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PROTECTING THE EMPLOYMENT RIGHTS OF THOSE WHO PROTECT THE UNITED STATES

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

EXAMINING WAYS TO PROTECT THE EMPLOYMENT RIGHTS OF THOSE WHO PROTECT THE UNITED STATES

NOVEMBER 8, 2007

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PROTECTING THE EMPLOYMENT RIGHTS OF THOSE WHO PROTECT THE UNITED STATES

THURSDAY, NOVEMBER 8, 2007

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:28 a.m. in Room SD–430, Dirksen Senate Office Building, Hon. Edward M. Kennedy, chairman of the committee, presiding.

Present: Senator Kennedy, Reed, Brown, Isakson, Murkowski, and Allard.

OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. This Sunday the Nation will celebrate Veterans' Day. On that solemn day, we honor the generation of soldiers who fought for our country in all our Nation's wars. We mourn for those who have lost their lives on the battlefield and we express our immense gratitude, particularly to the members of our Armed Forces who have served so bravely in recent years in Iraq and Afghanistan, both those who have returned home and those still in harm's way.

Since September 11th, 1.5 million of our service men and women have been deployed in Iraq and in Afghanistan. And more than 630,000 members of the National Guard and Reserves have been mobilized. Our forces now have been in Iraq for 4½ years, longer than our military was engaged in World War II. Our Government has asked all of these brave men and women to make immense sacrifices for our country. They've been sent far from their homes for extended tours of duty. We've asked them to leave their families and their jobs. We've asked them to risk their lives and more than 3,800 have made the ultimate sacrifice.

In fact, this year more soldiers have died in Iraq than any other year of the war. They've put our national security first and the Nation owes them an immense debt of gratitude.

When these heroes return home, we owe them more than a kind word or prayers. We must do whatever we can to help them make the transition back to civilian life. Many veterans need to return quickly to their former jobs to support their families. Our Federal laws are meant to speed that transition by requiring companies to quickly reemploy our Nation's veterans and ensure they don't lose out at work because they answered the call of duty.

However, Department of Defense figures that have been released today, show that tens of thousands of veterans returning home

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have faced the harsh reality that their service to our country has cost them the salary they deserve, the health care, and other benefits, and even their jobs. Among the members of the Reserves and National Guard, nearly 11,000 were denied prompt reemployment. More than 22,000 lost seniority and rightful pay. Nearly 20,000 saw their pensions cut. More than 15,000 did not receive the training they needed to resume their former jobs. Nearly 11,000 did not get their health insurance back.

Even more disturbing, veterans who seek help face a Walter Reed-like nightmare, a system that is crumbling and failing to serve them when they need it most. They have to negotiate a maze of bureaucracy, they could be shuffled among multiple agencies only to find, after all the bureaucratic run-around, they still may have to pay a lawyer to file their case in court.

With a system like this, it's no wonder that 77 percent of all veterans say they don't even bother to seek help when they face reemployment problems. A third say they have no idea where to turn and don't believe that their problems would be fixed. Our laws require the Federal Government to defend veterans' rights, but those who seek help must wait for months, even years, just to get a simple answer about whether the Government will take their case.

The Department of Labor, where the vast majority of claims are referred, has taken years to resolve complaints. One case has even been open for 7 years—7 years. Federal employees seeking help waited an average of 8 months before their cases were referred to yet another agency, the Office of Special Counsel for help. Nearly half of all veterans who sought help from the Department of Labor last year said that they were dissatisfied with the assistance that they received.

Of the nearly 1,400 complaints, the Department received in 2006, it referred only 24 cases, less than 2 percent, to other agencies for prosecution that year. As a result, the Attorney General filed only four Federal cases on behalf of veterans in 2006. The Office of Special Counsel litigated only a single case referred by the Department of Labor.

In a situation where tens of thousands of our veterans are having reemployment problems, these numbers are appalling. Even worse, we've done little to help disabled veterans to meet the unique challenges they face. More than 28,000 soldiers have been wounded in action since 9/11, thousands of them seriously enough to need help to return to their former civilian jobs. Incredibly, the Federal agencies tell us they don't even know what the scope of the problem is because they don't follow disability cases in a uniform manner.

This gross abdication of responsibility to our veterans is unacceptable. These brave men and women have risked their lives to protect us, yet we are failing to protect them.

Today, we'll seek answers from the agencies about why more isn't being done. We'll also hear from the Government Accountability Office, whose staff has produced several comprehensive reports about these problems, including two reports earlier this year. We look forward to hearing further about the in-depth work that they have done.

We're honored to have with us several veterans today. Tammy Duckworth, Director of the Illinois Department of Veterans' Affairs, an Iraq War veteran. Tammy, it's nice to see you again. Thank you. Thank you.

Retired Lieutenant Colonel Steve Duarte, Lieutenant General Dennis McCarthy, Executive Director of the Reserve Officers Association.

I know there are a number of men and women in the audience here who have served our country. We commend them for their strong commitment to seek fairness for veterans and service members. We know we can never truly repay our veterans for their immense sacrifices. They have fought hard overseas for our country. It's up to us to fight hard for them when they return to the heroes' welcome that they so justly deserve.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR KENNEDY

This Sunday, the Nation will celebrate Veterans' Day. On that solemn day we honor the generations of soldiers who have fought for our country in all the Nation's wars. We mourn for those who have lost their lives on the battlefield. And we express our immense gratitude, particularly to the members of our armed forces who have served so bravely in recent years in Iraq and Afghanistan—both those who have returned home and those still in harm's way.

Since September 11th, 1½ million of our servicemen and women have been deployed to Iraq or Afghanistan, and more than 630,000 members of the National Guard and Reserves have been mobilized. Our forces have now been in Iraq for four and one-half years—longer than our military was engaged in World War II.

Our government has asked all of these brave men and women to make immense sacrifices for our country. They've been sent far from their homes for extended tours of duty. We've asked them to leave their families and their jobs. We've asked them to risk their lives, and more than 3,800 of them have made the ultimate sacrifice. In fact, this year, more soldiers have died in Iraq than in any other year of the war. They've put our national security first, and the Nation owes them an immense debt of gratitude. When these heroes return home, we owe them more than kind words or prayers. We must do whatever we can to help them make the transition back to civilian life.

Many veterans need to return quickly to their former jobs, to support their families. Our Federal laws are meant to speed that transition, by requiring companies to quickly reemploy our Nation's veterans and ensure they don't lose out at work because they answered the call of duty.

However, Department of Defense figures being released today show that tens of thousands of veterans returning home have faced the harsh reality that their service to our country has cost them the salary they deserve, their health care, and other benefits, and even their jobs. Among members of the Reserves and National Guard:

- Nearly 21,000 were denied prompt reemployment.
- More than 22,000 lost seniority and rightful pay.

• Nearly 20,000 saw their pensions cut.

• More than 15,000 did not receive the training they needed to resume their former jobs.

• Nearly 21,000 did not get their health insurance back.

Even more disturbing, veterans who seek help face a Walter Reed-like nightmare—a system that is crumbling and failing to serve them when they need it most. They have to negotiate a maze of bureaucracy. They can be shuffled among multiple agencies—only to find after all the bureaucratic run-around that they still may have to pay a lawyer to file their case in court.

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We're also honored to have with us several veterans: Tammy Duckworth, Director of the Illinois Department of Veterans' Affairs and an Iraq War veteran; Retired Lieutenant Colonel Steve Duarte; and Lieutenant General Dennis M. McCarthy, Executive Director of the Reserve Officers Association.

I know there are a number of men and women in the audience here who have served our country. We commend them for their service, and for their strong commitment to seek fairness for all veterans and servicemembers.

We know we can never truly repay our veterans for their immense sacrifices. They have fought hard overseas for our country, and it is up to us to fight just as hard for them when they return home to the heroes' welcome they so justly deserve.

The CHAIRMAN. Senator Isakson.

STATEMENT OF SENATOR ISAKSON

Senator ISAKSON. Well, thank you very much, Senator Kennedy, for calling this hearing. And this gives me the opportunity to publicly apologize to Tammy for bumping into her when I came in the building today. And I want to also tell her that I had the pleasure of meeting her at Walter Reed when she was doing rehab there, and I thank you very much for your service to the country and what you're doing for veterans today.

While Veterans' Day is Monday, today is also the 25th Anniversary of the Vietnam Memorial, and I was pleased to join Senator Kennedy this morning in reading some of the 58,000 names of those brave Americans who died in Vietnam, including my very best friend in life, Jackson Elliott Cox, who was my roommate, and fraternity brother in school.

So this is a special day, it's a special day to look at our veterans, and it's a special day to have a hearing of this nature. So, thank you, Senator Kennedy, for doing that.

Since the tragic terrorist attacks of September 11, 2001, our Nation has depended on our Armed Services more than ever. It goes without saying that all of us, Republicans and Democrats, liberals and conservatives, are appreciative of their efforts and those of their families.

I am proud to have served in the Georgia Air National Guard, hired members of the Guard and the Reserve when I ran my company in Georgia, and I have voted to send our men and women into harm's way. I take nothing more seriously than the sacrifice and the courage of these brave young men and women.

Today, we address the employment of these brave young men and women upon their return from action. More than half of the men and women serving in all volunteer Armed Forces are members of the Guard and the Reserve. Accordingly, employers play a vital role in enabling their employees, who are members of the Guard and Reserve, to serve their country and return to their job in a smooth transition. It's imperative that employers be as flexible as possible, as veterans attempt the transition back to civilian life.

Federal law lays out a bare minimum that employers must do to meet the needs of our Guard and Reserve. Employers must not discriminate in hiring or other benefits of employment against persons, because of that person's obligation to perform services in uniform.

And I would make a note at this point in my remarks, unbeknownst to me and not planned because of this hearing, but at lunch—I'll be having lunch with some of the executives of Home Depot that testified last year before this very committee. They have

been recognized at least twice, as a national leader in the employment of veterans. And Frank Lake, their CEO, and the many people at Home Depot, who are headquartered in Georgia, can say their No. 1 responsibility and what they do over and above what is required, the minimum that's required by law, is just astounding. I think they're an absolute role model for the rest of the country.

And, Mr. Chairman, to that end, I have a number of statements, six precisely, that I've received from private employers documenting such efforts that I would like to be entered into the record.

The CHAIRMAN. They will be so included.

[The information previously referred to follows:]

PREPARED STATEMENT OF JANET FIORE, CEO, THE SIERRA GROUP, INC.

Please accept my testimony for the record regarding the major role that prompt and effective vocational rehabilitation services play in accommodating, retraining and placing injured veterans back into their prior civilian jobs or into new careers.

BACKGROUND

The high rate of unemployment for Americans with Disabilities is being compounded by the fact that more than 22,000 men and women who are returning from the current conflicts, who were previously employed, are now physically disabled, and in need of a totally different way to earn a living. Or, they have sustained injuries and disabilities that make it difficult for them to return to their prior civilian jobs unless both they and their employers receive disability-related accommodation and training services.

The men and women who have recently become disabled while serving our country are adding to existing U.S. Census statistics which show that 10 percent of all Americans have a disability. Physical injuries and post traumatic stress disorder for veterans is also causing an increase in the existing statistics that show 27 million Americans have a severe disability that affects their ability to see, hear, walk or perform other functions necessary for the workplace. Assistive technology is enabling thousands of these individuals to work or return to work in their previous jobs. However, the unemployment rate for people with disabilities remains more than 11 times the national average. Seventeen years following the passage of the Americans with Disabilities Act, which was enacted to prohibit discrimination solely on the basis of disability in employment, public services, and public accommodations, the unemployment rate for people with disabilities remains at 70–80 percent.

Assisting people with disabilities in finding and maintaining competitive employment is important to society. Assistive technology, training and other accommodations are proven avenues to help businesses in both hiring and return to work practices. However, access to information and services that support individuals and business that need them is fragmented and therefore, underutilized. For instance, veterans with disabilities can gain work-related training and accommodation services via a number of separate agencies including, but not limited to, the Veteran Administration's Vocational Rehabilitation and Employment (VR&E); the Department of Labor's Veterans' Employment and Training Services (VETS); the Department of Education's State-administered public program of Vocational Rehabilitation (VR); and others. While each agency provides meaningful and beneficial services to both individuals and to employers, the lack of ability to easily navigate the process is actually a disincentive that contributes to the low employment numbers for citizens with disabilities. Veterans with disabilities do not always know which employment-related services are best to meet their individual needs and desires as they attempt to re-integrate to employment. Similarly, businesses faced with a system that is cumbersome to navigate are not proactively recruiting people with disabilities.

In order for more people with disabilities to be put to use in the workplace, American businesses seem to need a catalyst that will show them how to benefit from hiring and rehiring people with disabilities. One catalyst that would begin to change the dire unemployment picture for these persons with disabilities is the Disability Preference Program for Tax Collection Contracts. Once enacted into law, the initiative will serve as a pilot program to demonstrate to business the benefits of bringing these men and women into the workforce, in large numbers. The Disability Preference Program for Tax Collection Contracts is very well-suited to be this catalyst for several reasons, including:

• It will provide well-paying jobs with health benefits and 401(k) benefits;
• It will provide jobs that require only a high school education or GED, which is of particular importance to returning veterans who have become disabled; and
• It will provide jobs that are well-suited to accommodations, including use of assistive technology.

In my 15 years of experience providing services for job seeking Americans with disabilities, and to employers who hire them, it is often difficult to find work that is so well-suited for those with severe disabilities. The jobs that would be created by the Disability Preference Program for Tax Collection Contracts involve work from a desk, computer and telephone, all of which can be readily adapted for people with the most severe disabilities including mobility impairments, mild traumatic brain injury, severe vision loss and other impairments.

In addition, finding jobs with sustainable wages and benefits for individuals with a high school diploma or GED is difficult. Of individuals identified as both unemployed and having a severe disability, nearly 50 percent of them have an education that has not culminated in a high school diploma. In fact, nearly 40 percent of this total is educated at or below the 8th grade level. *The Journal of Rehabilitation* (July/August/September 2002, volume 68, Number 9) addresses the need for accommodations during GED testing for adults with disabilities because research demonstrates that people with disabilities ages 15 to 20 fail to complete high school at twice the rate as those without disabilities (41 percent vs. 21 percent). Therefore, those who go on to successfully gain their GED have even less opportunities than their non-disabled counterparts.

The Disability Preference Program for Tax Collection Contracts could be a catalyst that would succeed in putting thousands of severely disabled men and women to work in meaningful, well-paying careers. The success of this program will serve as an example that can allow additional governmental contracts to businesses in all industries to encourage the employment of people with disabilities, at good wages and with benefits.

This "business first" approach provides a reason to build upon the numbers of employees with disabilities a business includes in its workforce by offering an incentive during the contracting phase, in order to stimulate the hiring of a large number of qualified men and women with disabilities into our shrinking American workforce. The need for this program is further evidenced by the GAO Report in 2002 that found low numbers of businesses routinely using the Work Opportunities Tax Credit (WOTC), the Disabled Access Tax Credit (DAC) and the Architectural Barriers Removal Deduction. This study, which I participated in, found that many businesses were unaware of the programs. I and others contacted recommended that Congress take steps to reach out to business to educate them about existing incentives.

I have seen first hand how leveraging assistive technology and training in a third party debt collection production center gives people with disabilities the opportunity to obtain the skills they need to be successful tax collectors, and provides them with solid customer service skills that will be transferable should they wish to move on to another career. Armed with this career experience, those now in the ranks of the unemployed will become self sufficient-taxpayers themselves, while acquiring valuable employment skills to use in their future.

Regarding the need to create jobs that can accommodate an assistive technology user, the National Organization on Disability (NOD) study in 1998 revealed that 25 percent of all people with disabilities who work use assistive technology. This same study also noted that 45 percent of those with disabilities who are unemployed stated that they would *require* assistive technology in order to become employed. Therefore, the Disability Preference Program for Tax Collection Contracts, as a pilot program, is well-suited to allow this large group of people with severe disabilities to have a chance to work. It will also serve as a means to increase the use of assistive technology in the workforce, thereby drawing on the talents of the group of unemployed Americans who require this type of accommodation in order to work.

In the last 15 years, with the improvements in technology, and assistive technology, The Sierra Group, Inc., has trained and assisted over 5,000 individuals. Sierra has an 80 percent success rate—success being defined as 4 years after an individual is provided with assistive technology or training for vocational and educational purposes, they are still utilizing the services provided. Every day in America, thousands of job-seeking people with disabilities are turned away by businesses that have not seen the proof that these people can work. This travesty in unemployment must be reversed if we are to be a fully inclusive society that values diversity in our workforce. American businesses obviously need and require both a straightforward incentive and a successful pilot program to prompt them to recruit, hire, train, and accommodate workers with disabilities.

Enhanced incentives and coordination of resources are required for injured veterans and business in order to protect the employment rights of those who became disabled while protecting the United States.

ATTACHMENT.—UMC, INC. MONTICELLO, MN

UMC, Inc. supplied the pay differential between the employee's guard salary and his UMC wages, and continued his 401K contributions.

UMC took up collections for gift cards and sent care packages to Iraq where he was deployed.

We learned that due to a storm, his family's privacy fence at their home was damaged and approximately 20 employees and some of the UMC managers volunteered to go to their house and repair their fence, plant trees, and build a sandbox for their children.

Employees took up collection drives while he was away to raise money so that his family could purchase him an airline ticket, Christmas gifts for the kids, and other items they needed.

UMC kept in contact with the family at home in case they needed anything and his wife kept UMC updated about the employee.

UMC provided paid transportation and accommodations for the employee and his wife to be able to attend the Freedom Awards Ceremony in Washington DC. UMC also purchased his Dress Blues Attire.

Since the employee has returned from Iraq and prior to him returning to work, UMC is paying him 100 percent of his wages.

The employee has not returned to work yet but will be starting back in 2 weeks. Our HR department hosted a roundtable meeting to discuss Vets returning to work and Jim Sullivan from the ESGR spoke to an HR group about re-acclimation.

PREPARED STATEMENT OF JEFF HORNER, CHIEF DEVELOPMENT OFFICER, GLOBAL BUSINESS DEVELOPMENT AND VICE PRESIDENT, GOVERNMENT RELATIONS FOR UNITED COLLECTION BUREAU, INC. (UCB)

It is an honor to be invited to submit my statement for the Record.

My name is Jeff Horner. I am Chief Development Officer of Global Business Development and Vice President for Government Relations for United Collection Bureau, Inc. (UCB). UCB is an Ohio Corporation providing debt collection and accounts receivable management services since 1959. We are licensed in all 50 States that require collection agency licensing. In addition to our home office in Toledo, OH, we have eight other locations throughout Ohio, Michigan, Florida and, most recently, Arizona. We presently have about 1,200 employees and generate over $40 million in annual revenue.

UCB is recognized as a top performing service provider in the Financial Services market for credit card and bank product collections, known as the most demanding and competitive market segments in the industry. The company is a contact award holder for the Government Service Administration (GSA) for debt collection services (SIN 520–4) and we hold multiple State tax collection contract awards. Currently, the company's key initiative is the procurement of contracts with the Federal Government.

Under our service contract with the State of Ohio, UCB has been recognized as the top-performing vendor each year of the competitive contract for the collection of personal income tax accounts. With over $25 million collected, UCB has played a critical role in the overwhelming level of success the two Ohio Attorney Generals have experienced while in office, with record recoveries each term. In recognition of exceptional performance with the personal income tax accounts, UCB has also been awarded, under competitive bid, contracts for the collection of business tax accounts, student loan accounts, and State-operated hospital patient accounts.

It is UCB's belief that value-added services offer significant benefits to our clients, debtors, and employees. To this end, UCB has developed a **Value-Added Initiative for Federal Government** collection contract opportunities, not available with any other collection company in the industry.

Mr. Chairman, 1 in 10 Americans have a disability. While the current unemployment rate in the Nation stands at about 4.7 percent, the unemployment rate of PWDs continues to hover at 70–80 percent. The high number of returning disabled American veterans from Iraq and Afghanistan will only serve to compound this problem.

We feel that the status quo is unacceptable. Therefore, UCB has teamed up with a number of relationship partners for the purpose of developing a comprehensive program to identify, recruit, screen, hire, train, and employ persons with disabilities

(PWDs), including returning disabled veterans. Our program engages government and non-government support agencies, assistive technology products and services, a specialized training academy, and company resources to provide these employees with full- or part-time collector positions with income opportunity well above the national average for level of education and experience.

The entire UCB–PWD program serves as a pipeline to reach out to many candidates and identify those that are compatible with the functions and responsibilities of the position. UCB has built an integrated process using the partners and resources necessary to deliver them to the workstation that has been personally equipped for them to successfully perform the functions and responsibilities of the job. It is our finding that employees who are also persons with disabilities make extremely loyal, dependable, and productive associates in our organization.

Senator Ben Nelson of Nebraska has also been working on an initiative to further the employment of our returning disabled veterans and all PWDs. The goal of the Disability Preference Program is to promote the employment of persons with disabilities, including disabled veterans, through the utilization and enhancement of the IRS' program. As approved by the Senate, Senator Nelson's legislation would give a preference in contracting to third-party debt collectors who currently employ at least 50 persons with disabilities and agree to hire an additional 35 percent of the contract workforce persons with disabilities.

The contracts being executed by the IRS with private-sector debt collection companies offer an exceptional opportunity for the Federal Government to stimulate creation of well-paying jobs for the disabled. Positions at third-party debt collection agencies pay between $25,000 and $150,000 annually, with most averaging $40,000. These jobs also include health and 401(k) benefits. With an initial hire of 750 persons with disabilities, the Federal Government could potentially save up to $344 million over 10 years in Supplemental Security Income (SSI) and Disability Insurance (DI) benefits.

The Senator first introduced the Disability Preference Program for Tax Collection Contracts in 2005. His initiative has passed the Senate on three separate occasions. Most recently it was included as part of H.R. 2829, the Financial Services and General Government Appropriations Act for Fiscal Year 2008, as reported by the Senate.

Enactment of the Disability Preference Program is necessary since in several letters and conversations with the Department of Treasury, they have stated that "under existing GSA Federal Supply Schedule (FSS) contracting procedures, (they) cannot set a specific number of awards aside for contractors employing significant numbers of persons with disabilities."

The Treasury Department has also said they need legislation in order for "GSA to amend its socioeconomic criteria in order to give a preference to a business that hires large numbers of persons with disabilities." Currently, the preference is only considered if an individual who owns the company is a disabled veteran. This is an oversight which needs to be corrected.

It makes no sense that current law provides an employment opportunity for ONE disabled person, while this legislation would create opportunities for hundreds, if not thousands of people who are unemployed and disabled.

Unfortunately, there are many in Congress staunchly opposed to the IRS program to collect past due income taxes. While the pilot program has been quite successful—over $24 million in gross revenue has been collected—it remains under attack. In fact, this week the House of Representatives is slated to take up Chairman Charlie Rangel's bill, H.R. 3996, which contains a provision to repeal the IRS program.

But Mr. Chairman, I would propose to you that the Disability Preference Program is worth supporting even under the assumption that the IRS contracting law should be repealed at some future point. A closer look at the Disability Preference Program and the repeal of current IRS contracting law clearly shows that the two are not mutually exclusive. Until such time as a repeal is passed, workers with disabilities, including service-disabled veterans, employed by contractors are gaining valuable vocational training and work experience on-the-job.

Disabled veterans and other disabled workers would most likely retain employment with the contractor through reassignment to another project within the company if the IRS contract were to expire or be terminated. Private sector collection contractors strive to lower attrition and training costs by reassigning exiting staff as projects are gained and lost.

In addition, employees assigned to the IRS contract work at the private collection contractor must pass the same level of scrutiny and background checks as IRS employees, and undergo IRS-approved project training and testing. Therefore, contractor employees will be the best available applicants for job opportunities with the IRS when the IRS hires internal collectors to do the work before or after repeal.

Under the Disability Preference Program, disabled workers would receive valuable training, certification, and job experience to seek gainful employment at private sector or government offices performing telephone collection work, and therefore would be much better qualified and prepared to continue a career in the collection industry than they otherwise would have been if the program was not available.

Although even for a temporary time period, use of this employment initiative would provide a much-needed demonstration to government contracting entities that similar contracting requirements should be used to provide good job opportunities for disabled veterans and other persons with disabilities.

Mr. Chairman, UCB is committed to finding gainful, meaningful work for our returning disabled veterans and for persons with disabilities. I hope to work with you and the other members of this committee to reduce the inexcusable unemployment rate for the disabled and to honor those who have sacrificed so much on our behalf.

Thank you, Mr. Chairman.

DISABILITY PREFERENCE PROGRAM FOR TAX COLLECTION CONTRACTS
LEGISLATIVE HISTORY

109th Congress

*S. 2020: Tax Relief Act of 2005**

The preference program was included in sections 406 and 503 in the bill that was passed by the Senate on November 18, 2005.

*H.R. 4297: Tax Relief Act of 2005**

The preference program was passed by the Senate in section 471 on February 2, 2006 but not included in the conference report.

110th Congress

*H.R. 1591: Emergency Supplemental**

The preference program was passed by the Senate in Section 570 on March 29, 2007.

*H.R. 2829: Financial Services and General Government Appropriations**

The program was included in Section 113 of the bill that was reported in the Senate on July 13, 2007, but was never passed.

PREPARED STATEMENT OF DAVID L. MILLER, PRESIDENT, CON-WAY FREIGHT-CENTRAL

At Con-way, we are tremendously proud of our employees and especially those who are members of the National Guard or Reserves. These brave men and women represent unique members of the Con-way family and deserve our support and the support of the Nation. Currently, we have 28 employees who are deployed and a total of 92 who are members of the Guard or Reserves. Tragically, two Con-way associates have been killed in Iraq so we understand the impact such losses can have on our families and on our business.

Supporting our employees called to active duty and their families is a long tradition at Con-way. We feel it is our duty to them—and to the Nation in which we freely live, work and do business. We also want to encourage other employers to learn from our rich history of commitment and encourage them to adopt similar value systems—ensuring our active duty Reservists that they can come home and support their families. As a business, we owe these individuals and their families nothing less.

- Con-way holds responsibility—not just to our shareholders but also to our employee family and the Nation—as a core value.
- Con-way maintains full health benefits and provides military differential pay to families when an employee is deployed—far above what is required by law.
- The company counsels employees being deployed and their families about health benefits and military pay differential programs to ensure those left at home have access to information and contacts during the deployment period.
- Human Resources representatives check in with the families to ensure that they understand the program of pay and benefits.
- Our program has been in place for years without alteration, despite increased deployments in recent years.

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*The amended bills—S. 2020, H.R. 4297, H.R. 1591, and H.R. 2829—cited in this section may be found on the Senate Web site *www.senate.gov*.

• Are there steps the government could take that might entice more employers to institute programs like ours? Yes. For one, we believe it would be helpful to businesses if there were more lead time between being called for duty and actual deployment. This would allow us more time to make adjustments in our workforce.

• We also recommend looking at tax credits as an incentive for more companies to work harder to support their employees in the Guard and Reserves.

• We are proud of our practices in supporting the citizen soldiers in our Con-way family and we would be happy to share what we've learned with any company interested in creating a similar program.

Thank you, members of the Commission.

ATTACHMENT 1.—NEWS ARTICLES

[From the American Forces Press Service, Aug. 28, 2007]

INDIANA GUARDSMAN CITES FREIGHT FIRM FOR EXCELLENT SUPPORT

(By Gerry J. Gilmore)

WASHINGTON, DC.—Indiana National Guard Command Sgt. Maj. Michael S. McAllister is so impressed with the support provided by his employer, Con-way Inc., that he recommended that it receive a prestigious Defense Department award.

Con-way Inc. is among 15 businesses and organizations selected to receive this year's Secretary of Defense Employer Support Freedom Award. McAllister nominated the company for the annual award, which honors businesses and organizations that provide exemplary support for their employees in the Guard or Reserves.

McAllister is a coordinator at Con-way Freight's trucking hub in Plainfield, Indiana, located near Indianapolis. The Ann Arbor, Michigan-based firm is a division of Con-way Inc., a freight transportation and global logistics company based in San Mateo, California.

McAllister, 41, cited the company's demonstrated concern and support for its employees in the Guard or Reserves.

