call to provide rehabilitation and humanitarian work in Iraq. As Larry was quoted saying in the article: "Here it was – the capability you could go away without worry about finances…or your family. It was a great relief."

We are, of course, proud that our pursuit of these policies has been recognized recently by the Reserve Officers Association survey where Schering Plough was ranked first among the "Top Ten Employers for Reservists". We believe these policies are "the right thing to do" and they make sense for business, too, for a number of reasons.

All of our employees come to Schering-Plough with skills, experiences, and traits that enable them to make valuable contributions to our company. In my experience, our Guard and Reserve members have, on balance, been mature, directed and committed employees. They have often come with a deep sense of loyalty -- to their country and to their employment -- and have learned how to effectively manage their obligations as an employee and as a citizen-soldier.

The Guard and Reserve provide substantial educational and training benefits that can also contribute to an employee's productivity on the job. The Department of Defense invests $14 billion a year in training and education of service members. When they enter or reenter the job market, these men and women come with marketable skills and a work ethic necessary to meet the demands of a modern economy. This skill development is an added benefit we derive from the commitment we make to our reservist employees.

While the level of support we provide to reservists is easier to sustain in a large organization like ours, some level of support can also work in medium and small enterprises. Companies should be encouraged to publicly affirm their support for their reservists and guard employees by signing the Statement of Support provided by the Department of Defense's Employment Support of the Guard and Reserves (E.S.G.R.). For anyone interested in seeking help in reviewing their employment policies, I encourage them to contact the very talented people at E.S.G.R.

Thank you, Mr. Chairman and Members of the Subcommittee, for allowing me to present the views of the Schering Plough Corporation, as well as my own personal experiences, on how employers of all sizes can benefit from demonstrating their support for Guard members and Reservists.

Statement of Michelle Comeau-Dumond before the Veterans' Affairs Committee, Subcommittee on Benefits Hearing on the Department of Labor's Administration of the Uniformed Services Employment and Reemployment Rights Act
July 24, 2003

Good Morning Ladies and Gentleman,

My name is Michelle Comeau-Dumond. I am a disabled veteran from Operation Desert Storm, a wife of a Maine National Guard member currently serving in Operation Iraqi Freedom, and a mother to two beautiful little girls. I am here before you today as a person who has been on both sides of the uniform. I have seen the affects of combat and the affects on military families torn apart by deployments. I have watched hundreds of hours of TV concerning various stories about the war on terrorism, but what I want you to see today is the affects it is having in our own back yards of the United States of America.

My story and family are not unique. My girls and I are but one of some 200,000 Guard and Reserve families effected by this current situation in the world, and not just in Iraq but Kuwait, Afghanistan, Bosnia, Kosovo, and several other countries and locations where Guardsman and Reservists are deployed, stateside and abroad. Much like what happen to us happens to most military service members. They get a call at any hour night and day, and are expected to respond. The families rush around to wash cloths, pack bags, wives hold back their own tears and wipe away those of their children's. We do our best to do our jobs, give'em a big hug & kiss and put our best face foreword as we watch them roll down the road. We proudly send them off to war, while dealing with emotions of anxiety, confusion, uncertainty, and overall stress and concern about how our family will survive.

Our family life style is now drastically changed without our loved one and breadwinner, as I found out first hand the day I returned home after the send off. . It was February, in northern Maine and we had been hit with one the worst blizzards in many decades; Aroostook County had been declared a disaster area. I arrived home to find 6 feet of snow in my driveway, and 10 feet on my garage roof. I could not open the garage door to get any shovels out because the beams were buckling. The snow blower would not start, and I couldn't find any one to immediately repair it. My girls and I dug out our door with our hands to get into the house and I started to make phone calls for help. We had not had a family support briefing yet so I did not have the phone numbers needed to reach them and I could find no other help!!! I managed to haul our suit case through the snow bank, and drove the car into the bank in front of the drive way, hoping no one would hit it.

The next day I got a path dug to the house, the temp had dropped to 45 deg. below zero. The day after that I was taken by ambulance to the hospital with Pneumonia. I forced the doctor to release me from the hospital after promising I would not shovel, as I had no one to take care of the girls now.

It took me a week and a half to clear snow and had to pay people to do work my spouse would normally have done. The snow blower was easily fixed but cost me $50.00 when my spouse always fixes those items. Now that the snow is removed it has revealed that the deck on top of the garage needs to be repaired and the siding on the house needs to be replaced. These are things my spouse would do for cost, but now I have to pay

someone to do them. These things cannot wait for my husband to return, because winter is coming again and things will only get worse, yet I have no help and not enough money to have the work done.

In March, my spouse temporarily returned to his home unit in Bangor, to train with their aircraft and fly them to their port of departure. He made arrangements to stay at a local hotel in Bangor, a 4 hour distance from our home. My husband was told his military credit card could be used for the room, and to save all receipts for travel and food for reimbursement. When he checked out of the room the card would not work, we were forced to use our personal money to pay for the room, food and travel. A cost of almost $1700.00 to the family which put a huge financial burden on us...

As a result, I fell behind on monthly payments on every bill and ran out of heating oil during the coldest winter in northern Maine history. We had purchased a heating oil plan but this was the first year we did not make it through the winter. I was forced to beg for oil, when two months earlier I had perfect credit and had never missed a payment. I knew the family support program was there to help, but knew there were families even worse off than us, knew they were very limited on the funds and staff available. After all, we still had food, a roof and now heat, at least for now. But it wasn't long before I was forced to go to the church and ask for food. On two occasions they assisted me with food for my children.

It seemed like every day something was breaking down; the driver's window in the truck, an oil leak in the car, the screen door was falling off, the faucet in the sink has been replaced with a pair of pliers. Just when I thought I could not take any more my grandfather passed away. I had no way to get there. I had no money and no cloths because I had lost 40 pounds from stress and was working on my third bout of pneumonia. I had reached my breaking point. I picked up the phone and asked our state family support coordinator, who is located in Augusta, 6 hours away, for help. I told her I needed just enough money to get there and back; a 500+ miles trip, plus meals on the roads one way. Once there I could stay with family and borrow cloths. The state family support coordinator asked if I had enough money to get to Augusta. I had a gas card that was not quite maxed yet, and 6 hours later my girls and I were in her office where she gave me $200.00 for travel and a new outfit to wear to the funeral. I never thought I could be so happy to go to a funeral, but now I would be able to say goodbye to my grandfather and my children's great grandfather.

We returned home thinking things were looking up to find out my husband was loosing his job because of this little known clause in the USERRA Law. This clause say's you can leave your employer to defend your country, leave your family to fend for themselves, and there is no job protection if the employer has a company wide layoff. Yes, you heard me correctly; when my husband returns home from Kuwait he will be unemployed. How will he be able to seek employment in Northern Maine while he is honorably defending his country and the freedom of others in Iraq? The paper mill he works for is laying off 100+ employees, two of which are currently deployed; do you not think the other 98+ will have a head start in filling all the available jobs in the area where they live? If they wait till they return home, what kind of luck will we have in selling a house in a community where high unemployment exists? There must be a way to protect our country's protectors! I have a few ideas; Schooling for new trades, job placement

when at deployment station and Real Estate opportunities for ones who are forced to relocate.

My stories seem comical now and perhaps they are small compared to others, but in Maine alone we have felt the pains of the war on terrorism. Many spouses and families have suffered. Many spouses left behind have been fired, or quit their jobs because their employer would not accommodate them with shorter hours to care for their families special needs, or simply to manage the day to day matters of home.

Why are the families of the Guard and Reserve fighting just as hard at home to support their spouses and yet have no legal protections themselves? There are spouses who can't drive due to visual handicaps and live in rural areas away from central commands and no way to help them. They are left to the wolves, why do we not have special provisions set aside for these special needs people when their spouse is called away to serve our country. If provisions were set aside they could arrange for extra help with there children and rides to get grocery. I am not asking for tickets to Disney World, I am simply asking for basic life provisions.

You're probably thinking, but we pay your spouse for military service. Yes, you do. But here is a fact I don't know if you realize. In my family alone we have lost $12,000.00 for one year's time while my spouse is serving. In a family that makes under $50,000.00 a year that is a large reduction in our income. Families need protection as well as soldiers. My children were chastised at school and teachers singled them out, simply because their father went to war. My 8 year old desperately needs counseling and the support group did try to find us some in the area but to no avail. There are no qualified civilians to deal with children and real war problems.

Guard and Reserve families need more family support during deployments; they are the only ones that know what each other is going through. Words can not say what family support coordinators and Family support programs do for those left behind. But Maine has only one coordinator that does the work of 10 people, 24/7 with very little money, and assistance. Often times they rely on local donations. Out reach to all the families is difficult too. The state of Maine alone has 417 miles of interstate, and another 120 miles north of that from north to south. With several guard and reserve units activated overseas and abroad, some 1,000 citizen-soldiers from Maine alone. We are a very rural state and our coordinator does her best with what she is given. What must be done is to protect and provide both our soldiers and their families support and protection by federal law. Without that many other families will suffer and struggle through many of the same problems that can be avoided.

Family Assistance centers have been set up during this mobilization. It consists of a person on the other end of the phone to refer us to outside sources. They do a fine job with what they have, but are not established until war and are only equipped to refer. We need is inside resources, trained professionals. They do not have the training to deal with what we have been exposed to. We need professional staff on hand like an active duty base would have. The family program should be staffed like an Army Community Center with counselors for both child and adult, financial counseling services, job placement help, legal counseling and more.

The family program schedules dinners and informational meetings through out the state at different times and locations. They try very hard to reach us all. They also schedule events for the children and adults so we may socialize and just be together.

Being able to talk to people who are in the same situations having the same feelings make a huge difference for me emotionally and physically. The family program would be able to reach more of us with more funding and assistance. I live 1 ½ hours away from the closest meeting and can not always make it due to financial reasons, that one trip could mean two weeks of gas in my car at home. I am the only one in this part of our county so it would not make sense for them to change the meeting. However, if they could help with gas I would be fine, and I know other families are in the same position.

I stand before you as a proud spouse and American. I will continue to stand behind my husband and my country. I appreciate the opportunity to address you today and I ask you to stand also for the issues that are affecting our military families.

Thank You

Examining the Department of Labor's Administration of the Uniformed Services Employment and Reemployment Rights Act under chapter 43 of title 38, United States Code

Exxon Mobil Corporation Oral Testimony for the Committee on Veterans' Affairs, Subcommittee on Benefits

Thursday, July 24, 2003

Good morning, Mr. Chairman and Members of the Benefits Subcommittee of the Veterans' Affairs Committee.

My name is Jim Rouse and I am a Vice President of ExxonMobil and the Corporation's senior official in Washington, D. C. I feel qualified to talk to you today about my Company's benefits programs as they relate to employees called to active military duty for two reasons: first, before coming to Washington, I managed the Human Resources function for Exxon Company, U.S.A. for more than a decade; and second, a year after joining the Company in 1962, I was called to active duty as a Lieutenant in the United States Army. For two years, I was the direct beneficiary of the Company's benefits under our Military Leave provisions, which I will describe.

ExxonMobil is the world's largest publicly traded petroleum and petrochemical company with operations in nearly 200 countries and territories on six continents. More than 36,500 (37%) of our employees are based in the United States.

Our military leave policy, which dates back to the 1940s, includes the following basic provisions:

1. If an employee enters, is inducted or recalled to full-time active duty with the Armed Forces of the United States, including the Reserves, employees can qualify for both a special lump sum payment and payment of the difference up to 50% of their military pay versus their Company pay while on active duty.

2. If an employee is called up in emergency situations for full-time temporary duty that is not anticipated to exceed two months, employees receive full pay, offset by any military pay received.

3. If an employee is called to active service in connection with initial or periodic military training that is not anticipated to exceed two months, employees receive full pay, offset by any military pay received, if the service is required.

Participation in ExxonMobil benefits continues for employees on leave based on the benefit plan status of the employee immediately prior to the military call-up..

This status excludes any vacation due the employee. A payment in lieu of vacation can be made for pending vacation credits at the employee's request when granted a military leave.

Special Provisions to our Military Leave Policy were adopted in October 2001 in response to Operation Enduring Freedom and extended to include Operation Liberty Shield and Operation Iraqi Freedom. Our standard policy for Full-time Active Duty Leave provided for payments while on military leave of up to 50% of normal pay, offset by military pay received. The special provisions increased the employee's pay protection under this policy from 50% to 100%, offset by military pay received. All other benefit provisions were continued.

There is no minimum Company service requirement to receive Company pay and benefits while on military leave.

More than 50 U.S.-based ExxonMobil employees were called to active duty in connection with the wars in Afghanistan and Iraq and in the U.S. Homeland Security operation between September 2001 and May of this year. ExxonMobil employees from the United Kingdom, also served during that period and were similarly supported. We recognize that military service requires sacrifices by our employees and their families. That is why ExxonMobil policy exceeds the minimum requirements established by law.

The requirements of USERRA seem very reasonable and the guidelines have been written for administrative ease. Because the requirements of the law are clear and well defined by the Department of Labor, ExxonMobil hasn't experienced employee complaints with respect to denial of benefits. Human Resources reports they haven't had a single dispute in this area with the administration of the USERRA or the DOL.

Complying with the Act has not come without its challenges for us as a company. For example, as employees are called to active duty, uncertainty exists about the expected duration of the call-up. Multiple call-ups of the same individual, and, in many cases, the extended duration of the call-up itself -- several for more than a year -- poses planning and staffing challenges. When employees are called up a second time within a relatively short period, it causes the Company to make accommodations for the first military leave, reverse those arrangements and generate new personnel moves.

In closing, let me say we believe the current requirements of the USERRA are reasonable and the Department of Labor's administration of the Act seems pragmatic from our perspective. Again, I wish to thank the Subcommittee for this opportunity to share an overview of our company's experience and views on the Uniformed Services Employment and Reemployment Rights Act.

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Lucille J. Cavanaugh
Vice President
Human Resources

ExxonMobil

July 18, 2003

Congressman Henry E. Brown, Jr.
Chairman
Subcommittee on Benefits
335 Cannon House, Office Building
Washington, DC 20515

Dear Congressman Brown:

This letter serves to inform you that ExxonMobil does not accept any federal funding in relation to the examination of the Department of Labor's Administration of the Uniformed Services Employment and Reemployment Rights Act under chapter 43 of title 38, United States Code.

Sincerely,

LJC:msc

Testimony of William B. Timmerman, Chairman and CEO of SCANA Corporation
Committee on Veterans' Affairs, Subcommittee on Benefits, July 24, 2003

Chairman Brown and Members of the Subcommittee:

I am honored to be here today representing 5,500 employees of SCANA Corporation, who share in the recognition of our company as an "exemplary employer for our valued Reservists." A few quick facts about our company will provide some context for my testimony.

SCANA Corporation is the successor to a company founded 157 years ago. Today, we are a Fortune 500 company, serving electricity and natural gas to significant portions of South Carolina, North Carolina and Georgia. Thirteen percent (13%) of SCANA's outstanding common stock is owned by its employees. Our average employee owns approximately 2,000 shares of our stock which is freely tradeable by them. Those shares have an approximate market value of $66,000 and pay an annual dividend of $2,800. Our average employee has been with us for 14 years and expects to work with us until retirement.

Our business success is built on 6 corporate values relating to service to communities, achievement, open communications, respect and caring for all people, excellence in operations and safety, and always doing the right thing. I am especially proud that the veteran's organizations recognized us for "doing the right thing." I sincerely believe we "walk the talk" with respect to our values, especially doing the right thing.

There also is an unwritten business principle which we diligently follow--- Employees treat customers as well or as poorly as they perceive they are being treated by the company. It's human nature, and a very powerful and very real predictor of employee behavior in the work place. Our business success

depends on serving 1.1 million natural gas customers and 600,000 electric customers every day. In today's world, it takes massive amounts of teamwork and personal communication to make our efforts come together so that our customers can take reliability, safety, integrity and caring energy service for granted.

So what do we do for reservists who are called away for active duty?

First, we continue all pay and benefits at current levels until their return, reduced only by the amount of their military pay. Their total pay, including military pay, qualifies for matching in our 401(k) savings plan, and counts toward their retirement. We keep them eligible for all bonuses, and in fact recently paid incentive bonuses to reservists on active duty which were earned by company employees for performance in 2002. Obviously, their jobs are protected for their return.

Beyond this, we work hard to keep them in our company family. We organized support groups for the families left behind. Managers and other leaders in our company monitored the families' needs while the reservists were gone. From time to time we sent "care" packages, which included a lot of company publications and other news. Finally, each reservist got a letter from me, which provided them with my direct email address and encouraged them to let me know if they needed anything that I could make happen. Throughout their deployments I have received notes and cards from those deployed. None of them ever had to call on me, which is a very positive sign. For me, it was comforting to know that the channels of communication were open. Other leaders in our company did the same thing. I should point out that these same policies and practices were substantially in place for the last large reserve deployment in 1990-1991.