"It wasn't so much all of the benefits. I mean, those are nice, because they're above and beyond what the law requires," McAllister explained.

Rather, he cited his employers practice of welcoming home employees returning from military duty.

"We're obviously elated that the company was recognized, but as I've made it a point to share with people, we didn't do it for any 'brownie points' if you will, or awards for us," said David L. Miller, Con-way Freight's chief operating officer.

"We're doing it because we have the means to support our citizen-soldiers, and it is the right thing to do at the end of the day," Miller said. "We only enjoy our freedoms because we have fine young men and women that are willing to put it on the line."

Con-way Inc. and its subsidiaries provide differential pay to their employees in the Guard or Reserves who are called up for active duty. The company also provides health benefits for spouses and children who remain at home and collects and delivers care packages of books, snacks and other items to overseas troops.

"We do a wage differential, so that when the guys or gals are deployed on active duty, whatever they would have earned here working for us, we make up the differential between what they make in the military vs. what they would have made here," Miller explained.

Supporting employees in the Guard or Reserves who've been activated for duty assists them to "have their heads in the mission" so they can come home safely, Miller pointed out.

"We don't want them having to look over their shoulders, wondering if their families are being taken care of when they are over there taking care of all of our families," he said.

McAllister recalled being activated to participate in Operation Noble Eagle to guard airports and other vital U.S. infrastructure for 2 years after the September 11, 2001, terror attacks. He recently was activated again to help establish a new State training organization that will prepare Guard and Reserve troops who've been mobilized for overseas duty.

McAllister reiterated that his civilian employer excels at supporting its employees in the Guard or Reserves. "I don't have to worry about the way the company's going to view me when I get back," the senior noncommissioned officer said, noting his company is proud of its employees in the Guard or Reserves.

The Secretary of Defense Employer Support Freedom Award recognizes U.S. employers that rise above the requirements of the Uniformed Services Employment

and Reemployment Rights Act. The National Committee for Employer Support of the Guard and Reserve, a Defense Department agency, manages the award process. ESGR assists Guard and Reserve members and their employers understand employee eligibility and job entitlements, employer obligations, benefits and remedies under this act.

Miller will accept the Freedom Award on behalf of Con-way Inc. during a formal ceremony here September 12.

ATTACHMENT 2.—EDITORIAL—TRANSPORT TOPICS MAGAZINE—AMERICAN TRUCKING ASSOCIATIONS

BEYOND RIBBONS AND CARE PACKAGES . . . HELPING COMPANIES DO WHAT THEY CAN—AND SHOULD—TO SUPPORT EMPLOYEES CALLED FOR MILITARY SERVICE

(By David L. Miller, President, Con-way Freight-Central)

It's no secret—when the military deploys members of the National Guard or Reserves it makes a dramatic impact on them and everyone around them. Families and friends feel the effects . . . and so do employers. With a war in progress and National Guard and Reserve soldiers now comprising 46 percent of our military, we need to look for ways to soften the impact that these absences will have, both on the families and the employers of those who are deployed.

In that sense, we are all partners in our country's national defense, and carry the responsibility that entails. As employers, we must show accountability to our citizen soldiers and their families—but also to the customers and shareholders who count on us to provide reliable, high-quality service and consistent returns. There has never been a better time for responsible employers to come together and evaluate how deployments of our employee/soldiers are handled and whether there are ways to improve that process for the citizen soldiers, customers and other stakeholders.

To examine these issues, it's important to take stock of what we're facing. What does an employer have to do when informed of an employee's imminent deployment, and how can the employer help cushion the impact for the employee, his or her family, and the business? The first step, of course, is finding a replacement to fill in during the absence. Depending on the facility's location, that can mean transferring an existing employee, training a new one, adding overtime hours for existing staff or some combination of the three. The universal theme? Time and money, and it takes both. Training or retraining an employee often costs thousands of dollars . . . and *always* takes a significant amount of time. Companies with National Guard and Reserves members on staff must be prepared to make those expenditures when these employees are called for active duty, making a national issue a (very) local one.

While taking steps to manage the impact of employee deployments on the business, which takes a great deal of our attention, there's another constituency that deserves just as much: the families of our deployed employees.

Many companies choose to go above and beyond minimum legal requirements in providing security to the loved ones of deployed soldiers. They continue to cover full-family health benefits and even pay the difference between military pay and what the soldier was earning as an employee.

But it's not just about compensation and benefits. Each of us must weigh our ethical obligation to provide as much support as we can during the trying times of a military separation. Companies can choose to communicate with the families early and often to make sure they understand all pay and benefits programs offered. It may feel like a business risk to offer more than legally required, but it pales in comparison to the risks taken by our citizen soldiers every day and to the rewards of ensuring that a good, motivated employee returns to your organization when their deployment ends. When you look at it that way, financial assistance and solid communication are small prices to pay, indeed.

After all, these are important employees in any organization. A staff member in the National Guard or Reserves truly knows the meaning of leadership, responsibility and professionalism. They tend to bring discipline, perseverance and grace under pressure to everything they do. We, as employers, are lucky to have them, even if it means having to function without them on short notice when necessary.

Having said that, let's look for ways to improve the deployment-reemployment activities for all involved. How can we make it easier for businesses to do the right thing without unnecessarily facing declining revenues or service levels in the process? That brings us back to time and money. Most employers would agree that additional lead time between notice of deployment and reporting for duty would be enormously helpful in planning for employee absences. More time can open up options

like cross-training and covering for the deployed employee without hiring a replacement. The goal is to minimize the operational disruption caused by the absence, reducing the financial risk to the organization, and providing enough time for the deployed employee's family to adjust and adapt. These are common-sense objectives we should work toward.

Another idea that's often discussed is government tax credits for companies employing National Guard and Reserves members. The credits could reward businesses going above and beyond what is mandated by law in deployment pay and benefits, and also potentially help alleviate the expense of temporary labor during a deployment. The No. 1 reason soldiers point to when leaving the Guard or Reserves is pressure from their employers, and tax credits like these could take the pressure off all parties.

These are just a few of the ideas that could help employers fulfill ethical and patriotic duties to those employees who sacrifice so much to protect the American quality of life. If the last nearly 6 years have taught us anything, it is that we can't take for granted the freedoms we enjoy as Americans. It is everyone's job to support those willing to sacrifice themselves for our country. That should go beyond ribbons and care packages.

PREPARED STATEMENT OF DAVE MCNULTY, DIRECTOR OF VETERANS EMPLOYMENT AND TRAINING FOR THE STATE OF WYOMING

Wyoming has not had a USERRA case in the past 2 years. The real success is talking with every soldier that is being mobilized or de-mobilized. We cover the USERRA law and what their rights and the rights of the employers are. We encourage them to sit down with their employer prior to being mobilized and go over the basics of the law. In addition to this, I talk with employer groups, both private and governmental, National Guard and Reserve Leadership groups and their Family Support Center Staff to ensure as many people as possible are aware of the USERRA law and its requirements.

I work very closely with Employers in Support of the Guard and Reserve (ESGR), a volunteer group that provides information to military personnel and employers throughout the State regarding USERRA. If ESGR cannot resolve issues, they refer the case to my office as an official complaint. I provide training on USERRA at least annually at the ESGR statewide meeting.

I receive many calls from employers in Wyoming asking what they need to do to comply with the law. One employer from Gillette, Wyoming called because their employee had been injured in Iraq and was back but could not get a release to go back to work. Their concern was they could not hire him back until he got a release, but in the meantime, he and his family had no income. I contacted the Wyoming Adjutant General regarding the problem and the Guardsman was put back on orders the next day and remained on orders until he could get a release to work. I cannot say enough about Wyoming's employers and service members.

PREPARED STATEMENT OF MICHAEL YACKIRA, PRESIDENT AND CEO, SIERRA PACIFIC RESOURCES

Dear Chairman and Senators: My name is Michael Yackira and I am President and Chief Executive Officer of Sierra Pacific Resources, the parent company of Nevada Power Company and Sierra Pacific Power Company, the two major electric utilities serving the State of Nevada.

I am pleased to share with you the details of Sierra Pacific Resources' history of, as well as policies in support of our employees who have taken on the responsibility of military service. We take great pride in the opportunity we have to support both our coworkers and our Nation through good company policy. Over the last 5 years, some 27 Sierra Pacific Resources employees have been called to active duty in the military, including the current commanders of the Nevada Army National Guard and the Nevada Air National Guard.

Just a few weeks ago, I had the great pleasure to accept on behalf of Sierra Pacific Resources and its employees the 2007 Employer Support of the Guard and Reserve Freedom Award. Sierra Pacific Resources was 1 of just 15 employers in the United States recognized with a Freedom Award for exceptional support of its military reserve-component employees.

Our company has also signed a 5-Star Statement of Support, received numerous Patriot Awards and the Above and Beyond Award.

The key policies implemented by our company to support military service include full pay during military service, the continuation of benefits for employees and family members, as well as training for managers on the Uniformed Services Employment and Reemployment Rights Act.

One of our highest goals as a company is to have employees who make a significant difference. In order to ask for such a commitment we must, as a company, make similar commitments to our employees. Our policies regarding military service are clearly the right thing to do, and it has full support throughout the company from senior officers, to managers to the coworkers who in many cases must pick up the extra work to compensate for those workers serving our country.

In greater detail, here are some key provisions of our military service policy:

• Sierra Pacific Resources employees who serve in the U.S. Military organizations, annual training or State militia groups may take necessary time off to provide military service for the period of the military orders. Sierra Pacific Resources complies fully with the Uniformed Services Employment and Reemployment Act.

• Sierra Pacific Resources will cover probationary and regular, full-time and part-time employees for voluntary and involuntary service.

• Employees who report for annual military reservist duty will receive his/her normal base pay in addition to the base pay earned as a result of such duty, excluding any military subsistence or other expense allowances during the training period, up to 30 working days.

• Employees deployed are eligible for 12 months of pay differential between the employee's military base earnings and the base pay which he/she would have earned as an employee. Employees deployed to active military service in excess of 12 months will be evaluated on an exception basis for continued eligibility for pay and benefits under this policy.

• For the employees Company Retirement Plan, credited service will continue to accrue for the duration of leave. 401(k) contributions and company-matching contributions will continue at the same percentage.

• Employer paid Base Life coverage will continue.

• Supplemental Life Insurance will continue.

Again, thank you for the opportunity to share our story with all of you and our support for the Uniformed Services Employment and Reemployment Act. Our commitment to our employees is one we take very seriously, and having a comprehensive and fair plan to support our military employees is just one example of that commitment.

It truly is the right thing to do. Thank you for your time.

PREPARED STATEMENT OF COLONEL FREDERICK H. BOOTH, DIRECTOR OF DIVISION OF STATE POLICE, NEW HAMPSHIRE DEPARTMENT OF SAFETY

The New Hampshire State Police have accomplished much in regard to being a supportive and responsible employer for the men and women who serve in the Guard and Reserve. There are over 20 members who serve in the Reserve components, most of whom have deployed one or more times since September 11, 2001.

Applicants are actively recruited personnel who serve in the Guard and Reserve, recognizing that the generally superior employee they gain outweighs the occasional inconvenience of them being away for training or operational requirements. ALL employees who are citizen-warriors are recognized as valued employees.

Care and comfort packages are provided for all deployed troops. The State Police escort all departing and returning mobilized units of all components. The remains of EVERY fallen Soldier, and members of all components are escorted from whatever point the air transportation lands, whether in or out of New Hampshire, entirely through the memorial and burial process, frequently by troopers who VOLUNTEER to show their support and respect. Troopers provide training in defensive driving to help the New Hampshire re-entry and re-union process for returning war veterans, assisting them to re-adjust to civilian defensive measures.

Differential pay, continuation of family health benefits, continuation of seniority time for up to 2 years of mobilization is provided. Applicants receive veteran's preference. In addition, up to 1 year of military service can be credited toward civilian retirement. All benefits are interpreted liberally to provide for maximum benefit to the citizen-warrior.

The entire DOL rules interpretation of USERRA (Uniform Services Employment and Reemployment Rights Act) was published in the "Trooper" magazine. The Department prominently displays USERRA/DOL posters in the workplace, and encourages all levels of leadership to acquaint themselves with its provisions.

MANY "Patriot" awards have been received throughout the Division, two "Above and Beyond" awards, one "Seven Seals" Award, the singular "Pro Patria" (Latin: "For the Country") award last year, and received 1 of only 15 ESGR Secretary of Defense "Freedom Award in Washington, DC. Oct 12, 2007. The State Police was one of the first of its super agency Department to sign a five-star formal "Statement

of Support" which it prominently displays with many other awards for service at its' Headquarters, and Troop Stations around the State.

The Department of Safety, of which it is a part, has since become the first super agencies in New Hampshire to have every Division sign as well. The New Hampshire State Police have been recognized before the Defense Advisory Board, and Reserve Forces Advisory Board for their part in the exemplary New Hampshire first in the Nation "Re-entry and Re-union" program for returning reservists. Photo displays are mounted at all State Police facilities, honoring the troops and the national flag is proudly displayed on all marked cruisers.

The State Police have long entered into a strategic partnership with the National Guard in the Drug Interdiction program, and have provided facilities, equipment and support for joint training and operational missions, which include search and rescue across the mountainous State.

In short, the NH State Police live by, support and honor by word and deed, the basic tenants of USERRA, and have gone above and beyond in every way, culminating in the recent receipt of the National Freedom Award.

NOVEMBER 8, 2007.

DEAR COMMITTEE: Thank you for accepting this written statement to be entered into your hearing record on the hearing this morning entitled: Protecting the Employment Rights of Those Who Protect the United States.

I am a 51-year-old disabled U.S. Army veteran, the son of WWII Navy veteran, brother of an Army veteran and father of an Iraqi veteran who is currently scheduled to return to Iraq for military service in June 2008.

I also serve as Chaplain (unpaid-volunteer) within a local chapter of the Vietnam Veterans of America, for which, I have been a member for many years.

I am a former Federal employee with combined (military and civilian) service in excess of over 13 years. I was Honorably Discharged from Military and Civilian Services.

On behalf of myself and my brother and sister veterans, I thank you for holding these hearings and I thank you for your service and commitment to our Nation.

I am writing to you to opine that I believe from my own personal experience, speaking to others and reviewing some of the case law from the MSPB and the U.S. Court of Appeals that the system for re-dress by the Federal Government for violations of veterans employment rights at the: (1) agency level, (2) U.S. Department of Labor (DOL–VETS), (3) U.S. Office of Special Counsel and (4) U.S. Merit Systems Protection Board, are unacceptable. My experience and this letter concerns employment limited to the *Federal sector*. While providing some relief to our veterans in few cases, in many other cases I believe, these processes more provide an inconsistent, unreliable and often conflicting system of bureaucracy, which perhaps adds more insult and emotional injury than relief for the majority of veterans seeking assistance. I say this mainly because I believe the process is such an uphill climb and battle for the service person to pursue, that most, probably elect to walk away if their veterans preference (VP) entitlement is denied under the Veterans Employment and Opportunity Act (VEOA, 5 U.S.C. 3330a) or other employment rights under the Uniform Services Employment and Reemployment Act (USERRA, 38 U.S.C. 4301 et seq.).

Engaging this process without legal counsel or substantial legal training is without a doubt most likely to end up in a loss. That is, unless the government decides to support and champion your cause, which given the fact of limited staff and resources to do so for these purposes, chances are only the very lucky or politically connected or represented by legal cases may find relief. This is for all cases, not even exclusive to veteran's issues. Veterans, on the other hand, usually are either returning from war or looking for employment from the private sector, school or the ranks of the unemployed. Numerous reports have been written documenting discrimination toward veterans and denial of veterans preference and re-employment rights which as the committee is well aware of has spirited recent legislation from Congress to enact stricter veterans' employment law. Nonetheless, both Federal and private sector employers continue to violate veterans' employment and re-employment rights. This opinion is not my unique observation, but now is found as a matter of fact. Given that a veteran is able to get his claim filed and moved forward through labor and or the special counsel getting to the MSPB (let alone winning) just to get a hearing was problematic, and has just recently been addressed by the U.S. Court of Appeals (USCA for the Federal Circuit, 05–3077, *Kirkendall* v. *Department of the Army*, decided: March 7, 2007). According to Circuit Judge Mayer, for the majority; p. 21 "Until now, it has been the board's practice to grant a hearing

as a matter of administrative grace, or deny one at its convenience." Later, in the same paragraph, the judge writes "the board's consistent misapplication of the law can neither be used to defend its practice; nor to justify what Congress did not intend." This case clearly showed that veterans were being denied access to the MSPB over misinterpretation of law and intent of Congress for filing VEOA claims and holding hearings for veterans in USERRA cases.

I recall when I first expressed my intention to fight what happened to me last year with my Federal employer (U.S. Department of Veterans Affairs) an investigator in the office of compliance at the U.S. Department of Affairs wished me good luck and stated words to the effect that OSC (Office of the Special Counsel) only finds merit in about 2 percent of the cases filed with them every year. Two percent, that is a profound number. That means that 98 percent of government employees and applicants for employment cases are unfounded. Wow! There must be a huge number of government employees out there that are misguided or our government has proven a phenomenal level of success in this area of employment law. Perhaps, that formula could be used to correct other areas of government inefficiency.

The truth of the matter is that most Federal employment claims are eliminated by the complaint processes through Labor, OSC, MSPB, and then what is left goes to the courts. The interesting figures would be to find out what percentage of "pro se" litigant cases (chances are that is where the unemployed veteran, veteran seeking re-employment, and veterans returning from war or being separated from the military are) are successful? Then find out how many veterans looking at their odds of success walk away instead of seeking re-dress from the government employer (who is represented by counsel) and their reality of limited resources (many having to find employment and income for their families, sooner than later) to hire counsel or go it alone and make sure he/she is able to learn and apply the statutes accurately and in most cases within 60 days. Saying all of that, the veteran has very little chance of prevailing.

Perhaps, the committee could get the statistics of the ratio of claims against Federal veteran employers and the punishment or sanctions for violating veterans' rights. Counted on how many hands?

My story, although probably not typical, can show the committee that even if a veteran manages to file a complaint properly, the government, who is supposed to be helping him/her, can drop the ball at various stages of the process, weakening or convoluting the situation or issues to make things very complicated or make it easier for the veteran just to quit rather than to swim against the tide and made to feel unpatriotic to proceed.

My case shows that even with evidence and reliable proof, the outcome of the case (without legal representation) remains up to the government whether the veteran will prevail, even if his/her case is righteous and the laws all support that conclusion, justice can be avoided.

The bottom line is that without legal representation the veteran is assured that a government lawyer will decide: (1) if there is a case, and (2) the government administrative law judge (ALJ) will decide whether to follow the law or not.

Reading some of the case laws, it is evident that some ALJ's routinely find against pro se veteran litigants and with the volume of petitions for review (PFR) that go to the full board and then the many cases that go through the appellate process, it is more than evident that ALJ's misapply the law routinely and dispose of cases routinely by ensuring the veteran will have to appeal their decision. It is an entirely new and complex legal process.

My case, if not true, would sound to the reasonable person as incredible or an unbelievable story. I can explain it and I can prove it, if there was anyone to take the matter to for action. But without a lawyer, it is my word against the lawyers. They win by default!

I filed a mixed motive case: VEOA/USERRA-Discrimination/PPP-Whistleblower Claim at the U.S. DOL–VETS. My VEOA claims were immediately denied (60-day filing rule) despite the fact the government (U.S. Department of Veterans Affairs (VA) failed to provide me with my official notification of the action (being appealed) until well beyond 60 days and even that notice was "unofficial" (a faxed copy). Supposedly, my Prohibited Personnel Practice (PPP) and USERRA claims were forwarded by U.S. Department of Labor, Veterans Employment and Training Services (VETS) to the Office of Special Counsel (OSC). OSC did a PPP investigation, but failed to discover any prohibited personnel practices, despite the Veterans Administration admitting "lost consideration" for passing me over as a veteran (a law violation) under title 5 U.S.C. Later, it was discovered that the USERRA charge was not processed by OSC and claimant (yours truly) had to re-file the USERRA charge six (6) months later. That matter remains pending. The VEOA appeals are at the MSPB and have been there since April 2007. No discovery, no hearing. I have ac-

cused persons at the VA of falsifying official records and sought investigation at the highest levels at the Department of Veterans Affairs.

They (VA) have ordered me not to contact any more officials and have refused to address the accusations of official misconduct, falsifying official records and willfully disregarding governmental law that I have raised. All my issues have been neatly placed in the compartment of the DOL/OSC/MSPB complaint process system and without a lawyer; you are at the total mercy of the system.

I have contacted my Congressman Jim Saxton, and the congressional and Senate Armed Services Committee chairs. Neither houses have investigated or mediated investigation of these serious claims by Labor or the agency (VA) concerned to formally address violation of personnel law that are not covered by the MSPB process. The next steps will undoubtedly be the press. Unfortunately, after many years, citizens still may not rely on Federal oversight and need to embarrass the leadership into accountability.

It seems that no law is broken until a government lawyer says so, regardless of the facts or the truth! My USERRA claim has not been decided yet. I filed my claims 8–9 months ago; chances are I will lose that case as well without my own lawyer.

My advice and testimony: the long and the short of it, tell the veterans if you want to protect your employment rights, don't expect the government's help. They take care of their own and you no longer are one of them! Get a good lawyer; you are going to need one!

I believe from my experience this past year from many government employees, being a veteran is meaningless to them, not to be honored, not to be respected, but rather persons deserving of loss of their employment rights!

Thank you for your interest in protecting the employment rights of those who protect the United States.

God bless you and God bless America! Don't forget! Hire the Vet!

Sincerely,

ROBERT R. FARRELL, SR.,
Chaplain, New Jersey Veteran.

Senator ISAKSON. Again, Mr. Chairman, I want to thank you very much for calling this hearing. I want to thank all of our witnesses for coming. We have no higher priority than looking after the best interest of the men and women who serve the best interest of the citizens of this country every day.

[The prepared statement of Senator Isakson follows:]

PREPARED STATEMENT OF SENATOR ISAKSON

Mr. Chairman, thank you for calling this hearing.

With the approach of Veterans' Day, it is more than appropriate that we take time to both honor those who have served in our military and those who serve today.

Since the tragic terrorist attacks of September 11, 2001, our Nation has depended on our armed services more than ever in waging the global war on terror. It goes without saying that all of us, Republicans and Democrats, liberals and conservatives, are appreciative of their efforts and those of their families.

I am proud of my service in the Georgia Air National Guard. I hired members of the Guard and Reserve as well as war veterans during my time as a businessman. And I have voted to send them into harm's way to defend this Nation.

Today, we address the employment of these brave men and women upon their return from action.

More than half of the men and women serving in our all-volunteer Armed Forces are members of the National Guard and Reserve. Accordingly, employers play a vital role in enabling their employees who are members of the National Guard and Reserve to serve their country. It is also imperative that employers be as flexi-

ble as possible as veterans attempt the transition back to civilian life.

Federal law lays out the bare minimum that employers must do to meet the needs of our Guard and Reserve. Employers must not discriminate in hiring or other benefits of employment against a person because of that person's obligation to perform service in uniform.

However at hearings I held last Congress, we learned that many, if not most, employers go well "above and beyond" that which is required under Federal law.

- Many employers voluntarily offer "differential wage payments," payments that represent wages active duty individuals would have received if he or she were performing services for the employer.
- Many continue to extend health benefits to their deployed employees and members of their families.
- Many employers voluntarily provide a myriad of services to the active service member's family including lawn care, babysitting, snow removal, and on and on.

Mr. Chairman, I have a number of statements that I have received from private employers documenting such efforts that I would ask be entered into the record.

In the relatively few circumstances whereby the relationship between the returning veteran and the employer requires some level of mediation, the Labor Department's Office of Veterans Employment and Training Service counseling veterans and investigates their employment claims.

I suspect many of these disputes are simply the result of misunderstanding or a lack of knowledge, not a conscious effort to deprive veterans of their rights. In fact, over 90 percent of claims are resolved immediately and amicably without any legal action.

Of course, the employment remediation services provided by the VETS Office are only a small part of that agency's mission. Their far larger role is in providing employment and re-employment assistance, training and placement for veterans.

Moreover, the VETS office constitutes only a tiny fraction of the Government's total range of services available to veterans. As a Member of the Veterans Committee, I hear constantly about the ongoing efforts of the Department of Veterans Affairs to improve services to those whom we owe so much.

Again, I thank Senator Kennedy for calling this hearing.

The CHAIRMAN. Thank you very much. I see Sherrod Brown and Senator Allard are here. Senator Brown is on the Veterans' Affairs Committee. Senator Akaka is the Chairman. We're working very closely because this is subject matter that they have done a great deal of work on. We have, obviously, dual kinds of interests. They have special responsibilities, charges. We have the Department of Labor provisions, which we take very seriously. If either of those Senators wanted to make a brief comment——

Senator BROWN. Thank you, Senator.

The CHAIRMAN [continuing]. We'd welcome it.

STATEMENT OF SENATOR BROWN

Senator BROWN. Mr. Chairman, thank you and thank you to all the witnesses for joining us. Many of you have been in front of the Veterans' Committee too, and I appreciate your input and your public service and commitment to our country.

But Uniform Services Employment and Reemployment Rights Act of 1994, USERRA, is one of those pieces of legislation that should not be necessary. USERRA was written to prevent discrimination against service members, as you know, when they return home from deployment. Fair treatment should be a given, but obviously sometimes it isn't.

When USERRA was established, no one contemplated the military realities that we're seeing today. When passed 13 years ago, USERRA was designed for the short call-up. No one in 1994 contemplated multiple deployments, stop-loss deployment extensions. And the USERRA, written more than a decade ago, obviously is not addressed in today's economic realities.

Some soldiers returning home find that the job they once had is gone, sometimes because the company they once worked for no longer exists. The fact that we have increased the demands on our soldiers, but employment protections have not been redefined to reflect today's reality.

USERRA has worked for some service members and some employers, of course, are doing the right thing. But good companies, good local small businesses that want to comply with the law are straining to honor their promise to Reservists because of the extended and repeated deployments they and their communities face. And there are other serious problems. Some employers don't know about USERRA and, unfortunately, some employers simply don't abide by it.

With more and more deployments, more and more companies and government agencies are affected by the war. USERRA enforcement must keep pace. We must do a better job of informing employers of their duties and soldiers of their rights. Soldiers need to know that they have the law on their side and the Federal Government must ensure that USERRA is fully enforced for every soldier in every State.

Perhaps the most appalling fact about the situation we're discussing, is that one of the greatest offenders is the Federal Government. In a recent report, Stars and Stripes, the independent military newspaper, found that "one in every six job discrimination cases last year involving Guardsmen and Reservists, centered on problems with a Federal agency." How can we expect private businesses to respect the law when those Federal agencies, when the Federal Government is not—is violating it?

The Federal Government should be leading the way, not dragging its feet. We're asking more and more from our service members and they continue to answer the call to duty again and again and again. Our employers, including the Federal Government, must also answer that call.

Mr. Chairman, thank you for holding this hearing today.

The CHAIRMAN. Senator Allard.

STATEMENT OF SENATOR ALLARD

Senator ALLARD. Thank you, Mr. Chairman. I'd also like to thank you for an opportunity to discuss issues facing our veterans, who have admirably served our country and now seek to reintegrate into our Nation's workforce.

I appreciate the testimony of the witnesses here today and I'd like to extend a special welcome to Lieutenant Colonel Steve Duarte from Centennial, CO.

We must never forget those who have served this country proudly and defended the freedom we all hold dear. We're here today because we have an interest in ensuring our veterans receive the greatest care, including the guarantee of reemployment once they return to civilian life.

Our Nation's returning war heroes possess diverse abilities, broad range of skills, excellent training, and proven character. These are qualities that many employers support and are proud to employ.

In my home State of Colorado, the month of November 2007 has been designated as the Hire a Veteran First month. To observe this month, activities are taking place across the State. One such activity includes Mesa Counties first annual Hire Vets First Employment Conference. The collaboration between the Mesa County Workforce Center of the Colorado Department of Labor and Employment and the employers of Mesa County, aims to smooth the transition home. This multiple event campaign serves as a fine example of the dedication and commitment necessary in helping our Nation's war heroes. I fully support these efforts and encourage other ventures like this to be repeated throughout the country on an annual basis. It is vital that we continue to do our part to help veterans return as contributing members of society.

Thank you, Mr. Chairman, for the opportunity to make a few remarks.

The CHAIRMAN. Thank you very much.

We have two panels, very special spokespersons on this issue and we're very grateful for their presence. On our first panel we have Chick Ciccolella. Do you have relatives in Massachusetts? With a name like that, you must have some up our way.

Mr. CICCOLELLA. I think one of the folks that produced the Sopranos, sir.

[Laughter.]

The CHAIRMAN. We're glad to have you here.

He is the Assistant Secretary of Veterans' Employment and Training Services at the Department of Labor, spent 28 years in the Army, 1968 to 1996, served with 101st Airborne Division, Vietnam 1969–1970. Before leaving the Army as an Infantry Colonel, he was Senior Military Advisor for the Arms Control and Disarmament Agency, Department of State.

Gordon Sumner, Executive Director, National Committee for Employer Support of the Guard and Reserves, oversees the activities of more than 4,200 volunteers, including more than 800 volunteer ombudsman, who informally mediate employment disputes between service members and their employers. Commissioned as a Reserve Officer, Dr. Summer had a successful military career. He is a deco-

rated combat veteran Airborne Ranger, Master Army Aviator. He graduated from Jacksonville State University, Alabama; he received a Ph.D. from Madison University, an MBA from Auburn University, and a Masters in Education from Boston University.

Scott Bloch serves as Special Counsel at the U.S. Office of Special Counsel. Prior to that, Mr. Bloch served as Deputy Director and Counsel to the Task Force for Faith-Based and Community Initiative at the U.S. Department of Justice. Mr. Bloch earned his Bachelor's and Law Degrees at the University of Kansas, where he served as an adjunct professor.

I saw that Kansas-Nebraska game a week ago Saturday. I don't know, did you see that game, Mr. Bloch?

Mr. BLOCH. Yes. It's an unusual event for us to beat Nebraska that badly.

The CHAIRMAN. Seventy-six to thirty-nine.

Since April 2007, Brenda Farrell has served as the Director of GAO's Defense Capabilities and Management team, where she's responsible for military and civilian personnel issues, including related medical readiness. Ms. Farrell and the GAO have produced significant insight in their reports, raising serious questions about our Government's assistance of service members whose rights are violated. Ms. Farrell is joined today by George Stalcup, the GAO's Director of Strategic Issues. We are enormously grateful to that agency. It provides extraordinary help to us doing our job. We are grateful for those who toil in those areas.

Chick, we'd welcome your comments.

STATEMENT OF CHARLES S. CICCOLELLA, ASSISTANT SECRETARY FOR THE VETERANS' EMPLOYMENT AND TRAINING SERVICE, DEPARTMENT OF LABOR, WASHINGTON, DC.

Mr. CICCOLELLA. All right, sir. Thank you very much, Senator Kennedy, Senator Isakson, and Senators. Thank you for the opportunity to testify before the committee on what veterans face when they return from their deployments.

Senator, as you mentioned, since the onset of operations in Iraq and Afghanistan, about a 1½ million and a half service members have actually served in theater.

The CHAIRMAN. We've been joined by Senator Reed, who, as we all know, is not only a member of the committee, but had a distinguished military career as well. And we're very, very grateful for his interest and involvement and participation. Thank you, Jack, for being here.

Please continue.

Mr. CICCOLELLA. Yes, sir. As you noted, 1½ million service members have served in these two theaters and many, many of those 630,000 National Guard and Reservists that you mentioned.

Each year, nearly 320,000 service members leave the military. That's about 220,000 who are coming out of the active duty and about 90,000 who leave the National Guard for their jobs or other purposes. The committee has asked what these veterans face when they return. Well, the deployments that they're going on today, whether they're active duty or National Guard or Reserve service members, present challenges for the service members and also for their families. For the National Guard and Reserve in particular,

many members are married and employed, so the long tours of duty overseas do interrupt their normal roles as workers and parents and members of the community. And they also present challenges for the employers, in terms of bringing them back into the workforce. If a National Guard or Reservist is self-employed, then they also face economic losses.

In addition to this, as you mentioned, some service members are coming back wounded and injured, some seriously wounded and injured. And that will have a lasting impact on their lives and their employment.

What service members need when they transition to civilian life from active duty, is good information and help with the tools and the skills that they will need to return to the workforce. And they need this help early on. They need it before they deploy and they need it when they come back during their postdeployment demobilization.

The military, the Defense Department, the Department of Labor, and the Department of Veterans Affairs work together to help service members as they separate from active duty or as they separate when they demobilize, in order to return to their civilian life and jobs. In particular, all service members today participate in preseparation counseling. That's a four-part program, which is pretty well organized. Active duty members attend a transition employment workshop that helps them to prepare a plan for separation. National Guard and Reserve commanders provide information and assistance to their members when they demobilize so they know how and where they can get help.

In addition to this, almost every Governor has started a program in their State to increase public support and awareness of returning service members, and to provide additional supporting services for them.

The Department of Labor provides employment assistance for returning service members and veterans, including National Guard members and Reservists. Our mission is to help them get good jobs or to ensure they get their jobs back. And we do this in three ways. We do that first by providing a transition employment workshop for active duty military members that helps with writing resumes, interviewing skills, and learning about the job market before they get out. We've also made this TAP employment workshop, or modified workshop, available to returning National Guard and Reservists whenever it's requested. And we work with the military to improve the participation rates in this program.

Second, we help our veterans through the publicly funded workforce system at the Nations over 3,200 job centers, or one-stop career centers. At all these one-stops, veterans receive priority of employment services. And at many of the one-stops there are veteran employment representatives that are funded by the Department of Labor, who work one on one with our veterans.

For returning National Guard and Reservists in particular, the services of these veteran employment representatives are very, very important, because as they're having a problem in either getting a job back or in changing careers, these veterans can help the veterans that are coming out.

We also provide one-on-one job training and counseling and reemployment services to the seriously wounded and injured service members, who can not return to active duty or their Guard and Reserve units, through an innovative program we started almost 4 years ago, that we call Recovery Employment Assistance Lifelines. With our network of veteran employment representatives, we actually network these service members once they're stabilized, so that we can work with them or their spouse or caregiver, to make sure they get employment.

We especially want to help veterans who are at risk of becoming homeless or may already be homeless. And we do this through two very successful programs call the Homeless Veteran Reintegration Program and the Veterans Workforce Investment Program.

The third way in which we help veterans is by protecting their employment when they're called up to serve. We work hand-in-hand with the Departments of Justice, Defense, and the Office of Special Counsel to enforce USERRA, the law that we've talked about that protects employment protections for veterans. The Department of Labor administers USERRA, it's a top priority. The specific goals are to protect the employment and reemployment of veterans and to prohibit, as you mentioned, discrimination due to military obligations.

Most USERRA problems result from misunderstandings in the employers obligations. We've made the law much easier to understand. We also work with the State and DOD and the military departments and units to make sure that service members are briefed both before and after they leave the service. We've made USERRA information available 24 hours a day. We also provide continuous assistance to service members and employers so they can contact us on USERRA issues and we also investigate USERRA complaints.

We investigate through a network of over 100 trained USERRA investigators who are located in all the States, who are trained to meet the workforce employment needs of today's service members, not only in terms of USERRA, but also in terms of preparing them for jobs. When we can't resolve a case, we advise our clients of their right to refer the case to the Department of Justice and the Office of Special Counsel if it's a Federal sector case. And DOJ and OSC have enforcement authority and can represent the clients before, in a Federal Court or before the Merit Systems Protection Board.

USERRA complaints levels rose after 9/11. There were about 900 cases a year. The year before last there were 1,500. They've decreased to about 1,400 investigations that we're doing this year. We've been carrying on a demonstration, as you know, with Mr. Bloch and the Office of Special Counsel, and the General Accounting Office recently reviewed that. And we're taking some very good actions to identify the important things that the GAO identified as areas where we can improve.

Mr. Chairman, our agency is a small agency. We're dedicated to the three very important missions that we have and to getting veterans reintegrated into the workforce as quickly and as smoothly as we can. We take our responsibilities very seriously, especially when it comes to our returning veterans from Iraq and Afghanistan.

And I thank you very much for the opportunity to appear before you today, sir.

[The prepared statement of Mr. Ciccolella follows:]

PREPARED STATEMENT OF CHARLES S. CICCOLELLA

Chairman Kennedy, Ranking Member Enzi, and distinguished members of the committee, thank you for the opportunity to testify on what returning Iraq and Afghanistan veterans face when they come home and return to their civilian employment. Since the onset of military operations in Afghanistan and Iraq, over 1 million members of the active duty military have served in these two theaters. In addition, many of the Nation's National Guard units and Reservists have also been called to active duty in support of the Global War on Terror and have served in these theaters or elsewhere.

In fact, the Department of Defense (DOD) reports that over 600,000 National Guard and Reserve mobilizations have occurred since September 11, 2001. This represents the largest deployment of the National Guard in the past half century.

WHAT RETURNING VETERANS FACE WHEN THEY COME HOME

These situations present some complex issues because the deployments create challenges for service members and their families. For the National Guard and Reserve in particular, many of their members are married and employed. Long tours of duty overseas interrupt their normal roles as workers, parents and members of the community. Lengthy tours of duty also challenge employers as they deal with these absences and with the reintegration of service members back into the workforce.

In addition, some National Guard and Reserve members report themselves as self-employed or own a small business. Extended deployments may mean they face special problems, including economic losses or other adverse effects.

Many service members are returning severely wounded and injured. Their recoveries are often long and difficult, and this may have a lasting impact on both them and their families. They need and deserve special assistance.

To put this into perspective, each year, nearly 320,000 military members return to civilian status—either through retirement, voluntary separation from active duty, demobilization or discharge from the National Guard or Reserve, or as a result of a discharge due to disability.

SERVICE MEMBERS NEED GOOD INFORMATION AND ASSISTANCE WHEN THEY RETURN TO THEIR CIVILIAN LIVES AND JOBS

To help service members' transition to civilian life from active duty, they must not only have good information, but also the tools and skills to make their transition back to civilian life as smooth as possible. This information and assistance comes from many sources.

DOD and each of the military services strive to assist service members as they separate from active duty or demobilize and return to their civilian life and jobs.

Active duty members participate in formal separation counseling and transition assistance programs when they are preparing for discharge. National Guard and Reserve commanders provide information and assistance to their members when they demobilize, so their members know how and where they can receive help if they need it.

States also assist. Most States have created programs to increase public support and awareness of returning service members. Services include outreach and family support activities, financial assistance such as emergency funds, educational assistance, mental health and other comprehensive services and assistance to augment the services provided by the Federal Government.

DEPARTMENT OF LABOR (DOL) EMPLOYMENT SERVICES FOR RETURNING SERVICE MEMBERS AND VETERANS

DOL provides a variety of employment assistance programs for returning service members and veterans, including National Guard members and Reservists. It is the job of DOL to help these men and women transition into the civilian sector through job counseling, referral and placement services.

Transition Assistance

First, through DOD's *Transition Assistance Program* (*TAP*), DOL helps returning veterans learn how to market their unique skills and experience to potential em-

ployers. DOL provides the TAP employment workshop that helps with writing resumes, preparing for interviews, and learning about the job market.

Most of these employment workshops are facilitated by DOL-funded veterans employment representatives who are also located throughout the Nation at the many Career One-Stop Centers in the public workforce system.

We also have made the TAP employment workshop, or a modified TAP employment workshop, available to returning National Guard and Reservists on a demand basis. We are supporting TurboTAP, a DOD initiative to provide a wide array of transition assistance information online.

We have made the TAP workshop more relevant and, with the help of DOD, we are working hard to increase TAP participation in all the services. The Administration's goal is for 85 percent of active duty transitioning servicemembers to participate in TAP employment workshops.

Job Counseling and Placement Assistance

Secondly, *America's publicly funded workforce system provides priority services to help veterans find good jobs and careers* at over 3,200 full service and affiliate One-Stop Career Centers. The specialized services of the Local Veterans Employment Representative (LVER) and the Disabled Veteran Outreach Program (DVOP) specialist are also available to both transitioning service members and veterans.

For returning National Guard and Reservists in particular, the services of these veteran employment representatives are important from two points of view. First, the DVOP or LVER can link service members to assistance if they are having problems returning to their employers. Secondly, if the returning National Guard member or Reservist desires to seek another job instead of returning to the pre-service employer, they can receive a full range of workforce and employment services on a priority basis from One-Stop Career Center staff.

Employment Assistance for Veterans Who Need Help the Most

Four years ago, recognizing the special employment challenges that certain returning Iraq/Afghanistan veterans face in the workplace, the Department initiated the Recovery Employment Assistance Lifelines, or *REALifelines program*. This program provides one-on-one job training, counseling, and re-employment services to seriously wounded and injured service members who cannot return to active duty.

REALifelines staff, both Federal and State, are forward-positioned at seven major military medical facilities, at the Department of Defense Military Severely Injured Center, with the U.S. Marine Corps and with the U.S. Army at several installations. Through REALifelines, we help wounded or injured veterans and their spouses or caregivers build new and rewarding careers in the private sector.

DOL has also focused on assisting any veterans who may find themselves homeless or facing other barriers to employment. We do this through the Homeless Veterans Reintegration Program (HVRP) and the Veterans Workforce Investment Program (VWIP). While we are not seeing a large number of returning Iraq/Afghanistan veterans in these special programs, we do see some and we conduct special outreach to these veterans.

Protecting Service Members' Employment

One of our Department's top priorities is protecting our military members' jobs when they're called up to serve. We work hand-in-hand with the Departments of Defense, Justice and Office of Special Counsel (OSC) to enforce USERRA, which was signed into law in 1994. The goal of this law is to protect the employment and re-employment rights of veterans returning to civilian employment after active-duty service.

The Uniformed Services Employment and Reemployment Rights Act

USERRA protects the public and private sector civilian job rights and benefits of veterans and members of the armed forces, including National Guard and Reserve members. The law prohibits employer discrimination due to military obligations and provides re-employment rights to returning service members. DOL's Veterans' Employment and Training Service (VETS) not only investigates complaints by service members and veterans, it also administers a comprehensive outreach, education, and technical assistance program here in the United States and around the world.

VETS works closely with DOD's Office of the Assistant Secretary for Reserve Affairs' Employer Support of the Guard and Reserve (ESGR) to ensure that service members are briefed on their USERRA rights before and after they are mobilized. We conduct continuous USERRA outreach and education to inform service members and employers on their rights and responsibilities under the law. Since most complaints result from a misunderstanding of the USERRA obligations and rights, we

took an important step in 2005 to make it easier to understand the law by promulgating clear, easy-to-understand regulations in question and answer format. Since 9/11, VETS has provided USERRA assistance to over 490,000 service members, employers and others.

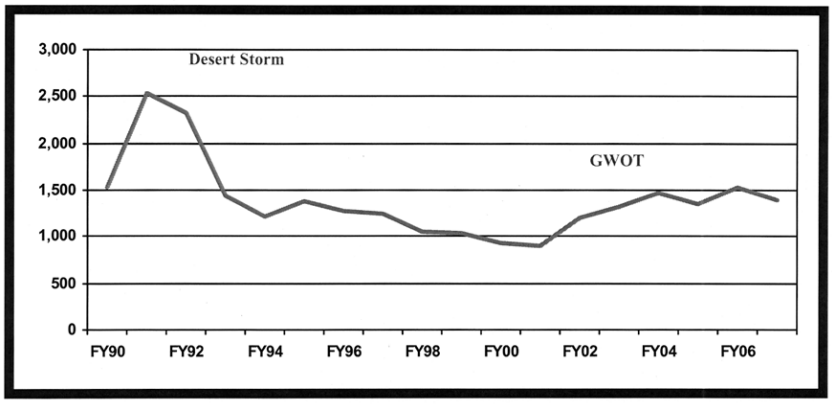
VETS has also made it easier for a service member to determine if he or she has a valid complaint and if so, to file a USERRA complaint online through our interactive USERRA elaws Advisor. The Advisor provides the user with information on eligibility and rights and responsibilities under the law and is available 24 hours a day, 7 days a week, at *www.dol.gov/elaws/userra.htm*.

We vigorously investigate complaints, and when employers do not comply with the law we make every effort to bring them into compliance. VETS does this through a nationwide network of over 100 highly skilled Federal employees who are employment specialists. Almost all are veterans themselves. They are trained to meet the many workplace employment needs of today's service members. VETS' Federal employment specialists are located where veterans need them most—in all 50 States, the District of Columbia, and Puerto Rico. These specialists conduct outreach and provide technical assistance to employers, service members, veterans, and veterans' organizations on employment and re-employment issues at the national, State and local levels, including at locations where service members are demobilized.

VETS coordinates with ESGR, the OSC, and the Department of Justice (DOJ) to ensure the employment rights and benefits for returning service members are protected. ESGR engages in a number of efforts to ensure employer support for the Guard and Reserve is sustained. ESGR also reinforces the relationship between employers and employees through informal USERRA mediation. DOJ and the OSC help enforce USERRA by representing USERRA complainants when DOL is unable to resolve the complaint and/or when the service member or veteran requests their case be referred.

VETS has a decades-long history of protecting the rights and interests of American service men and women employed in both the public and private sectors by investigating complaints under USERRA and its predecessor laws. Complaints under USERRA peaked in 1991 following mobilizations for Operation Desert Storm, when claims topped 2,500. After 9/11, USERRA complaints rose again, from approximately 900 per year to approximately 1,500 in fiscal year 2004 and fiscal year 2006. Complaints in fiscal year 2007 decreased to 1,400. As the chart below shows, complaints during the Global War on Terror have never approached their Desert Storm high. We attribute much of this result to VETS' comprehensive outreach to service members and employers and to the agency's user-friendly 2005 regulations.

USERRA CASES OPENED



Demonstration Project with the Office of Special Counsel (OSC)

In 2004, Congress passed the Veterans Benefits Improvement Act (VBIA). Section 214 of that Act required the Secretary of Labor and the OSC to carry out a multi-year demonstration project under which USERRA claims made by Federal Govern-

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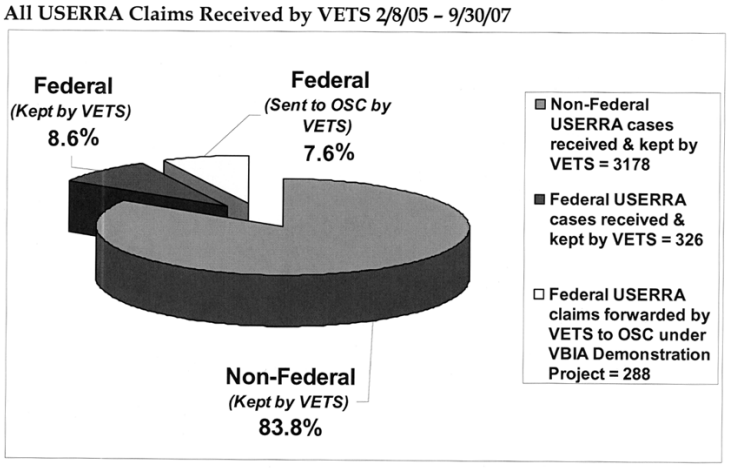
ment employees whose social security number ends in an odd-numbered digit are referred to OSC for investigation, resolution and enforcement. The demonstration project was to conclude at the end of September 2007, but the current Continuing Resolution extended the demonstration project through November 16, 2007.

Since inception of the pilot on February 8, 2005 through the end of fiscal year 2007, VETS received 3,792 USERRA complaints. Of those, 614 (16.2 percent) were Federal cases that were subject to the demonstration. VETS transferred 288 of those Federal cases to OSC under the demonstration, of which 13 were transferred because VETS concluded that they might include prohibited personnel practices.

ALL USERRA CLAIMS RECEIVED BY VETS 2/8/05—9/30/07



GAO's Report (GAO–07–907, July 2007) evaluating the demonstration project recommended that VETS institute improved procedures to ensure claimants are notified of their right to have their case referred to OSC, if a Federal case, or to DOJ, if a non-Federal case, and that our investigators undergo mandatory training on those procedures. The report also recommended that VETS develop and implement an internal review mechanism for all unresolved claims before claimants are notified of determinations and cases are closed, to help ensure adherence to procedures and standards. Finally, GAO recommended that VETS implement internal controls to ensure that our investigations database accurately reflects the number of unique claims, the dates that these claims were closed and the outcomes of the claims.

VETS is actively addressing the issues raised in GAO's Report. VETS has taken positive steps to address each of these recommendations. For example:

• VETS investigative staff received new instructions on notifying claimants of their right to referral and on recording the appropriate closure date for a claim.

• These instructions have been incorporated into the revised USERRA Operations Manual, which will be field-tested this month and fully implemented in January 2008. The new manual will also clarify procedures for documenting case outcomes and recording them correctly in the VETS investigative data base.

• VETS investigators have all participated in mandatory conference calls reinforcing procedures for notifying claimants of their right to referral. In addition, regional investigator training is being conducted in each of the VETS regions and this training will also focus on these notification procedures.

• VETS is developing an online distance learning module for investigators that will include this instruction.

• VETS has already identified ways to correct previous reporting practices that resulted in duplicate cases being reported. We are working with GAO to ensure that issues identified by GAO surrounding duplicate cases are addressed.

VETS is proud of its record in enforcing USERRA since its enactment. For example, over the past 10½ years, 91 percent of Federal USERRA cases were resolved by VETS to the satisfaction of both parties, without need for referral to the OSC.

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Furthermore, 83 percent of "meritorious" Federal USERRA cases resolved by VETS (claims granted or settled) reached resolution within 90 days.

VETS remains committed to continuous improvement of our USERRA investigative processes and our reporting to Congress on investigations. As a result of that commitment, we have made a number of investments to our USERRA program, and more are planned. An investment in VETS' USERRA program is an investment in protecting the employment rights of all service members and veterans covered under USERRA, regardless of whether their employer is the Federal Government, a State or local government, or a private entity.

CONCLUSION

The United States has the best, most capable, most technologically advanced military in the world. The dedication to service and the willingness of our military to sacrifice in order to support our national security is extremely important. Our service members are the guarantors of our freedom and preserve our way of life. Our country is a better and safer place because of them.

Our men and women in uniform are known for their intelligence, strong work ethic, loyalty, discipline, and leadership abilities. They have the highly marketable professional qualities that employers are looking for.

Mr. Chairman, DOL takes seriously its responsibilities for assisting our veterans, especially those returning from Iraq/Afghanistan, in finding good jobs and careers and in protecting their job rights. These brave men and women are protecting our national security and we must do everything we can to help protect their economic and job security.

Thank you for allowing me to testify before this committee today. I am prepared to respond to your questions.

The CHAIRMAN. Thank you.

Mr. Sumner.

STATEMENT OF L. GORDON SUMNER, PH.D., EXECUTIVE DIRECTOR, NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE, ARLINGTON, VA

Mr. SUMNER. Mr. Chairman, thank you for this opportunity to come and participate in your panel today. You have a copy of my prepared testimony that I have submitted for the record. And again, thank you very much for this opportunity. I'm looking forward to answering yours and your panel member's questions.

And before I leave, to Senator Reed, I'd also like to add, Airborne all the way, sir.

[The prepared statement of Mr. Sumner follows:]

PREPARED STATEMENT OF L. GORDON SUMNER, JR., PH.D.

Chairman Kennedy and members of the committee, thank you for the invitation to offer my perspective on issues relating to the Uniformed Services Employment and Reemployment Rights Act (USERRA) program. Your invitation letter asked me to address the issues faced by returning Iraq/Afghanistan veterans when they come home and return to their civilian employment, with a focus on how the Uniformed Services Employment and Reemployment Rights Act (USERRA) is working to protect our returning veterans as they transition back into the workforce.

As you know, the Uniformed Services Employment and Reemployment Rights Act of 1994 protects the employment and re-employment rights of Federal and non-Federal employees who leave their employment to perform military service. The role of informing service members and employers about this law, and of enforcing it fall to several different government organizations. It should be noted that USERRA covers all employees and employers except screeners employed by the Transportation Security Administration.

Employer Support of the Guard and Reserve (ESGR) is a Department of Defense organization that seeks to develop and promote a culture in which all American employers support and value the military service of their employees. We do this by recognizing outstanding support, increasing awareness of the law, and resolving conflicts through informal mediation.

Gaining and maintaining employer support requires a strong network comprised of both military and civilian-employer leaders that is capable of providing commu-

nication, education and exchange of information. ESGR works with the Reserve component leadership from each service, appropriate government organizations such as the Department of Labor's Veterans' Employment and Training Service (DOL–VETS), the Small Business Administration, and industry associations such as the Chamber of Commerce and others, to create broad-based, nationwide support for our troops.

It is important to note that ESGR is not an enforcement agency, and we do not have statutory authority to offer formal legal advice or to participate in any formal investigative or litigation process. Our part in the USERRA issue is to inform and educate our customers—service members and their civilian employers—regarding their rights and responsibilities under the USERRA statute. ESGR also provides informal mediation services. We have over 1,000 trained volunteer ombudsmen throughout the country and a national call center in Arlington, Virginia, to provide those services. Our call center received over 13,000 requests for assistance during fiscal year 2007. Of those requests, 10,742 were informational in nature, that is, they were sufficiently resolved by providing information about the law. The remaining 2,374 were assigned as cases to our ombudsmen. Through a Memorandum of Understanding (MOU) between ESGR and DOL–VETS, ESGR informs those service members whose cases ESGR is unable to successfully mediate within 14 days of their options to either contact the DOL–VETS or to retain private counsel. During fiscal year 2007, ESGR referred 416 cases to DOL–VETS. It should be further noted that the ESGR mediation process is now covered by the Administrative Dispute Resolution Act of 1996. This statute is fairly restrictive regarding the protection of privacy for all parties involved in the dispute. Thus, even for cases ESGR refers to DOL–VETS under our MOU, ESGR is unable to pass on any case information exchanged between claimants and ESGR ombudsmen without the written consent of all parties involved in the mediation.

ESGR's mandate ends at this point in the USERRA resolution process. As I understand it, DOL investigates and attempts to resolve claims filed by service members, and if not successful, DOL informs the Federal claimants that they may request to have their claims referred to the OSC, and informs non-Federal claimants that they may have their cases referred to the Department of Justice for further review and possible representation. Of course, all parties reserve the right to engage private counsel at any time.

As you know, 639,000 Reserve component members have been mobilized since the terrorist attacks on September 11, 2001. There are 93,898 RC members mobilized today (November 1, 2007). The use of the Reserve component has shifted from a strategic reserve to an operational reserve whereby the National Guard and Reserve no longer are forces held in reserve but are an integrated and integral part of our total force.

The Department is well aware of the stress this operational use has on our service members and their employers. To that end, Secretary Gates has provided policy guidance designed to give more predictability as to the frequency and duration of RC mobilizations so that both RC members and their employers can better plan their professional and personal futures.

As I stated earlier, ESGR operates proactive outreach programs to inform, educate, and recognize the employers of our service members. We do this to raise awareness of USERRA and to thank employers for their support. As you know, employers suffer twice the cost when their employees are mobilized for military duty. They lose their trained, productive employees and they have to often hire replacements for the time those employees are gone. We talk all the time about the costs borne by our service members, and by their families. Those are no doubt real costs. But we do not often talk about the costs borne by the employers of Guard and Reserve members. These employers do not have a choice when we take away their employees for months. Despite these very real costs, employers across the country continue to provide incredible support, and it is the least we can do to publicly recognize that support.

All of our records, including the numbers of RC members who contact us to recognize their employers, to the day-to-day interaction ESGR volunteers across the country have with service members and employers, to the ever decreasing numbers of USERRA cases handled by ESGR, indicate that employer support for the Guard and Reserve remains strong. Of course there are instances of USERRA violations, but I urge caution to not interpret isolated but highly visible problems as broad-based policy problems.

We are working with the individual uniformed services to raise awareness of USERRA and to provide training about USERRA to all RC members. We also continue to work with the appropriate Federal Government agencies such as the DOL–VETS, the Department of Veterans Affairs, and the Small Business Administration,

to better communicate to service members and their employers about USERRA, transition assistance and reintegration programs.