So why do we do this?

The first reason is my personal commitment to members of the Armed Forces. From 1968 to 1972, I was an enlisted man in the U. S. Navy and served in 1972 aboard the USS America, then deployed to Vietnam. I do not have many happy memories of the treatment of military personnel during that era, or upon transition and reentry into the civilian world. That is history and none of us can change it. Some of us will never forget, even though we may have gotten over it. However, I do use my sphere of influence to ensure all my fellow employees never feel a lack of support or caring, especially those called to active duty.

Going beyond my personal convictions, our treatment of reservists parallels our treatment of other good employees who might be having a significant, temporary personal issue. For example, we work closely with employees who might be going through an extended series of chemotherapy treatments or other physical rehabilitation, might have had a house fire, might have experienced the sudden loss of an immediate family member, or other catastrophic situation that impacts their ability to work a normal schedule for a while. We take a long term view with respect to employment. We are able to do this because our operating assets and our customer relationships are long-lived.

So our policies and practices in this area fit our business model and our customer expectations and needs quite well. However, I could not prescribe our policies for all organizations.

There are many businesses which do not have the size and scope of operations to have the requisite flexibility for these kinds of policies. Some businesses might not have enough financial strength. Some organizations may be in the development stage, or so dependent on an individual's talent or entrepreneurial skills that they are limited as to what they could accomplish.

As I try to think about where our nation seems to be heading from a foreign policy standpoint and from a military preparedness standpoint, it seems that militarily,

we are depending more on the reservists now than ever before. It also seems that there are increasing situations in the world that make the deployment of armed forces, regular and reserves, for limited times more likely than before. Thus the reservist/civilian job market interface probably will be more pressured in the future. Not all organizations can support our reservists the way SCANA does.

Beyond certain basic protections, the treatment of reservists in the workplace probably is similar to a host of other employee/employer relationships. In my experiences, direct explicit communications with no surprises makes that relationship work best.

I do think employers must provide a clearly written delineation of how reservists on active duty will be treated. A clear and explicit set of expectations and policies for the employer, the reservist, and his or her family, would go a long way toward helping reservists find employers who will support their commitments.

My personal thanks to this committee for allowing me to testify today regarding SCANA's experiences with the treatment of our employees who also serve in the armed forces reserve. I would be pleased to answer any questions.

STATEMENT

SCANA Corporation has never received a Federal grant or contract relevant to the subject matter of this testimony.

William B. Timmerman

1997 to Present - Chairman, President & CEO, SCANA Corporation

An energy holding company headquartered in Columbia, SC. The company has been listed on the New York Stock Exchange at "SCG" since 1946, and currently ranks 453 on the Fortune 500.

Education:	Duke University - 1968 B. A. - Public Accounting
	Harvard Business School - 1990 Advanced Management Program
Special Honors:	CPA - State of North Carolina Graduate - Leadership South Carolina
Active Directorships:	
	SCANA Corporation Liberty Corporation ITC Holding Company, Inc. ITC DeltaCom Palmetto Seed Corporation Palmetto Business Forum
Past Directorships:	
	South Carolina Research Authority-Chairman PowerTel, Inc. SouthernNet/TelecomUSA Benedict College South Carolina State Ports Authority
Military:	U. S. Navy

MILITARY LEAVE: NATIONAL EMERGENCIES PROCEDURE	HR 4-001
ISSUE DATE	SEPTEMBER 15, 2001

I. PURPOSE

SCANA fully supports its employees who are members of the United States Military Reserves and National Guard and is committed to fully complying with both the letter and spirit of the Uniformed Services Employment and Reemployment Rights Act ("USERRA") and any related and applicable state laws. Reservists and National Guard members who are called to active duty have a number of rights relating to their employment and benefits while on active duty, as well as certain reemployment rights. Additionally, under certain circumstances, SCANA will offset income lost by those Reservists and National Guard members (hereinafter "activated employees") as a result of their duty.

II. PROGRAM BENEFITS

Each eligible employee will qualify for the following benefits under this program:

Employment Rights: USERRA provides that activated employees, upon honorable completion of their military service, have certain rights and responsibilities regarding the reemployment. These rights vary with the length of duty served:

- **Service of 90 days or less:** Returning employees whose military service was less than 91 days are essentially entitled to reinstatement to the position held prior to emergency military duty.

- **Service of more than 90 days:** Returning employees whose military service was more than 90 days are entitled to reinstatement to the position held prior to emergency military duty or a position of "like seniority, status, pay, and duties." Returning employees are to be restored to the positions they would have attained if they had continued working. Employees reinstated may not be discharged from such positions without cause for a specified period of time after returning from emergency military duty. The duration of the specified time depends on the length of the employee's emergency military duty (generally, whether it is more or less than 180 days).

Company Seniority Rights: Each employee will retain all seniority rights for those benefits they had at the time they were activated to emergency military duty, plus any additional seniority and benefits they would have become entitled to if he or she had remained continuously employed. These benefits include rights under a defined benefit plan, defined contribution plan, health care plan, insurance coverage and awards, bonuses, severance pay, vacation, and the opportunity to select work hours or location of employment.

Emergency Duty Compensation: SCANA will offset income lost as a result of activation to emergency duty. Such offset will be the difference between the activated employee's regular (SCANA) straight time hourly wage rate or salary, less

their military base pay, excluding incentive pay and allowances, based on pro rata monthly pay.

Continued Health Care Coverage: An employee activated to emergency military duty may elect to continue medical and dental health care coverage for up to 18 months, subject to COBRA guidelines, from the date on which the employee begins emergency military duty. At the discretion of SCANA, this 18-month period may be extended if significant issues exist to justify the extension. If electing to continue coverage, the employee activated to emergency military duty will continue to pay the employee's portion of the elected benefit plan currently enrolled in at the time of activation and subsequent departure for emergency military duty. Payroll deductions for health care coverage will be held in arrears while the employee performs emergency military duty and will not be repaid to SCANA until the employee's subsequent return to regular employment status or termination of employment. However, the employee activated to emergency military duty may choose to pay for health care coverage during the period of emergency military duty.

Other Benefits: An employee activated to emergency military duty is eligible to continue any currently enrolled life and accidental death and disability insurance, flexible spending accounts, and short-term and long-term disability insurance during the emergency military duty. (Please note that there may be some wartime and/or military duty exclusions to such coverage.) Payroll deductions will be held in arrears while the employee performs emergency military duty and will not be deducted until the employee returns to regular employment status or termination of employment. However, the employee may choose to pay for this coverage during the emergency military duty.

Retirement Plans: If the employee is a participant in the SCANA Stock Purchase Plan at the time activated to emergency military duty, the employee's contributions will automatically be deducted from his or her SCANA offset pay, if requested by the employee. Company matching monies will be credited as employee contributions are made to the Plan. The employee may elect to have additional employee contributions withheld from his/her offset pay for the portion of his/her base pay paid by the military or he/she may elect to suspend all contributions until such time as he/she returns to regular employment status. It is the employee's right to make up missed employee contributions upon his/her return to regular employment status, and thereby receive credit to his/her accounts for Company Matching funds. The employee may choose to suspend loan payments while on emergency military duty and have loan payments commence upon return to regular employment status.

PTO: Employees on emergency military duty are not required to use earned PTO towards the completion of their emergency military duty, although they may choose to do so. Employees on emergency military duty continue to accrue time towards years of service minimum eligibility in determining annual PTO allotment. Employees who return from emergency military duty during the same calendar year in which they began the duty retain their available PTO balance for that calendar year. If an employee enters a new calendar year while on emergency military duty, PTO that is unused from the previous year can be credited towards the 40 hour Carryover Bank, but is otherwise not carried over. Employees returning from emergency military duty

having entered into a new calendar year will receive their entire annual allotment upon their return, subject to the guidelines of the SCANA PTO policy.

Optional Deductions: Activated employees on emergency military duty may continue to have deductions of optional payments, such as cancer, auto and homeowner's insurance, and credit union loan payments, if the net balance is sufficient to cover these payments.

III. Program Administration

A. Emergency Duty Notification

- When an employee is ordered to active federal or state duty as a result of military emergency, the activated employee must provide written or verbal notice to his/her supervisor unless giving such notice is impossible, impractical, or precluded by military necessity.
- Notice may also be given by an appropriate officer in the employee's branch of service (e.g., his or her commanding officer). There is no minimum time requirement for providing advance notice.

B. Program Sign-up/Orientation

- The employee's supervisor shall notify his or her H.R. Representative as soon as possible to provide relevant information regarding the employee's orders to report to emergency military duty.
- The H.R. Representative will contact the activated employee and conduct the emergency military orientation process.
- During this session the H.R. Representative will cover the policy and procedures regarding emergency military duty, complete the Emergency Military Duty Checklist, and coordinate communications with Payroll, Corporate Compensation and Benefits and the Employee Stock/Pension Plans Departments.
- The employee should bring all appropriate military information (enlistment orders/compensation details) to ensure that all compensation and benefit elections can be completed during the session.

C. Time Reporting During Military Service

- Timekeepers from the employee's normal work location are responsible for timekeeping. Timekeepers will use the code "MP" to designate emergency military duty time for employees on emergency military duty. A day's regular time coded with the letters "MP" is reported for each day of work lost as a result of emergency military duty.

D. Payroll Administration

- The Payroll Department is responsible for payment of the offset to the employee's military pay for the duration of emergency duty. If the employee's military base pay is greater than his or her SCANA base pay, no offset will be paid. This offset will not apply to annual active duty for training periods or IDT duty or any other non-emergency duty as contemplated by this policy.

- Beginning with the first pay period following activation to emergency duty, Payroll will deduct from the employee's paycheck an amount equal to one day's military pay for each working day lost because of emergency military duty. Payroll will make adjustments based upon subsequent increases in military pay as a result of promotion or increase in time of creditable service.

- Upon completion of emergency duty and return to regular employment status, the HR Representative will provide the activated employee with Form 215, "Military Pay Certification for Emergency Duty." The activated employee is required to return the completed form to the HR Representative within 30 working days of his or her return to regular employment status. If it is determined that during the employee's activation to emergency duty, the Company paid an excess or insufficient offset to the employee, the excess or shortage will be corrected. In the case of an overpayment, payroll will work with the employee to arrange a repayment plan, if necessary.

E. Employee Return to Work

Regardless of the length of emergency military duty, the employee returning to regular employment status is responsible for providing documentation from the military to verify all time lost due to emergency military duty. The following service length timeframes will guide the "notification of intent to return" requirements:

- **Service Length (1 to 30 days):** If the emergency military duty was less than 31 days, the returning employee must report back to work either on the first day of the first regularly scheduled work period following completion of service, or "as soon as possible," if reporting on the first regularly scheduled work period is "impossible or unreasonable" through no fault of the returning employee.

- **Service Length (31 to 180 days):** If the emergency military duty is for more than 30 days, but less than 181 days, an application for reemployment (which may be oral) must be submitted no later than 14 days following completion of military service, "or as soon as possible" if the failure to make timely application for re-employment is through no fault of the returning employee.

- **Service Length (more than 180 days):** Applications for re-employment must be submitted within 90 days from completion of military service.

Statement of
Susan LaChance
Manager
Selection, Evaluation, and Recognition
United States Postal Service
before the
U.S. House of Representatives
Committee on Veterans Affairs
Subcommittee on Benefits
July 24, 2003

Good morning, Mr. Chairman and members of the subcommittee. My name is Susan LaChance. I am the Manager of Selection, Evaluation, and Recognition for the United States Postal Service.

The United States Postal Service has a long tradition of employing America's veterans in large numbers. We and the various branches of the U.S. military grew up together as our young nation expanded and matured over the past two hundred years.

As our nation's military deployment needs have evolved, including greater reliance on its Reserve Components, our efforts in support of those needs have evolved as well. We continue to innovate as times change and as we identify areas where we can provide additional support.

With more employees called up for longer periods of time in the post-911 world, I am glad to have the opportunity to learn about best practices and share information with my peers across the nation on improving our USERRA-related programs.

I am particularly pleased to be able to hear first-hand how other employers are innovating and meeting employee needs with regard to USERRA in these changing times.

For the Postal Service, the most important part of our efforts is ensuring that our employees who serve our nation in both a civilian and military capacity receive the employment benefits and protections they are entitled to under the Uniformed Services Employment and Reemployment Rights Act of 1994.

So, I take my responsibility for developing the Postal Service's implementation policies for USERRA very seriously. We understand that USERRA is an essential tool that our Armed Forces need to be able to continue to recruit and retain qualified men and women. We strongly and publicly support USERRA.

In fact, during last year's Veterans Day ceremonies, Postmaster General Jack Potter re-pledged our commitment by signing a statement of support for the Guard and Reserve.

This statement of support was published in our Postal Bulletin for national distribution, and all field offices were instructed to post it prominently in their facilities.

Now, as I review our Reserve and Guard statistics with you, it is helpful to keep in mind that our numbers with regard to serving personnel are, of necessity, approximations. This is because many postal employees exercise their USERRA right to use annual vacation leave during some or all of their time on military duty. As a result, they may not be tracked as on military leave by our timekeeping systems.

The Postal Service employs more than 212,000 veterans, including more than 70,000 who are disabled. And, of that number, nearly 18,000 have a disability rating of more than 30 percent.

Currently, we have some 13,000 men and women who proudly serve our country twice, both as postal employees and as members of the Reserve Component of America's Armed Forces.

Additionally, approximately 30,000 other Postal Service employees completed their service in the Reserve Components while working for the Postal Service and are members of the Retired Reserve.

Since 9/11, approximately 8,000 of our employees have been called to duty to assist in the defense of the nation in various capacities here and abroad. In fact, for our most recent two-week pay period, more than 3,400 employees were currently on military duty. That means, approximately one quarter of our entire Reserve Component membership was on military duty during the first two weeks of July.

These employees serving in the Armed Forces receive paid military leave benefits like those provided by other federal agencies.

For example, we provide postal employees with 15 days of paid military leave and are currently in the process of implementing procedures to pay the full cost of health insurance for up to 18 months for any of our employees on active military duty.

As in the administration of any policy, the Postal Service has developed a number of proactive steps to ensure that both reservists and managers understand USERRA.

For example, in-house Labor and Human Resource publications highlight and explain our policies on a regular basis to those field personnel with the responsibility to see that they are properly implemented.

This year, we began offering specific USERRA training to human resource and labor relations specialists in the field. So far, we have provided this training to 125 of these specialists. We intend to provide additional outreach education in 2004.

Postal Service managers also keep in contact with the Department of Labor to review information and to obtain advice on applying USERRA to specific situations.

The Employer Committee for Support of the Guard and Reserve's (ESGR) mission is to obtain support for our Guard and Reserve forces across the federal government and the private sector. We actively support ESGR and maintain a liaison with the national office. We are also in the process of identifying and assigning a liaison to work with each of the ESGR's state committees.

The Postal Service is the nation's second largest employer of men and women who also serve in the National Guard and Reserve. We are an organization that reaches into every city and town in the country. Communications with our employees – whether their jobs are in post offices, in mail processing facilities, or delivering mail to every home and business in America – is extremely important to us.

Communication involves many outlets, tools, and publications to ensure that we are all always on the same page in our operations and policies.

This communication is critical at every stage of the process as our employees are called up for service, so we are constantly looking for ways to provide information quickly and conveniently to our employees.

One tool is our intranet site, which lists a number of publications and has links to military affairs offices to assist our employees with any questions they might have about this complex topic.

Of course, local personnel officials are also available to answer employee questions directly.

In addition, our Employment and Placement Handbook comprehensively defines how we administer USERRA. Additional instructions to management personnel concerning the benefits available to members of our Armed Forces are also located in our Employee and Labor Relations Manual – a compendium of our administrative policies related to personnel issues

Both of these publications are available in hard copy and on our website, so our employees can easily access detailed information about our policies and procedures regarding military service.

The Handbook spells out our position very clearly. It states, "The Postal Service supports employee service in the Reserve or National Guard, and no action is permitted to discourage either voluntary or involuntary participation."

Employees may be absent to participate in drills or meetings scheduled by the National Guard or Reserve Units of the armed forces; to attend usual summer training periods and to perform any other duty ordered by the National Guard and Reserve Units of the Armed Forces.

We have issued a Standard Operating Procedure for all employees as they enter USERRA-covered military service. This includes providing them with a letter with specific information – in detail – about their leave, benefits and status while on military duty.