The Department has also provided ESGR more resources over the past 5 years to better serve our customers and we now have 150 full-time staff around the country in addition to the almost 4,500 volunteers. We also have a national customer service center that is operational 12 hours per day during the workweek to provide service.

We continue to believe that the existing USERRA process will continue to best serve the interests of service members, whereby the Department of Defense, through the ESGR organization, provides informal mediation, and the Department of Labor continues to have the statutory authority to investigate USERRA claims. ESGR and DOL will, of course, continue to collaborate to the fullest extent possible to ensure the speediest and most effective resolution of USERRA challenges.

For our part, ESGR will continue its mission to gain and maintain employer support by recognizing outstanding support, increasing awareness of the law, and resolving conflicts through informal mediation, and by cooperating to the fullest extent allowable with the Department of Labor.

I hope that I have been able to clarify the role played by the Employer Support of the Guard and Reserve in helping to explain, and where applicable, mediate, issues involving the Uniformed Services Employment and Reemployment Rights Act. Thank you.

The CHAIRMAN. There you go. Are you going to say something about Boston University and——

[Laughter.]

The CHAIRMAN [continuing]. Your wonderful experience you had in Boston in all those years.

Mr. SUMNER. Well, I'm——

The CHAIRMAN. But we'll settle for Airborne.

Mr. SUMNER. In fact, it was so good, I'm going to go back to Harvard this summer.

The CHAIRMAN. Good for you. Thank you.

Mr. Bloch.

STATEMENT OF SCOTT BLOCH, SPECIAL COUNSEL, U.S. OFFICE OF SPECIAL COUNSEL, WASHINGTON, DC.

Mr. BLOCH. Chairman Kennedy, Senator Isakson, members of the committee. Good morning and thank you for calling this hearing. Thank you for the opportunity to testify on matters of concern to our service members, their families, and our national security.

My name is Scott J. Bloch, Special Counsel of the United States, and head of the U.S. Office of Special Counsel. Sunday is Veterans Day, when we honor the sacrifice and dedication of those who protect our Nation.

It is fitting to ask how to help those who serve on active duty and expect their civilian employers to welcome them back. Sadly, some returning service members are turned away at their job site or denied full rights and benefits. The message is, welcome back, you're fired.

Sometimes that employer is the same Federal Government that mobilized the service member. Federal Government employees are about 10 percent of the National Guard and Reserve, but they file a greater percentage of claims under USERRA. This law notes that the Federal Government should be a model employer.

When I took office nearly 4 years ago, I found the Federal Government anything but a model employer. Reserve service members who were being cycled into Iraq and Afghanistan and others performing necessary Guard and Reserve duty to support these foreign

campaigns, were routinely coming back to indifference, hostility, and job discrimination.

An additional harm occurs when service members, who are lucky enough to know their rights and turn to the Federal bureaucracy, are denied justice by either having it delayed or by being told they have no case after a lengthy drawn-out process. Sometimes service members have had to wait a year, 2 years, even longer to learn they had no case. Many were not told they had the right to come to OSC for relief. Look at our charts that show our process under the demonstration project versus labors process, which we have provided to the committee.

Facing the loss of a job after military service is a great slap in the face. But then being cast into a system that seems not to care how long the service member has to wait for relief is devastating and totally avoidable. I'm determined to change all of that. I created a dedicated USERRA unit at OSC and started to take USERRA seriously.

We filed the first ever prosecution by OSC in June 2004. It took about 2 years for that case to come our way, after she was told she had no case. When we got it, we did a new investigation of this case, involving a long-term Department of Veterans Affairs nursing supervisor with a Ph.D. She was fired after lengthy service for VA Hospitals. Her supervisor said, "We can't have these people going on military leave." We obtained all of her back pay and interest on that back pay and her private attorney's fees, but it took 3 years to obtain justice. And by that time her career was over.

I have filed a total of five USERRA prosecutions since becoming the Special Counsel. We still have one pending. We obtained full corrective action in the other four, even though in two of them the claimant had been told they had no case before they came to us.

Such is the Army Corps of Engineer employee who entered the Air Force and then came back to the Army Corps and was told he had no job. He filed a complaint and was told he had no case. When we got the case over a year after his initial complaint and several months after he requested referral to OSC, we determined the Army Corps had violated his rights and filed suit. We got him back pay of $85,000 and his job back in just over a year.

If Congress leaves matters in the status quo, this is what you will continue to hear regarding service members. We are getting corrective action for one in four complainants. We do so in less than 150 days. We have prosecutorial power. GAO found that DOL did not always tell service members they could come to OSC when they turned them down. Labor has been counting cases that close administratively that OSC would never have opened. We believe DOL did not count the time a service members case is in a regional solicitor's office, which can be up to a year sometimes.

OSC is the only Federal investigative agency that can be a true single point of contact for Federal employees making USERRA claims. If Congress gives the matter back to DOL, cases still must come to OSC for prosecution, assuming VETS tells a service member of his rights. And all cases must come to us if there is a prohibitive personnel practice involved. OSC is the personnel law specialist in the Federal Government. If OSC receives all Federal USERRA claims at the outset, we will continue to work hard to re-

move this devastating problem that returning service members face.

I look forward to your questions.

[The prepared statement of Mr. Bloch follows:]

PREPARED STATEMENT OF SCOTT J. BLOCH

Chairman Kennedy, Ranking Member Enzi, and members of the committee, good morning, and thank you for the opportunity to testify today on important matters of concern to our service members, their families, and ultimately our national security.

My name is Scott J. Bloch and I am Special Counsel of the United States and head of the U.S. Office of Special Counsel (OSC).

This Sunday is Veterans' Day, a day for Americans to honor the sacrifice and dedication of those who have served, and those who serve today, to protect our Nation. Members of the U.S. military serve our Nation in combat and through their readiness for combat. As veterans returning to civilian life or continuing to serve as members of the National Guard and Reserve, they can be superb employees because of the skills they have acquired as members of the military.

Members of the U.S. military are graduates of one of the world's largest training organizations, with highly specialized knowledge in areas such as engineering, healthcare and information technology. Moreover, their military experience builds judgment, dedication, resourcefulness, and leadership—personal qualities that should be valued by employers.

This is the week before Veterans' Day, and it is an especially appropriate time for us to examine how we can provide better support for members of our military who serve on active duty, and expect to be welcomed back by their civilian employers.

Unfortunately, not all employers understand their obligations to their employees who meet their own obligations to our Nation through active duty service. Some service members, mostly members of the National Guard and Reserve who return from active duty, many from combat duties in Iraq and Afghanistan, are turned away by their civilian employers or not afforded their full rights and benefits upon their return.

It is difficult to imagine an employer welcoming back a returning service member with words to the effect, "Welcome back—you're fired!" But it happens—and not only in the private sector. Some members of the National Guard and Reserve, who also serve their country as Federal civilian employees, find themselves returning from active duty to a government unwilling to take them back, or only willing to take them back with less pay, status, or benefits. While civilian employees of the Federal Government represent about 10 percent of the National Guard and Reserve, they file a disproportionately greater percentage of claims under USERRA. Considering that the law specifies that the Federal Government is supposed to be a "model" employer, this is a disturbing trend.[1] The very government that sends them forth into combat might deny them their livelihood when they come marching home.

Reasonable people would cry, "There oughta be a law!" But there have been laws to protect the jobs of returning veterans since 1940, when the Veterans' Reemployment Rights (VRR) law was enacted. The VRR law served our Nation reasonably well for more than half a century. Over the years, however, numerous piecemeal amendments and sometimes conflicting judicial constructions made the law confusing and cumbersome. There were also some loopholes in the VRR enforcement mechanism, especially as it applied to the Federal Government as a civilian employer.

Better protections were needed, and 13 years ago, Congress enacted and President Clinton signed into law the Uniformed Services Employment and Reemployment Rights Act of 1994, or USERRA. It strengthened the enforcement mechanism for Federal employees by giving the Merit Systems Protection Board (MSPB) explicit jurisdiction to adjudicate allegations of USERRA violations by Federal executive agencies as employers.

Under USERRA, a person claiming a violation by any employer (Federal, State, local, or private sector) is permitted to make a complaint to the Department of Labor's Veterans' Employment and Training Service (DOL–VETS) which must investigate and attempt to resolve the matter. If DOL–VETS cannot resolve a complaint involving a private, State, or local employer, the individual may file a private lawsuit or request a referral to the Attorney General for possible representation in Fed-

[1] 38 U.S.C. § 4301(b).

eral district court. If the employer is a Federal executive agency, the individual may appeal to the MSPB or request a referral to OSC for possible representation before the MSPB and, if necessary, the U.S. Court of Appeals for the Federal Circuit.

Thus, the passage of USERRA expanded OSC's role as protector of the Federal merit system and Federal workplace rights by giving OSC prosecutorial authority over Federal-sector USERRA claims. However, it also established a bifurcated process in which DOL–VETS first investigates and attempts to resolve such claims, followed by possible OSC prosecution before the MSPB when there is no resolution by DOL–VETS.

Recognizing the inefficiencies inherent in this process, as well as OSC's unique expertise in investigating and prosecuting Federal employment claims, Congress passed the Veterans Benefits Improvement Act of 2004 (VBIA), which established a demonstration project whereby OSC receives roughly half of Federal USERRA claims from the beginning (i.e., when they are filed and prior to investigation).[2] This demonstration project eliminated (for some claims) the often cumbersome, time-consuming, bifurcated process whereby Federal USERRA claims bounce around different Federal agencies before being resolved by allowing OSC to apply its extensive experience investigating other Federal personnel laws to USERRA. By combining both the investigative and prosecutorial functions in one agency, Congress hoped to determine whether OSC could provide better service to Federal employees filing USERRA claims.

The results of the demonstration project speak for themselves: OSC has obtained corrective action for service members in more than one in four USERRA claims filed with us. This is very high when you consider that the rate of positive findings and corrective action for governmental investigative agencies is usually well under 10 percent. OSC achieves this high rate of corrective action through its thorough investigations, expert analysis of the law, ability to educate Federal employers about the requirements of USERRA, and a credible threat of litigation before the MSPB.

In addition to obtaining corrective action for the individual claimant, in our role as protector of the Federal merit system, OSC seeks "systemic" corrective action to prevent future violations by an agency. For example, we have assisted agencies in modifying their leave and promotion policies to comply with USERRA, provided USERRA training to agency managers and HR specialists, and required agencies to post USERRA information on their Web sites and in common areas.

Our centralized and straight-line process has ensured that the USERRA claims we receive are resolved efficiently, thoroughly, and, most important, correctly under the law. The numerous corrective actions we have obtained for returning service members include back pay, promotions, restored benefits and seniority, time off and systemic changes that prevent future USERRA violations where they work.

Congress tied the outcome of the USERRA demonstration project to an evaluation by the Government Accountability Office (GAO). OSC participated in the evaluations conducted by the GAO, but we were disappointed that their draft report did not meet the April 1, 2007 deadline mandated by Congress. Instead, the final report was published only a week before the congressional August recess. This left Congress with almost no opportunity to act on USERRA before the demonstration projected concluded on September 30th. We appreciate that Congress enacted an extension of the USERRA demonstration project in the fiscal year 2008 Continuing Resolution.

Moreover, the GAO report did not address the central question that the demonstration project was intended to answer: Are Federal sector USERRA claimants better served when they are permitted to make their complaints directly to OSC, for both investigation and litigation, bypassing the bifurcated process? We submit that the answer is an emphatic "yes."

We, of the U.S. Office of Special Counsel, are privileged to be engaged in the enforcement of USERRA. Both as Special Counsel, and as a father of a Marine, I am proud of the work we are doing to protect the employment rights of those who give of themselves for our national security. We employ members of the National Guard and Reserve at OSC; my Deputy Special Counsel is a lieutenant colonel in the Marine Corps Reserve, and four of our recent hires served in the military and are still in the Reserve.

OSC is uniquely suited to assist members of the National Guard and Reserve who, upon their return from active duty, even from combat and with combat-related

[2] Under the demonstration project, OSC has exclusive investigative jurisdiction over Federal-sector USERRA claims where: (1) the claimant has a Social Security Number ending in an odd digit, or (2) the claimant alleges a Prohibited Personnel Practice (PPP) as well as a USERRA violation (regardless of Social Security Number). DOL–VETS retains investigative jurisdiction over all other Federal-sector USERRA claims.

injuries, are turned away by their Federal employers, or not afforded the full protections or benefits to which they are entitled. Because the mission of OSC is to protect the Federal merit system, our specialized USERRA unit is staffed with attorneys and investigators who are experts in Federal personnel law and have years of experience investigating, analyzing, and resolving allegations of violations of Federal employment rights. We also just recruited a nationally-known USERRA expert, Sam Wright, a captain in the Navy Reserve, who helped draft the law and has written and spoken extensively about USERRA and the predecessor re-employment statute, throughout his career. He can assist us not only in the prosecution of complex cases but also in outreach and public affairs aspects of our work for veterans and active members of the National Guard and Reserve.

OSC is the only Federal investigative agency that can provide a true single point of contact for Federal employees making claims under USERRA. Even if Congress decided to return exclusive investigative jurisdiction to DOL–VETS, USERRA cases involving Prohibited Personnel Practices would still have to be passed to OSC. Granting OSC exclusive jurisdiction over the Federal sector USERRA cases would ensure that Federal employee claimants would benefit from having a single agency resolve their claim. For this reason, Federal sector USERRA investigation and enforcement is a natural "fit" for OSC.

We are proud of our achievements enforcing USERRA. We have filed the first ever prosecutions by OSC in the law's history, obtaining corrective action in several cases that had been delayed for years or considered non-winnable. For example, the case of an Army Corps of Engineers employee, who was not re-employed after serving in the Air Force, remained unresolved until OSC received the case. We prosecuted before the MSPB and obtained full corrective action for the service member, including $85,000 in back pay, re-employment in his former position, and full restoration of benefits. And, when an injured Iraq war veteran returned from duty only to be sent home by his Federal employer because he could no longer perform his former job, we convinced the agency to find him a suitable job consistent with his physical limitations, along with back pay.

Cases that before took several years to come to no positive conclusion now routinely take well under a year for OSC to investigate and resolve favorably. We are committed to getting as much relief as the law allows for our brave service members, and doing so as quickly as possible. These patriots have given their all in the service of this great Nation. They should never be hung out to dry by a long, drawn-out, confusing process. OSC is passionate about obtaining relief for all who come to us, and no less for the soldiers of our country who also serve in the Federal Government.

Moreover, giving OSC exclusive jurisdiction over USERRA Federal sector claims would remove the burden from the Department of Labor's Veterans' Employment and Training Service to navigate Federal personnel law, freeing them to focus on providing their best service to USERRA claimants from the private sector and those in State and local governments. Thus, the benefit to service members would be doubly positive—for Federal service members who would benefit from OSC's specialized experience, and for those private sector service members who would benefit from greater attention to their claims at DOL–VETS.

Today, America is in the middle of the largest sustained military deployment in 30 years. That deployment is not limited to the approximately 200,000 service members in Iraq and Afghanistan at this moment. In recent years, the number of members of the National Guard and Reserve mobilized at one time peaked at more than 212,000. Last week, the Department of Defense reported that 93,898 members of the National Guard and Reserve had been mobilized and were on active duty. It is when these service members end their active duty that they may find they are no longer welcome to return to their civilian jobs and are eligible to file a claim under USERRA.

Right now, with returning war vets a comparative trickle, USERRA claims are in the hundreds. What will happen if and when that trickle turns into a flood? Will we see a "spike" in the number of claims filed by returning service members who have been turned away by their employers? Will the government demonstrate its support for our troops by being fully ready to provide prompt and effective action on these claims?

We don't know when they will start returning home in greater numbers, boosting demand for USERRA enforcement. We believe that adequate information has been developed to support a decision by Congress to assign the task of investigating and enforcing USERRA claims by Federal employees to OSC. We are poised to assume this responsibility and to do our part in making their transition back to civilian life as smooth as possible.

Thank you for your attention and I look forward to your questions.

The CHAIRMAN. Thank you.
Ms. Farrell.

STATEMENT OF BRENDA FARRELL, DIRECTOR OF MILITARY AND CIVILIAN PERSONNEL ISSUES IN THE DEFENSE CAPABILITIES AND MANAGEMENT TEAM, GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC.

Ms. FARRELL. Mr. Chairman, Senator Isakson, members of the committee. George Stalcup and I are pleased to be here today to discuss the activities of the Departments of Defense, Labor, Justice, and the Office of Special Counsel regarding USERRA. This act protects millions of people, largely National Guard and Reserve members, as they transition between their military duties and their civilian careers.

Mr. Chairman, in 2004, you recognized the issues associated with USERRA, particularly in light of the significant number of Reservists serving in Iraq and Afghanistan who would be demobilized, returned to their civilian jobs, and possibly called back to duty. Our testimony today is particularly relevant, because more than ½ million Reservists have been called to duty since September 11, 2001.

Let me briefly summarize our written statement, which is based upon work that we have conducted for you, Mr. Chairman, in response to Congressional mandates. Our statement is presented in three parts. First, let me elaborate on the overall process used to implement USERRA. The fact that four Federal agencies have key USERRA roles makes enforcement of the act somewhat complex.

DOD along with Labor is responsible for informing service members and employers of their rights, benefits, and obligations under USERRA. Much of DOD's outreach is accomplished through volunteers with its employer support of the Guard and Reserve. This organization also has ombudsman who act as mediators for informal complaints that arise between service members and their employers. And in GAO's February 2007 report, we noted that nearly 10,000 informal complaints had been filed with DOD in fiscal years 2004 and 2005. When ombudsman can not resolve the complaint, service members have several options. No. 1, service members can file formal complaints with Labor's Veterans Employment and Training Service. No. 2, service members can file complaints directly in court if it involves non-Federal employers or the Merit Systems Protection Board if it involves Federal Executive Branch employers. No. 3, certain Federal employees can file complaints directly with OSC under a Federal demonstration project.

When a service member files a formal complaint with Labor, 1 of its 115 investigators attempts to resolve it. If its investigators are unable to resolve the complaints, Labor is to inform the service members that they may request to have their complaints referred to Justice for complaints against private sector employers or State and local governments, or to OSC for complaints against Federal Executive Branch agencies.

If Justice or OSC determines that the complaint has merit, it will attempt to solve the complaint directly with the employer, and if unsuccessful, represent the complainant in court for those referred to Justice or before the Merit System Protection Board for those referred to OSC. If Justice or OSC determine the complaint

has no merit, it notifies the claimant of his or her right to pursue a cause of action.

The second part of our statement addresses the implementation of USERRA. Although USERRA defines individual agency roles and responsibilities, no single office has visibility to focus on program results.

Agencies have developed agency-specific output, rather than cross-cutting goals directed toward resolving service members' complaints. For example, agency goals address the complaints processing times of each stage of the process, rather than the entire time that elapses while service members wait to have their complaints addressed.

GAO's 2005 review found that for certain cases, those that were closed and reopened two or more times, the total elapsed time that service members waited to have their formal complaints fully addressed averaged about 20 to 21 months, from the time they first filed their formal complaint with Labor, until the complaint was fully addressed by Labor, Justice or OSC.

Finally, the last part of our statement notes that all four agencies have generally been responsive to GAO's recommendations, including those in our most recent report, issued in July 2007, to improve the implementation of USERRA, on outreach to employers, data sharing and trend information, reporting to Congress, and the internal review of Labors' investigator's determinations of USERRA complaints.

With the Nation's attention so focused on those who serve our country, it is important that their employment and reemployment rights are protected.

This concludes my opening statement, we would be pleased to take questions when you wish.

[The prepared statement of Ms. Farrell follows:]

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-08-254T, a testimony to Committee on Health, Education, Labor and Pensions, U.S. Senate

November 8, 2007

MILITARY PERSONNEL

Federal Agencies Have Taken Actions to Address Servicemembers' Employment Rights, but a Single Entity Needs to Maintain Visibility to Improve Focus on Overall Program Results

Why GAO Did This Study

Since September 11, 2001, the Department of Defense (DOD) has mobilized more than 500,000 National Guard and Reserve members. As reservists return to civilian life, concerns exist about difficulties with their civilian employment. The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 protects the employment rights of individuals, largely National Guard and Reserve members, as they transition back to their civilian employment. GAO has issued a number of reports on agency efforts to carry out their USERRA responsibilities. DOD, the Department of Labor (DOL), the Department of Justice (DOJ), and the Office of Special Counsel (OSC) have key responsibilities under the act. GAO was asked to discuss the overall process that the agencies use to implement USERRA. Specifically, this testimony addresses (1) organizational accountability in the implementation of USERRA and (2) actions that the agencies have taken to improve their processes to implement USERRA. For this testimony, GAO drew from its most recent reports on USERRA.

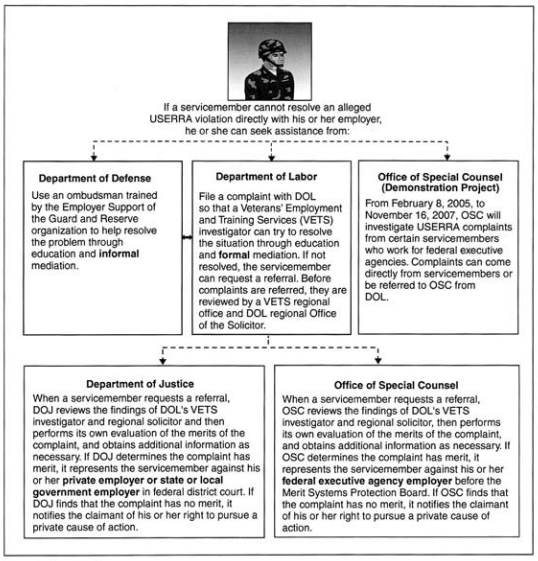
What GAO Recommends

In October 2005 GAO suggested that Congress make a single entity accountable for maintaining visibility over the entire USERRA complaint resolution process. Designating one single entity would, in GAO's view, enhance efforts to improve overall program results.

To view the full product, including the scope and methodology, click on GAO-08-254T. For more information, contact Brenda Farrell at (202) 512-3604 or farrellb@gao.gov or George Stalcup at (202) 512-9490 or stalcupg@gao.gov.

What GAO Found

Depicted below are servicemembers' options for obtaining federal assistance with their USERRA complaints.



Source: GAO, Art Explosion.

USERRA defines individual agency roles and responsibilities; however, it does not designate any single individual or office as accountable for maintaining visibility over the entire complaint resolution process. From the time informal complaints are filed with DOD's Employer Support of the Guard and Reserve through final resolution of formal complaints at DOL, DOJ, or OSC, no one entity has visibility over the entire process.

The four agencies have generally been responsive to GAO's recommendations to improve the implementation of USERRA—on outreach to employers, data sharing and trend information, reporting to Congress, and the internal review of DOL's investigators' determinations of USERRA claims.

United States Government Accountability Office

PREPARED STATEMENT OF BRENDA S. FARRELL

Mr. Chairman, Senator Enzi, and members of the committee, we are pleased to be here today to discuss four Federal agencies' activities regarding the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994.[1] USERRA protects the employment and re-employment rights of millions of Federal and non-Federal employees who leave their civilian employment to perform military or other uniformed service. USERRA also prohibits discrimination in employment against individuals because of their uniformed service, obligation to perform service, or membership or application for membership in the uniformed services. USERRA further prohibits employer retaliation against any individual who engages in protected ac-

[1] Pub. L. No. 103–353 (1994), as amended, codified at 38 U.S.C. §§ 4301–4334.

38957-3.eps

tivity under USERRA, regardless of whether the individual has performed service in the uniformed services.

Mr. Chairman, in 2004 you recognized the issues associated with USERRA, particularly in light of the significant number of National Guard and Reserve members serving in Iraq and Afghanistan who would be demobilized, returned to their civilian jobs, and possibly called back to duty.[2] Our testimony today is particularly relevant because more than 500,000 reservists have been called to duty since September 11, 2001.

Our testimony is based on work that we have conducted for you and in response to congressional mandates. Since 2002, we have issued several reports on Federal agency efforts to carry out USERRA responsibilities. The four agencies primarily responsible for assisting service members under USERRA are the Department of Defense (DOD), the Department of Labor (DOL), the Department of Justice (DOJ), and the Office of Special Counsel (OSC).[3] In our reports, we have made numerous recommendations to these agencies concerning the implementation of USERRA.[4]

Our testimony is based on our three most recent reports on USERRA and examining whether DOD, DOL, DOJ, and OSC have effectively carried out their USERRA responsibilities.[5] Our testimony addresses (1) organizational accountability in the implementation of USERRA and (2) actions that the agencies have taken to improve their internal processes to implement USERRA.

As noted, this testimony is based on our prior work. For that work, we reviewed applicable laws, guidance, regulations, and operations manuals. To assess how efficiently and effectively DOD, DOL, DOJ, and OSC address USERRA complaints, we collected, reviewed, and analyzed data from a wide variety of sources (including the four Federal agencies) and interviewed responsible officials.[6] We also reviewed DOD survey data and conducted original analysis on these data. To identify progress made by DOD in capturing employer information, we obtained and analyzed reporting compliance data from DOD and its reserve components. Further, we analyzed the number of disability complaints filed with DOD and DOL between fiscal years 2004 and 2006. We found DOD's civilian employment information and Employer Support of the Guard and Reserve (ESGR) databases to be of undeterminable reliability.

In our October 2005 report, we compared data obtained from DOJ and OSC with those captured by DOL and, where available, we compared the information in DOL's USERRA Information Management System to information from hard copy complaint files for accuracy.[7] For our July 2007 report, we assessed the reliability of selected data elements on Federal employee complaints from DOL's USERRA database by tracing a statistically random sample of data to case files from February 8, 2005, through July 21, 2006.[8] We determined that these data were sufficiently reliable,

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[2] The term reservists refers to the collective forces of the Army National Guard, Air National Guard, Army Reserve, Air Force Reserve, Navy Reserve, Marine Corps Reserve, and the Coast Guard Reserve.

[3] The law also gives outreach responsibilities to the Secretary of Veterans Affairs, but we did not review actions of the Department of Veterans Affairs in supporting USERRA because its role is more limited.

[4] GAO, *Military Personnel: Improved Quality Controls Needed Over Servicemembers' Employment Rights Claims at DOL,* GAO–07–907 (Washington, DC.: July 20, 2007); GAO, *Military Personnel: Additional Actions Needed to Improve Oversight of Reserve Employment Issues,* GAO–07–259 (Washington, DC.: Feb. 8, 2007); GAO, *Military Personnel: Federal Management of Servicemember Employment Rights Can Be Further Improved,* GAO–06–60 (Washington, DC.: Oct. 19, 2005); GAO, *U.S. Office of Special Counsel's Role in Enforcing Law to Protect Reemployment Rights of Veterans and Reservists in Federal Employment,* GAO–05–74R (Washington, DC.: Oct. 6, 2004); GAO, *Reserve Force: DOD Actions Needed to Better Manage Relations Between Reservists and Their Employers,* GAO–02–608 (Washington, DC.: June 13, 2002).

[5] We recently testified on issues related to our July 2007 report. GAO, *Military Personnel: Considerations Related to Extending Demonstration Project on Servicemembers' Employment Rights Claims*, GAO–08–229T (Washington, DC.: Oct. 31, 2007).

[6] Federal agencies use a variety of terms to describe service member allegation of USERRA violations, including "complaints," "claims," "cases," "matters," and "referrals." For clarity and consistency throughout this testimony, we use the term complaint to describe these service member allegations. We refer to complaints to DOD as "informal complaints" and complaints to DOL, DOJ, and OSC as "formal complaints."

[7] DOL's USERRA Information Management System is a Web-based case management and reporting tool implemented by DOL in October 1996 that allows for automated collection and investigator input of information regarding USERRA complaints and generation of reports for analysis of USERRA operations and outcomes. For purposes of this testimony, we refer to DOL's USERRA Information Management System as DOL's USERRA database.

[8] For our July 2007 report, we also assessed the reliability of selected data elements on Federal employee complaints from OSC's case tracking system for the same period. The data ele-

with the exception of certain data elements from DOL's USERRA database, which we note in this testimony. With respect to actions agencies have taken in response to our recommendations, we discussed the agencies' progress with knowledgeable officials from DOL, ESGR, and OSC. Our work on the above reports, as well as the work we conducted for this statement, was performed in accordance with generally accepted government auditing standards.