So, you can see that we work hard to accommodate the needs of our employees called to duty by our nation's military. We also provide support for their families.

Our Employee Assistance Program offers counseling for employees and their families. And the Employee Assistance Program website has helpful information on a number of topics related to military deployment, including Deployment from a Spouse's Viewpoint; Keeping In Touch With Your Spouse During Military Separation; Coping With Separation; Preparing Children for When Their Parents Are Deployed; What to Do When Loved Ones in the Military Are Deployed; Steps To Making Family Separation Manageable; and Supervisors Tips about USERRA.

We also provide a link to DOL's Veterans' Employment and Training Service website and to the fact sheet that Veterans' Employment and Training Service developed about USERRA.

We continually look at how to improve the services we provide to our employees and their families. As we see ways to improve communications and programs for USERRA-covered employees, we will continue to implement them nation-wide as quickly and effectively as possible.

We are proud of the efforts of postal employees who serve in the Guard and Reserve. We recognize their vital importance to support the interests of our nation and its people when called upon to do so.

We will continue our efforts to assist them, both as co-workers and through our USERRA responsibilities, not because it is mandated, but because these dedicated employees deserve our full support and commitment for their duel duties on behalf of the American people.

Thank you, Mr. Chairman. I would be happy to address any questions you may have.

# # # #

Testimony of

Mr. Jerry Carter

Senior Vice President, Human Resources

International Paper

Presented before the Subcommittee on Benefits

House Committee on Veterans Affairs

Washington, DC

July 24, 2003

Mr. Chairman and members of the subcommittee, my name is Jerry Carter and I am Senior Vice President of Human Resources for International Paper. Headquartered in Stamford, Connecticut, IP is the world's largest paper and forest products company with almost 60,000 U.S. employees and operations in more than 40 countries.

It is a pleasure for me to be here today to discuss IP's experience with the Uniformed Services Employment and Reemployment Rights Act (USERRA). As a leading corporate citizen, International Paper has always strived for full compliance with applicable local, state and federal laws, but when it comes to our employees who serve their country in the Guard and Reserve, I can tell you that our policies are not only based on federal law, but on our commitment to our friends, colleagues and family members who are serving our country in a time of national crisis.

As a past member of the active military and National Guard, I appreciate the commitment made by our employees in service to our country. The stress and concerns around family and employment issues are significant for all those called to serve, and IP has made a commitment to "do the right thing" for our colleagues who are risking their lives in active military duty. By sustaining an employee's normal pay level and benefits, we believe that we are allowing our servicemen and women to do their duty without burdening them with concerns over their families' financial security. We adjust to their absence from the work place through various means and we are proud to welcome them back when their service is completed.

I'd like to share with you how IP has honored its commitment to our employees called up to active duty. Following the events of September 11th and the build up to the war in Afghanistan, it became clear that our policy on pay equalization needed to grow as our active duty employees were receiving longer assignments. We therefore moved to a policy of 180 days of pay equalization. In addition, we extended medical, dental and life insurance coverage for up to 12 months following activation – at no additional cost to employees. We also counted their service time toward their vesting requirements for IP's pension and savings plans.

As the buildup to Operation Iraqi Freedom began, however, it became clear that even 180 days of pay equalization was not enough to ease the burden on our military personnel and their families. Effective April 1 of this year, we formally extended our pay equalization policy to one full year. This policy was not the result of employee requests, or any state or federal mandates. It simply reflects IP's commitment to our employees who are making such great sacrifices for our country. As of today, we have 71 employees who are currently on military leave. They come from facilities across the nation – from Bucksport, Maine and Georgetown, South Carolina to Pensacola, Florida.

We have also had to remain flexible to adjust for differing needs of returning employees. While USERRA is quite strict about the need for returning military to return promptly to work after discharge, we have been willing to accommodate a transition back to work that works for the employee and his or her family. We have also occasionally found it necessary to provide some additional on-the-job-training to returning employees.

Mr. Chairman, while we are proud of our corporate commitment to our active duty military personnel, we were overwhelmed by the support our fellow employees demonstrated when their colleagues were called up to active duty. In addition to reworking their schedules to accommodate the increased workload, our employees expressed their support and concern in numerous ways. They worked directly with our employees' families to assist where needed, wrote letters, boxed care packages, held special events commemorating their service, generated community support projects, and printed and distributed tens of thousands of post cards for use by the troops to communicate with their families.

One of the projects that I think typified the level of internal employee support for our active duty military personnel was a website established voluntarily by a group of our employees. The site listed contact information for the friends and family members of IP employees who were serving in operation Iraqi Freedom. More than 170 listings were posted. Many of these individuals reported receiving dozens and dozens of messages of

support and appreciation from the greater IP family. In addition to what this meant to the troops themselves, the families and friends of our active duty personnel were deeply touched by this outpouring of support during a time of great stress and anxiety in their lives.

Turning to the subject of primary interest to this committee, Mr. Chairman, I'd like to briefly comment on the Department of Labor's administration of USERRA. We think USERRA has worked well because it is based on general principles rather than very specific requirements. The most notable of these is that a service member who is on military leave must be treated no worse -- nor better -- when he or she returns than if he or she had worked during the period of military leave. This is known as the "escalator principle." In general, the escalator principle works as intended for those who serve our country in a time in need. The service member returns to work in the position that he or she would have had if the individual continued working during the leave.

A good illustration of the fact that USERRA's general principles have worked well is the notable absence of litigation under the Act. Although it is clear that litigation often increases when the act is put to full use, so far, the number of USERRA cases remains relatively small. We especially encourage the Department of Labor to maintain a reasonable flexibility in any further regulation in this area so that it may continue to be easily applied to a variety of work situations.

Mr. Chairman, as with most laws, USERRA was passed to set a minimum standard of performance. International Paper believes the law is generally working well and our experience has been positive. I think you will find that employers, large and small, will bend over backwards to support employees who are called up to active military duty. As one of our employees put it, "it is the least we can do for colleagues who are putting their lives on the line to defend our freedoms."

Mr. Chairman, thank you very much for the opportunity to testify. This concludes my prepared remarks and I will be happy to answer any questions you might have.

International Paper (http://www.internationalpaper.com) is the world's largest paper and forest products company. Businesses include paper, packaging, and forest products. As one of the largest private forest landowners in the world, the company manages its forests under the principles of the Sustainable Forestry Initiative (SFI) program, a system that ensures the perpetual planting, growing and harvesting of trees while protecting wildlife, plants, soil, air and water quality. Headquartered in the United States, International Paper has operations in over 40 countries and sells its products in more than 120 nations.

Statement of
Peter Perez
Senior Vice President, Human Resources
W.W. Grainger, Inc.

Before the

Subcommittee on Benefits
Committee on Veterans' Affairs
House of Representatives
July 24, 2003

Concerning
Department of Labor Administration of the Uniformed Services Employment and Reemployment Rights Act (USERRA) under chapter 43 of title 38, United States Code

Chairman Brown, Ranking Member Michaud, and other distinguished members of the Subcommittee, I am pleased to appear before you on behalf of my employer, W.W. Grainger, Inc. to provide testimony on the Uniformed Services Employment and Reemployment Rights Act.

I represent 15,000 employees throughout North America. Some of them are currently on active duty for the Iraqi Freedom mission. We are proud of their service to our country and we support their commitment to a safer, more peaceful future.

Grainger is the largest supplier of facilities maintenance products in North America. Now the products we supply aren't glamorous, but they are very essential. They're the hammers, the cleaning supplies, the safety gear, the equipment that's crucial to keeping facilities up and running. We're headquartered in Lake Forest, Ill., and have nearly 400 branches across the United States. In fact, Grainger has at least one branch in every State in the Union.

Supporting our Reservist personnel during not only this critical time, but at all times is important to Grainger. Our commitment to them goes beyond what we consider our duty. Grainger is committed to helping them and their families because we have deep respect and admiration for their selfless service to our country.

Since September 11, 2001, nearly 40 Grainger employee-Reservists have been called to duty. In total, there are about 130 Reservists in our company. And we are proud of every one of them. The Uniformed Services Employment and Reemployment Rights Act is an important measure to guarantee Reservist confidence. Grainger's policy fully agrees with the spirit of this Act because it is designed to ensure the financial security and well being of employee-Reservists and their families. We have extended benefits to Reservists beyond what is required by the law. Our practice is to provide full benefits for up to one year. We provide full pay to Reservists called to active duty in addition to their military pay for up to one year. Grainger also continues to provide Group Term Life Insurance and to make contributions to the Reservists' retirement fund, Grainger's Profit Sharing Trust, while they are on active duty for up to one year. And upon their return from active duty, employee-Reservists can expect the same or an equivalent job.

But as we all know, while Reservist members are often deployed to locales very far from home, their hearts remain with their families. Of all the Reservists stationed abroad, on average 60 percent are married and 30 percent have children. Spouses, children, parents, and those they hold dear are never far from their thoughts. To ease the financial hardships

on our employee-Reservists' families, Grainger believes it is important to provide primary health and dental coverage for eligible dependents of Reservists for up to one year. In addition, as time goes on and the emotional strain can takes it toll, we offer family members access to Grainger's Employee Assistance Program, which offers a variety of services such as counseling.

Over the last year we've come to understand just how unique our program is. A survey conducted by the Reserve Officers Association of the United States cites Grainger among the top three companies for providing the most generous support to employees involuntarily called into military duty. And *Forbes* recently recognized us as among the top three employers for Reservists. In fact, Illinois Congressman Mark Kirk wrote to us to recognize our policy, stating that it will "do so much to boost troop morale and focus."

We know that it's Grainger that benefits most from these policies, as we are able to attract and retain exceptional employees. Take for example Orlando McGee. Orlando is a safety analyst at our distribution center in Niles, Ill. He's also a dedicated Reservist. In fact, he was called to action during the Gulf War. Unfortunately at the time he worked for a company that did not offer comparable benefits. One of the reasons Orlando came to Grainger was because of the benefits we offer to Reservists. Our policy attracts quality employees, like Orlando, whose military experience only enhances their value to our company. You see, the military has extensive logistics experience and our business is all about logistics, where each hour we supply more than 8,000 shipments of essential maintenance facilities products destined to locations around the world. We find that

when we hire men and women who have served in the military, we are ahead. That's why we've begun to actively search and recruit former soldiers and sailors.

Fellow Grainger employees appreciate and respect military experience. When employee-Reservists are called to into service, Grainger employees band together in support. This may include sharing duties and cross training to cover the responsibilities until our Reservist returns. Our pride extends to these Grainger employees, many of who have been working hard over the last year to provide essential items for our troops in the Middle East. One of our San Diego account managers, Paul Bill, is currently stationed in Kuwait. Paul recently wrote to us to thank Grainger for its benefits and the terrific support Grainger employees were showing by making certain the troops have what they need. Paul writes, "There is not a person in my unit of 125 that doesn't know I work for Grainger. We get our Gatorade, generators, boots, safety stuff all from Grainger."

We will continue to support Paul and the other activated Grainger Reservists. We remain committed to examining our current Reservist benefit program to determine whether or not we need to refine, revise or extend our benefits to provide additional support to our employees.

Grainger is committed to sending a clear message to our employees in the armed forces that while they're serving their country, they do not have to worry about the financial support of their families or whether there will be a job for them when they return. We

wish them well and pray for their continued health and safe return to their families and to us.

Mr. Chairman, this concludes my statement. I thank you for your time and consideration, and I would be pleased to answer any questions that you or other members of the Subcommittee may have.

GRAINGER

BIOGRAPHY

PETER M. PEREZ

SENIOR VICE PRESIDENT, HUMAN RESOURCES

Peter M. Perez joined Grainger as Senior Vice President, Human Resources, in February 2002. He is responsible for ensuring that all of Grainger's human resource programs and functions are aligned with and support the overall business goals and objectives of the company.

Before joining Grainger, Mr. Perez served as Chief Human Resource Officer for Alliant Exchange, Inc., an affiliate of Clayton, Dublier & Rice, Inc., where he was hired to create a strategic human resource function and assist the organization in building performance toward a public stock offering. He also has served as Senior Vice President, Human Resources, for Whitman Corporation, an affiliate of PepsiCo, Inc., and has held increasingly responsible human resource positions at Kraft General Foods and Emerson Electric Company.

Mr. Perez graduated from Eastern Illinois University with a bachelor of science degree in business, production and personnel management. He holds a certificate in organization development from George Williams College. He also earned a master's degree in business administration with concentrations in human resource management and organization behavior from Northwestern University's Kellogg School of Management.

W.W. Grainger, Inc. (NYSE: GWW), is the leading broad line supplier of facilities maintenance products in North America. Grainger serves customers through a network of nearly 600 branches, 16 distribution centers, and four Web sites. Sales for 2002 were $4.6 billion. For more information, visit Grainger online at www.grainger.com.

Rule XI 2(g)(4) Disclosure

W.W. Grainger, Inc., of Lake Forest, Illinois sells the products every business and institution needs to keep its facilities and equipment running. It provides products to thousands of large and small businesses as well as federal, state and local government agencies. With nearly 600 locations throughout North America, 1,900 customer service associates and a robust online presence, Grainger is the leading industrial distributor of products to keep facilities and equipment running. It has relationships with virtually all federal agencies through supply schedule contracts as well as open market purchases.

STATEMENT OF LIEUTENANT GENERAL NORMAND LEZY, USAF (RET),

ON BEHALF OF WAL-MART STORES, INC.

SUBMITTED TO THE COMMITTEE ON VETERANS' AFFAIRS,

SUBCOMMITTEE ON BENEFITS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mr. Chairman and Members of the Subcommittee, my name is Norm Lezy and I am Vice President for National Government Relations for Wal-Mart Stores, Inc. Wal-Mart is honored to testify before the Subcommittee on the important subject of the Uniformed Services Employment and Reemployment Rights Act.

Before I comment about Wal-Mart, I would like to thank the committee for its longstanding support of members of our Armed Forces, veterans, and their families. As an Air Force veteran with 30 years of service, I am very familiar with the committee's leadership on veterans' issues and its significant contributions to the health, welfare, and morale of those who serve our country.

Wal-Mart Stores, Inc. based in Bentonville, Arkansas, operates more than 2,900 discount stores, Supercenters and Neighborhood Markets, and more than 525 Sam's Clubs in the United States. Internationally, the company operates more than 1300 units. Wal-Mart's annual sales last year were $244 billion. Wal-Mart employs 1.3 million associates worldwide. Last year, more than $200 million was raised and contributed by the Wal-Mart Foundation to support communities and local non-profit organizations. Fortune magazine recently named Wal-Mart the "most admired" company in America.

At Wal-Mart, we share the Subcommittee's commitment to those who serve our country. Wal-Mart places high priority on supporting associates who serve their country and participate in the Guard and Reserves. Although we do not have the exact total, we know that thousands of our associates are members of the Guard and Reserves. After 9-11, we wanted to ensure our Guardsmen and Reservists could step forward and serve their country without facing undue financial hardship at home. Consequently, we instituted a policy where we make up the difference in pay for associates whose military pay is less than their Wal-Mart pay. We do this for those called to active duty as well as for those attending training camps. Thus far in 2003, more than 1,200 associates have benefited from this policy.

Medical and dental coverage is another important benefit Wal-Mart offers its associates. We know the importance of this coverage to family members when military members are serving in remote locations away from their families. When associates are called to active duty, medical and dental coverage for their family members is continued without interruption. The company pays the majority of the premium and the associate pays the same premium they paid before they departed on their military leave of absence.

In addition to taking care of our associates serving in Guard and Reserve Units, we recognize the need to support all of our troops and their families. For example, since 9-11 our Foundation has given more than $3 million to the Navy/Marine Corps Aid Society, Air Force Aid Society, Army Relief Society, Coast Guard Aid Society and USO. At the local level, our stores, clubs and distribution centers have spearheaded a number of community projects to assist active duty service members and their families. These projects include adopting families whose loved ones have been deployed, supporting Boys and Girls Clubs and other youth activities, and serving as collection points for donated items for our troops.

Thank you for giving me the opportunity to testify. I am prepared to answer your questions.

STATEMENT OF FREDERICO JUARBE JR.
ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

July 24, 2003

Chairman Brown, Ranking Member Michaud, and other distinguished members of the House Veterans' Affairs Committee, Subcommittee on Benefits, the Department of Labor is pleased to have this opportunity to provide comments on the Uniform Services Employment and Reemployment Rights Act (USERRA). As you know, USERRA has been very much in the news for nearly two years now. Within days after the attacks of September 11, 2001, the President authorized a partial mobilization, under which up to a million members of the Ready Reserve can be activated for up to 24 months. As of this week, 200,000 of these citizen-soldiers remain on active duty.