SUMMARY

Mr. Chairman, our main message today is that the four Federal agencies have taken steps to better support and protect service members' rights under USERRA in response to problems identified and recommendations made in our prior reports. However, no single agency is accountable for maintaining visibility over the entire complaint resolution process and therefore, it is difficult for the responsible agencies to effectively carry out their USERRA responsibilities. Designating one single entity would, in GAO's view, enhance efforts to improve overall program results.

BACKGROUND

The overall process used to implement USERRA is as follows:

• **Outreach and resolution of informal complaints.** DOD and DOL share responsibility for outreach—the education of service members and employers about their respective responsibilities under USERRA. Much of DOD's outreach is accomplished through ESGR, which performs most of its work through over 4,000 volunteers. DOL conducts outreach through its Veterans' Employment and Training Service (VETS) investigators, who are located nationwide. These investigators conduct briefings to educate employers and service members about USERRA requirements and responsibilities and handle service-related employment and re-employment questions that are directed to their offices.

Service members who have USERRA-related issues with their employers can file informal complaints with DOD's ESGR. In our February 2007 report, we noted that nearly 10,000 informal complaints had been filed with ESGR in fiscal years 2004 and 2005. A subgroup of ESGR's specially trained volunteers serve as impartial ombudsmen who informally mediate USERRA issues that arise between service members and their employers.

• **Formal complaints and prosecution.** When ESGR ombudsmen cannot resolve complaints informally, they notify service members about their options. Service members can file a formal complaint with DOL or file complaints directly in court (if it involves non-Federal employers) or the Merit Systems Protection Board (if it involves Federal executive branch employers). Under a Federal sector demonstration project established by the Veterans Benefits Improvement Act of 2004,[9] DOL investigates complaints against Federal executive branch agencies for individuals whose social security numbers end in even numbers, and OSC is authorized to directly receive and investigate complaints and seek corrective action for individuals whose social security numbers end in odd numbers.

When a service member files a formal complaint with DOL, one of VETS's 115 investigators examines and attempts to resolve it.[10] If VETS's investigators are unable to resolve service member complaints, DOL is to inform service members that they may request to have their complaints referred to DOJ (for complaints against private sector employers or State and local governments) or to OSC (for complaints against Federal executive branch agencies).[11] Before complaints are sent to DOJ or OSC, they are reviewed by a VETS regional office for accuracy and sufficiency and by a DOL regional Office of the Solicitor, which assesses the legal basis for complaints and makes an independent recommendation.

If DOJ or OSC determines that the complaint has merit, it will attempt to resolve the complaint without litigation and, if unsuccessful, represent the complainant in court (for those referred to DOJ) or before the Merit Systems Protection Board (for those referred to OSC).

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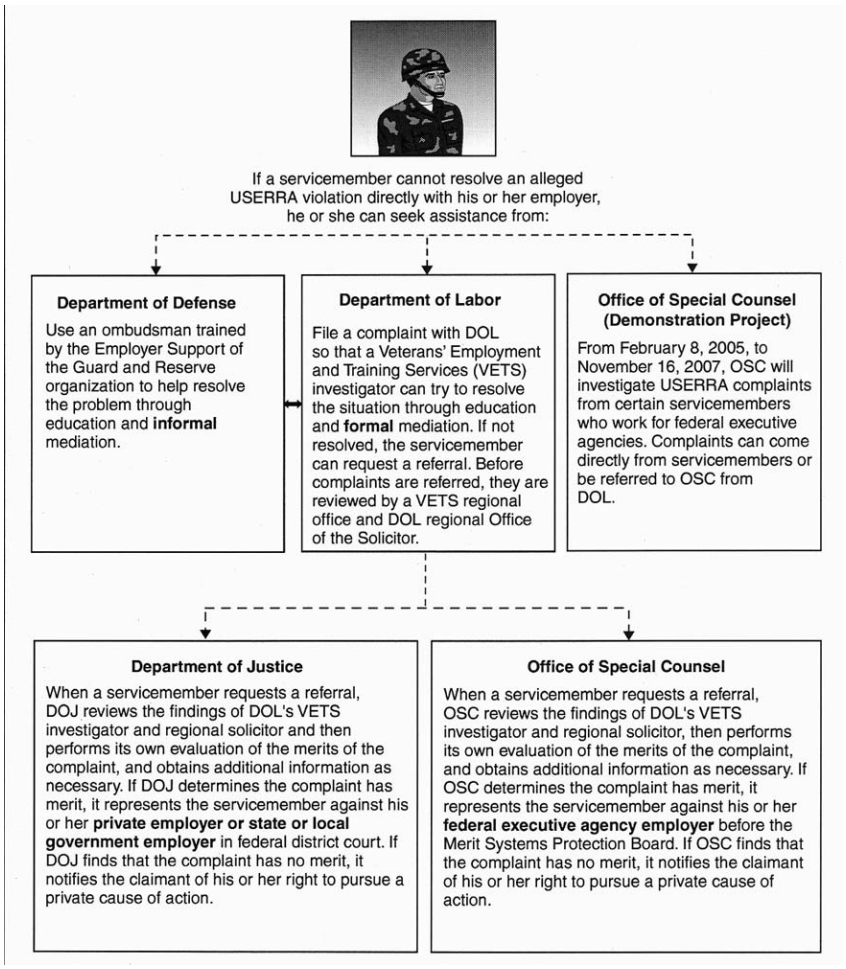
ment that OSC uses to describe the outcomes of complaints was not sufficiently reliable for reporting specific outcomes.

[9] The demonstration project began on February 8, 2005 and was originally scheduled to end on September 30, 2007. Pub. L. No. 108–454, § 204 (2004), 38 U.S.C. § 4301 note. It was extended through November 16, 2007. Pub. L. No. 110–92, § 130 (2007).

[10] Another 74 investigators include regional administrators and management authorized to investigate USERRA complaints but not assigned to any.

[11] DOL is also to inform service members that they may file their complaint directly in court (if it involves non-Federal employers) or with the Merit Systems Protection Board (if it involves Federal executive branch employers).

Figure 1 shows service members' options for obtaining Federal assistance with their USERRA complaints.



• **Agency databases and reporting requirement.** Each of the four Federal agencies responsible for assisting service members under USERRA maintains an automated database with complaint information. Both DOD and DOL have electronic complaint files that are stored in automated systems with query capabilities.

The Secretary of Labor in consultation with the U.S. Attorney General and the Special Counsel prepares and transmits a USERRA annual report to Congress on, among other matters, the number of USERRA claims reviewed by DOL, and during the current demonstration project by OSC, along with the number of claims referred to DOJ or OSC. The annual report is also to address the nature and status of each claim, state whether there are any apparent patterns of violation of the USERRA provisions, and include any recommendations for administrative or legislative action that the Secretary of Labor, the U.S. Attorney General, or the Special Counsel consider necessary to effectively implement USERRA.

NO SINGLE AGENCY IS ACCOUNTABLE FOR MAINTAINING VISIBILITY OVER THE ENTIRE COMPLAINT RESOLUTION PROCESS

Although USERRA defines individual agency roles and responsibilities, it does not make any single individual or office accountable for maintaining visibility over the

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entire complaint resolution process. In our October 2005 report, we noted that the ability of Federal agencies to monitor the efficiency and effectiveness of the complaint process was hampered by a lack of visibility resulting, in part, from the segmentation of responsibility for addressing complaints among multiple agencies. Moreover, from the time informal complaints are filed with DOD's ESGR through final resolution of formal complaints at DOL, DOJ, or OSC, no one entity has visibility over the entire process. We found that the agency officials who are responsible for the complaints at various stages of the process generally have limited or no visibility over the other parts of the process. As a result, Federal agencies have developed agency-specific output rather than cross-cutting goals directed toward resolving service members' complaints. For example, agency goals address the complaint processing times of each stage of the process, rather than the entire time that elapses while service members wait to have their complaints addressed. Meanwhile, the service member knows how much time is passing since the initial complaint was filed. In October 2005, we reported that more than 430 of the 10,061 formal complaints filed with DOL between October 1, 1996, and June 30, 2005, were closed and reopened and 52 complaints had been closed and reopened two or more times. Our analysis of those 52 complaints showed that the processing times averaged about 3 to 4 months but the total elapsed times that service members waited to have their complaints fully addressed averaged about 20 to 21 months from the time they first filed their initial formal complaints with DOL until the time the complaints were fully addressed by DOL, DOJ, or OSC.[12]

We have previously suggested and continue to believe that Congress should consider designating a single individual or office to maintain visibility over the entire complaint resolution process from DOD through DOL, DOJ, and OSC. We believe this would encourage agencies to focus on overall results rather than agency-specific outputs and thereby improve Federal responsiveness to service member complaints that are referred from one agency to another. In response to this matter, in our 2005 report, both DOL and OSC were supportive, and both agencies noted that they had the expertise to oversee the USERRA complaint resolution process. However, DOL stated that with the mandated demonstration project ongoing, it would be premature to make any suggestions or recommendations for congressional or legislative action until the project has been completed. DOD and DOJ did not provide comments on this matter.

AGENCIES HAVE TAKEN ACTION TO IMPROVE INFORMATION ON EMPLOYERS AND ASSISTANCE TO SERVICE MEMBERS UNDER USERRA

DOD, DOL, DOJ, and OSC have generally been responsive to the recommendations we have made in our prior reports. Following is the status of some of the improvements made thus far.

Outreach

Integral to getting service members the help they need is educating them and their employers on their respective responsibilities under USERRA. Since 2002, we have reported on DOD's need to obtain complete and accurate information on the civilian employers to better target its outreach efforts. Accurate, complete, and current civilian employer information is important to DOD to improve its ability to target outreach to employers, to make informed decisions concerning which reservists should be called for active duty to minimize the impact that mobilizations might have on occupations such as law enforcement, and to determine how businesses may be affected by reserve activation. As we recommended in our 2002 report, DOD implemented regulations that required the reporting and collection of employer information for Reserve personnel. Additionally, DOD established compliance goals for these service members. We noted in our February 2007 report that the percentage of service members reporting employer information to DOD had increased, but most reserve components had still not reached their compliance goals. In addition, we found that employment data were not necessarily current because some reservists were not aware of requirements to update their employer information and the serv-

[12] Because dates in DOL's USERRA database did not always match the dates in the other agencies' systems and of the concerns raised in our July 2007 report about the investigation closed dates entered for Federal sector complaints, discussed later in this statement, the processing and total elapsed times may not be accurate and the figures presented here are not precise reflections of processing or total elapsed times. For our 2005 report, we reviewed hard copy complaint files at the regional offices, tracked cases if they were referred to DOJ or OSC, and spoke with relevant investigators about these cases. We determined these data were sufficiently reliable for illustrating the differences between the agencies' focuses on outputs and the service members' concern with the results.

ices had not established a formal mechanism to remind reservists to update this personnel information as necessary to reflect changes in their current employment.

To improve the reporting of National Guard and Reserve employment information, we recommended that the Secretary of Defense direct the Office of the Assistant Secretary of Defense for Reserve Affairs to establish specific timeframes for reservists to report their employment data, set specific timeframes for reserve components to achieve the established compliance reporting goals, and direct the service components to take action to ensure reporting compliance. In response to this recommendation, DOD indicated at the time of our report that its current policy on employer reporting established compliance goals. We noted in our report that DOD needed to establish a new deadline by which reservists must report their employer information to DOD and set specific timeframes for reserve components to achieve the established compliance reporting goal. In addition, to encourage reservists to keep their employer data current, we recommended that DOD instruct all military departments to establish a formal review mechanism that would require all reservists to review and update at least annually their reported employment-related information. At the time of our February 2007 report, DOD was in the process of revising its policy on civilian employer reporting to require an annual review of reported employer information.

DOD provides USERRA outreach and education to service members using several mechanisms, including a toll-free information line and individual and group briefings. DOD monitors the extent to which it reaches this population and the occurrence of USERRA-related problems by including questions on these areas in its Status of the Forces survey, which is periodically conducted to identify issues that need to be addressed or monitored. We noted in our 2005 report that survey questions offer the potential to provide insight into compliance and employer support issues. However, questions on the surveys vary from year to year and have not always included those pertaining to USERRA compliance and employer support. To gauge the effectiveness of Federal actions to support USERRA by identifying trends in compliance and employer support, we recommended that the Secretary of Defense direct the Under Secretary of Defense for Personnel and Readiness to include questions in DOD's periodic Status of Forces Surveys to determine:

- the extent to which service members experience USERRA-related problems;
- if they experience these problems, from whom they seek assistance;
- if they do not seek assistance, why not; and
- the extent to which service members' employers provide support beyond that required by the law.

In response to this recommendation, DOD incorporated these additional USERRA-related questions in its June 2006 Status of the Forces survey.

Data Sharing and Trend Identification

Because the resolution of service member complaints could involve multiple Federal agencies, it is important that the agencies be able to effectively share and transfer information to efficiently process service member complaints. In October 2005, we found that the automated systems that DOD, DOL, DOJ, and OSC used to capture data about USERRA complaints were not compatible with each other.[13] As a result, information collection efforts were sometimes duplicated, which slowed complaint processing times. To increase Federal agency responsiveness to USERRA complaints, we recommended that DOD, DOL, DOJ, and OSC develop a system to allow the electronic transfer of complaint information. At the time of our report, DOL and OSC concurred with this recommendation, DOJ did not provide comments, and DOD deferred to the other agencies. We noted in our February 2007 report that DOL had implemented an enhancement to its USERRA database in October 2006 to enable the four USERRA coordinating agencies to electronically transfer case information between agencies. The database enhancement allowed DOD, DOL, DOJ, and OSC to access and update the status of cases using the Internet and produce a report containing aggregate USERRA complaint data on the cases over which they have jurisdiction. We further noted in this report that, despite these enhancements to the USERRA database to allow the electronic transfer of complaint information between agencies, DOD only had visibility over those cases that originated with informal complaints to DOD. Even though DOD shares responsibility with DOL for USERRA complaints, DOD did not have access to all USERRA complaint data, and we recommended that DOL provide these data to DOD's ESGR.[14] In response to

[13] GAO–06–60.
[14] GAO–07–259.

this recommendation, in October 2007, DOL provided DOD with the ability to view and download aggregate information on all USERRA cases in its database.

In addition, in October 2005, we reported that when a complaint is referred from DOL to OSC or DOJ, the agencies are unable to efficiently process complaints because they are forced to create, maintain, copy, and mail paper files to other DOL offices and to OSC and DOJ. To reduce administrative burden and improve oversight of USERRA complaints processing, we recommended that DOL develop a plan to reduce reliance on paper files and fully adopt the agency's automated complaint file system. DOL concurred with this recommendation and, as a result, is developing an electronic case record system, scheduled for completion in October 2008, that will allow all agencies assigned to the case an opportunity to review documents and add investigative notes or records.

To effectively identify trends in issues facing service members, it is important in a segmented complaint resolution process that the complaint data generated by each of the Federal agencies be sufficiently comparable. In our February 2007 report, we noted that the complaint categories used by each of the four agencies could not be uniformly categorized to reveal trends in USERRA complaints. In particular, we noted that the complaint data collected by DOD and DOL, the two agencies that see the highest volume of cases, were not categorized in a way that is conducive to meaningful comparison. Specifically, we found that the two agencies use different categories to identify reservists' USERRA complaints for issues such as being refused job reinstatement, denied an appropriate pay rate, or being denied vacation time. To allow for the analysis of trends in reporting USERRA complaints, we recommended that DOD and DOL adopt uniform complaint categories in the future that would allow aggregate trend analysis to be performed across the databases. At the time of our report, both DOD and DOL agreed with this recommendation. Since that time, DOD and DOL have collaborated to identify common complaint categories that will allow both agencies to match similar USERRA complaints. According to officials from both DOD and DOL, these complaint categories are expected to be pilot tested in fiscal year 2008.

As reservists continue to be exposed to serious injury in operations in Iraq and Afghanistan, the ability to identify disability re-employment complaints becomes more critical. However, we noted in our February 2007 report that the four Federal agencies responsible for assisting service members with USERRA complaints could not systematically record and track disability-related complaints. Additionally, we found that these agencies do not distinguish disability-related complaints from other types of complaints for tracking and reporting purposes. For example, the service member must indicate that the case involves a disability for it to be classified as such, and these complaints may not be distinguishable from any other types of complaints because a single USERRA complaint may involve a number of issues that complicates the classification of the case by the agency. Further, disability-related complaints are not identified using consistent and compatible complaint categories. DOD classifies USERRA disability-related complaints within three categories including medical benefits, job placement, and time limits for re-employment, while DOL uses one category, reasonable accommodation and retraining for disabled, to classify USERRA disability-related complaints. To provide agencies with better information about disability-related employment complaints, we recommended that DOL develop a system for recording and tracking these complaints and share it with the other agencies that implement USERRA. DOL concurred with this recommendation at the time of this report. According to DOL officials, DOL's USERRA database identifies disability claims, and the agency has recently provided DOD, OSC, and DOJ with access to this system.

INFORMATION REPORTED TO CONGRESS

As previously mentioned, the Secretary of Labor is required to provide an annual report to Congress that includes information on the number of USERRA complaints reviewed by DOL, along with the number of complaints referred to DOJ or OSC. We noted in our February 2007 report that DOL's report to Congress does not include information on informal complaints filed with ESGR. Therefore the complaint data that DOL reported to Congress for fiscal years 2004 and 2005 did not include 80 percent, or 9,975 of the 12,421 total informal and formal USERRA complaints filed by reservists during that period. Without data from ESGR, Congress has limited visibility over the full range of USERRA issues that reservists face following deployment. Further, without these data, Congress may lack the information for its oversight of reserve employment matters. To gain a full perspective of the number and nature of USERRA complaints filed by reservists in gaining re-employment upon returning from active duty, we suggested that Congress consider amending the

reporting requirement[15] to require DOL to include data from DOD's ESGR in its annual report to Congress. In response to this matter for congressional consideration, Members of Congress are considering changes to the legislation.[16]

In addition to DOL's report to Congress not reflecting informal USERRA complaints, we identified data limitations in our July 2007 report that affected the quality of information reported to Congress that could adversely affect Congress's ability to assess how well Federal sector USERRA complaints are processed and whether changes are needed.[17] DOL provides information in its annual report to Congress on the number and percentage of complaints opened by type of employer, issues raised—such as discrimination or refusal to reinstate—outcome, and total time to resolve. We found that the number of Federal sector complaints shown in DOL's USERRA database from February 8, 2005, through September 30, 2006, exceeded the number of unique claims it processed during the period of our review. Duplicate, reopened, and transferred complaints accounted for most of this difference. Also, in our review of a random sample of case files, we found:

- the dates recorded for case closure in DOL's USERRA database did not reflect the dates on the closure letters in 22 of 52 sampled complaints and
- the closed code, which DOL uses to describe the outcomes of USERRA complaints (e.g., granted, settled, no merit, or withdrawn), was not sufficiently reliable for reporting specific outcomes of complaints.

To ensure that accurate information on USERRA complaints' processing is available to DOL and to Congress, we recommended in our July 2007 report that the Secretary of Labor direct the Assistant Secretary of Veterans' Employment and Training to establish a plan of intended actions with target dates for implementing internal controls to ensure that DOL's USERRA database accurately reflects the number of unique USERRA complaints filed annually against Federal executive branch agencies, the dates those complaints were closed, and the outcomes of those complaints. In response to our recommendation, DOL issued a memo from the Assistant Secretary of Veterans' Employment and Training in July 2007 instructing investigators to ensure that the closed date entered into DOL's USERRA database match the date on the closure letter to the service member, and DOL conducted mandatory training on this memo beginning in August 2007. Further, DOL officials told us that DOL's fiscal year 2007 annual report will count reopened complaints as a single complaint if brought by the same individual, against the same employer, and on the same issue.

NOTIFICATION OF RIGHTS TO REFERRAL AND INTERNAL REVIEWS

We reported in July 2007 that in cases where service members sought assistance from DOL and the agency could not resolve the complaints, DOL did not consistently notify service members in writing of their right to have their unresolved complaints against Federal executive branch agencies referred to OSC or to bring their claims directly to the Merit Systems Protection Board.[18] Specifically, our review of a random sample of complaint files showed that DOL failed to notify service members in writing in half of the unresolved complaints and notified others of only some of their options. In addition, we found that DOL's *USERRA Operations Manual* failed to provide clear guidance to its investigators on when to notify service members of their rights and the content of the notifications. In July 2007, we also reported that DOL has no internal process to routinely review investigators' determinations before claimants are notified of them and noted that this lack of review could have caused DOL's inconsistent practice of notifying service members for their rights to referral. We recommended that the Secretary of Labor direct the Assistant Secretary for Veterans' Employment and Training to: (1) require VETS's investigators to undergo mandatory training on the procedures to be followed concerning notification rights to referral, (2) incorporate into the formal update to DOL's *USERRA Operations Manual* guidance concerning the notification rights to referral, and (3) develop and implement an internal review mechanism for all unresolved complaints before service members are notified of determinations and complaints are closed.

Since that time, DOL has taken the following actions:

- issued a memo in July 2007 from the Assistant Secretary for Veterans' Employment and Training to regional administrators, senior investigators, and directors

[15] 38 U.S.C. § 4332.
[16] H.R. 1632 was proposed on March 21, 2007, and was referred to the Committee on Veterans' Affairs.
[17] GAO–07–907.
[18] GAO–07–907.

concerning case closing procedure changes, including standard language to use to ensure that service members (Federal and non-Federal) are apprised of their rights;

• began conducting mandatory training on the memo in August 2007;

• incorporated the policy changes into the revised *Manual*, which according to DOL officials is expected to be released in January 2008; and

• according to DOL officials, beginning in January 2008, all claims are to be reviewed before the closure letter is sent to the claimant.

These are positive steps. It is important for DOL to follow through with its plans to ensure that clear and uniform guidance is available to all involved in processing USERRA complaints.

Mr. Chairman, Senator Enzi, and members of the committee, this concludes our remarks. We will be pleased to take questions at this time.

The CHAIRMAN. Thank you, thank you very much.

Let me just cover this quickly, because we want to keep moving along. I thank Senator Murkowski for joining with us here this morning, as well.

Ms. Farrell, you pointed out the administrative complexity—I don't want to spend a great deal of time on this, as a matter of fact I'll spend very little time, maybe we'll come back for questions, but this is a chart that gives the summary of the points that you make about the bureaucratic duplicity that exists, and confusion in this. And even with this we have a requirement, that the Department of Labor is supposed to file a statutory report in February about the progress that they're making, and we still haven't even received that.

But this is the rough conceptual reality of how this breaks out. But, I want to move beyond this. What I want to do is address the veterans, the half of the reservists, and the National Guard that have expressed dissatisfaction with the DOL.

Now, what are the issues that they have expressed some dissatisfaction with the DOL? In this chart here, these are the lists of the areas where they've expressed some dissatisfaction: loss of seniority, loss of pensions, the loss of the upgrade in their skills, failure to reinstate health insurance, failure to get prompt reemployment. This is a list of the types of dissatisfactions.

OK, so these are the numbers, and the types of dissatisfactions. Now, what do these service men and women do? They go to the Department of Labor, and this chart here will show you when they go to the Department of Labor, what is their degree of satisfaction.

In 2004, we found there were 27 percent who were dissatisfied, now in 2006, it's up to 44 percent. These are the Department of Defense figures, as of October 17. So, the dissatisfaction is not going down, the number of complaints has stabilized, gone up somewhat. And that is something.

Now, let's take the total number of service members that go to the Department of Labor, now, almost half of them are dissatisfied. So we ask ourselves, how many did not go there? And we find out that 77 percent did not seek assistance. These, again, are Department of Defense figures from the Status of Focus Survey. So, only about 23 percent actually sought assistance, of the ones that sought the assistance, almost 50 percent of those are dissatisfied.

Now, these are Department of Defense figures. And this is not a record that we should be very satisfied with. And we have to try and get it straight. Now, there's bureaucratic aspects of it that have been pointed out, there are other aspects, there's some very

important progress that Mr. Bloch mentioned, particularly cases that they've done, there has been some noble help and assistance.

But with this degree of dissatisfaction, the fact is that service men and women are not using the system, and they've got problems, and the ones that do use the system have the problem with the system. What in the world are we going to try to do about that?

Mr. Ciccolella.

Mr. CICCOLELLA. Thank you, Senator.

What we're trying to do, is to brief every service member before they go on their deployments, and we brief them at demobilization. We do that with the Defense Department——

The CHAIRMAN. I'm going to ask you, just very quickly, because my time's going to be up, I'm going to ask each one of you to give about a 1-minute reaction to this, so you can be thinking about it. We're voting at 11:30 and we're going to want to move on to the next panel.

Mr. CICCOLELLA. The most important thing about this law—this is a complicated law—the most important thing about the law is to explain to service members where they can go to get assistance, and that's what we try to do. We've made the law much easier to understand with our regulations, heretofore, there were no regulations on this law. It's not an easy law to understand, and where there are problems with USERRA, it is generally because the law is not understood.

And we brought up the issue of deployments, the deployments are much longer, it's not like it was in 1994 when the law came out, where service members were off for their weekend duty. These lengthy deployments create situations that are much more complex.

You noted on your list of their complaints, the types of complaints that you're getting—and you can see the complexity—and Senator, it's not only the complexity. But it's the multitude of issues. You don't have USERRA cases now with just one issue.

So, in many cases, it is that the employer does not understand the law, it's not the egregious, "We're not going to hire you," or "You're fired." And, it does take time to work through those issues, especially health care restoration, pension restoration, and a lot of times it's status, you know, an individual leaves, comes back, leaves again, and then when they come back, they're not immediately put back in the exact same position or, as the law says, it's got an escalator principle that underlies it, they're supposed to be put in the position they would have had, but for the military experience, or service. Which puts the employer in a situation where they need to bring that individual up to speed. The intent of Congress was that service members should not be penalized for their military service.

The CHAIRMAN. Please, Dr. Sumner.

Mr. SUMNER. Sir, from our viewpoint on the ESGR side, we're the ones who try to provide that informal mediation process to those Guard and Reserve members, before it ever gets to this level.

The CHAIRMAN. Sure.

Mr. SUMNER. And right now, over the last couple of years, we have had—just for information only—over 15,000 cases that have come to our office, either by telephone, through our e-mail or

through our 1-800 call center support. And just from that alone, we've been working those cases, as of last year and the 2006 issue, for example, of all the cases which numbered into 10,000-plus cases, only 1 percent were those we could not resolve at the community level between our volunteers, our paid staff—who are located at every State and territory—working with those Guard or Reserve units that are located with them, as well as the businesses that are with them, and that 1 percent is what we ended up having to follow-on to the Department of Labor. But our effort, again, is focused solely on being the ones that can fix their problems immediately, to the satisfaction of both parties, as we provide that informal mediation process.

The CHAIRMAN. Put up the organizational chart. As I understand it, your agency does about 80 percent of the USERRA cases?

Mr. SUMNER. Yes, sir.

The CHAIRMAN. And the Department of Labor is 20 percent, you do the ones with volunteers, and do it effectively.

Mr. SUMNER. Yes, sir.

The CHAIRMAN. But it's the other part, the 20 percent that have caused a lot of problems, where there were a lot of abuses, which is where the problem is.

Senator Isakson.

Oh, excuse me, quickly, Mr. Bloch and Ms. Farrell, if you'd just comment quickly.

Mr. BLOCH. Thank you, Senator. Well, I would respond by quoting another famous Teddy, Teddy Roosevelt, who said, "Speak softly, but carry a big stick." We do. We speak a lot to employers in the Federal Government, but when they don't cooperate, we have the big stick of prosecution and we use it to good effect. But, we also have the stick of public comment. We do press releases, we frequently interact with the media on these issues to bring awareness to these service members and Senator, I think it is a travesty that people feel deterred from going to seek relief. That is a terrible thing, we need to send a better message, we're trying to do that through prosecution, education and outreach, and media.

The CHAIRMAN. Thank you.

Ms. Farrell.

Ms. FARRELL. Senator, it was in 2005 that GAO reported that—about 72 percent of the Reservists that DOD had surveyed in their "Status of Forces" survey said that they had not sought assistance for these problems, and it was in response to our recommendation that you need to understand why. And, DOD did take action to include similar questions in its 2006 survey. But, it's not just collecting the information, but it's analyzing it and determining why they didn't seek the problems, in order to develop some type of action plan to move forward.

The CHAIRMAN. Good.

Senator Isakson.

Senator ISAKSON. First of all, Mr. Ciccolella, I understand from a little research that you received both the Bronze Star and the Silver Star—the Bronze Star for valor in Vietnam, I wanted to make sure everybody knew that, and thank you for your service.

Mr. CICCOLELLA. Thank you, sir.

Senator ISAKSON. And having somebody like you with that experience in this job means a lot to me. I'm just wondering, in your Department, how many of your fellow workers are veterans?

Mr. CICCOLELLA. We have about 240 individuals in the Veterans Employment Training Service. About 95 percent are veterans.

Senator ISAKSON. That's terrific.

Second, and I may be wrong on this, but perspective-wise—of the 77 percent that didn't file an action, I would assume a fair number of those didn't file, because whatever their initial inquiry was, was dealt with. Is that correct, or incorrect?

Mr. CICCOLELLA. Most USERRA cases, Senator, are resolved very quickly, they're resolved on the phone. Even those that are referred to us by ESGR, we can usually resolve them very quickly. Most of them are a result of an employer not understanding the law.

For those that are not resolved, we think we're doing much better in terms of the rate, the complaint rate. For example, in the first Gulf War, 265,000 service members were activated, Reserve and Guardsman, and they were activated for shorter periods of time than these service members, because now the tours are a year long.

Now, we've activated over 600,000, those were Guard and Reservist. In the first Gulf War, for every returning reservist, for every 54 returning reservists, we were doing an investigation, a Federal investigation. Now that's 1 out of about every 80. Now, that's better, but it's not good enough. Any time that a service member comes back, they don't get their job back, or they're not properly restored to their position, and that's usually what happens, it's not the egregious sort of thing—that's of concern to us.

We're veterans, out in the field. These veterans are 4 year, 10 year, 20 year veterans of the service. They deal with these issues every single day. They not only deal with USERRA, but they also work with the workforce system, and they work with the military on a day-to-day basis, to make sure that service members in the real terms, put these individuals through transition assistance programs. They also do mobilization and demobilization briefings, so they're imminently well-qualified to deal with the service member and find out what the complaint is, and also deal with the employers.

In cases where service members don't pursue a case, sometimes they don't want to pursue a case, a lot of times they want to change jobs. When a Guardsman or a Reservist goes over to Iraq or Afghanistan, and they're a squad leader over there, and they have been working at the Garden Center at K-Mart, and they come back, they've got skills that vastly overwhelm the job that they had. So, they may want to change jobs.

That's another reason why we're very well-suited, because we can deal with that issue, and also help the service member get a job, and that's what happens in a lot of cases.

Senator ISAKSON. Well, that being the case, then, I think the representation of 77 percent and then 46 percent, really the 23 percent that file the cases, 46 percent of them are dissatisfied, which is 1 out of 10, rather than 46 percent of all USERRA cases, is that—that's the way it would look to me, from that standpoint.

Mr. CICCOLELLA. Yes, sir, and the other thing is that these surveys are very, very important. And, as Brenda has talked about, you really need to do some research on the surveys, and look at, how many people responded on the survey, what was the response rate? And also, do the detailed research to find out why they didn't pursue the cases, but you're absolutely correct, sir.

Senator ISAKSON. And on that line, one quick question for Dr. Sumner and then I'll move on, I know we're in a hurry—you all mediate a fair number of these, is that correct?

Mr. SUMNER. That's correct, sir.

Senator ISAKSON. Of the ones that you are unsuccessful at mediating, is there a more common reason, is there something out there that you find in these mediations where we do have a problem that recurs that's hard to mediate?

Mr. SUMNER. It's primarily, the No. 1 issue of the codes that we receive, primarily just involve around the pay and the position that these individuals come back to. So, that's——

Senator ISAKSON. Something less than what they left with, is that——

Mr. SUMNER. Less, some other position, the seniority, one of those that you see on the chart that the Senator showed earlier, Mr. Chairman there.

Senator ISAKSON. That's helpful, thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Reed.

STATEMENT OF SENATOR REED

Senator REED. Well, thank you, Mr. Chairman.

And thank you, gentlemen for your testimony, and Ms. Farrell.

This is a very important hearing today for many reasons. But one reason is, just this morning there was a report released indicating that one out of four homeless Americans are veterans, which is a shocking statistic, and one that we should really be troubled by. And, frankly, if you can't get a job, there's a pretty good chance you'll be homeless, so this is all connected. And, I think what you're doing to try to inform veterans and protect veterans in the workplace is critical.

And Doctor, I have just one question because time is moving forward—there's great effort to inform the veterans of their rights, responsibilities under the law—is there a similar, in your view, effort with employers, that they are notified officially and directly that they have the obligation.

Mr. SUMNER. Oh, absolutely, Senator, that's one of our key mission statements, if you will, is the fact that the employer support of Guard and Reserves main focus is to educate and to inform and to sustain that knowledge of the USERRA, with the employers that are out there. And that is really one of the key support efforts of our over 4,500 volunteers that are located in every State and territory.

Senator REED. Well, you have a wonderful organization around, Ernie Almonte, you probably know is——

Mr. SUMNER. Yes, in fact, I just spoke to him yesterday.

Senator REED. He's tremendously talented, he's our general auditor, also—but, you know, as we personally brief a National Guards-

man or Reservist who is leaving active duty, do we directly and personally communicate with their employer, saying, "So-and-so is coming back, and these are your rights and responsibilities," or is it, as I think, a volunteer effort where you're there too, as a resource for the employers in the State—if there's a problem—do we have a systematic way, where we send a note?

Mr. SUMNER. We do not do the notification, either pre-deployment or postdeployment with those units, and the employers of those Guard and Reservists. What we do is, through our informal process of discussions, our ability to speak with the various employers through the organizational activities that we have—if we know of a unit that is scheduled to come back, we will share that information, but it's not in our charter to be the ones that do any kind of official notification that that individual is coming back.

Senator REED. Is it anyone's charter to do that? The Colonel?

Mr. CICCOLELLA. Sir, we reach out to employers on a day-to-day basis in an ad hoc sort of way. I think your question was for the—that returning Reservist or Guardsman, so we talk to his or her employer? No, sir. It would be very difficult to do that.

Senator REED. It may be. But, it just strikes me as that you've got an employer that has a vague understanding that he has some obligation under the law.

Mr. CICCOLELLA. Yes.

Senator REED. And I don't think, they're trying to be—in most cases—defiant of the law, they want to cooperate. And then you have a soldier coming back who's trying to explain to the employer what the law—what he thinks the law is. And you get into this kind of unsatisfied debate back and forth, technically, probably above everybody's—it would be above mine, frankly—and then you get into this situation of, well, they go, they—sometimes they'll call your office, sometimes they won't call, they'll just be frustrated, ESGR sort of steps in. I'm just wondering, if it might be useful to—since we've got a lot of information these days—if we do, in fact, formally notify employers.

Mr. CICCOLELLA. Well, it would be very useful. The most important thing with USERRA issues, is that there's communication between the employee and the employer, because that's the relationship that is at stake. It's so important that when we go in and investigate a situation, we maintain that relationship, between the employee and the employer.

Most employers understand the law. They may not understand all of the technical aspects—how to exactly restore the pension or entitlement or health coverage benefit—and most issues are because of misunderstandings, so we ought to take a look at what you just said.

Senator REED. Thank you very much.

Thank you, Ms. Farrell, thank you, Mr. Bloch. Thank you.

The CHAIRMAN. Senator Murkowski.

STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman. I really appreciate the hearing this morning, the testimony from the distinguished panel. I was up in Alaska earlier in the year, meeting with veterans from around the State and had a very, very interesting

discussion with some vets at a vet center. Primarily, they had come back from Iraq. I had a conversation with a young man, probably early twenties, who had been a mechanic over there, very skilled in his area. He came back and was looking for a job. He ultimately ended up with a position as a night stocker at one of the Big Box stores. The things that he said were very troubling. They were all the more troubling because other young men who were there said the same thing.

One of them told his employer he had just come back from Iraq. His employer made some comment to the effect of, he thinks that everybody who's coming back is suffering from PTSD. In the words of another young man, "They think that we're all ballistic, and when are we going to go off." The vets I met were all concerned about discrimination against our returning veterans when they come back. We know that USERRA prohibits discrimination in employment on the grounds of military service, but I listen to those stories, and am greatly, greatly concerned. And I know that it makes the job of each and every one of you just that much more difficult. But, I do believe that we are dealing with a level of discrimination out there by employers, and how we address that is going to be very, very key to demonstrating our support for those who have been serving us.

I want to ask about a specific case in Alaska, in which my constituent has been waiting for 7 years to have his USERRA matter resolved.

This is an individual who had a position with Indian Health Service. He left it in 1995 to go on active duty with the Alaska National Guard. In 2000 he leaves active duty, seeks reinstatement to his position, but the position no longer exists, because the facility where he was working, at Indian Health Service, has transferred this to tribal control, under the Indian Self-Determination Act.

First, the constituent is told he doesn't have rights under USERRA, then he appeals, years go by, and nothing is happening.

When I came to the Senate, we intervened, picked this up, and persuaded the Labor Department to reopen the case. Long and short of the story is this gentleman now has a job. But, he has a job in the community of Kodiak. Which is—if you're not familiar with Alaska—it's an island, a large island in the Gulf of Alaska. His family lives in Palmer, which is an hour north of Anchorage. In order for him to see his family, he flies an hour and a half on a commercial jet to get there. This is the solution to his USERRA complaint.

This case is still open. The complaint has not yet been fully resolved, and we're 7 years down the road. This is not a service, this is a process that isn't working.

So, I would like to ask, on the record here, Mr. Ciccolella. I do understand that you are familiar with the case. I'd like to know how we can—how we can allow for a system to let an individual, kind of, fall through the cracks like this?

I'd also like to ask you, Mr. Bloch, if you were familiar with it, if the case has been referred from the Department of Labor to you, yet, and whether or not you've got jurisdiction over this to do anything. I want to be able to tell my constituent that, "Yeah, the proc-

ess works. You've been hanging for 7 years, but we can find some resolve to this."

So, first Mr. Ciccolella, and then Mr. Bloch.

Mr. CICCOLELLA. Yes, ma'am.

This was a case that is very unfortunate. The individual came to the Department of Labor and put their complaint in. The Department of Labor employee who processed the case had indicated that the case was referred to the Office of Special Counsel, and that was not the case. That employee has since departed the Department of Labor.

The case, as far as I know, lay dormant for several years. In 2005, we picked the case back up, recognizing the errors that had been made. We have worked to—with the Federal agency—to assist in getting the position back. As you've said, that's still not satisfactory with the individual. There are other aspects of this case, Senator, that involve the financial settlement. The case is very, very likely to be referred to the Office of Special Counsel, that is being prepared, right now, as we speak——

Senator MURKOWSKI. Can I interrupt?

Mr. CICCOLELLA. Yes, please.

Senator MURKOWSKI. To ask a question on that——

Mr. CICCOLELLA. Yes.

Senator MURKOWSKI. If, in fact, it had been indicated some years ago that it was being referred to the Office of Special Counsel, why has it taken a period of years, then, to actually make that referral?

Mr. CICCOLELLA. The information that has come to me is that we were asked to work the case by the individual, and we have done so. We are now in the process of referring the case, it will be referred to the Office of Special Counsel very, very shortly.

It is an open case, it may involve the Special Counsel litigating that case with the Merit Systems Protection Board. Going beyond that information, would probably be inappropriate, because it could prejudice the outcome of the case. On the other hand, we'd be happy to sit down with you or your staff in a closed session and go over all of the details in the case.

Senator MURKOWSKI. I would appreciate that, but more importantly, I think my constituent wants a resolve to this, and I would like to think that we would all think that that is in the best interest.

It concerns me that when you have a situation, one unfortunate situation—as you refer to it—the word gets out. Don't bother going, because they're not going to be able to do anything. There's a process there that isn't working if we're not getting the results, and I think that that's what this case demonstrates. I hope that this is very, very quickly going to get to the Office of Special Counsel and we're going to see a very immediate resolve to it.

Mr. CICCOLELLA. I can assure you that it's going to be expedited, too, it's already in-process and going to the Special Counsel.

And I understand your concerns, Senator. Most USERRA cases don't follow this path.

Senator MURKOWSKI. Mr. Bloch, did you want to add anything?

Mr. BLOCH. Well, thank you, Senator. I can't say anything regarding what Mr. Ciccolella has said, he knows more about the case than I do, we've never actually had any jurisdiction over it.

However, about 6 months to a year ago—I can't remember the exact timeframe—I began getting e-mails from this individual, crying for help. And so I went to my Deputy and the head of the USERRA unit, and I said, "What can we do? This sounds drastic, a terrible situation." And so, we began to talk with Labor, and interact with them and, to see if we could get the case, and we were willing to take it, whatever timeframe it may have been—6 months ago, a year ago, I can't remember.

Since that time, we've heard a fair amount from the complainant about the situation. I read these e-mails, very concerned, and so we were told—I should put it this way: My understanding is that our office, in communicating with Labor and Vets office, was told in August we would be getting the case in a week, but we've never received it.

It is my understanding that there was some discussion between Vets investigator and the complainant for about a year, implying that the individual had received a monetary settlement, and it was very large, and it would be forthcoming and it just never was.

And then, more recently was told a slightly lesser figure, although still a fairly large amount. Again, nothing happened. The concern is that there's never an end to the process. What we try to do is bring things to a head quickly for the service member, we tell the employer, "Here's your obligations, here's how we view this case, what are you going to do now?" And if we say, "Well, we'll get back to you," we just go ahead and file. And then that gets their attention. And that's how we do things.

Senator MURKOWSKI. Well, Mr. Chairman, whether it is one individual, or whether it's the 25, 23 percent—it's too many.

The CHAIRMAN. Well, we thank you, our committee will work with you and the reasons you've outlined, and we appreciate your responses, and we'll probably have some follow up questions if the Senators want to do that, we'll be glad to join with them.

I want to thank our panel, very much. We might give some other additional kinds of questions, but we thank all of you very much for being here.

And we'll move to our next panel, if we could, please.

Lieutenant General Dennis McCarthy. Dennis McCarthy is the National Executive Director of the Reserve Officers Association. He is currently the Commander of Marine Forces North, and previously served as Lieutenant General for the Reserve Affairs Division Headquarters U.S. Marine Corps. Lieutenant General McCarthy served in Vietnam, and is a graduate of the University of Dayton.

Next, Lieutenant Colonel Steve Duarte. Steve Duarte is a retired Marine Reservist. Lieutenant Colonel Duarte was laid off by his employer, Agilent Technology, shortly after returning from his tour in Kuwait and Iraq. Although he filed complaints, the Departments of Defense and Labor told him that his case lacked merit. Undeterred, Lieutenant Colonel Duarte hired his own commanding officer to represent him and ultimately won his case in court.

Major Tammy Duckworth is a National Guard Major. Since 2006, she has served as the Director of Illinois Department of Veterans' Affairs. Major Duckworth is a veteran of the Iraq War, where she was a helicopter pilot. In 2004, Major Duckworth's helicopter was

struck by a rocket-propelled grenade. She's received the Purple Heart, and she also received the Air Medal, and Army Commendation Medal. Director Duckworth has a B.A. in Political Science from the University of Hawaii, a Master's from George Washington University's Elliot School of International Affairs, and she is currently working on a Ph.D. in political science at Northern Illinois University.

Finally, Richard Halbrook, Executive Vice President of Administration and Human Resources for Dollar Thrift Automotive Group. Dollar Thrift was one of 15 employers honored with the 2007 Secretary of Defense Employer Support Freedom Award for support of National Guard and Reserve employees. With over 25 years of experience in human resources, Mr. Halbrook currently directs the Human Resources, Communications, and Business Strategy function at DTG.

We'll hear from Major Duckworth, please. Thank you very much.

STATEMENT OF MAJOR LADDA TAMMY DUCKWORTH, DIRECTOR, ILLINOIS DEPARTMENT OF VERTERANS' AFFAIRS, SPRINGFIELD, IL

Major DUCKWORTH. Thank you, Senator, members of the committee. I don't know if you remember, but you did visit me at Walter Reed, I still proudly display my Sox hat you gave me—it does raise eyebrows in Cubs territory, but it's still proudly displayed. You gave that to me late one night on one of your trips to Walter Reed.

It's such a pleasure to be here. I'd like to have my spoken comments added to the record, because I think I'd like to focus more on what we're doing in the State of Illinois, and less on the punitive measures as the previous panel spoke about.

First and foremost, we need to talk about the quality of the men and women who have served in uniform. These are people who are the best employees any employer could ever hope to have. They are people who have guaranteed the quality of their work with their lives. And with the exception of our brothers and sisters in the police and fire fighting forces, I doubt that any other employee can write that on their resume.

Let me give you an example. My crew chief, my mechanic, when he fixed my helicopter, and handed me the key and said, "Here, go fly your mission with this," he guaranteed to me that he checked every oil level, he twisted every nut, he checked every safety wire, with his life because he climbed into the back of that helicopter, and went out on those combat missions with me. I doubt that there's many jobs out there that you can write in your classified ad, "Must be willing to guarantee quality of work with life." And that's what all service members do every single day.

With that in mind, the State of Illinois has recognized that many of our returning service members teeter, teeter on the edge of financial disaster, of homelessness, of divorce, based on how quickly they can gain stable, steady employment.

So, what we've done is addressed the central question and I believe this is the same question the committee is facing, which is how do we help our warriors make the transition to employment

and the pursuit of the American dream, after they have defended our freedoms?

This must be a combination of State and Federal efforts. One of the things that the panel previous to mine has not addressed are those State efforts. In Illinois, we have come up with several incentives for employers. We are the first State in the Nation to provide a tax incentive. We give each employer $600 per veteran that they hire who is a veteran of Iraqi Freedom, Enduring Freedom and Desert Storm. So, multiply that by the number of employees that you hire, we give them $600 per employee. And we hope that that will at least offset the cost of health insurance, or at least get employers, especially in small and mid-sized companies, and rural communities, to take a second look at these employees.

We also provide the Illinois veterans grant. This is an educational program that provides 128 credit hours at any State institution of higher learning, whether it is a technical school where they want to get a truck driver license, a commercial truck driver license, or a Ph.D. And when used in conjunction with the Federal G.I. bill, this allows an employee to, perhaps, take an apprenticeship position with an employer, or for a potential employer to look and say, "OK, we can bring this person on board, the State will pay for his continuing education for him to gain new skills toward his employment, and the G.I. bill will supplement his living expenses." And that allows these great men and women to develop additional skills that will help them move up in their career fields and perhaps get slightly better employment than working as a night stocker at a Big Box department store.

The other thing that we do is also recognize in the State that outreach is a major issue. So, in Illinois, Governor Blagojevich has now increased a number of our Veterans' Service Offices, we have 73 of them in 51 field offices, so our Veterans' Service Offices will actually go to a veteran's home and sit at his kitchen table and talk to him about his USERRA rights, talk to him about his Federal rights, and also all of the State benefits. Unfortunately, one of the downfalls that we have, is that there's no communication between the Federal and the State. DOD and USVA will not tell me when someone is coming home, so that I can send a service officer to help him.

Oftentimes, the first time I hear about a veteran who's come home to the State of Illinois is when he gets in trouble. He's homeless, and the homeless shelter calls us, or he has been self-medicating, he gets a DUI, and now he's in trouble with the law, and the local State troopers give us a call, "Hey, we have another one of yours, come help him." We'd like to intervene before he gets into trouble, but there is no agreement, in fact, DOD and USVA have been negotiating an information-sharing agreement for the past 3 years, and they can't come to an agreement between two Federal agencies, let alone, use us.

I have a budget of $105 million, I have more than 1,000 employees. I am here to help. I ask you to consider urging the Federal Government, USERRA, all of these organizations to look to the States and put us to work to help us reach our veterans.

Thank you, sir, and I'm open to your questions.

[The prepared statement of Major Duckworth follows:]

PREPARED STATEMENT OF MAJOR LADDA TAMMY DUCKWORTH

Mr. Chairman, members of the committee, it is a pleasure to testify before you today on behalf of Illinois Governor Rod Blagojevich and the Illinois Department of Veterans Affairs (IDVA). This committee is to be commended for drawing attention to the issues and challenges that our veterans face when returning to the civilian workforce.

In Illinois, as in many parts of the Nation, we have found that employment, healthcare and housing are the top concerns facing our Veterans today. This is especially true of our younger Veterans returning home from service in Iraq and Afghanistan. These young Veterans often come home after a tour on active duty military service or as a deployed national Guardsman or Reservist and find themselves unable to re-integrate into society because of a lack of jobs or affordable housing. In 2007 alone, the State of Illinois has launched nearly $50 million in Sate programs to help our Veterans find employment, obtain mortgages and access state-provided healthcare. Unfortunately, due to an unwillingness of the Federal VA and DOD to share information with individual States, many of our returning Veterans never find out about our State programs until they are in trouble. Often, and tragically, the first time my agency finds out about a returning service member is when we get a call from a homeless shelter or the local jail. We would like to reach them before they start self-medicating for Post Traumatic Stress Disorder (PTSD) with alcohol, or before they lose their homes. However, without help from the Federal USDVA or DOD, this is a major challenge for States to overcome.

In Illinois, we are committed to providing our veterans with the best possible services and resources available to make a smooth transition into employment. For instance, the Illinois Department of Employment Security launched six Veterans Job fairs last year to connect employers with veterans throughout the State. Participating organizations included the American Legion and AMVETS. We have also designated November 2007 as "Hire a Vet Month," and are currently conducting statewide Veterans job fairs throughout the State. Finally, Illinois is also the only State in the Nation to offer a $600 per employee State income tax credit to employers in exchange for hiring Veterans of Desert Storm, Operation Iraqi Freedom and Operation Enduring Freedom.

To help Veterans prepare and develop new job skills, Illinois has the Illinois Veterans grant, which grants each qualifying Veteran 128 credit hours (tuition and fees) at any State of Illinois institution of higher education. Veterans can use this in conjunction with the Federal GI Bill, allowing them to attend school for degrees ranging from technical training programs like Commercial Truck Driver to Ph.D. studies. Unlike the GI Bill, the Illinois Veterans Grant does not expire and can be used for additional programs throughout the Veteran's lifetime. This combination makes for an attractive package for future employers who know that the Veteran employee will be able to take a lower-paying training position while having his retraining paid for by the State and his living expenses supplemented by the GI Bill.

The U.S. Department of Labor, through Assistant Secretary for Veterans Employment & Training Ciccolella, implemented the "2007 National Hire VetsFirst Job Fairs," requesting that each State conduct a Statewide Veterans Job Fair during the month of November. This year, Illinois has expanded its job fair to 10 sites throughout the State with 345 employers currently registered to participate. The job fair will also include the "First in the Nation" Virtual Job Fair in partnership with Illinois Department of Employment Security (IES), the Illinois Department of Commerce and Economic Opportunity (DCEO), and Illinois workNet, an online employment tool for veterans. I am pleased to report that at the national level, our report to the USDOL–VETS was well received.

In addition, our Illinois Department of Commerce and Economic Opportunity strongly supports the Jobs for Veterans Act and encourages eligible veterans to participate in all appropriate training and assistance programs managed by the department's Bureau of Workforce Development. Illinois is divided into 26 Local Workforce Investment Areas (LWIA). Services are provided through what are currently referred to as One-Stop Centers and their affiliate sites in each of these LWIAs. Our Bureau of Workforce Development works closely with our Department of Employment Security, a WIA program partner, and their Veterans' Employment and Training Staff (VETS) at the local One-Stop Centers to provide comprehensive services to veterans seeking employment.

According to the 2006 annual Current Population Survey (CPS) special report on Veterans' labor force status, 804,000 people aged 20 and over in Illinois were civilian veterans, or 9 percent of the State's civilian population. Of these civilian veterans, 431,000 were in the labor force (7 percent of the total labor force) and 410,000 were employed. Thus, it was estimated that 21,000 were unemployed for a rate of

4.9 percent. The Illinois unemployment rate for veterans (4.9 percent) was higher than that for nonveterans (4.1 percent).*

To determine why veterans in the 20–24 age range have a higher unemployment rate than non-veterans in the same age group, our IDES undertook an additional special study last year, "An Examination of the High Unemployment Rate for Young Veterans: Based on the Labor Market Experience of Illinois Veterans Discharged from 2001–2006." The available data supports the hypothesis that the potential for unemployment of a veteran would be at its highest within months after discharge. Among the study's results:

• The largest proportion of military discharges is in the 20–24 age group. **Of the Illinois veterans that were discharged in 2001–2005, 45.9 percent were between 20 and 24** as of the last day of the discharge year. However, only 2.1 percent of the national veteran labor force falls in the 20–24 age range.

• **Of those IL veterans discharged in 2001–2005, 31.7 percent fall into the 25–34 age group**, compared to 12.0 percent nationally.

• Veterans exiting from the Reserve/Guard have a lower proportion filing new Unemployment Insurance claims than those veterans who are exiting from the regular services, holding age group constant. Thus, the **Reserve/Guard discharges demonstrate the easiest transition to civilian employment after military discharge**, most likely because of their prior employment history.

• For many of the **veterans discharged from the regular services**, enlistment may have been their first full-time job, their first time away from home, and they are now eligible for unemployment compensation and education benefits. The availability of education benefits decreases the likelihood that veterans will transition directly to work, particularly with regard to the 20–24 age group.

• After a discharged veteran finds stable employment, the probability is high that they will remain employed as long as they continue to be part of the labor force.

As the Director of the Illinois Department of Veterans Affairs, I see every day the struggles of families as they help their loved ones drive long distances to a health care facility for the necessary treatments and therapies of wounded veterans, including treatments for physical, mental and emotional injuries. These struggles impact spouses, parents and children. And, given the intermittent and often lengthy treatment schedules, the needs of veterans must be recognized and understood by employers. In my position, I also see the case work that is required to help our Veterans find jobs and training that may be required if one cannot return to their prior employment.

More personally, as an injured Veteran I've seen first hand what it is like to try to re-integrate after a deployment and service-connected injury. Since I am older and my husband and I own our own home, we only had a dual challenge of finding jobs while trying to receive care in our VA system. In particular, I want to highlight the stresses of traveling to get care as well as the impacts that these stresses have on the families of Veterans. I can attest to the hardship on my family and employer. I live in suburban Chicago. To access my VA hospital basically takes an entire day off from work because of the long drive times as well as the common experience of long waiting times to see medical professionals, obtain pharmacy services, etc. Now, I'm the Director of a State Veteran's agency. I would not be surprised if I routinely receive more conscientious service than most. I can only imagine the challenges faced by a 20-year-old Veteran, trying to get time off from work to attend day-long appointments at his VA medical clinic. In fact, since the USDVA is so overburdened, many Veterans, especially in rural areas, find that it can take multiple days to obtain a single doctor's visit. One such example is the Danville VA hospital in central Illinois that routinely denies Veterans access to their local physicians for procedures as simple as a chest x-ray. The veteran is instead forced to take once-a-day shuttles to pick up points for a second shuttle. If one misses any of the shuttles, one must stay overnight, out of ones' own pocket, to catch the next day's shuttle. When they finally reach Danville, it is a common experience for a Veteran to wait 4 hours to see a medical professional, followed by another 3–4 hour wait for pharmacy services. In the end, it is not unheard of for a Veteran to spend 3 or 4 nights away from home for a single doctor's visit.

Despite our progress, we clearly must work harder as a State and a Nation to better re-employee our Veterans. I recommend the committee to consider:

(1) Helping establish an information sharing agreement between States and Federal agencies so the States and territories can be notified when a Veteran has left Federal service (either through the DOD or the VA medical system) and is returning

*The national unemployment rate for veterans (3.8 percent) was lower than the unemployment rate for nonveterans (4.1 percent).

home. This will allow States to immediately make contact with the Veteran to extend services ranging from employment to housing, medical care, and advocacy services in filing USDVA compensation claims.