USERRA is particularly important now as it provides reemployment rights to those men and women called from civilian jobs to serve in the nation's defense. In addition, the law prohibits employer discrimination against veterans and reservists because of their military service or obligations.

HISTORY

USERRA's roots go back to 1940, when the Congress was considering the nation's first peacetime draft. At the same time, the lawmakers resolved to provide newly inducted servicemembers right to return to their pre-service employers. To achieve this, what came to be popularly known as the Veterans' Reemployment Rights (VRR) law was enacted.

By the early 1990s, the VRR law had become a complex and often difficult patchwork of legislative amendments and court decisions. It was severely tested by the mobilization and subsequent return of some 265,000 Guard and Reserve members for Operation Desert Shield/Desert Storm in 1991. USERRA revised and restructured the VRR law, continuing most of its provisions while clarifying many provisions. It also made some substantive changes.

The legislative history makes it clear that, to the extent it is consistent with USERRA, pre-USERRA case law developed under the VRR remains useful in interpreting the statute. For example, in fulfilling our obligations to administer and help enforce USERRA, we are ever mindful of the two principles laid down by the Supreme Court in its first reemployment rights case, *Fishgold v. Sullivan Drydock*. Those principles are as valid today as they were in 1946 – first, that the law is to be construed liberally to the benefit of those it protects; and second, that upon completion of service, the returning servicemember is to be reemployed in the position he or she would have occupied had employment continued during the period of service – the "escalator principle."

USERRA is experiencing its greatest test due to the current war in Iraq, as well as Operations Noble Eagle and Enduring Freedom. The Department of Labor believes that USERRA has worked extremely well in the face of its current challenges. I would like to turn now to our USERRA experiences and activities since September 11, 2001.

CURRENT DATA

Since USERRA was enacted in October 1994, the Office of Veterans' Employment and Training (VETS) has reported periodically to this Committee on our activities related to the administration and enforcement of the statute. For Fiscal Years 1995 through 2001, which ended September 30, 2001, we reported a steady decline in the number of USERRA cases opened year-by-year. We opened nearly 1,400 cases in FY 1995, but by FY 2001 the number had declined to 895. In the wake of the mobilization that began in September 2001, this trend has reversed.

I should say here that while we have experienced an increase in cases opened, it is not proportional to the enormous number of men and women who have been called to duty. The nation's employer community is overwhelmingly supportive of their employees who have been activated under the ongoing mobilization.

During FY 2002, we opened 1,195 new USERRA cases, an increase of less than 35 percent over the previous fiscal year. As of June 30, 2003, the end of the third quarter, we had opened 953 new cases for FY 2003. If this rate continues through the end of this fiscal year, we will experience a slight increase, about 6 percent, over FY 2002.

I can report with pride that the VETS' staff has been up to the challenge of dealing with the increased USERRA caseload. Despite the sharp increase of USERRA claims filed, our case handling statistics this year are consistent with prior years. As of June 30, we have closed 911 cases during FY 2003. We closed 89% of these cases within 90 days after opening and 95% within 120 days. Of the cases closed, one-third of the claims filed were found to be without merit or the claimants were found to be not eligible for USERRA protection, and about another twenty five percent were closed because the claimant withdrew or did not pursue the complaint. One-third of the claims were successfully resolved in favor of the claimant, either because the claim was granted, or a mutually agreeable settlement was achieved. About seven percent of cases closed were referred for further legal action. Of those cases, about nine in ten are referred to the Department of Justice because they involve a non-Federal employer, and the remainder are referred to the Office of Special Counsel because they involve Federal executive agencies.

COMPLIANCE ASSISTANCE EFFORTS

While our staff has been extremely effective at resolving complaints, a major focus for the Department remains the resolution of problems before complaints arise. Secretary of Labor Chao has made compliance assistance a priority with respect to all the laws administered and enforced by the Department, including USERRA. In this regard, VETS represents the Secretary in providing assistance and conducting educational outreach activities.

Since September 2001, VETS' staff nationwide has responded to more than 15,000 requests for USERRA information from employers, Reserve component members, the media and the

general public. In addition, we have delivered USERRA briefings and presentations to more than 91,000 people nationwide. Most of these briefings were for members of mobilized Guard and Reserve units, but we have also reached many employers and employer groups. Just a few examples – Web casts for the U.S. Chamber of Commerce, the Society for Human Resource Management, the Labor Policy Association and others; an appearance as a featured guest on the national FEDtalk radio broadcast; an appearance on a television broadcast to all the offices of the United States Attorneys and a nationwide network of National Guard units; and an interactive conference call with employer members of the Equal Employment Advisory Council.

In fulfilling our statutory obligations to provide help and educational outreach, we have received tremendous support and assistance from colleagues both inside and outside the Department of Labor. The Department's Office of the Solicitor has provided support in all areas, particularly by participating in briefings and helping us respond to technical questions. They are also helping to draft new USERRA regulations, which we are considering promulgating.

Additionally, we have received numerous briefings and invaluable technical assistance support from the Employee Benefits Security Administration. The Employment Standards Administration has helped us develop interpretations of the relationships between USERRA and other laws, such as the Family and Medical Leave Act and the Fair Labor Standards Act. Our web site's resource guide for the general public was revised in March 2003 to update and clarify VETS position on pension issues. And, VETS participates in DOL's

Internet based Employment Laws Assistance for Workers and Small Businesses advisor program ("elaws"), whereby the Department provides interactive advisors for USERRA and other laws. The e-VETS Resource Advisor, a portal site to numerous websites with information and resources helpful to veterans, has been released and is available through the VETS homepage as well as through the "elaws" Advisor on the DOL website.

Outside of the Department, I would like to mention the extraordinary efforts by our colleagues at the National Committee for Employer Support of the Guard and Reserve (ESGR). Their small national staff and more than 4,000 volunteers nationwide perform prodigious service in promoting understanding between employers and their reservist-employees and in helping to informally resolve disputes when they arise. We would be hard pressed to do what we do without ESGR, represented here today by Colonel Al Smith. Other agencies that have provided assistance to us include the Department of Justice, Office of Special Counsel and the Office of Personnel Management, and many others.

CONCLUSION

The Department of Labor will continue to inform employers about USERRA and VETS will continue with its mission of protecting the reemployment rights of our servicemembers. Mr. Chairman and members of the Committee, this concludes my statement. I will be happy to answer any questions.

Statement of Lynn Guimond for the Veterans' Affairs Benefits Subcommittee Hearing on the Department of Labor's Administration of the Uniformed Services Employment and Reemployment Rights Act., July 24, 2003

I am honored to be able to address my words to you today to help you understand the strains and the demands placed upon the families that are left behind when a loved one is called to active duty.

I am the wife of Stephen Guimond, who is currently serving in Kuwait. I am the mother of three very active children who miss their father very much. His picture is on the refrigerator, so every time they go to get a glass of milk or a soda, they are reminded of him. I worry that the youngest, Andrew, who is four, will forget, that the middle child, Elizabeth, who is seven, will become less and less talkative. She is daddy's little girl, and I worry that she and he will grow apart in immeasurable ways while Steve is gone. My oldest child, Seth, who is 12, really needs another authority figure, other than me, around to challenge.

As you can tell, I have enough worries right within my own house. Let alone worries over bills and commitments. I don't know how people that try to hold down jobs themselves manage to do it. Despite all that I have to do there are some days that I feel I can't get out of bed. There are some days where even words that are meant kindly, such as someone saying, "oh, you poor thing, how do you manage!" when they run into me at the grocery store, rankle. There are some days when I feel strong, and like I am managing well, and some where I need to be scraped off the floor, I feel so low. Day after day, it's a process of ups and downs, and learning to cope with them. Steve and the kids and I are able to talk on the phone a couple of times a week. It helps keep us all connected, but it doesn't help the loneliness.

The time right after Steve left was probably the hardest, as I also worried about the security of his job at the mill. The Uniformed Services Employment and Reemployment Rights Act (USERRA) offers some good job protection, but it doesn't protect you from downturns in an industry. These months have been hard, while layoffs and rumors of others have rocked this area. Some days, there are too many unknowns, will he have a job to come home to? Will he be home in a year? Will he be called up again?

I have depended on so many people, and thank goodness for them. Many have helped, which has greatly eased the financial burden. I was able to get fuel assistance and help with the electric bill. My neighbor plowed my driveway all winter, and boy did we have a lot of snow! He wouldn't take any money from me, just took a large weight off my mind and said that it was a neighborly thing to do.

I worried at first about having enough money for food, and for clothes for the kids. My parents have helped by getting clothes for me and the kids, and will be taking the kids to shop for the first day of school, and my father and brother have helped me with maintenance issues having to do with the house and van. To keep costs down, I have parked the car and taken it off the insurance until Steve returns. I do worry that part of

my roof will need replacing, one section is quite old. I am crossing my fingers and hoping that it makes it through another year without springing a leak.

I have been attending a support group, which has helped me know that I am not alone, despite what it feels like sometimes! The support group has been wonderful, and has helped provide some greater connections to the community, which has for the most part been very supportive. The eighth grade class at the local high school, and the local family support coordinator and many others worked to prepare care packages to be sent overseas, and that was a really special day for me and the kids. Its also been important for Steve to see that the community is involved.

I would say if there was one thing that should change, it would be to make more financial resources available for the support groups, so that as ideas evolve, they could be acted upon more readily. We would love to see a separate group for the children, so that they could have a place to discuss things with their peers, and with a therapist. There are so many things that they are going through, and even though I have not allowed them to watch coverage of the war, the youngest asked me, "when daddy comes home, is he going to be dead?" As young as he is, he still sees that I don't have all the answers, and I know that there are many more children just like him all across the country, wondering if their daddies or mommies are going to be coming home dead. These children need support, too.

Northern Maine is like the other end of the world from Washington, DC, as much as Kuwait is. I am writing to you from a place where people don't lock their doors, leave the keys in their cars, and trust and depend on their neighbors for help. It is a tightknit community, but like thousands of other communities across the country, they need help dealing with the families of Guard members who have been activated. Please keep all of those who have been left behind in mind as you make decisions on support for these programs.

STATEMENT OF
PETER S. GAYTAN, PRINCIPAL DEPUTY DIRECTOR
VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
TO THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
THE DEPARTMENT OF LABOR'S
ADMINISTRATION OF THE
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT
UNDER CHAPTER 43 OF TITLE 38, UNITED STATES CODE.

AUGUST 8, 2003

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to submit the views of The American Legion on the Department of Labor's administration of the Uniformed Services Employment and Reemployment Rights Act (USERRA) under Chapter 43, Title 38, United States Code (U.S.C.). As tens of thousands of National Guard and Reserve soldiers, sailors, airmen and Marines return from Operation Iraqi Freedom and other deployments around the globe, the importance of this hearing becomes self evident in its relevancy and timeliness.

The American Legion expresses its gratitude to Congress for providing a mechanism for reducing the negative financial impact of service on servicemembers and their families. The American Legion strongly supports this law which has been critical to the continued success of the all-volunteer military and its increasing reliance on Reserve and National Guard units. When a servicemember can be assured that his or her livelihood will be minimally disrupted, benefits will not be forfeited and career paths preserved, they can better accept the sacrifices and risks of military life and continue their essential contributions to our national security. The American Legion supports any measure that will strengthen the effectiveness of USERRA in achieving this goal.

USERRA establishes the reemployment rights of persons who have been absent from a position of employment because of service in the uniformed services. Service in the uniformed services consists of active duty, active duty for training (ACDUTRA), initial ACDUTRA, inactive duty training, full-time or funeral honors, National Guard and full-time Reserve duty, fitness for duty examinations and other circumstances. The uniformed services consist of all the branches of the U.S. Armed Forces, including Army and Air National Guard and Reserves and Commissioned Officers of the Public Health Service. The cumulative length of absence from civilian employment may total up to five years with certain exemptions.

In addition to basic rights to return to previous employment, USERRA protects other benefits and job attributes. USERRA provides for COBRA-like health care continuation for persons who

FTE	250	250	0
Resources Supporting Performance Goal 1	15,328	17,492	2,164
FTE	134	139	5
Resources Remaining in Support of Performance Goal 2	10,707	11,536	829
FTE (USSERA, VP, FCP)	116	111	-5

*FY 2003 estimate was fully funded.

USERRA CASELOAD
Past Performance and *Future Projections*

	FY 2001	FY2002	FY 2003	FY2004
Cases Opened	895	1,195	*1,200*	*1,400*
Cases Processed	843	1,135	*1,100*	*1,325*
Cases Carried over to next FY	102	162	*252*	*327*
Cases Processing within 90 days	90%	90.5%		

Mr. Chairman, given these budget figures and the return of large numbers of service men and women who left jobs to serve, we question whether VETS will have sufficient resources to handle the influx of USERRA claims which will certainly occur. It is clear that the initial projections were based on normal budgetary assumptions and did not foresee such a mobilization as has been required by Operation Iraqi Freedom.

In response to an inquiry from The American Legion, the VETS Office noted that an increase of 10 percent over the FY 2004 budget has been requested and that an additional appropriation for FY 2005 will be requested. VETS Director of Management and Budget states that it would be impossible to staff up for an influx of Operation Iraqi Freedom veterans' claims in such a relatively short time because of the lengthy training processes involved. VETS' projections indicate that the majority of USERRA claims will come in FY 2005, and that a number of them have already been filed based on pre-deployment denials of reemployment rights by employers; that is, denials based on the advance notice requirement by the servicemember. The Director stated that if VETS' FY 2004 request is fully funded that sufficient resources should be available to prevent a case backlog from developing and he reiterated VETS' goal of clearing 95 percent of USSERA complaints within 90 days of filing. The American Legion applauds VETS and its management for currently adjudicating 90 percent of its caseload within 90 days and for its commitment to enforcing the reemployment rights of this nation's all-volunteer armed forces.

Finally, Mr. Chairman, I would like to mention the case of The American Legion's own Deputy Director for Economics, Mr. Joe Sharpe, who is currently in Iraq as an Army civil affairs

specialist, helping to rebuild the banking system in that country. Upon his return, Mr. Sharpe will resume his duties as if he were not called up and will have lost no benefits, time for pension purposes, etc. In fact, he will have lost nothing financially because of The American Legion 's policy of making up the difference between a called-up employee's military pay and his Legion salary. We believe this is the next step in the evolution of equitable policies for Guard and Reserve personnel and it will be a priority of The American Legion.

Again, thank you for this opportunity to comment on this valuable program. The American Legion looks forward to working with the VETS Office and the Subcommittee to ensure that the men and women serving in the Guard and Reserve units are provided adequate job security while defending the freedoms of this great nation.

The American Legion welcomes any questions you or your colleagues may have on this important issue.

are absent from work to serve in the uniformed services, even when the employer is not covered by COBRA. Servicemembers who meet the law's eligibility criteria must be treated as if they had been continuously employed for pension purposes, regardless of the type of pension plan the employer has adopted. A returning servicemember is entitled to all general across the board pay raises that he or she would have received if not absent due to active military service. An employer is generally required to allow a returning servicemember to make up any missed tests for promotion if that employee would have been eligible during his or her absence and to make reasonable efforts to help qualify that person

Servicemembers also have obligations to fulfill in order to assert rights under USERRA. The servicemember/employee must: 1) give advance notice to the employer of his or her intention to return to a position following service, 2) apply for reemployment in a timely manner and 3) have completed service under honorable conditions. It is critical to the success of USERRA that deploying servicemembers be knowledgeable of these obligations well in advance of a call-up. The American Legion recommends that outreach programs to disseminate information on rights under USERRA to Guard and Reserve units at monthly drills be established.

The legal authority to enforce USERRA has been assigned to the Veteran's Employment and Training Service (VETS) of the U.S. Department of Labor, except in the cases of federal employees, certain union employees and transit workers. A formal complaint against an employer must be filed with VETS, but it is recommended that mediation first be attempted through volunteers of the National Committee for Employer Support of the Guard and Reserve (NCESGR). In the investigation of complaints, VETS can compel, by subpoena, the production of witnesses and documents. If VETS renders an outcome unfavorable to the employee/veteran, the employee/veteran may further pursue the matter by filing a complaint with the U.S. Attorney General or with the Office of Special Counsel, if federal employment is involved. VETS employees who investigate USERRA claims also handle Veterans Preference (VP) complaints and further the veteran hiring objectives of the Federal Contractor Program.

Administration of USERRA is accomplished through funding of VETS Performance Budget Goal 2 – Quality Workplaces - in support of the DOL's Strategic Goal 3. Budgetary support of USERRA, VP and FCP is accomplished by the residual of funds available after fully funding VETS Performance Goal 1 – the Prepared Workforce. Performance Goal 1 includes the Transition Assistance Program (TAP), Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) Program and Homeless Veterans Reintegration Program (HVRP), as well as grants to States.

VETS' FEDERAL ADMINISTRATION ACTIVITY
($ in Thousands)

	FY 2003 Appropriation*	FY 2004 Estimate	FY 2003/2004 Difference
Activity Appropriation (Total VETS Resources)	26,669	29,028	2,359

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"The Servicemember's Voice in Government"
Established 1968

STATEMENT

Of

THE NATIONAL ASSOCIATION FOR UNIFORMED SERVICES

On the

Uniformed Services Employment and Reemployment Rights Act

Before the

Subcommittee on Veterans' Benefits
House Committee on Veterans' Affairs

July 24, 2003

NAUS was founded in 1968 to support legislation to uphold the security of the United States, sustain the morale of the Armed Forces, and provide fair and equitable consideration for all members of the seven uniformed services: Active, Reserve, National Guard, Veteran, Retired and their spouses, widows and widowers. The Society of Military Widows (SMW) became affiliated with NAUS in 1984. Our nation-wide membership is now 160,000, with over 500,000 additional family members and support voters. NAUS is the only military association to represent all grades, ranks, components and branches of the uniformed services: Army, Air Force, Navy, Marine Corps, Coast Guard, Public Health Service, National Oceanic and Atmospheric Administration, their families and survivors.

Disclosure
The National Association for Uniformed Services (NAUS) has not received grants (and/or subgrants) or contracts (and/or subcontracts) from the federal government for the past three fiscal years.

Opening Statement

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) was signed into law on October 13, 1994. This act prohibits discrimination against persons because of their service in our nation's military. USERRA prohibits an employer from denying any benefit of employment because of an individual's military service. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after an absence due to military service or training. Since September 11, 2001, our nation has mobilized more than 292,000 members of the National Guard and Reserve forces to support military operations in the nation's war on terror at home and abroad. Currently 204,000 Guard and Reserve service members remain on active duty and 88,000 of the total number mobilized have been released from duty back to their hometowns. Approximately 15,000 of the service members who remain on active duty have received orders extending their service obligation to a total of 24 months active duty.

Considering all these factors, the laws that protect the reemployment rights of our nation's reserve force must be a top priority.

Needed Improvements to USERRA

DoL Needs to Represent Individuals Whenever Possible

In the vast majority of USERRA cases filed in court, the plaintiff has been represented by private counsel or has proceeded without counsel, and in only a very small minority of cases has DoL acted as attorney for the plaintiff, as Congress intended. Enforcement of USERRA should be given a higher priority. These Reserve and National Guard members are serving our country, often at a substantial loss of income and under circumstances involving significant personal danger. The least that we can do, as a grateful nation, is to ensure that they not lose their civilian job rights because of their service to our country. To this end, it is particularly important that DoL act as attorney in those cases where the defendant (employer) is a state, because in those cases there is literally no remedy if the DoL does not get involved. Only DoL can bring an action in the name of the United States. When the employer is a state, there can be no enforcement of USERRA unless DoL brings the suit.

Please urge the Civil Division U.S. attorneys of the DoL to give USERRA a high priority and to ensure that meritorious USERRA cases are litigated in a timely and diligent manner.

USERRA Needs to Protect the National Oceanic and Atmospheric Administration (NOAA)

USERRA applies to the commissioned corps of the Public Health Service (PHS) but not to the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA). It appears that NOAA was intentionally excluded from USERRA In development of the USERRA the writers used the "uniformed services" definition contained in 10 U.S.C. 101(a)(5). That definition includes the five armed forces (Army, Navy, Marine Corps, Air Force, and Coast Guard) plus the PHS corps and the NOAA corps. The Senate Veterans' Affairs Committee was opposed to including PHS and NOAA in USERRA, because they thought that the traditional veterans' organizations would oppose expanding the class of persons who could call themselves "veterans" although the draft did not use the word "veteran" suggesting re-employment rights to a

person who had performed "service in the uniformed services." Through this process both PHS and NOAA were contacted to explain the problem. The PHS leadership contacted the Committee and asked to be included—which they were. The NOAA leaders were unwilling to get involved, so that service was not included.

The National Association for Uniformed Services represents all the uniformed services, and in this light we would ask that the members of NOAA be included in the protections offered by USERRA. The individual members who will benefit from these provisions should not be omitted because of the politics involved several years ago at the highest levels of the organization.

Protect National Guardsman called up for state duty, when state laws do not.
There are many incidences were National Guardsman are called up for state duty such as to fight forest fires. There are no USERRA rights for this period of service because this duty did not meet the 10 U.S.C. 101(d)(5) definition of "full-time National Guard duty" or the USERRA definition of "service in the uniformed services." Fortunately, there are many excellent state laws protecting National Guard members under these circumstances—but not every circumstance.
For example, recently when the governor of Washington called him up guard members to fight forest fires, one guardsman left his civilian job at a small convenience store just across the border, in Oregon. When he was released from that period of state duty, the convenience store owner refused to re-instate him in his civilian job. The storeowner insists that he is under no obligation to take this young man back because his duty was state, not federal. Unfortunately, he had no protection under federal law (USERRA) because the forest fire duty was state duty and did not meet the statutory definition of "full-time National Guard duty." The Washington state law does not protect him because his state's law could be applied across the state line in Oregon. The Oregon law does not protect him because that law, by its own terms, only applies to "a member of the National Guard of this state." The Washington law applies to "a member of the National Guard of this or any other state." Since Oregon chose not to return the favor, this guardsman was unemployed.

All the states need to emulate Washington's law for USERRA like protection at the state level. Until that happens, we highly recommend that those guardsman that are unprotected by similar loopholes or unique circumstances in the system, fall under the protections of the federal USERRA program.

Regulate how much time off must be given to an employee before the employee has to report for weekend drills or other military obligations by the employer.
USERRA gives DoL the authority to prescribe regulations implementing this law with regard to states, political subdivisions of states, and private employers. The Department of Labor (DoL) has taken the position that an employee must be afforded enough time off from the civilian employer so that he or she can travel safely to the duty location and arrive fit to perform the military service. Such factors as the nature of the civilian job, the nature of the military duty to be performed, travel time, and other factors should be considered in arriving at an answer for a particular situation. In most cases, it will be more than simply travel time.

Many reserve members work in the public or private sector. Some members work late Friday night and then try to drive through the early morning hours, to arrive at their place of duty early Saturday morning. Sometimes, they are so tired they don't get much out of the training on Saturday and in some cases this could be a real safety issue, such as a recent tragedy involving an Army National Guard first lieutenant who was also a police officer. He worked an eight-hour shift one Friday evening, then tried to drive 200 miles to his National Guard drill, which began at 0700 on Saturday. He never made it. He fell asleep at the wheel and crashed into a tree about 10 miles short of the National Guard armory.

It is hoped that DoL will move expeditiously to promulgate USERRA regulations, and that those regulations will address the important issue of how much time off must the employer give an employee before the employee has to report for weekend drills or other military obligations.

Make Employers More Responsible for Keeping Employees Informed
The provisions of USERRA allow employees the right to make up the missed contributions to retirement plans that they may have missed while activated, but with a deadline. Unlike other federal laws, USERRA does not require an employer to notify employees of their legal rights, and because of this returning employees may miss out on the opportunity to catch up their retirement plan.

USERRA should be changed to require employers to give employees such information

Compensate Employers for the Inconvenience Caused by an Activated Employee
Under current law, there is no financial compensation for employers, but the National Committee for Employer Support of the Guard and Reserve (NCESGR) does have an awards program for particularly cooperative employers. If the employers were given more positive reinforcement, like tax breaks, this would further the positive reinforcement efforts that have been ably started by the ESGR Program.

Congress needs to pass legislation that would give employers a tax break or other compensation for the inconvenience caused by the mobilization of Reservists.

NAUS appreciates this opportunity to provide this statement to the Veterans Benefits Subcommittee on the issue of improving the Uniformed Services Employment and Reemployment Rights Act. Your work on behalf of our nation's service members and veterans is very important to them and their families and we appreciate your interest in this issue.

STATEMENT FOR THE RECORD

BY

BLAKE C. ORTNER

ASSOCIATE LEGISLATIVE DIRECTOR

PARALYZED VETERANS OF AMERICA TO THE

SUBCOMMITTEE ON BENEFITS OF THE

HOUSE COMMITTEE ON VETERANS AFFAIRS

CONCERNING THE UNIFORMED SERVICES EMPLOYMENT AND

REEMPLOYMENT RIGHTS ACT

JULY 24, 2003

Chairman Brown, Ranking Member Michaud, members of the Subcommittee, Paralyzed Veterans of America (PVA) appreciates this opportunity to submit a statement for the record concerning the Department of Labor's administration of the Uniformed Services Employment and Reemployment Rights Act and its effect on veterans returning from active military service.

PVA is the only national veterans' service organization, chartered by Congress to represent and advocate on behalf of our members and all Americans with spinal cord injury or disease. All of PVA's members, in each of the fifty states and Puerto Rico, are veterans with spinal cord injury or dysfunction. These veterans suffer from catastrophic injury and disease and face challenges every day in their quest to survive and function

fully in society. In addition, PVA fully supports and advocates for all veterans and the challenges they face in achieving their benefits gained from military service.

PVA fully supports America's National Guard and Reserves. As a currently serving member of the 29th Infantry Division, Virginia Army National Guard, I have never lacked any support, assistance or leave from PVA to perform my military duties. As a battalion commander, can often be extensive and required with very short notice. My recent duties included a 9-month deployment as part of the SFOR 10 peacekeeping mission to Bosnia-Herzegovina in 2001.

Throughout my testimony, my references to reserves include both National Guard and Federal Reserve forces. As I have said to my soldiers, "this is not your father's National Guard." Reservists today face a level of uncertainty unheard of prior to the first Gulf War. As the first large scale conflict to test the "Total Army" concept, it was an awakening for those reservists that believed the extent of their military service consisted of one weekend a month, two weeks in the summer and the occasional natural disaster. The Gulf War was also the first wide spread activation of reservists for an extended period of time. There were plenty of news stories of those that chose not to accept their responsibility and declined to answer the Nation's call. Fortunately these were few and were dealt with appropriately through the military legal system. But ten's of thousands of others willingly left home, family and employment to serve our country. Then as now, many faced the potential loss of employment.

As of July 16th, over 201,000 Reserve and National Guard soldiers are on active military duty. This number includes both units and individual augmentees. The Department of Defense (DOD) has recently announced the planned mobilization of approximately 10,000 additional National Guard soldiers to support the second phase of Operation Iraqi Freedom. Many leaders within the reserve community do not see an end in sight. The possible long-term occupation of Afghanistan and Iraq, continuing commitments in the Balkans and the requirements of Operation Noble Eagle to provide security within the borders of the United States will strain reserve units. Secretary of Defense

Rumsfeld's plan to realign some reserve unit missions to active duty forces and relieve the war fighting commitments of reserves will take years to implement. Reserve forces will be mobilized and committed to military contingencies for many years to come.

These continued commitments will strain reserve units, both emotionally and through an impact on readiness. One of the greatest challenges facing our mobilized soldiers, sailors, marines and airmen is the impact on their families and livelihood while they are mobilized. There is often significant fear on the part of servicemembers deploying to hostile lands. But what is not realized is that most of this fear is not the fear of being killed by an enemy. Though fear of the enemy gains the greatest amount of attention and the most immediate concern, soldiers recognize that the greatest number of deaths and injuries come from accidents rather than enemy engagements. But one big difference between reservists and active personnel is the fear of losing their jobs while deployed. While at the mobilization station, representatives of the Employers Support of the Guard and Reserve (ESGR) reassure servicemembers of their reemployment rights. But invariably there will be one or two soldiers who have already lost their jobs. Servicemembers believe these terminations are often attributed to illegal actions by employers. Unfortunately, the actions have often been deemed legal by Department of Labor investigations.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), enacted in October 1994, significantly strengthened and expanded the employment and reemployment rights of all uniformed service members. But while reservists called to active duty are protected by USSERA, many companies know the techniques to fire someone "within the rules." Though anecdotal stories of employers firing mobilized reservists in front of witnesses exist, more often reservists lose their jobs during reorganizations, company-wide layoffs, or "unannounced" inspections that find "cause" with violations of company policy or procedures that result in an individual's termination. More often than not, these terminations are upheld following investigations. Given sufficient time, virtually any employer can build grounds for

reorganization or lay-offs. There are few ways to root out this type of employer and they may simply be an unfortunate by-product of American business ethics.

Though in many cases, little can be done to punish a business, it is critical that those servicemembers that lose their jobs are given greater opportunities to retrain or gain employment. Unfortunately, individuals who lose their jobs may get the news while deployed and this presents unique challenges. It is very difficult to pursue employment while deployed thousands of miles overseas. PVA would like the Department of Labor Veterans Employment and Training Service (VETS) to examine additional methods to assist these displaced workers in seeking employment. Because most overseas installations have internet connectivity, these methods should be web based to assist those pursuing employment.

Additionally, there should be no illusions that mobilized reservists face threats to their employment. Current mobilization brochures paint a rosy picture of the safeguards afforded reservists. This raises unfounded expectations that their jobs are inherently safe when in fact they are not. It is understandable that the ESGR representatives want to put the servicemembers minds at ease as they prepare for their military duty. But this reassurance becomes a disservice when these same soldiers do not understand the loss of their jobs. It creates an unrealistic expectation that they will get their jobs back at the conclusion of the investigation and may not pursue alternatives as aggressively as possible. After all, they have been told their "jobs are safe."

A possible option may be a modified Transition Assistance Program (TAP) that can operate at demobilization sites, providing specific services to these reservists. Additionally, mobile TAP teams may be able to travel to deployed theaters to provide one-on-one assistance to those individuals who have lost employment prior to or during mobilization. Though this program would have additional costs, it is only fair that extra effort be made for those servicemembers who have made extraordinary sacrifices to serve their country.

There may also be a need for additional "unemployment compensation" that can be made available to soldiers terminated while deployed. Though most returning soldiers have leave available at the time of discharge, it is a travesty that they would have to use their military leave to survive while pursuing new employment. Without a program to support these most needy of returning servicemembers, they risk losing everything and possibly even moving from the ranks of the military to the ranks of the homeless. This must not be allowed to occur.

One point not addressed in USERRA that needs consideration addresses those who are self-employed or individuals who make significantly more income from their civilian employment or small business. PVA and other Veteran Service Organizations have worked hard to secure legislation that protects these servicemembers as well. I mention this only to serve as a reminder that many of our mobilized reservists sacrifice much more then just time with family and risk of injury when they depart. Many risk their entire livelihood when they choose to answer America's call. These heroes deserve greater consideration than any of their civilian counterparts. But as seen in recent veterans funding decisions, our government is very willing to use up its military, while failing to provide for them after the job is done.

There are other efforts that Congress can make to assist our mobilized reservists. One of these efforts is H.R. 742 which would reduce the age for receipt of military retired pay for non-regular service from 60 to 55. Currently, reservists who have retired from service must wait until age 60 before they can collect retirement. This is the same whether they have 5 years or 15 years of active duty. As more and more reservists spend a greater amount of time on active duty, PVA would ask that Congress correct this inequity and allow all servicemembers to receive earned retirement pay regardless of age. DOD opposes this change due to the cost. This attitude is disingenuous. Reservists retired pay is based on the number of points earned during service. It is considerably less than that received by an individual retiring from 20 years of active service. Delaying these payments until age 60 is intended to further reduce DOD retirement expenditures and insure reservists receive a limited return on their years of

service. Changing this inequity might actually help DOD improve readiness in the reserves by encouraging individuals to continue service because there will be benefits in the near future.

Members of the Reserves and National Guard have willingly accepted the dangers and challenges of military service. They have accepted the risks. Today those enlisting in reserve units recognize more than ever the possibility of mobilizations and service in areas of conflict. Unfortunately, some popular sentiment is that reservists "knew what they were getting into" and that they "volunteered for it." While essentially true, this Nation owes our mobilized reservists a great debt. The reserves have allowed America to maintain a limited active duty force and saved billions of dollars. It is only fair that they be afforded extraordinary protections in their reemployment rights and given every opportunity to protect their families and their livelihood.

Mr. Chairman, Paralyzed Veterans of America appreciates this opportunity to express our views to the Subcommittee. Thank you.

Information Required by Rule XI 2(g)(4) of the House of Representatives

Pursuant to Rule XI 2(g)(4) of the House of Representatives, the following information is provided regarding federal grants and contracts.

Fiscal Year 2002

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation—National Veterans Legal Services Program—$179,000 (estimated).

Fiscal Year 2001

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation—National Veterans Legal Services Program—$242,000.