(2) Provide legislation that would protect Veterans' right to take time off from work to obtain medical care resulting from their military service.

(3) Monitor the USDVA re-employment and Vocational Rehabilitation program for consistency across the Nation. These awards for educational and vocational rehabilitation are subjective and vary disparately across the Nation. A Veteran's right to such funding should not be dependent on where he lives.

I commend this panel for asking these very important questions about accommodations for our veterans, and your efforts to make sure our Veterans are able to return to work and have the information they need to do so. We should all demand that our Veterans have access to care that is commensurate to their dedication to our country.

I would be happy to take any questions.

The CHAIRMAN. Excellent suggestions.

Lieutenant General McCarthy.

STATEMENT OF LIEUTENANT GENERAL DENNIS M. McCARTHY, NATIONAL EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION, WASHINGTON, DC.

Lt. General MCCARTHY. I thank you, Mr. Chairman, and Senator Isakson, members of the committee, for the opportunity to testify. I'm honored to be here with Major Duckworth and Lieutenant Colonel Duarte.

I couldn't be more proud of the people who are serving today and in particular the, as you say, over 600,000 citizen-warriors, who, from time to time, leave their civilian employment to wear the uniform of their Nation. For most of those great Americans their service has been made possible by the support that they receive from their employers. The Nation's employers, I think, have been shown to have done a tremendous job over the past 5 years. Most of them have been incredibly supportive of their employees who serve in uniform. Many have gone above and beyond what the requirements of law place on them. And they should be congratulated and supported by their fellow citizens.

But there are some conflicts and those conflicts must be resolved promptly and fairly. Fortunately we have a very strong law in USERRA, but enforcement of USERRA can sometimes be cumbersome and that's where I think the Congress can help.

I'd like to respectfully suggest six actions, which the Reserve Officers Association believes are necessary.

First, resource the National Committee on Employment Support of Guard and Reserve appropriately. Beef up their outreach program and their ombudsman program so that they can solve problems at the lowest level.

Our second recommendation is that the Department of Labor needs a specific set of USERRA investigators, rather than rely on generalists who cover all of the different Labor areas.

Third, USERRA records should be maintained electronically, so that they can be effectively passed between the service member and the various agencies that could be involved in their case.

Fourth, Congress should mandate better reporting by all Federal agencies. How many cases are there, really? How are they resolved and how long do they take to be resolved? Quite frankly, the re-

porting has been very, very confusing to those of us who have been trying to get those answers.

Fifth, we believe that the Office of Special Counsel should handle all of the cases involving Federal employees, in order to free up the DOL VETS program to work with private employers where we have the majority of the cases. And last, I'd ask you to please consider the establishment of a law center at the Reserve Officers Association.

We have been working, quite frankly, in this area for a number of years and we've done some great work in creating an information sharing program and in providing continuing legal education to private counsel. But we could do a lot more with a very, very small amount of Federal resources. And I think that if we were to do that, we would significantly enhance the services being provided to these great young men and women. They are the next greatest generation and they truly deserve our very best.

Thank you. I invite your questions.

[The prepared statement of Lieutenant General McCarthy follows:]

PREPARED STATEMENT OF LIEUTENANT GENERAL DENNIS M. MCCARTHY, USMC (RET.)

The Reserve Officers Association of the United States (ROA) is a professional association of commissioned and warrant officers of our Nation's seven uniformed services, and their spouses. ROA was founded in 1922 during the drawdown years following the end of World War I. It was formed as a permanent institution dedicated to National Defense, with a goal to teach America about the dangers of unpreparedness. When chartered by Congress in 1950, the act established the objective of ROA to: ". . . support and promote the development and execution of a military policy for the United States that will provide adequate National Security." The mission of ROA is to advocate strong Reserve Components and national security, and to support Reserve officers in their military and civilian lives.

The Association's 70,000 members include Reserve and Guard Soldiers, Sailors, Marines, Airmen, and Coast Guardsmen who frequently serve on Active Duty to meet operational needs of the uniformed services and their families. ROA's membership also includes officers from the U.S. Public Health Service and the National Oceanic and Atmospheric Administration who often are first responders during national disasters and help prepare for homeland security. ROA is represented in each State with 55 departments plus departments in Latin America, the District of Columbia, Europe, the Far East, and Puerto Rico. Each department has several chapters throughout the State. ROA has more than 505 chapters worldwide.

ROA is a member of The Military Coalition where it co-chairs the Tax and Social Security Committee. ROA is also a member of the National Military/Veterans Alliance. Overall, ROA works with 75 military, veterans and family support organizations.

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Reserve Officers Association is a private, member-supported, congressionally chartered organization. Neither ROA nor its staff receive, or have received, grants, subgrants, contracts, or subcontracts from the Federal Government for the past 3 fiscal years. All other activities and services of the Association are accomplished free of any direct Federal funding.

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Mr. Chairman and distinguished members of the Health, Education, Labor and Pensions Committee, on behalf of our 70,000 members, the Reserve Officers Association would like to express our appreciation for the opportunity to present testimony on issues that affect the 1.1 million men and women now serving in America's Reserve Components.

As ongoing contingency operations continue to bring about more mobilizations and deployments for Reserve Component members, many of these outstanding citizen soldiers, sailors, airmen, Marines, and Coast Guardsmen have put their civilian careers on hold while they serve their country in harms way.

As the Global War on Terrorism enters its seventh year, stresses are being placed on the employers of this Nation's Guard and Reserve members who have been partners in fighting this war. The vast majority of our Nation's employers are very patriotic, but as our Nation continues military operations on a global scale, Reserve Component members are being mobilized, some for the second or third time, with employers facing many problems on the business front.

Because of this, the Reserve Officers Association has noted an increase in re-employment problems. ROA retains a lawyer to counsel National Guard and Reserve members as they are preparing to deploy and after they return. We have seen an increase in the number of phone calls and e-mails that ROA has been receiving.

The nature of the problems is changing. While many challenges still relate to lost jobs or demotions, others are dealing with lost seniority, promotions, pay raises and other employment-related matters protected under the Uniformed Services Employment and Reemployment ACT (USERRA). The vast majority of these problems are corrected through good communications, as is demonstrated by the ombudsman program of the Employer Support for the Guard and Reserve that does an excellent job in correcting a large portion of these disagreements. Yet, not all the problems that arise can be settled through mediation.

USERRA is essentially a good law, but the challenge is enforcing it when the involved parties disagree. When Guard and Reserve members return to civilian employment following Federal service, actions need to follow through to enforce the law. A growing population of Reserve Component members feels that the Federal Government isn't doing enough.

Background: The Uniformed Services Employment and Reemployment Rights Act (USERRA) significantly strengthens and expands the employment and re-employment rights of all uniformed service members. Re-employment rights extend to persons who have been absent from a position of employment because of service in the uniformed services, which means the performance of duty on a voluntary or involuntary basis including:

- Active duty,
- Active duty for training,
- Mobilization,
- Presidential Recall,
- Active duty for Special Work,
- Initial active duty for training,
- Weekend or Weekday Drill,
- Absence from work for an examination to determine a person's fitness for any of the above types of duty,
- Federal National Guard Duty,
- State National Guard Duty,
- Funeral honors duty performed,
- Duty performed by intermittent disaster response personnel for the Public Health Service.

USERRA was signed into law by President Clinton October 13, 1994, but the law is actually 63-years-old. USERRA was a complete rewrite of the Veterans' Reemployment Rights (VRR) law, which can be traced to August 1940, when Congress provided re-employment rights to those who left civilian jobs when voluntarily or involuntarily recalled to active duty. The law was amended during the 1960s to provide protection to National Guard and Reserve members performing training duty.

USERRA applies to "re-employments initiated" on or after December 12, 1994, while preserving vested rights under the prior law.

Section 4301 of USERRA (38 U.S.C. 4301) sets forth the purposes that Congress had in mind when it enacted this law: to encourage service in the uniformed services; to minimize disruption of employment and income by providing for the prompt re-employment of those who have served; and to prohibit discrimination against those who serve or have served. Section 4301 also sets forth "the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter" [38 U.S.C. 4301(b)].

On December 19, 2005, the U.S. Department of Labor (DOL) published final regulations impacting USERRA. The regulations clarify the rights and obligations of individuals serving in active duty with respect to their civilian employment. The DOL also finalized regulations regarding employer notice obligations of USERRA rights in the workplace, which took effect on January 18, 2006. A complete text of the regulations is available at *www.dol.gov/vets/regs/fedreg/final/2005023961.pdf*.

Discussion: Currently, the agencies tasked to enforce USERRA are the Departments of Labor and Justice. DOL's Veterans' Employment and Training Service (VETS) handles USERRA complaints and other veterans' issues. DOL–VETS provides assistance to all persons having complaints under USERRA. If resolution is unsuccessful following an investigation, the privately employed Reservist may have his or her claim referred to the Department of Justice for consideration for representation in the appropriate District Court, at no cost to the claimant.

Labor currently employs 189 investigators nationwide with authority to perform USERRA investigations. Of those, 115 are primary investigators; the other 74 are regional administrators and management officials. DOL's fiscal year 2007 budget for veteran re-employment rights enforcement was $13.7 million. These investigators work other cases beside USERRA.

Labor officials told GAO that the department had 166 USERRA complaints by federally employed service members from the beginning of the project in 2005 through fiscal year 2006. Of those, it "closed" 155 (93 percent). The GAO has indicated that average time for processing complaints was between 53 and 86 days, although the data used may have included duplicate complaints. Some files were credited as "closed" without resolution, and time is not measured by actual elapsed time, but by time spent processing.

Unfortunately, actual elapsed times of cases often take 1 to 2 years to investigation and process. Within DOL, cases are still processed on paper; this slows information transfer, and creates the risk of duplication. In the vast majority of cases, the outcome is dismissal of the claim. Since USERRA's passage in 1994, most USERRA enforcements were by Reservists who sought private litigation.

A demonstration project was established by the Veterans Benefits Improvement Act of 2004 (VBIA). In the act, Congress expanded Office of Special Council's (OSC) role. Under the VBIA, jurisdiction over *federally* employed Reservist USERRA cases was split between OSC and DOL–VETS. Since 2005, about half of the serving RC members with Federal re-employment problems could have allegations directly investigated by OSC.

OSC employs seven people; a unit chief, three investigators and three attorneys, who focus almost solely on USERRA cases. The office has a budget of $2.5 million. GAO said OSC received 269 complaints from the start of the project in 2005 through September 2006. Of those, it closed 176 cases (65 percent) at an average 115 days per case.

OSC reported 45 corrective actions out of 176 cases resolved. The Department of Justice's Civil Rights Division has filed 13 lawsuits and reaching 7 consent decrees since fiscal year 2005.

GAO reports that 72 percent of Reservists with re-employment problems never seek Federal remedy. Many are discouraged by the elapsed time it takes for DOL to investigate and process complaints as the employee is in ongoing disagreement with their employers during the duration. Others Reserve Component members can't afford private litigation. The Reserve Officers Association received a report about one Army Reserve unit where of 79 members who returned from deployment 11 faced re-employment problems, with most simply seeking different employment. What is needed is not only a Federal office which can focus and streamline USERRA cases, but a collaboration between Federal and private representation to serve this country's patriots who are transitioning back to becoming private citizens following a tour as warriors.

The Reserve Officers Association is exploring the establishment of a *Servicemembers Law Center*, advising active and Reserve members who have been subject to legal problems that occur during deployment. This new center would be located in the 5 renovated Minute Man Memorial Building on Capitol Hill. A position paper is attached to this testimony.

The law center would provide counseling to demobilized Reserve and separated Active component members, and could provide a referral service for those who needed legal assistance. This law center would also educate private lawyers about USERRA and the Servicemember Civil Relief Act and promote representation of RC members by private lawyers.

CONCLUSION

The Reserve Officers Association recommends the following:

(1) The National Committee for Employer Support of the Guard and Reserve (ESGR) should be better resourced to expand its outreach programs as it is better to prevent a problem by educating employers or resolve a problem at the lowest level.

(2) The Department of Labor should follow the success of the Office of Special Council with dedicated investigators and lawyers assigned to DOL–VETS who specifically focus on USERRA cases.

(3) The Office of Special Council should handle all of the Federal employee USERRA cases.

(4) USERRA case files should be electronically maintained and transmitted, allowing access to ESGR, DOL–VETS, OSC, and DOJ and the service member.

(5) Congress should mandate better reporting by all Federal agencies by providing details on:

- how many cases;
- how they are resolved; and
- how long the actual elapsed time takes. Accomplishment of objectives should be measured by results rather than outputs.

(6) ROA also hopes that the committee will support the Servicemembers Law Center project. It would be a:

- hub for sharing information on USERRA and SCRA; and
- an education source on rights and responsibilities under USERRA for serving members and providing continuing legal education to private council.

(7) Further, we hope this committee will support improvements to USERRA and work with the Veterans Affairs committee to accomplish this. Additional items are needed to strengthen USERRA:

- Do not allow employers to discriminate by asking prospective employees if they are in the Guard or Reserve.
- Exempt employees from penalties when their insurance lapses if their motor carrier license expires while mobilized (i.e., the Federal Motor Carrier Safety Administration).
- Exempt from age restrictions for Federal law enforcement retirement application when deployment causes the member to miss completion of the application to buy back retirement eligibility.
- Work with Federal agencies to abide by USERRA/SCRA standards.
- Amend 38 U.S.C. 4323(d)(1)(C)—the "liquidated damages" provision in the amount of $20,000 or the amount of the actual damages, whichever is greater. Provide a provision in section 4324—for the Federal executive agencies provision, such as found in section 4323—as it applies to States, political subdivisions of States, and private employers.
- Amend Title 38 U.S.C. 4323(e) to mandate (rather than simply permit) injunctive relief to prevent or correct a USERRA violation.
- Amend Title 49 U.S.C. 44935 to include Transportation Security Administration (TSA) screeners under USERRA.
- Amend 38 U.S.C. 4302(b) to make it clear that USERRA overrides an agreement to submit future USERRA disputes to binding arbitration.
- Amend 38 U.S.C. 4303 (definition of "employer") to clarify that a successor in interest inherits the predecessor's USERRA obligations and that there need not be a merger or transfer of assets to support a finding of successor liability.
- Amend 38 U.S.C. 4323 and 4324 to authorize punitive damages for willful and egregious USERRA violations.
- Devise a method to tie the escalator principle to merit pay systems.

ATTACHMENT.—ROA POSITION PAPER

SERVICEMEMBERS LAW CENTER

Concept: ROA Servicemembers Law Center, advising active and Reserve members who have been subject to legal problems that occur during deployment. This new center would be located in the renovated Reserve Officers Association Building.

Justification: Recruiting of prior service members into the Reserve Component is on the decline because service members leaving active duty fear ramification of ongoing deployments on new civilian careers. A legal center would help:

Recruit: Encourage new members to join the Guard and Reserve by providing a non-affiliation service to educate prior service members about Uniformed Services Employment and Reemployment Rights Act (USERRA) and Servicemember Civil Relief Act (SCRA) protections.

Retain: Work with Active and Reserve Component members to counsel Uniformed Services Former Spouse Protection Act (USFSPA), USERRA and SCRA protections for deployed or recently deployed members facing legal problems.

Law Center's Services

Counseling: Review cases, and advise individuals and their lawyers as to legitimacy of actions taken against deployed active and reserve component members.

Referral: Provide names of attorneys within a region that have successfully taken up USFSPA, USERRA and SCRA issues.

Promote: Publish articles encouraging law firms and lawyers to represent service members in USFSPA, USERRA and SCRA cases.

Advise: File Amicus Curiae, "friend of the court" briefs on service member protection cases.

Educate: Quarterly seminars to educate attorneys to provide a better understanding of USFSPA, USERRA and SCRA.

ROA's Contributions:

- ROA would set-aside office spaces.
- ROA's Defense Education Fund would hire an initial staff of one lawyer, and one administrative law clerk to man the Servicemembers Law Center to advise and counsel individuals and their legal representatives.

Anticipated startup cost, first year: $750,000 (for personnel, furnishing, leasing, travel, etc.).

The CHAIRMAN. Thank you. Those are good suggestions, helpful. Lt. Colonel Duarte.

STATEMENT OF LIEUTENANT COLONEL JOSEPH STEVE DUARTE, U.S. MARINE CORPS, CENTENNIAL, CO

Lt. Colonel DUARTE. Mr. Chairman, I'm honored to be here before you and speak about my experiences with USERRA in regard to ESGR. I'm also pleased to be accompanied by my wife, Mary Duarte, my daughter, Danielle Duarte, and my parents, Erla Duarte and my father, who is a former U.S. Marine who fought in Korea, with me today.

I have faithfully served my country as a U.S. Marine for 29 years. Concurrent with my Marine Corps service, I'm employed by Hewlett Packard and Agilent Technologies, and was deployed successfully for 19 years prior to my deployments. Upon my return from Operation Iraqi Freedom in July 2003, I worked for them for 3 months and on November 10, 2003, the 220th birthday of Marine Corps, I was told I was being fired from my company.

Now, prior to my deployments, I was briefed on my USERRA rights and the laws that were supposed to protect me. And I felt confident that these USERRA rights or government agencies or the company I even worked for would help me resolve my situation. I was fired by two or three managers who worked directly with me, from my company, but the most significant thing about that was that the senior leadership of that company, the CEO and the highest ranking HR member of that company, were conspicuously absent throughout the entire 13-month process. So, they were pretty much—the managers who worked directly with USERRA were out there on their own.

I did attempt to communicate——

The CHAIRMAN. I don't understand. The people in your company, overall heads of the company were detached from your——

Lt. Colonel DUARTE. Yes. Yes, sir. That's correct. There were three managers directly related to the case that fired me, but the senior level above them were conspicuously absent throughout the entire process.

Now, I did attempt to communicate with them directly, via e-mail, the day after I was told I was being fired. And within 24 hours after sending my e-mail directly to them—and I did include the CEO of the company, the VP of HR, and the highest levels of the management with Agilent Technologies. The answer I received back from them—and I'll just briefly read an excerpt from that—"We have received the concerns expressed in your memo. We have concluded that USERRA does not prohibit us from selecting you as a participant in Agilent's workforce management program." This response came back less than 24 hours after I sent my communication to them. And really, in less than 24 hours they were completely knowledgeable about USERRA and felt that they knew exactly what they needed to do with that. There was no question in their mind what they wanted to do.

On November 13, a couple days after I was being told I was fired, is my first contact with ESGR. I explained my deployment history and my timeline of events and pending terminations. Without any further comment or questions, they give me a phone number to the Department of Labor of VETS. They did not offer any guidance, any mediation, any informal investigation, or no training related to USERRA. They gave me the phone of the VETS and DOL. They did not relate my process or any process I should follow, except to contact the DOL.

The DOL, I contacted them with the number they gave me from ESGR and they were equally ineffective. The person I spoke to at the Department of Labor of VETS, and I'll quote. She said, "Unless your termination was for military reasons, you have no case." And they again offered no guidance, mediation, investigation of any sorts or any referral of any process I should follow.

I filed my case in district court the following February 2004. And loss of my livelihood, the support of my family and career change at age 51 were on the line, along with the fact that many thousands of troops returning were potentially following the same fate that I did. I surmise that many of these returning service members and Guard members would be pushed aside by ESGR with the same response I was given. Many younger privates, airmen, lance corporals, sailors, or sergeants might not have the time, resources, or wherewithal to fight or question wrongful terminations, regardless of job change.

Without the aid of USERRA—or without the aid of ESGR, DOL, Agilent and its attorneys treated me as though I had broken the law. They attacked my personal performance, my skill sets, they eliminated my job and reposted it 3 months later verbatim, the way it was written when I was doing the job. They also had me sign releases during the court case to get release of my medical records, my military records, my financial background, and even criminal records. They were looking for anything they could to discredit me.

Not one member of our military should ever be subjected to treatment such as this, especially after deployment in the defense of our country.

The case lasted 13 months and in March 2005, Agilent Technologies was found in violation of USERRA. The cost to Agilent Technologies has been estimated at $1 million. They chose to specifically fight this case, spend a significant amount of money, hire a large firm, and fight a single military veteran, while this country was still at war.

My second contact with ESGR was 4 months after I filed my case and 7 months after my initial contact with ESGR. And I received a call from Fred Fleetmeier, who is the Chairman of the Colorado ESGR. He asked about my status. I informed him about my conversation that I had initially with his ombudsman and when I told him what they had said, he said, "What is your current status today?" And I said, "I have filed a lawsuit in the district court." He immediately ended the conversation, again, providing no other resources or avenue of what I should do. He said, "We cannot help you any more," and almost, promptly hung up.

Companies and organizations interpret labor laws through their own biased filters and business needs, who dehumanize the effect based on the bottom line. While many companies share the country's burden of being at war, other companies share none. Still, there are many businesses, organizations, agencies, and civilians that do not have any idea or care to have an idea what the military member has sacrificed for his country and family. For the most part the military member has become an inconvenient leave of absence and disruption to their business.

I sued Agilent Technologies because they were one of the companies who completely ignored the fact that this country was at war, and a war for which they neither acknowledged nor demonstrated any shared responsibility. They also chose to interpret USERRA to meet their own financial needs. They broke the law.

I spent——

The CHAIRMAN. I'm going to give you just another minute or so, because I want to hear from Mr. Halbrook and today we've got a vote that's going on.

Lt. Colonel DUARTE. Yes, sir. I spent $12,000 of my own money and turned down a settlement offer of $325,000 to continue this lawsuit.

My ordeal, unnecessary ordeal, with Agilent has made me and my family stronger. It has also significantly increased my conviction that no other member of our military ever endure this treatment, especially after dedicated and faithful service to their country. I've gratefully accepted your offer to testify here today and flew myself out here at my own expense for my brothers and sisters in the military. We need to continue to pursue and defend all USERRA issues as they occur with our returning Reservists and Guard members, as this law will be meaningless without enforcement.

Thank you, Mr. Chairman.

[The prepared statement of Lieutenant Colonel Duarte follows:]

PREPARED STATEMENT OF LIEUTENANT COLONEL JOSEPH STEVE DUARTE (USMC)

OPENING

Mr. Chairman and distinguished members of the committee, I am honored to appear before you today to speak about my experiences with the Employer Support of the Guard and Reserve in regards to helping other service members understand their resource options and rights under the Uniform Services Employment and Reemployment Act (USERRA). I am pleased to be accompanied at today's hearing by my wife, Mary Duarte, my daughter, Danielle Duarte, my mother, Erla Duarte and my father, a former U.S. Marine who fought in Korea, Joe Duarte.

More than anytime since WWII, the U.S. Armed Forces are relying on National Guard Members and Reservists to carry out their missions. Since September 11, greater than one half million Reservists and National Guard members have dutifully left their civilian jobs and families and risked their lives alongside active duty troops. I was one of those Reservists and I am here to relate my personal experience with regard to the transition from military duty to civilian life.

Many of our troops have assimilated back into the civilian world with family and careers which were interrupted while they were called upon to do the work of the country. However, thousands of others like me, have returned home to problems with our civilian employers. Employment problems that have included: demotion, loss of pay and benefits, and even flat-out firings—as happened to me.

MILITARY BACKGROUND

I was a U.S. Marine for 29 years. I was commissioned a Second Lieutenant in the U.S. Marine Corps in April 1977. I served on active duty until April 1980 as a Marine Artillery Officer. I became a Marine Reservists in September 1980 and maintained this status until called to Active duty following the attacks on the World Trade Center in September 2001. From October 2001 to April 2002, I was activated in the capacity of a Marine Liaison Officer assigned to the Joint Force Command in Norfolk, Virginia. From November 2002 to July 2003, I was activated in the capacity as a Marine Advisor to the Navy Seabees operating in Kuwait and Iraq during Operation Iraqi Freedom. From June 2005 to March 2006 I was activated and assigned duties as the Senior Operation Office in the Fourth Marine Division Command Operations Center in New Orleans, Louisiana, prior to, during and after Hurricane Katrina. I retired from the Marine Reserves in March 2006.

CIVILIAN BACKGROUND

Concurrent with my service in the Marine Corps, I have remained employed in the private sector. From April 1980 to October 1984 I was employed by Texas Instruments as a Manufacturing Supervisor. From November 1984 to November 2003, I was employed by Hewlett-Packard as a Human Resource Generalist performing such functions as Compensation, Recruiting, Training and Organizational Development issues. In November 1999, Agilent Technologies, Inc. was spun off from HP. As a long-term HP employee, all my seniority rights continued with me in my move to this new spin off company. I was primarily assigned duties as a Senior Design Consultant for Sales, in the Corporate Compensation department.

Agilent Technologies is the company which fired me in November 2003. I returned from Operation Iraqi Freedom in July 2003 and on November 10, 2003, the 228th Birthday of the U.S. Marines, I was told by my manager that I was being fired.

MY OPTIONS

In 1994 Congress passed the Uniformed Services Employment and Reemployment Rights Act, or USERRA. My understanding is that at least part of the rational behind the law is that when the Nation goes to war, everyone should share in the responsibility and not just the men and women on the front lines.

Prior to my active duty assignments following September 11, 2001, I was briefed on USERRA as a law that was supposed to protect Reservists rights. I understood USERRA guaranteed service members their civilian jobs back upon their return and that it included both public and private sector employers. Returning Service members were guaranteed re-employment for at least 6 or 12 months, depending on the length of deployment.

At the time of my firing from Agilent Technologies, Inc. in November 2003, my options were readily apparent and I felt confident with the knowledge that there were laws written to protect deployed personnel and government agencies specifically chartered to support these laws. Given the patriotic wave of support throughout this country since 9/11, I felt confident in that the USERRA law, the govern-

ment agencies or the company I worked for 19 years would somehow support my deployment in the defense of our country and allow me to resume a previously successful career.

I communicated directly with the highest levels of management within Agilent Technologies, Inc. I contacted the ESGR immediately when I received the word from Agilent that USERRA did not prevent them from letting me go. I contacted the Department of Labor (VETS) as instructed by ESGR. Having failed in my communications with my company and getting no help from two government agencies, I hired private counsel.

EMPLOYER SUPPORT OF THE GUARD AND RESERVE (ESGR)

I understood ESGR's mission to ensure that public and private employers support the men and women of the National Guard and Reserve. It is their volunteer "ombudsmen" who are tasked with preventing, resolving, or reducing employer and employee problems and misunderstandings that result from National Guard or Reserve service by providing information regarding USERRA, informal investigations and informal mediation.

During deployment briefings, troops are reminded of their USERRA rights and advised that if they have trouble with their civilian employers, they should contact the local ESGR office. Military Reservists and Guard Members are briefed and encouraged to first turn to the Employer Support of the Guard and Reserve (ESGR). My understanding as a Marine Officer was that the ESGR would be my advocate to discuss any violations of USERRA.

JOB LOSS FROM AGILENT

My job firing was orchestrated by three individuals with absolutely no regard for USERRA or my military situation or for that matter, my performance in that civilian job. Actually, they regarded the law only enough to scheme around it. One of these individuals sat within a short walking distance in the same building from the top leadership of this 28,000-plus employee organization. The leaders I speak of here are the CEO Ned Barnholdt and the Vice President of Human Resources and highest ranking Human Resources member, Jean Halloran, both of who were visibly absent during the entire process. Both were addressees on e-mails sent directly to them and neither responded, apparently choosing to keep their heads buried in the sand and refusing to acknowledge the 14-month legal proceedings. They failed to acknowledge from even a patriotic perspective knowing this country was at war and a single member of the Agilent organization was questioning his military labor law rights through USERRA. The total lack of leadership at the highest levels of this organization and the total lack of management checks and balances for a multibillion dollar organization for labor laws like USERRA suggest that their business needs and financial priorities were much greater than the needs of this country.

The three individuals who orchestrated this violation of law and my firing relied on a scheme they cooked up from a program known to Agilent Managers as "Workforce Management", a euphemism for firing employees! The Workforce Management program had been used by Agilent Technologies over the preceding 4 years, to lay off 12,000-plus employees. This program, prior to my firing in November 2003, had never been used to lay off an employee who had been activated to military service with rights under USERRA.