Fiscal Year 2000

General Services Administration—Preparation and presentation of seminars regarding implementation of the Americans With Disabilities Act, 42 U.S.C. §12101, and requirements of the Uniform Federal Accessibility Standards—$30,000.

Federal Aviation Administration—Accessibility consultation--$12,500.

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation—National Veterans Legal Services Program—$200,000.

BIOGRAPHY OF BLAKE C. ORTNER

Blake Ortner is an Associate Legislative Director for Paralyzed Veterans of America representing PVA to federal agencies including the Department of Labor, Office of Personnel Management, Department of Defense, HUD and the VA. In addition, he is PVA's representative on issues such as Gulf War Illness, homeless veterans and coordinates issues with other Veteran Service Organizations. He also often serves on special projects such as disability advisor for the dedication ceremonies of the Korean War Veterans Memorial.

He has served as the Chair for the Subcommittee on Disabled Veterans (SODV) of the President's Committee on the Employment of People with Disabilities (PCEPD) and as a member of the Department of Labor's Advisory Committee on Veterans' Employment and Training (VETS) and the Veterans Organizations Homeless Council (VOHC).

A native of Moorhead, Minnesota, he attended the University of Minnesota in Minneapolis on an Army Reserve Officer Training Corps (ROTC) scholarship, graduating in 1983 with an International Relations degree. He was commissioned as a Regular Army Infantry second lieutenant stationed at Ft. Lewis, WA. Following service with the 9th Infantry Division, he became a member of the Army's Special Operations elite 2nd Ranger Battalion.

He continues his military service as the battalion commander of 3-116th IN, Virginia Army National Guard and returned in April 2002 from a 9-month deployment as part of the SFOR 10 peacekeeping mission to Bosnia-Herzegovina.

Mr. Ortner resides in Stafford, VA and is married with two children.

MOAA
Military Officers Association of America
FORMERLY TROA

VADM Norbert R. Ryan, Jr. USN (Ret)
President

September 4, 2003

The Honorable Henry E. Brown (R-SC)
Chairman, Subcommittee on Veterans Benefits
Room 337, Cannon House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the nearly 390,000 members of the Military Officers Association of America (MOAA), I am writing to thank you for holding a very timely hearing on July 24 on the employment and reemployment rights of uniformed services personnel, and to recommend a needed technical change to the statute protecting these rights.

MOAA recommends inclusion of the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA Corps) in Section 4303, Definitions, of the Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 USC). NOAA Corps officers serve on active duty, as defined in Title 10 and Title 37, and receive the same pay and benefits as their peers in the Armed Forces and the Commissioned Corps of the U.S. Public Health Service. Like USPHS officers, NOAA Corps officers may be transferred to the Army, Navy or Air Force in time of war or national emergency.

The NOAA Corps is included in the basic definition of "uniformed services" as set forth in Section 101(a)(5) of Title 10, USC. MOAA believes that the NOAA Corps was improperly (and perhaps, inadvertently) excluded from the comprehensive revision of employment and reemployment rights laws enacted in 1994 after the first Gulf War.

We can envision circumstances under which a NOAA Corps officer who is released from active duty may desire reinstatement in a civilian position held prior to entry on active duty in accordance with the USERRA. As rare as such situations may be – given that the NOAA Corps currently has less than 300 commissioned officers -- MOAA sees no justification for excluding these dedicated uniformed service officers from USERRA protection.

The Military Officers Association of America urges that you endorse a change to the Uniformed Services Employment and Reemployment Rights Act to include the NOAA Corps in the "uniformed services" definition, Section 4303(16), 38 USC.

Sincerely,

Norbert R. Ryan

cc: Rep. Christopher Smith (R-NJ), Chairman, House Veterans Affairs Committee
Rep. Lane Evans, D-IL, Ranking Member, House Veterans Affairs Committee
Rep. Michael Michaud, D-ME, Ranking Member, Subcomm. On Veterans Benefits

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Exchanging Clinical Records via the Web

John D. Halamka, MD, MS
CIO, Beth Israel Deaconess Medical Center and Harvard Medical School

Introduction

The same technologies that send web pages from one site to another on the public internet can shape a private medical intranet that assembles a "virtual" medical record that draws on sources of heterogeneous information. But, barriers to creating virtual medical records on intranets abound. Some are technical: correctly identifying patients, guaranteeing data integrity, and protecting confidentiality. Some are organizational: standardizing the types of information exchange, providing appropriate sanctions for violation of security policies, and obtaining patient consent for transmitting information among multiple institutions.

Several groups have proposed solutions for such technical and organizational challenges and have implemented systems that use intranets to provide clinical information to health care providers. [Kohane, Fraiser] This holds special impact for emergency departments that constantly struggle with providing care based on incomplete information about medical histories. To illustrate both the challenges and some early solutions, we describe the early experiences with a live implementation, CareWeb, that shares complete medical records information between multiple healthcare organizations on a corporate intranet.

The Beth Israel Deaconess Medical Center, the Joslin Diabetes Center, two Boston area community hospitals, and several satellite outpatient clinics have clinical affiliates that that required the integration of existing electronic medical records. Each site has different clinical computing systems, different institutional vocabularies, and varying completeness of clinical information.

Beth Israel Deaconess stores clinical data and several related practices in a comprehensive, custom built computing system [Bleich], while clinical data at Joslin Diabetes Center resides in an industry standard database. Our goal was to consolidate medical records "virtually" at these heterogenous institutions, using the corporate intranet and to make that information available to practioners at the point of care.

CareWeb operates in response to a care provider who, using a standard web browser, creates a query for information by specifying patient identification. This information is submitted over the intranet to CareWeb which, in turn, generates a request for information the Beth Israel Deaconess, Joslin and community clinical computing systems. The systems respond with demographics, problems, medications, records of allergies, notes, and visits. CareWeb interprets the incoming messages and creates a single, unified presentation that it returns to the health care provider as a series of web pages. Tool bars enable full navigational control, allowing the medical record to be scanned using a tab folder-like paradigm.

Barriers to using an intranet

Barriers, both technical and organizational, preclude a uniform infrastructure for exchange of medical records on an intranet. To exchange patient identified information among hospitals, even apparently simple tasks, such as identifying the correct patient, can be a challenge.

Identifying the patient

In the United States, there is no universal healthcare identifier to identify individual patients. A logical approach is to use a combination of demographic identifiers – such as name/date of birth/gender or social security number. However, demographic identifiers are often mis-entered or mis-reported, making patient identification a difficult problem. Teich and colleagues at

Partners Healthcare in Boston [Teich] found a 3% discrepancy in birth month for known matched patients, and a 39% discrepancy in last name. Another study [Goldberg] found a 2.4% discrepancy in gender for known matched patients.
The Health Insurance Portability and Accountability Act of 1996 (PL 104-191) [HIPAA] stipulates that Health and Human Services devise a strategy for universal patient identification by 1998. Current suggestions span the gamut from the social security number to the use of long random numbers, unique to each individual. [Szolovits]

CareWeb uses a statistical probabilistic best match of name, gender, date of birth and other demographics to group the medical record numbers of each patient together into a community member index. All clinical data resides in the clinical computing systems of each health care facility, but the common patient index provides pointers to patient specific information at each location. Beth Israel Deaconess, Joslin and the Community Hospitals are electronically interfaced to this community member index such that each new patient registration automatically updates the index with patient demographic information, medical record numbers and pointers to clinical data at each site.

Data format and Vocabulary

Medical records contain data elements that vary widely among hospital systems, both in definition and in the amount of data available. To exchange electronic medical records successfully, all partners involved in the exchange must first define the uses for the data and then elect a consistent set of elements most relevant to the intended use. For example, a clinical emergency department application requires a set of data far different from an application assaying managed care eligibility. Data elements must also address potential legal and social sensitivities. A patient may agree to share insurance authorization information, but not HIV

status.

Several standardized data sets have been suggested for emergent clinical use, including the Center for Disease Control's Data Elements for Emergency Department Systems (DEEDS) [Pollack], the Boston Collaborative data set [Kohane], and the National Information Infrastructure Health Information Network Emergency Medicine data set. [Barthell]

But even if partners agree on data elements to exchange and a consistent way to request information, the data exchanged may not be easily comparable. Hospital systems are heterogeneous, and most lack uniform vocabulary. One hospital may list a diagnosis as "hypertension," while another may code the same diagnosis as "high blood pressure." Similarly, medication lists assembled from multiple hospitals might appear as Naproxen Sodium, Naprosyn, Aleve.

Vocabulary standards solve the problem of data comparability. ICD-9-CM coding is one of those most familiar. By coding all medical records with ICD-9-CM codes instead of physician-generated English descriptions, hospital discharge records become comparable. The international Systemized Nomenclature for Medical and Veterinary Medicine (SNOMED) provides a comprehensive set of over 150,000 terms organized into twelve categories – anatomy, morphology, normal/abnormal functions, symptoms or signs, chemicals, drugs, enzymes, organisms, physical agents, spacial relationships, occupations, social contexts, diseases, and procedures. [SNOMED]. The National Library of Medicine's Unified Medical Language System (UMLS) has concept identifiers that group these ICD-9 and SNOMED terms into a single nomenclature. [Humphreys] The Logical Observation Identifier Names and Codes (LOINC) provides a library of over 6500 clinical test names or identifiers. [LOINC] Finally, the National Drug Code (NDC) provides a standard dictionary of

medications. Although most institutions do not use all of these vocabularies, it is possible to translate institution specific data into standard terminologies during the presentation of medical information to clinicians. [Law]

At each hospital, a site-specific CareWeb program intercepts incoming requests for information. These programs have knowledge of the computer systems at each site and translate hospital specific information into standard vocabularies – ICD-9-CM for diagnoses, NDC for drug information, and LOINC for laboratory. Once translated into standard vocabularies, messages are sent between CareWeb sites using Health Level 7 [HL7], a standard data format for medical information interchange.

Security/ Confidentiality

In his 2004 state of the Union address, President Bush noted that we should implement interoperable electronic medical records to reduce medical errors and healthcare costs. However, the security and confidentiality implications of web-connecting the nation's clinical data from a major impediment in realizing this goal. [Woodward, Rind]

In 1995, the National Research Council of the National Academy of Sciences was charged with evaluating practical measures that can reduce the risk of improper disclosure of confidential health information, while providing appropriate access to those interested in improving quality and reducing the cost of care. Their March 1997 report, "For the Record: Protecting Electronic Health Information," presents the findings of two years of collaborative investigations which delineate best technical and organizational practices to protect patient confidentiality [NRC]. Intranet medical record systems should incorporate these recommendations, and recent legislation emphasizes the need to implement strong security measures. For each unauthorized disclosure, the Health Insurance Portability and Accountability Act

of 1996 (PL 104-191) [HIPAA] imposes a fine of up to $250,000 per incident, and up to five days of imprisonment. In addition, failure to protect patient information and patient privacy can result in loss of accreditation. Implementation of this act is anticipated in mid-1998. CareWeb incorporates all NRC guidelines for protecting health care information and the techniques for this are discussed elsewhere. [Halamka]

Authentication

The authenticity of each CareWeb user is guaranteed with a strong username and password. Passwords expire every 90 days, must be at least 6 characters in length and may not be English words.

Access Control

Once authorized, CareWeb determines each user's role from a database, and this role is used to restrict access to specific areas of the medical record. Currently, clinicians are allowed to examine the full record, while registration clerks are limited to demographic information.

Audit Trails

The security policy of the Beth Israel Deaconess Medical Center is to provide auditing at the level of the specific patient queried and the individual menu selections used. [Safran] CareWeb implements a complete multi-organizational audit trail.

In any multi-institutional reporting system, there are two places to capture the audit – either at the institutional level where the information is stored (the sites), or at the point where the information is delivered. Careweb audit information is captured at the site level. By storing audit trails at each site, each hospital can control and audit the information that leaves its site, regardless of where it is delivered. Each hospital site server captures patient identification information, the requester, the requester's location, date, time, and information requested. Although information is

stored at the site level, a multi-institutional auditing system that provides patients with the details of the movement of their medical information throughout the healthcare enterprise is available. The auditing query system has the same hardware token authentication and access controls required for any CareWeb healthcare data request. Once authenticated, an auditor enters patient identification information and submits the information to the CareWeb auditing system. It produces a consolidated report showing all flows of information about the patient for all institutions.

Protection of External Communications

The existing hospital computing systems at all the healthcare facilities connected to CareWeb employ a complex series of hardware controls which limit direct connectivity to clinical servers from outside the institution.

Encryption of Public Network Transmissions

For communications between data sources and CareWeb users, we implemented a cryptographic system that incorporates industry standard components for digital signature and encoding of messages, using the most secure keys available.

Electronic Authentication of Records

CareWeb uses digital signature cryptography methods for all network transmissions, ensuring the integrity of all health data delivered. The NRC recommends an implementation of digital signature to ensure that medical records are not changed on the individual systems where they are stored. The CareWeb architecture provides a secure mechanism to transport each institution's data and can guarantee that the data were not changed during the retrieval process. Security policies of each institution providing data dictate the reputability of the data.

Physical Security and Disaster Recovery

Multi-institutional architecture provides significant physical protection for health data. Instead of physically locating all patient records in a central data source vulnerable to physical disasters, the CareWeb architecture creates a virtual record that is assembled on demand and not stored in a central repository. Currently, all hospital computers linked by CareWeb are geographically dispersed and are locked in secure computer rooms accessed by electronic keycode. The CareWeb architecture depends upon the physical security and disaster recovery practices of the individual sites that provide data. However, if any sites sustain a disaster and cease to provide data, CareWeb notes that a site is currently unavailable and provides a virtual medical record comprised of all functioning sites.

Software Discipline

Web pages returned by CareWeb can not be stored on local hard disks by the browser. Three specific techniques are used to prevent such behavior. The pages are given an expiration date of January 1, 1970 and arrive "out of date." The pages are sent with a special message instructing the browser not to store them. Finally, the pages are sent in a secure mode (secure sockets) which most browsers use as an indicator to not store pages.

Discussion

Continuing reports of flaws in internet security give a public impression that internet technologies are not suitable for transmission of sensitive information, and this creates difficulty in obtaining institutional support. Consensus for deploying such a system must include information systems personnel, hospital administrators, patients, and clinicians.

Several groups are working to define data and security standards to encourage the development of a national infrastructure for medical data exchange, including HL7 (www.hl7.org), the EHR Collaborative (http://www.ehrcollaborative.org) , and the NHII

project (http://aspe.hhs.gov/sp/nhii/).

Implementation of federal legislation mandating universal patient identification, combined with the efforts of researchers, public interest groups, and industry fuels a rapid evolution of the infrastructure required to exchange medical records using intranets. With an appropriate balance between confidentiality and the need for clinical information, an intranet-based system will benefit patients and physicians and ultimately lead to better care.

Acknowledgements
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Statement for the Record
House Veterans Subcommittee on Benefits
Oversight Hearing on Administration of USERRA
July 24, 2003
Thomas G. Hardy, MeadWestvaco Corp.

Mr. Chairman, I wish to thank you and the other Members of the Subcommittee for the opportunity to submit testimony. My name is Thomas G. Hardy. I am Director of Employee Relations for MeadWestvaco Corporation. I am personally located in Richmond, Virginia. However, as you know, the company has considerable operations in South Carolina, including a kraft paper mill in North Charleston, chemical, research and forestry facilities, as well as forest land holdings statewide totaling nearly 500,000 acres. We employ over 2,100 employees in the state. MeadWestvaco is headquartered in Stamford, CT., with a total employment base of approximately 30,000. The company is a leading producer of packaging, coated and specialty papers, consumer and office products and specialty chemicals.

I am pleased to provide comments regarding the administration of the Uniformed Services Employment and Reemployment Rights Act (USERRA), including the experiences of my company with the law. MeadWestvaco Corporation was created January 28, 2002 as the result of the merger of the Mead Corporation and Westvaco Corporation. Both Mead and Westvaco had long histories of supporting their employees who participate in America's armed forces, whether through active enlistment, Reserve or National Guard duty. MeadWestvaco is proud to continue this strong level of support for the men and women it employs who answer their nation's call to military service.

MeadWestvaco's policies prohibit discrimination based on veteran's status and provide pay and benefits to those on military leave in excess of the legal requirements of USERRA. Specifically, MeadWestvaco makes up the difference between the company's base pay and military pay for up to twelve (12) months of the employee's military service. The Company also makes available Health Care, Prescription Drug, Dental and Life Insurance Benefits for employees on military leave for up to twelve (12) months on the same basis and at the same cost available to active employees. After these twelve (12) months, a minimum of six (6) additional months of coverage under the Company's medical and dental plans are available at full cost consistent with USERRA and COBRA. Employees on military leave also are permitted to continue participation in MeadWestvaco's 401(k) Plan (including the Company's matching contributions) and Flexible Spending Accounts for twelve (12) months. Eligibility for participation in the Employee Assistance Program is available to the employee and his or her dependents for the duration of the employee's military leave of absence.

Employees may combine periods of leave for military service when seeking pay differential or benefit continuation until the 12 month limit is reached. For example, an employee on military leave for a period of eight (8) months who returns to work will still be eligible for four (4) additional months of these enhanced benefits if he or she has a subsequent period of military service.

While MeadWestvaco strongly believes in policy of offering this enhanced pay and benefits to its employees in the military service, the company does not support any effort to legally mandate these benefits. USERRA sets a generally reasonable floor for employment protection for men and women who are in the Armed Services. Mandating still greater protections could have the unintended consequence of decreasing the support that most employers automatically give to their employees when they serve our country. Smaller employers without the resources of MeadWestvaco may find such a requirement a financial burden beyond their means. Similarly, the smaller the employer, the greater the impact the loss of even a single employee to military service has on its operations. We should not discount the significant contributions made by such employers who willingly accept the loss to a business when a valued employee goes on military leave.

Over the years, numerous employees of MeadWestvaco and its predecessors have taken leave for military service of one type or another. Since September 11, 2001, the Company has provided leave from work to over 80 employees serving in the Armed Forces, with approximately 28 on military leave at the present time.

While the administration of the majority of these leaves under USERRA has been relatively routine, application of some of the law's principles relating to the process of reemploying veterans can create problems. Application of the "escalator principle" is often difficult for even the most well-meaning of employers. It can be difficult to recreate the career path an employee would have taken but for his or her military service. This is particularly true when there are several possible alternatives, or when advancement is conditioned upon demonstrating competence or skill in a function that the returning service person has not performed or mastered. This issue is exacerbated in today's global economy where jobs and technology change so rapidly. If a company is to remain competitive in a marketplace that is increasingly fluid, it is unrealistic to assume that the same duties, jobs, departments or facilities that existed before the employee went on military leave will always be there when they return.

This in turn implicates issues concerning the extent of reemployment rights. While no one disputes the right of a returning veteran to be free from discrimination, to resume the job he or she left, or be placed in a job the veteran would have attained but for their military service, it is more difficult to apply the concept when the veterans' old job, department or facility no longer exist. Current interpretation provides that in this situation the veteran be awarded a job of like seniority, status and pay even if the position is occupied and the veteran would not have been in it, or had rights to it, in the absence of their military service. This results in the veteran being placed in a <u>better</u> position than he or she would have been in had they not been in military service, rather than simply insuring the veteran is not penalized. It also negatively impacts an otherwise "innocent" coworker who suddenly loses their job to someone who may be not as qualified.

Likewise, the absolute ban on terminating a returning veteran's employment for twelve (12) months absent just cause can create a similar situation. If purely economic reasons unrelated to the veteran's prior service compel the elimination of the position, department or facility in which the veteran happens to be working, the veteran would be treated more favorably than other similarly situated employees and be entitled to bump or displace an otherwise valued employee from his or her job. That displaced employee may have greater skills or service, or family or financial obligations equal to if not greater than the veteran.

Balancing these equities can be a very difficult challenge. We understand that the Department of Labor is proposing to issue regulations to help employers and veterans better understand and apply USERRA. Such regulations could be useful, and even welcome, but only if they take into account the practical business realities today's employers and service personnel face. Regulations divorced from economic reality and which deprive employers the flexibility to address USERRA's requirements in reasonable ways given their individual circumstances will harm both employers and returning veterans through economic inefficiencies, unnecessary costs, and uncompetitive practices.

One of the best examples of a "good law gone bad" through regulation is the Family and Medical Leave Act of 1993. Most large employers had no difficulty with the fundamental principles behind that law and the legislation itself. Indeed, many already provided more liberal leave policies than those the FMLA purportedly required. The regulations issued by the Department of Labor, however, imposed so many new, unanticipated and impractical burdens on employers trying to apply the law that it is now arguably the single most difficult piece of employment legislation to administer in this country. New regulatory requirements found nowhere in the statute have turned the FMLA into maze of traps for even the most conscientious employers, and a benefit many companies cannot effectively manage.

We hope that any regulations under USERRA take a different approach and preserve the support and goodwill that responsible employers like MeadWestvaco have for their employees in our armed forces. Thank you for the opportunity to submit our views on this subject to the Subcommittee.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES

Hearing Date: July 24, 2003
Committee: House Committee on Veterans' Affairs Benefits Subcommittee
Member: Chairman Brown
Witness: Secretary Rumsfeld
Question #1

Question: Mr. Jim Rouse, Vice President of ExxonMobil, testified that "we believe the current requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA) are reasonable and the Department of Labor's administration of the Act seems pragmatic from our perspective." What are your views on Mr. Rouse's observation, please?

Answer: I agree with Mr. Rouse's observation. We do not see any need for change in the Act at the current time. USERRA is broad enough to handle the wide variety of situations that arise, yet narrow enough to address each specific case involving an individual Service member or an employer. However, as the first long term mobilization of Guard and Reserve members since the enactment of USERRA in 1994 continues to evolve, we may identify areas for future consideration.

Hearing Date: July 24, 2003
Committee: House Committee on Veterans' Affairs Benefits Subcommittee
Member: Chairman Brown
Witness: Secretary Rumsfeld
Question #2

Question: The Military Coalition recommends that the Subcommittee strengthen the "escalator principle" to ensure that reemployed Service members are not denied merit pay increases based on the lack of a scheduled performance evaluation during military absence. The Coalition recommends, for example, that an average of two or three previous merit increases, if awarded, be used to set a reemployment pay increase. What are your views on this proposal, please?

Answer: We believe that USERRA provides protections broad enough that regulations being developed by the Department of Labor's Veterans' Employment and Training Service (DoL/VETS) can be written to provide a fair application of merit pay increases and support consideration of the Military Coalition's recommendations.

Hearing Date: July 24, 2003
Committee: House Committee on Veterans' Affairs Benefits Subcommittee
Member: Chairman Brown
Witness: Secretary Rumsfeld
Question #3

Question: The Military Coalition recommends the Subcommittee review the lack of Department of Justice enforcement of the USERRA among state governments and establish a requirement for that department to accept the cases filed by state employees. The Military Coalition further recommends that the Subcommittee establish a reporting requirement for the Department of Justice under section 4323 of title 38, United States Code, to assess the effectiveness of the provision for state employee-reservists with legitimate USERRA claims against state employers who do not waive their sovereign immunity in such cases. Do you have views on this proposal?

Answer: We would defer to Department of Justice for their input to the Subcommittee.

Hearing Date: July 24, 2003
Committee: House Committee on Veterans' Affairs Benefits Subcommittee
Member: Chairman Brown
Witness: Secretary Rumsfeld
Question #4

Question: The Military Coalition recommends that Congress amend the USERRA to require the Secretary of Labor to issue regulations implementing the USERRA by changing "may prescribe regulations" to "shall prescribe regulations" in section 4331 of title 38, United States Code. The Military Coalition further recommends that the Department of Labor's Veterans' Employment and Training Service (DoL/VETS) be provided the resources necessary to publish a USERRA Handbook. What are your views, please?

Answer: Mr. Juarbe, Assistant Secretary for Veterans' Employment and Training Service, Department of Labor, testified that Secretary Chao has directed the Department to begin drafting proposed regulations that will be promulgated for USERRA, therefore, amending the statute to mandate such a requirement is not necessary. We expect to provide comment/input prior to the public comment period. Also, we understand that DoL/VETS has already developed a draft USERRA handbook.

Hearing Date: July 24, 2003
Committee: House Committee on Veterans' Affairs Benefits Subcommittee
Member: Chairman Brown
Witness: Secretary Rumsfeld
Question #5

Question: The Military Coalition recommends a greater investment of resources to provide outreach to military reservists, families, and employers on Family Medical Leave Act benefits for returning Guard and Reserve Service members. The Military Coalition, therefore, recommends that the Subcommittee on Benefits authorize an outside review of the DoL/VETS and the Department of Justice resource requirements for adequate USERRA compliance activities. Do you have any views on this proposal?

Answer: We are aware that the Department of Labor's Wage and Hour Division of Employment Services Administration has formulated a policy under which active duty time of activated Reservists is counted towards eligibility to take time off from work under the Family and Medical Leave Act. That policy memorandum is posted on the DoL/VETS website. We are always looking for ways to market USERRA information to employers and Service members. Our National Committee for Employer Support of the Guard and Reserve (NCESGR) is in constant communication with DoL/VETS—this allows us to focus the efforts of nearly 5000 volunteers throughout 55 ESGR committees to inform employers and represent Service members.

U.S. Department of Labor

Assistant Secretary for
Veteran's Employment and Training
Washington, D.C. 20210

SEP 24 2003

The Honorable Henry E. Brown, Jr.
Chairman
Committee on Veterans' Affairs
Subcommittee on Benefits
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Brown:

Thank you for the opportunity to respond to the follow-up questions presented as a result of the oversight hearing held on July 24, 2003. The responses to those questions are enclosed.

Sincerely,

Frederico Juarbe Jr.

Enclosure

1. *Mr. Jim Rouse, Vice President of Exxon Mobil, testified that "we believe the current requirements of the USERRA are reasonable and the Department of Labor's administration of the Act seems pragmatic from our perspective." What are your views on Mr. Rouse's observation, please?*

The Department's approach in administering USERRA is results-oriented and focused on ensuring that America's service members receive the full protection of the Act. The Department is engaged in an active, aggressive information and outreach effort that provides returning service members, Reserve and National Guard members, and employers all the necessary information and technical assistance to assure they understand their rights and responsibilities. This includes assisting returning service members in filing claims, resolving complaints of discrimination, as well as assisting employers in meeting their obligations and responsibilities. The Department strives at all times to provide guidance that is clear, consistent, and accurate. The Department concurs with Mr. Rouse's characterization of USERRA's requirements.

2. *The Military Coalition recommends that the Subcommittee strengthen the "escalator principle" to ensure that reemployed servicemembers are not denied merit pay increases based on the lack of a scheduled performance evaluation during military absence. The Coalition recommends, for example, that an average of two or three previous merit increases, if awarded, be used to set a reemployment pay increase. What are your views on this proposal, please?*

The Department of Labor has taken a consistent position with respect to this issue dating back to USERRA's predecessor, the Veterans' Reemployment Rights (VRR) law. The current law addresses the concerns of the Military Coalition regarding merit pay increases. Merit pay is governed by the "escalator" principle, which dictates that a returning veteran "does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during [his military service.]" Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275, 284-85 (1946). Consequently, the Department's position is that a returning veteran may not be denied a merit pay increase awarded during the period of service simply because the veteran missed a performance evaluation. Depending upon the specific circumstances, the returning veteran must either be given a reasonable opportunity to earn the merit pay increase retroactive to the date it was awarded to his or her co-workers, or, if the merit pay increase is more accurately an automatic raise, the veteran is to be awarded the pay increase upon reemployment, with retroactive effect. The Department will adhere to this principle as it addresses merit pay increases in regulations on USERRA.

3. *The Military Coalition recommends the Subcommittee review the lack of Department of Justice enforcement of USERRA among state governments and establish a requirement for that Department to accept cases filed by state employees. The Military Coalition further recommends that the Subcommittee establish a reporting requirement for the Department of Justice under section 4323 of title 38, United States Code, to assess the effectiveness of the provision for state employee-reservists with legitimate USERRA claims against state employers who do not waive their sovereign immunity in such cases. Do you have views on this proposal?*

The Department respectfully recommends that detailed inquiries on this issue be directed specifically to the Department of Justice.

4. *The Military Coalition recommends that Congress amend the USERRA to require the Secretary of Labor to issue regulations implementing the USERRA by changing "may prescribe regulations" to "shall prescribe regulations" in section 4331 of title 38, United States Code. The Military Coalition further recommends that the Department of Labor's Veterans' Employment and Training Service (DoL/VETS) be provided the resources necessary to publish a USERRA Handbook. What are your views, please?*

The Secretary directed the Department to issue regulations for USERRA and we expect that the proposed rules will be out by February 2004. In addition, a draft USERRA Handbook is being reviewed and the Department intends to issue the handbook as a companion piece to the regulations upon their issuance.

5. *The Military Coalition recommends a greater investment of resources to provide outreach to military reservists, families, and employers on Family and Medical Leave Act benefits for returning Guard and Reserve servicemembers. The Military Coalition, therefore, recommends that the Subcommittee on Benefits authorize an outside review of the DoL/VETS and the Department of Justice resource requirements for adequate USERRA compliance activities. Do you have views on this proposal?*

The Department is constantly seeking new and innovative ways to enhance our outreach activities. The Department will continue to include USERRA in its internet based Employment Laws Assistance for Workers and Small Businesses (elaws) Advisor program, which provides interactive Advisors for USERRA, the Family and Medical Leave Act (FMLA), and veterans' preference, as well as other major laws administered by the Department. Additionally, the e-Vets Resource Advisor, a portal site to numerous websites with information and resources helpful to veterans, including information pertaining to the FMLA, is available through the VETS homepage as well as through the elaws homepage on the DOL website.

The Department issued a memorandum in July 2002 to clarify its position under USERRA on the rights of returning uniformed service members to family and medical leave. The memorandum clarifies that the months and hours that the employee would have worked, but for his or her military service, should be combined with the months employed and the hours actually worked to meet the 12-months and 1250 hours of employment required by the FMLA.

Additionally, information on this issue has been made available on both the VETS and the Employment Standards Administration's Web sites, which includes a fact sheet and some frequently asked questions. Based on the limited number of complaints or requests for technical assistance received on USERRA-FMLA, the Department believes that this information fully responds to the need for guidance.

In the wake of the events of September 11, 2001, and the subsequent activation of National Guard and reserve members, the Department, through VETS, has been able to substantially increase its USERRA outreach activities. In response to a sharply increased interest in USERRA within the employer community, VETS headquarters staff, in conjunction with the Office of the Solicitor and the Employee Benefits Security Administration, has made presentations for such groups as the Society for Human Resource Management, Labor Policy Association, District of Columbia and American Bar Associations and U.S. Chamber of Commerce. The Chamber of Commerce and Society for Human Resource Managment presentations occurred as live Webcasts and are now available in archived form via a link on the VETS website.

As of August 31, 2003, VETS staff had briefed approximately 98,000 individuals at 1,600 briefings and presentations nationwide since September 2001. VETS has also developed a web site that provides a USERRA briefing for National Guard and Reserve members unable to attend the formal VETS briefing.

VETS is constantly reviewing its USERRA investigation procedures to ensure optimal quality and timeliness and is establishing new and innovative USERRA training focused on outreach and compliance assistance. In this regard, VETS held a Compliance Assistance Conference on September 23, 2003. This one-half day conference consisted of professional interaction and generated vital information and fresh ideas on all of VETS compliance assistance activities, including USERRA. The conference augmented VETS' efforts to develop more and better methods to coordinate its compliance assistance efforts.

The Department has been very proactive in its approach to compliance assistance and I do not believe an outside review to evaluate resource requirements for USERRA compliance activities is warranted. We would be pleased to meet with the Military Coalition, however, to discuss any specific comments or concerns with respect to the Department's resource requirements for USERRA compliance activities.

QUESTIONS FOR THE RECORD FROM
CHAIRMAN HENRY E. BROWN, JR.
TO POSTMASTER GENERAL JOHN POTTER
FROM THE SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS

Oversight Hearing on
Uniformed Services Employment and Reemployment Rights Act (USERRA)
July 24, 2003

1. Mr. Jim Rouse, Vice President of ExxonMobil, testified that "we believe the current requirements of the USERRA are reasonable and the Department of Labor's administration of the Act seems pragmatic from our perspective." What are your views on Mr. Rouse's observation, please?

The Postal Service agrees that USERRA's requirements are reasonable and that the Department of Labor's (DOL) administration of the Act is sound. In our opinion, the Department of Labor takes a balanced approach to applying USERRA provisions and thereby ensures that current and former members of the Armed Forces receive the benefits and protections provided by the Act, while fairly and adequately considering the needs and concerns of employers. Many employers are not fully aware of their obligations under USERRA. In our opinion, business outreach programs, perhaps provided in coordination with the Department of Defense's (DOD) Employer Committee for the Support of the Guard and Reserve, would correct this problem and further evidence DOL's balanced approach to administering the statute.

2. The Military Coalition recommends that the Subcommittee strengthen the "escalator principle" to ensure that reemployed service members are not denied merit pay increases based on the lack of a scheduled performance evaluation during military absence. The Coalition recommends, for example, that an average of two or three previous merit increases, if awarded, be used to set a reemployment pay increase. What are your views on this proposal, please?

USERRA's language is unclear with regard to the requirement to provide pay increases to employees evaluated on a merit system when they have been in an administrative leave status for the entire rating period. Nevertheless, the Postal Service continues to give "merit" increases to employees who are on military duty for all or part of the rating period. The Postal Service believes that its approach is consistent with the intent of USERRA and that our employees who defend our nation should not be adversely impacted because of their military service.

In FY 03, our merit evaluation plan for professional, managerial, non-unionized clerical and administrative staff (EAS) is based on achievement of mutually established objectives at the beginning of each fiscal year. If an employee is at work for fewer than 60 days during the rating period because of military service, he or she is awarded the most prevalent successful rating and receives a salary increase. Employees working for at least 60 calendar days during the rating period are rated and are eligible for merit increases on the basis of the rating received.

Collective bargaining unit employees on LWOP, Military Leave, receive increases as negotiated by the appropriate bargaining unit. These raises are effective as stipulated by the contract and are given as if the employee were at work.

We believe, however, that USERRA's intent in this regard should be clarified, either legislatively or administratively.

3. The Military Coalition recommends that Congress amend the USERRA to require the Secretary of Labor to issue regulations implementing the USERRA by changing "may prescribe regulations" to "shall prescribe regulations" in section 4331 of title 38, United States Code. The Military Coalition further recommends that the Department of Labor's Veterans' Employment and Training Service (DoL/VETS) be provided the resources necessary to publish a USERRA Handbook. What are your views, please?

The Postal Service believes that the greatest challenge facing employers in correctly applying USERRA is the absence of clear, easily obtained guidance on issues that require interpretation of the Act. During the period prior to the enactment of USERRA, the Veterans Reemployment Rights Act (VRRA) provided servicemen and women employment protection. The Department of Labor published a handbook that provided guidance to employers and employees in applying VRRA. The absence of such formal guidance, either by way of a handbook or by regulations, can create unfulfilled expectations on the part of servicemen and servicewomen or impede the employer's ability to comply with the Act. The Postal Service recommends that the DOL issue formal guidance, either in the form of a handbook or by proscribing regulations, as soon as practical.

4. The Military Coalition recommends a greater investment of resources to provide outreach to military reservists, families, and employers on Family Medical Leave Act benefits for returning Guard and reserve service members. The Military Coalition, therefore, recommends that the Subcommittee on Benefits authorize an outside review of the DoL/VETS and the Department of Justice resource requirements for adequate USERRA compliance activities. Do you have views on this proposal?

The Postal Service believes that the Department of Labor's memorandum of July 22, 2002, concerning the availability of Family and Medical Leave Act (FMLA) benefits to returning reservists and guardsmen, resolved this issue. The Postal Service, in accordance with DOL's guidance, counts periods of military service toward the 12-month and 1250-hour eligibility requirements set by FMLA.

Schering-Plough

John Ryan
Senior Vice President
Human Resources

Schering-Plough Corporation
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September 9, 2003

Mr. Henry E. Brown, Jr.
Chairman
Subcommittee on Benefits
U.S. House of Representatives
Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find Schering-Plough's responses to the questions arising from the Subcommittee on Benefits hearing of July 24, 2003. I also have e-mailed a copy to Ms. Devon Seibert.

Thank you for the opportunity to participate in the Subcommittee hearing, and to respond to the written questions. It was a pleasure meeting you, and commend you and your fellow subcommittee members for the important work you are doing on behalf of the armed forces reservists and guardsmen and women.

Sincerely,

John Ryan

JR:ab
Enclosure

John Ryan
Sr. Vice President, Human Resources
Schering-Plough Corporation

1. Mr. Jim Rouse, Vice President, ExxonMobil, testified that "we believe the current requirements of the USERRA are reasonable and the Department of Labor's administration of the Act seems pragmatic from our perspective." What are your views on Mr. Rouse's observation, please?

   Response: We concur in general with Mr. Rouse's testimony, with the exception as noted in response #2 regarding strengthening the "escalator principle."

2. The Military coalition recommends that the Subcommittee strengthen the "escalator principle" to ensure that reemployed servicemembers are not denied merit pay increases based on the lack of a scheduled performance evaluation during military absence. The Coalition recommends, for example, that an average of two or three previous merit increases, if awarded, be used to set a reemployment pay increase. What are your views on this proposal, please?

   Response: We concur with the recommendation of the Military Coalition with respect to the "escalator principle". This principle is currently included in our policy regarding re-employment of activated reservists, which, among other provisions, is as follows:

   - Upon returning to work, hourly employees in step-rate pay systems will be placed at the step level they would have achieved if they had not been activated.
   - Employees scheduled for merit increases during the activation period will receive increases (upon re-employment).

3. The Military Coalition recommends that Congress amend the USERRA to require the Secretary of Labor to issue regulations implementing the USERRA by changing "may prescribe regulations" to "shall prescribe regulations" in section 4331 of title 38, Untied States Code. The Military Coalition further recommends that the Department of Labor's Veterans' Employment and Training Service (DoL/VETS) be provided the resources necessary to publish a USERRA Handbook. What are your views, please?

   Response: We concur with the proposed wording change from "may" to "shall" in order to ensure the issuance of regulations to implement USERRA. We are less sanguine about the value of a USERRA Handbook to be funded by additional resources for Dol/VETS for this purpose. It is not clear what the purpose of the Handbook would be, how it would be provided to the intended audience for maximum impact, and how it would be kept up-to-date. If the intent is to provide employers and employees of their responsibilities and rights under USERRA, this help is already available through ESGR, at its website or through telephone consultation.

4. The Military Coalition recommends a greater investment of resources to provide outreach to military reservists, families, and employers on Family Medical Leave Act benefits for returning Guard and reserve servicemembers. The Military Coalition, therefore, recommends that the Subcommittee on Benefits authorize an outside review of the DoL/VETS and the Department of Justice resource requirements for adequate USERRA compliance activities. Do you have views on this proposal?

   Response: It is unclear what the Military Coalition is recommending. The reference to "greater investment of resources to provide outreach" regarding FMLA benefits seems misplaced since USERRA and FMLA are separate and unrelated federal acts governing employees rights under disparate circumstances. With respect to the recommendation that the Subcommittee authorize a review of Dol/VETS and DOJ resource requirements for USERRA compliance, it is not clear what the reasons for this review are and what the benefits would be.

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J. J. "Jim" Rouse
Vice President

ExxonMobil

October 27, 2003

U.S. House of Representatives
Committee on Veterans Affairs
One Hundred Eighth Congress
335 Cannon House Office Building
Washington, DC 20515

Dear Chairman Brown and the members of the Subcommittee on Benefits:

On behalf of ExxonMobil, I am forwarding the following responses to questions we received from the U.S. House of Representatives' Committee on Veterans Affairs, Subcommittee on Benefits.

Q1. The Military Coalition recommends that the Subcommittee strengthen the "escalator principle" to ensure that re-employed service members are not denied merit pay increases based on the lack of a scheduled performance evaluation during military absence. The Coalition recommends, for example, that an average of two or three previous merit increases, if awarded, be used to set a reemployment pay increase. What are your views on this proposal, please?

A1. ExxonMobil takes exception to this proposal. Rather than a formula, we would propose a statement of principle that says re-employed service members should receive pay treatment on the same basis as if they had remained at work.

Q2. The Military Coalition recommends that Congress amend the USERRA to require the Secretary of Labor to issue regulations implementing the USERRA by changing "may prescribe regulations" to "shall prescribe regulations" in section 4331 of the title 38, United States Code. The Military Coalition further recommends that the Department of Labor's Veterans' Employment and Training Service (DoL/VETS) be provided the resources necessary to publish a USERRA Handbook. What are your views, please?

A2. ExxonMobil takes no position on this proposal.

Q3. The Military Coalition recommends a greater investment of resources to provide outreach to military reservists, families, and employers on Family Medical Leave Act benefits for returning

October 27, 2003
Page 2

Guard and reserve service members. The Military Coalition, therefore, recommends that the Subcommittee on Benefits authorize an outside review of the DoL/VETS and the Department of Justice resource requirements for adequate USERRA compliance activities. Do you have views on this proposal?

A3. ExxonMobil and many other companies have personal leave and other workplace flexibility policies that could provide support for employees whose spouse is on a military leave of absence. As such, there are alternatives already available to employees without broadening the intent and scope of the Family Medical Leave Act.

Thank you again for allowing us the opportunity to testify before the Subcommittee. If you need any further assistance, please give Jeanne Mitchell a call at (202) 862-0225.

Sincerely,

J.J. Rouse

JJR/dcm

REPUBLICANS

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PATRICK E. RYAN
CHIEF COUNSEL AND STAFF DIRECTOR

U.S. House of Representatives

COMMITTEE ON VETERANS' AFFAIRS

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C. MICHAEL DURISHIN
STAFF DIRECTOR

August 20, 2003

Mr. William B. Timmerman
Chairman and CEO
SCANA Corporation
Columbia, SC 29218

Dear Mr. Timmerman:

In reference to the Subcommittee on Benefits hearing of July 24, 2003, I would appreciate it if you could respond to the enclosed additional questions for the record by close of business September 24, 2003. If the answers to these questions are not received by this date, the Committee may proceed to publish the hearing record with an indication that SCANA Corporation did not respond to the Committee's questions in a timely manner.

It would be appreciated if you could provide your answers consecutively on legal size paper, single spaced. Please restate the question in its entirety before providing the answer.

In addition, please email a copy of your responses to the enclosed questions to Ms. Devon Seibert at devon.seibert@mail.house.gov

Thank for your cooperation in this matter.

Sincerely,

HENRY E. BROWN, JR.
Chairman
Subcommittee on Benefits

Enclosures

Oversight Hearing on
Uniformed Services Employment and Reemployment Rights Act (USERRA)
July 24, 2003

Post-Hearing Questions
Honorable Henry E. Brown, Jr.
Chairman

1.
Q. Mr. Jim Rouse, Vice President of Exxon Mobil, testified that "we believe the current requirements of the USERRA are reasonable and the Department of Labor's administration of the Act seems pragmatic from our perspective." What are your views on Mr. Rouse's observation, please?

A. I agree.

2.
Q. The Military Coalition recommends that the Subcommittee strengthen the "escalator principle" to ensure that reemployed servicemembers are not denied merit pay increases based on the lack of a scheduled performance evaluation during military absence. The Coalition recommends, for example, that an average of two or three previous merit increases, if awarded, be used to set a reemployment pay increase. What are your views on this proposal, please?

A. From a certainly philosophical standpoint, I agree reemployed servicemembers should be "kept whole" as to their reemployment pay level. Due to the myriad processes in the private sector relating to pay and pay adjustments, I am not certain any single formulaic approach would work. It does seem to me that the basic test is the level of a reemployed reservist's pay compared to his peer's pay for the same job. A review of the history of pay increases granted during a reservist's time away should be very germane in most cases.

3.
Q. The Military Coalition recommends that Congress amend the USERRA to require the Secretary of Labor to issue regulations implementing the USERRA by changing "may prescribe regulations" to "shall prescribe regulations" in section 4331 of title 38, United States Code. The Military Coalition further recommends that the Department of Labor's Veterans' Employment and Training Service (DoL/VETS) be provided the resources necessary to publish a USERRA Handbook. What are your views, please?

A. I think publishing a handbook of USERRA rights is a positive step toward both the employer and employee/reservist both having the same set of expectations.

4.
Q. The Military Coalition recommends a greater investment of resources to provide outreach to military reservists, families, and employers on Family Medical Leave Act benefits for returning Guard and reserve servicemembers. The Military Coalition, therefore, recommends that the Subcommittee on Benefits authorize an outside review of the DoL/VETS and the Department of Justice resource requirements for adequate USERRA compliance activities. Do you have views on this proposal?

A. I do not.

GRAINGER.

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September 18, 2003

The Honorable Henry E. Brown, Jr.
Chairman of the Subcommittee on Benefits
Committee on Veterans Affairs
U.S. House of Representatives
Washington, D.C. 20510

Dear Chairman Brown:

On behalf of W.W. Grainger, Inc., enclosed are the responses to the questions submitted subsequent to the Subcommittee's hearing addressing the Uniform Services Employment and Reemployment Rights Act on July 24, 2003.

Please call upon me if I can provide any additional information. W.W. Grainger appreciates very much participating in the Subcommittee's consideration of this matter.

Respectfully,

Peter Perez

Peter Perez
Senior Vice President for Human Resources

enclosure

Responses of Peter Perez.
Senior Vice President for Human Resources
W.W. Grainger, Inc.

3. The Military Coalition recommends that Congress amend the USERRA to require the Secretary of Labor to issue regulations implementing the USERRA by changing "may prescribe regulations" to "shall prescribe regulations" in section 4331 of tile 38, United State Code. The Military Coalition further recommends that the Department of Labor Veteran's Employment and Training Service (DoL/VETS) be provided the resources necessary to public a USERRA Handbook. What are your views, please?

   The USERRA is intended to minimize the disadvantages to an individual that occurs when that person needs to be absent from civilian employment to serve in the military. The 1994 legislation made significant changes in protecting servicemember rights and benefits and added a more focused enforcement mechanism. We believe that the law is emphatic in its policies and its requirements. W.W. Grainger has diligently pursued adherence to law; it is an important element of its recruitment and retention policies. We make available our policies and the law's requirements to our employees. Regulations or additional information would not alter our commitment to the law.

   4. The Military Coalition recommends a greater investment of resources to provide outreach to military reservists, families, and employers on Family Medical Leave Act benefits for returning Guard and reserve servicemembers. The Military Coalition, therefore, recommends that the Subcommittee on Benefits authorize an outside review of the DoL/Vets and the Department of Justice resource requirements for adequate USERRA compliance activities. Do you have views on this proposal?

   W.W. Grainger's embrace of the USERRA is premised on it reflecting sound labor relations policy, the comprehension that the national defense is a responsibility of all, and the obligation to follow the law. W.W. Grainger is enormously proud of the Grainger men and women who serve in the armed forces and our policies are a tangible example of our pride and trust in them. Within the context of our positive experience under USERRA, we are not in a position to comment on the need for an outside review of either Department of Labor or Department of Justice activities.

Post-Hearing Questions:
Honorable Henry E. Brown, Jr.
Chairman

1. Mr. Jim Rouse, Vice President of ExxonMobil, testified that "we believe the current requirements of the USERRA are reasonable and the Department of Labor's administration of the Act seems pragmatic from our perspective." What are your views on Mr. Rouse's observation, please?

WAL-MART RESPONSE:

Based on our experience at Wal-Mart, we agree with this observation.

2. The Military Coalition recommends that the Subcommittee strengthen the "escalator principle" to ensure that reemployed servicemembers are not denied merit pay increases based on the lack of a scheduled performance evaluation during military absence. The Coalition recommends, for example, that an average of two or three previous merit increases, if awarded, be used to set a reemployment pay increase. What are your views on the proposal, please?

WAL-MART RESPONSE:

We agree. Specifically, the Supreme Court long ago, in *Fishgold v. Sullivan Drydock,* made it clear that an otherwise eligible service person "[M]ust be restored to [his/her] former position, or a position of like seniority, status and pay...." And that [he/she] steps back on the [pay] escalator "at the precise point [he/she] stepped off." (emphasis supplied). In keeping with both the letter and the spirit of that decision, the Coalition recommendation seems appropriate.

3. The military Coalition recommends that Congress amend the USERRA to require the Secretary of Labor to issue regulations implementing the USERRA by changing "may prescribe regulations" to "shall prescribe regulation" in section 4331 of title 38, United States Code. The Military Coalition further recommends that the Department of Labor's Veterans' Employment and Training Service (DoL/VETS) be provided the resources necessary to publish a USERRA Handbook. What are your views, please?

WAL-MART RESPONSE:

Employing the permissive "may," rather than the mandatory "shall," clearly evidences Congress' intent to allow the Secretary the discretion to determine when and under what circumstances she will issue implementing regulations. There does not seem to be a compelling reason to withdraw that discretion. With respect to the handbook, there appears to be sufficient information for employers and employees to easily access, including a DOL web site, case law and other employer and employee associations with this information.

4. The Military Coalition recommends a greater investment of resources to provide outreach to military reservists, families, and employers on Family Medical Leave Act benefits, for returning Guard and reserve servicemembers. The Military Coalition, therefore, recommends that the Subcommittee on Benefits authorize an outside review of the DoL/VETS and Department of Justice resource requirements for adequate USERRA compliance activities. Do you have views on this proposal?

WAL-MART RESPONSE:

We are without sufficient information to provide a meaningful reply to this question.

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