The Workforce Management program was a management tool used by Agilent Technologies to effectively eliminate positions. Since their spin off from Hewlett-Packard in November 1999, Agilent Technologies had essentially reduced their workforce from 40,000-plus employees to approximately 28,000 employees at the time of my release from the company in November 2003, a period of 4 years. This workforce program, utilized for eliminating employees, had apparently survived the labor laws for the release of minorities, women, older employees or other employees in protected classes, but it had never been utilized to eliminate a USERRA-protected employee.

The Workforce Management program had two primary selection criteria for managers to select from in targeting employees for termination. The primary selection criteria were if the employee was involved in programs, projects, or other work slated for elimination. The secondary selection criteria were for such things as process improvement, excess capacity or restructuring. For these secondary criteria, managers were asked to list the future essential job functions, analyze the future business needs and evaluate the individual critical skills for each employee.

After my return to Agilent Technologies from Operation Iraqi Freedom in July 2003, I was not given the position I held prior to my deployment. My manager, Brunker had stepped down from her management position and filled my position

within the organization. My new manager, Groniga, assigned me to a special project. Unknown to me, this particular project is slated to be eliminated and because the project is ended 3 months after being assigned to me, the first selection criterion for the Workforce Management program is met. Concurrent with this project assignment, Brunker was asked to complete a performance evaluation on me based on 4 months observation (prior to my deployment) and to also complete a skills assessment on me. Brunker writes a performance evaluation that identifies many areas for improvement this was substantially different than my two previous evaluations written by two separate managers. Those were glowing. Brunker also conducts a "critical skills assessment" and scores me significantly low and was ultimately reviewed and approved by Groninga. After nearly two decades with this organization (Hewlett-Packard and Agilent Technologies), my skills are now rated as significantly diminished and degraded. Suddenly the company saw me as if I were a different, unqualified person.

On November 10, 2003, I was told by Groninga that I am being selected for "Workforce Management" because the project I am working is going away. After almost two decades with this organization, I was told I have 1 week to clean out my desk and my last day would be November 17, 2003. It was after this phone conversation with Groninga that I contacted my Commanding Officer, Colonel Aucoin, who advises me to send a communication to Agilent Technologies that they are in violation of USERRA. On November 12, I sent an e-mail directly to Jean Halloran (VP of HR for Agilent Technologies, and copies to the CEO, Groninga, Brunker, Juskie, and several other managers. The following is an excerpt from this e-mail communication:

> As a member of HP and Agilent HR workforce for 19-plus years, I understand the companies need to manage it's workforce. If you proceed with the process to end my employment with Agilent, you will be in violation of Federal Law; 38 U.S. Code 4316(C) 4317(C) (USERRA).

Within 24 hours after sending my e-mail to Agilent officials, I received an e-mail reply on November 13, from Steve Remmel (Agilent Group Human Resources Manager), the following is an excerpt from that response:

> We have reviewed the concerns expressed in your memo. We have concluded that USERRA does not prohibit us from selecting you as a participant in Agilent 's Workforce Management Program.

In less than 24 hours or 1 business day, Agilent Technologies, Inc. is totally knowledgeable and completely confident in their assessment of USERRA, and that this fairly new labor law with little case law support does not prevent them from letting me go.

FIRST CONTACT WITH ESGR

I first contacted the ESGR on November 13, 2003. I briefly explained my deployment history, timeline of events and my pending termination. Without further comments, questions or discussion, I was immediately referred to the Department of Labor. The ESGR contact did not offer me any guidance regarding an informal investigation they might conduct with Agilent Technologies. The ESGR contact did not mention anything related to any mediation they might conduct. The ESGR contact offered no guidance or training related to USERRA. The ESGR contact did not relate any process that I should follow except to contact the Department of Labor.

The ESGR Ombudsman was completely ineffective to my firing in November 2003. A situation where my employer raised many flags and would eventually be found in violation of USERRA and obvious misconduct. The ESGR Ombudsman offered no research to any potential USERRA violations and never volunteered to conduct an informal investigation. The ESGR made no attempt whatsoever to review my potential USERRA situation and never offered mediation or suggestion to contact Agilent for additional information.

CONTACT WITH DEPARTMENT OF LABOR

The ESGR Ombudsman I spoke to on November 13, gave me a phone number to call when he referred me to the Department of Labor. I called this number (303–844–2151) on November 13 and received a recorded message for a Mark McGinty, whereby I left my name and number on his voice mail. This phone number was for an organization known as the Veterans Employment and Training Services (VETS). I received no return call from Mr. McGinty and on the next day I tried the phone number again. This time I was connected with Teresa Arney, a VETS Program Assistant, who spoke to me in person. Again, I briefly explained my deployment history, timeline of events and my pending termination. I also explained that I was

referred to this number by an Ombudsman with the ESGR. She was quick to tell me that if I did not hear someone at Agilent Technologies tell me that they were "terminating me for military reasons," that I did not have a USERRA case.

JOSEPH STEVE DUARTE V. AGILENT TECHNOLOGIES, INC.

The case, Civil Action No. 04–B–0298 Mag. Div. (CBS), was filed in U.S. District Court for the District of Colorado. After continued discussions and consultations with Colonel Aucoin and having not heard any responses from the ESGR or Department of Labor, I filed this suit in February 2004.

In my professional Human Resources history with both Hewlett-Packard and Agilent Technologies, whenever an employee filed a law suit against the company, internal counsel would attempt to get the case dismissed through Summary Judgment. If the case was not dismissed, then outside counsel would be retained to handle the case. In my particular situation, after I made my filing in U.S. District Court, Agilent Technologies immediately hired one of the largest law firms in Colorado to defend them. They hired the Denver law firm of Holland & Hart LLP.

I retained my Commanding Officer, fellow Marine and Civilian Attorney George Aucoin. With limited financial resources and little case law history we attempted to find out if USERRA had teeth. The loss of my livelihood, the support for my family and a career change at age 51 were on the line, along with the fact that many thousands of troops would return home to potentially the same situation. At the time, I surmised that many of these returning Reservists and Guard Members would be pushed aside by the ESGR with the same response I was given. Many others might receive the same information by VETS and the Department of Labor. Many younger Privates, Airman, Lance Corporals, Sailors or Sergeants might not have the time, resources or wherewithal to fight or question wrongful terminations or job status changes. Many would possibly take a small or no severance package and move on in the interest of continued support to there families.

Agilent Technologies attorney's pursued a multi-pronged approach to discredit me through several avenues:

1. My old manager Brunker writes a Performance Appraisal with low marks. Two previous managers on two separate appraisals mark me as having acceptable performance.

2. My new manager Groninga assigns me to a special project upon my return from Operation Iraqi Freedom. She alone cancels the project which is the No. 1 criteria for the Workforce Management program allowing for the termination.

3. My old manager Brunker, along with my new manager Groninga complete a critical skills assessment on me. They are the only two to score and evaluate the test which is the secondary reason for Workforce Management.

4. My new manager Groninga states that my job has been eliminated through a restructuring program. My exact position, verbatim, is posted on an external Web site 3 months after I was released.

Agilent's attorneys suggest that my termination was justified due to financial strain that Agilent Technologies was experiencing. During the fiscal quarter in which I was let go, Agilent Technologies gave bonus money back to the employees in the amount of $12–$13 million. I myself received $500. Agilent Technologies makes significantly more money in the year to follow.

6. Agilent's attorney's, looking for a defense; ask me to sign a release for my medical records, previous income filings, military records and criminal background. They apparently find nothing they can use.

7. Agilent's attorneys accuse me of not looking for employment and mitigating my circumstances during the year long case. I provide monthly documentation to them demonstrating greater than 150 resumes submitted to companies for the various functions within HR.

The case lasted 13 months and in March 2005 Agilent Technologies, Inc. was found in violation of USERRA. Me, my family and Colonel Aucoin invested hundreds of hours in time. The out-of-pocket expense to me and my family exceeded $12,000. This financial expenditure was all during a time of unemployment, with limited funds coming from continued Marine Reserve duty, unemployment compensation and an Agilent Severance package. Without a steady income, there was a reluctance to spend money and conserve my assets.

The cost to Agilent Technologies, Inc., which include such items as attorneys fees (defendant and plaintiff), judgments, back pay and interest, not to mention loss in productivity to managers, has been estimated at nearly $1 million. This is significant in that given the 7-month severance they gave me, with an additional 1 month pay and 8 months worth of benefits, they could have kept my services for 8 months and fired me for any reason they wanted after my USERRA 12-month re-employ-

ment requirement. They chose to specifically fight this cause, spend a significant amount of money, hire a large law firm and fight a single military Veteran while this country was still at war. A billion dollar corporation like Agilent Technologies, can afford to spend a million dollars on a legal issue.

The DOD Ombudsman or the Department of Labor–VETS could have inquired or intervened with any of the above listed items and reasonably determined that information, education, investigation (formal or informal) or mediation would have produced better results.

FINAL CONTACT WITH ESGR

During my case, my final contact with ESGR occurred when I received a call from Fred Fleetmeyer, the Colorado Chairman for the ESGR, sometime during June 2004. This phone call was about 7 months after my initial contact with ESGR. For some reason or another he had heard about my situation with Agilent Technologies, and inquired about my current status. I informed him about my conversations with two Ombudsmen from the Colorado organization (the names of which I mentioned to him at the time of this conversation but cannot recall now) and their giving me the phone number and forwarding me to the Department of Labor. He inquired as to my current status and when I mentioned that I had acquired private counsel and filed a case through District court, he stated that the ESGR could not help me and immediately ended the conversation. He neither asked nor suggested any conversation about the problems associated with my initial contact with the Colorado ESGR.

WHY I SUED AGILENT TECHNOLOGIES?

I have been a Human Resources professional for 20 years and have been involved with many terminations, suspensions, downsizing, lay-offs, demotions and various employment statuses for which these laws were enacted to protect. Companies and organizations interpret labor laws through their own bias, filters and business needs and will dehumanize the effects based on the bottom line. While many companies share this countries burden of being at war, other companies share none.

USERRA as recently re-drafted in 1994, is a fairly new labor law for which many companies have little or no experience. It has been my experience in working within both the public and private sectors, that many companies follow the labor laws enacted to protect employees. However, there are still many businesses, organizations, managers and civilians that do not have any idea or care to have any idea what the military member has sacrificed for his country and family. For the most part, the military member has become an inconvenient "Leave of Absence" (LOA) and disruption to their business.

I sued Agilent because they were one of these companies who completely ignored the fact that this country was at war and a war for which they neither acknowledged nor demonstrated any shared responsibility. They also choose to interpret USERRA to meet their own financial needs. THEY BROKE THE LAW.

This company, through its manager Vicki Groninga, went out of its way to fire me after I returned from Operation Iraqi Freedom. Ms Groninga was a manager within Agilent's corporate Human Resources organization with access to corporate counsel and should have known the consequences to violations of Federal law. CERTAINLY AFTER MY E-MAILS TO HER AND OTHER MANAGERS LAYING OUT THE LAW. It was Groninga who wanted me gone and she used Agilent's rules to fire me. In my opinion, Ms Groninga is one of those civilian managers who does not have any idea or care to have any idea what the military member has sacrificed. THE LAW EXISTS TO PROTECT SERVICE MEN AND WOMEN FROM MANAGERS LIKE THIS.

Agilent Technologies manager was prepared to take whatever steps and provide whatever resources necessary to eliminate my position regardless of USERRA. This case demonstrated the fact that some businesses and organizations are not afraid of USERRA, ESGR, Department of Labor, Department of Justice or Office of Special Counsel. They are fully aware that Reservists and Guard members do not have the time or other resources to fight for their job status changes or lost positions.

FINAL THOUGHTS

About 2 weeks before the case coming to trial, Agilent Technologies, Inc., through their attorney, offered me $325,000 to settle the case. For reasons stated earlier regarding all the Reservists and Guard Members to follow me and return home, I turned them down. By now it was a firmly entrenched principle and leadership issue. I needed to determine if USERRA had teeth and could protect the rights of all Reservists and Guard Members. I needed to know that organizations who do not

share in the responsibility or burden of this country being at war, could not summarily dismiss USERRA as just another labor law.

When I returned from Operation Iraqi Freedom I didn't fully understand the USERRA law. I am not a lawyer but I expected various government agencies like ESGR and the Department of Labor to help me.

The Employer Support for the Guard and Reserves failed me as a returning service member, and failed completely and miserably. They demonstrated absolutely no interest, willingness or desire to educate, intervene or mediate between me and Agilent Technologies, Inc. It felt as though they were on the side of the large corporations and politically or otherwise did not want to lose the support of big business. For whatever their reasons, as a government agency they offered no support or empathy for my situation and I continued to move forward as Marines are trained.

The Department of Labor–VETS, equally failed in their support for a returning Veteran. They never offered or volunteered to investigate my USERRA claim. They offered no comprehensive outreach of any sort nor any education or training. They never offered to mention that a process existed or should be followed. They never reviewed my rights and were quick to dismiss my claim. Again, not being a lawyer, I relied heavily on their counsel and advice.

Following my two deployments since September 11, 2001 and my subsequent termination from Agilent Technologies, Inc. on November I7, 2003, my family and livelihood have been significantly disrupted. Being deployed to a combat zone in defense of your country is difficult, but a situation for which I was trained. Being released from your livelihood after serving your country and getting no support from its government agencies is reprehensible. Either agency (ESGR or DOL–VETS) with minimal investigative effort could have (and should have) easily uncovered the misconduct perpetuated by Agilent Technologies.

Agilent Technologies and their lawyer's, attacked and twisted every part of my character, my past performance, my skills, and my general worth to the company to win the case against me. After 19 dedicated years to this company, the company allowed its attorney's to paint me as lazy, unmotivated and questioned my integrity. My wife and three children endured my job loss, the financial strain and this legal challenge against us for 15 long months.

After Agilent broke the law of USERRA and fired me, I eventually found employment. It was not easy. From November 2003 to June 2005, I submitted well over 200 applications and resumes to various companies for HR positions and received only two face-to-face interviews. From June 2005 through March 2006 I was deployed to New Orleans with the 4th Marine Division, physically enduring Hurricane Katrina from my assigned post adjacent to the Mississippi River and near downtown New Orleans. From April 2006 to August 2006 I returned to civilian life and was briefly employed by Leprino Foods as a Compensation Specialist. For the past 6 months I have been and currently employed by the city of Westminster as a Senior Human Resources Analyst continuing my responsibilities as a Generalist and my professional passion for Compensation, Recruitment, Training, Organizational Development and Employee Issues. MY ORDEAL, UNCECESSARY AND ILLEGAL ORDEAL, with AGILENT, has made me and my family much stronger. It has also significantly increased my conviction in that no other Marine, Sailor, Airman, Soldier, Guardsman or any member of our military, ever endure this treatment, especially after dedicated and faithful service to their country. I have gratefully accepted your offer to testify here today, and flew myself out at my own expense, for my brothers and sisters in the military. We need to continue to pursue and defend all USERRA issues as they occur with our returning Reservists and Guard Members, as this law will be meaningless without enforcement. THANK YOU FOR THE OPPORTUNITY TO SPEAK WITH YOU TODAY.

The CHAIRMAN. Well, thank you for a remarkable story. Thanks for your service and thank you for a remarkable story. It reminds us about what our responsibilities are. I appreciate it. It's very moving.

Mr. Halbrook.

STATEMENT OF RICHARD HALBROOK, EXECUTIVE VICE PRESIDENT, DOLLAR THRIFTY AUTOMOTIVE GROUP, INC., TULSA, OK

Mr. HALBROOK. Chairman Kennedy, members of the committee, I'm honored to be before you today. Thank you for the invitation.

Dollar Thrifty Automotive Group is a Fortune 1000 company, headquartered in Tulsa, Oklahoma. We rent cars under the Dollar Rent-A-Car brand and the Thrifty Car Rental brand. We were ranked one of America's most trustworthy companies by Forbes Magazine in 2007. We believe that says a lot about the values we hold and our integrity.

However, most important to the topic before this committee and why we were invited this morning, was the distinguished service award we received this year from the National Defense Transportation Association, and most recently, the 2007 Secretary of Defense Employer Support Freedom Award. We were 1 of 15 U.S. employers out of 1,200 nominations to have been honored by ESGR.

At the awards ceremony on September 12, here in Washington, Thomas F. Hall, Assistant Secretary of Defense for Reserve Affairs, said, "In the military, the best leaders are those who have always taken care of their people. It's no different in the civilian workforce." We couldn't agree more. And with that lead-in, let me give you some of the history about our experience with USERRA.

Certainly, when you looked at USERRA, it didn't seem that difficult to comply with. It was much like FMLA. It had some additional complexities to it, but it wasn't that hard. We thought we would go above and beyond that. In addition to compliance with that, we proposed a few enhancements. First we said, if the basepay of the employee on military service is less than what they would have received if they were with us, we would continue to pay them that difference while they were serving and we'd make deposits into their account. We had forms and procedures to do that.

Second, USERRA requires the continuation of health care at the full premium level, or 102 percent of the full premium. We know that this amount can be significant. As this is the amount associated with COBRA coverage when an employee leaves our company. So, the second enhancement we had was to extend health coverage to the employee at the same rate per month that they would have seen if they were still working for us full time.

Third, we also made our employee assistance program counseling available to the returning military employee, to aid them in their return and transition back to civilian life.

The employees of Dollar Thrifty and our culture are what we find makes the real difference for our employees going on extended military leave, and that is something that can't be implemented by a formal policy. It's against the cultural backdrop that our employees choose on their own, to correspond to coworkers that are out on military leave, post pictures in the hallways, hold "Good Luck" and "Godspeed" going away parties, and more important, hold the welcome back parties.

It's our managers who know and recognize what military experience and assignments do in the way of developing an employee and their leadership skills. An example is the case of Marine Corporal Blake Milam, who shortly after his return to Dollar Thrifty, applied for and received a promotion to a new position. There are always areas of opportunity where we can do better at Dollar Thrifty. That's the nature of a company led by a Marine. Our CEO, Gary Paxton, who keeps demanding and raising the bar for us to perform to. We were humbled beyond all words for the nomination

submitted by Corporal Milam. To us, we were simply doing the right thing.

So, in closing, I'd like to paraphrase the letter that Corporal Milam wrote on our behalf, in his nomination of our company.

> "When I got off active duty and returned to reserve status, I already had my old job at Dollar Thrifty waiting for me. All of my fellow employees had a welcome home party for me at work, cake, balloons, and a huge card. I even had a department director and a bunch of big wigs come down and shake my hand. I had been activated on December 1, 2005 and was back to work in November 2006. I was given two raises and a healthy profit-share that quickly went to bills and relieved much of my stress. Overtime was always there when I asked. My fellow employees even took time out of their day to help me re-learn my job. In December, I applied for a new position in the company and was moved up to where I am now in January. It's almost surreal to think that a year ago I was shooting and being shot at daily. If I didn't have this job at Dollar Thrifty, if I had to look for a job with that many bills and that much stress and that much happening all at once, I wouldn't be where I am today and I'm very happy where I am today. That's why I nominated my company for the Freedom Award, for making my transition back to the real world possible."
>
> Sincerely,
>
> BLAKE MILAM.

Thank you, Corporal Milam. We believe we were just doing our duty.

Again, thank you for inviting me here today.

[The prepared statement of Mr. Halbrook follows:]

PREPARED STATEMENT OF RICHARD HALBROOK

Chairman Kennedy, Senator Enzi and members of the committee, I am pleased to appear before you today. My name is Rich Halbrook, and I currently serve as the Executive Vice President of Administration and Human Resources for the Dollar Thrifty Automotive Group.

Dollar Thrifty Automotive Group, Inc. (DTG) is a Fortune 1000 Company headquartered in Tulsa Oklahoma. The Company's two brands, Dollar Rent-A-Car and Thrifty Car Rental, serve value-conscious travelers in approximately 70 countries. Dollar and Thrifty have over 800 corporate and franchised locations in the United States and Canada, operating in virtually all of the top U.S. airport markets: both brands operate in all of the top Canadian airport markets. The Company's more than 8,500 employees are located mainly in North America, but global service capabilities exist through an expanding international franchise network.

Dollar Thrifty has been recognized for several initiatives and services, but among these we are most proud of are the ones that point to our integrity and support of the Armed Services and our employees in the Armed Services. Briefly, Dollar Thrifty was named one of America's Most Trustworthy Companies by Forbes in March 2007. We believe that says a lot about the values we hold and our integrity. However, most important to the topic before this committee and why we were invited here this morning was the Distinguished Service Award we received this year from the National Defense Transportation Association (NDTA), and most recently, the 2007 Secretary of Defense Employer Support Freedom Award.

Dollar Thrifty Automotive Group, Inc. was one of 15 U.S. employers out of 1,200 nominations, to have been honored with the **2007 Secretary of Defense Employer Support Freedom Award** by the National Committee for Employer Support of the Guard and Reserve (ESGR), an agency of the Department of Defense.

Accepting the award on Dollar Thrifty's behalf at a special awards dinner was Dollar Thrifty President and CEO, Gary Paxton. The celebration took place September 12 at the Ronald Reagan Building and International Trade Center in Washington, DC.

Thomas F. Hall, Assistant Secretary of Defense for Reserve Affairs, said at the event, "In the military, the best leaders are those who always take care of their people—and it is no different in the civilian workplace."

We couldn't agree more. And with that lead in, let me give you some history about our experience with the Uniformed Services Employment and Reemployment Rights Act, USERRA.

When presented with the requirements of the amended USERRA, our CEO, Gary Paxton, asked that my department explore what this would mean for DTG employ-

ees serving our country. Overall, our summary look at the USERRA showed that we were compliant with the act.

There are a lot of details behind these basic requirements which are contained in the 20-plus pages of the act itself, and at Dollar Thrifty we decided to not just be compliant with the act, but to take additional steps that would reflect our culture, which puts our people as our No. 1 priority. These enhancements were fairly straightforward and included:

(1) If the base pay the employee receives during their military leave is less than the pay they would have received while continuing to work for DTG, then DTG would make regular deposits equal to this difference. Forms and administrative procedures were developed to handle this aspect of the policy.

(2) USERRA requires the continuation of health care at the full premium level or 102 percent of the full premium. We know that this amount can be significant, as this is the amount associated with COBRA coverage when an employee leaves our company. So the second enhancement was to extend heath coverage to the employee at the same rate per month that they would pay if they were still working full-time at DTG. This is a much lower amount than the full premium called for under USERRA. Most of our employees on leave will likely find their coverage under the Armed Services policy more than adequate for just themselves, but our concern here was also for family coverage situations where there may be the need for the continuation of the Dollar Thrifty coverage.

(3) We would also make any Employee Assistance Plan counseling available to the returning Military employee to aid them in their transition back to civilian life.

The employees of Dollar Thrifty and our culture are what we find makes the difference for our employees going on extended Military leave, and that is something that can't be implemented by a formal policy.

For several years now, DTG has taken an active stance toward our overall culture and employee morale. We have a set of core values that we aspire to. These values are (1) our customers, (2) our people, (3) continuous improvement, and (4) results. To assist us in realizing these values, we have over 150 employees that are Cultural Ambassadors. These employees go through formal training on the basics you would expect, such as hiring skills, new employee orientation, new employee retention, employee recognition, and employee communications. However, they are also trained on "Bring on The Fun," a program that entails hosting fun events to build morale and team spirit.

It is against this backdrop that our employees choose, on their own, to correspond with co-workers on military leave, post pictures in the hallways, hold "Good Luck & Godspeed" going away parties and more importantly, "Welcome Back" parties.

It is our managers who know and recognize what military experience and assignments do in the way of developing an employee and their leadership skills. These managers in turn tend to find new assignments and promotional opportunities for employees returning from military services. An example is the case of Marine Corporal Blake Milam, who, shortly after his return, applied for and received a promotion to a new position.

There are always areas of opportunity where we can improve at DTG, specifically in the treatment of our employees who go on military leave, or are involved with the Reserves. That is the nature of a company who is led by a Marine—our CEO, Gary Paxton—who demands we keep raising the bar.

Overall, we are extremely grateful to all the men and women of our armed services and we honor their service. Dollar Thrifty is especially proud of those service members that are also our employees and we are humbled beyond all words for the nomination submitted by Corporal Milam. The resulting award from the Secretary of Defense Employer Support Freedom Award was unexpected and certainly makes us want to confirm that we are truly doing everything we can for these honorable men and women. When you couple this recognition with the 2007 National Defense Transportation Association (NDTA) Distinguished Service Award and the 2006 ESGR Pro Patria Award, we at Dollar Thrifty are simply overwhelmed by the attention and recognition being given to us for what seems to us as simply "doing the right thing."

I believe that the hearing of this committee will also clearly showcase the "right thing to do" with regards to the USERRA and our service men and women.

In closing, permit me to return to my earlier comments on The Freedom Award, and why we were so proud to have received it. Recipients of this award were nominated by their employees, who voluntarily serve in the National Guard and Reserve, and who recognized the exceptional support their company gave them above the requirements of Federal law.

I'd like to read you now the letter that Marine Corporal Blake Milam wrote on our behalf in his nomination of our company:

> I was deployed with Weapons Co. 1st Battalion, 25th Marines, to Fallujah, Iraq for about 8 months. I was the radio operator for my platoon. Basically, for the Battalion, I was the voice of "Whiskey 3" and for Whiskey 3, I was the voice of the Battalion. We pretty much operated as a police force in Fallujah.
>
> When I got off active duty and returned to reserve status, I already had my old job at Dollar Thrifty waiting for me. All my fellow employees had a welcome home party for me at work—cake, balloons and a huge card. I even had department directors and "big wigs" I had only heard of come down to shake my hand. I had been activated on December 1, 2005 and was back to work in November 2006. I was given two raises and a healthy profit share that quickly went to bills and relieved much of my stress. Overtime was always there when I asked. My fellow employees even took time out of their day to help me re-learn my job!
>
> In December, I applied for a new position in the company and was moved up to where I am now in January. Even now, almost a year later, I still have people coming up to me asking, "What did you do over there?" I just smile and say, "I did my time and came home." Honestly, who wants to hear all that? It's almost surreal to think that a year ago I was shooting and being shot at daily. If I didn't have this job at Dollar Thrifty Automotive Group—if I had to look for a job with that many bills and that much stress and that much happening all at once—I wouldn't 't be where I am today. And I'm very happy where I am today.
>
> That's why I nominated my company for the Freedom Award . . . for making my transition back to the real world possible.
>
> Sincerely,
>
> MARSHALL "BLAKE" MILAM.

Thank you Corporal Milam. We were just doing our duty as well.

Our President and CEO of Dollar Thrifty, Gary Paxton, said the following about this nomination and award, "Dollar Thrifty is honored to receive this prestigious award on behalf of all its employees. For all they do for us, we want all our Guard and Reserve members to know we will steadfastly support them should they be called to duty."

Again, thank you for inviting me here today, and I look forward to answering any questions any of you may have.

The CHAIRMAN. Well, thank you all very much. This has been a very impressive panel. Where is Avis and Hertz, Mr. Halbrook?

[Laughter.]

I'll tell you, I don't rent, but I do on some occasions, and I'll be knocking on the door there for——

Mr. HALBROOK. Thank you, Senator.

The CHAIRMAN. That's extraordinary, it's an extraordinary example. And we might write to these other companies and ask them what they are doing and mention it. I certainly will. I'll see if we get a little bipartisan support, just inquire on that. It's extraordinary.

Thank you, Tammy Duckworth, again, for your service to the country, and also for the recommendations. I think we heard from Jack Reed about these cross communications. They shouldn't be all that complex. We're working very closely with the Veterans' Committee on recommendations, since we have—as we mentioned at the opening—shared responsibility.

We thank Lieutenant Colonel Duarte for taking on and continuing on and believing in his rights and representing workers and then being able to inspire us. I think, as Senator Murkowski pointed out, if this happens to one, it happens to all of us. And you've certainly demonstrated—listening to your story—a devotion and service to the Marines, a family that's been dedicated, and

your own perseverance, when others have said that you didn't have the goods on it. And it's an inspiring story and one that shouldn't have to be replicated. We've seen the explosion of private counsel in these areas and it's just not right. We ought to be able to try and get so that every service man and woman has the information and the help and the assistance and hopefully the kind of reception Mr. Halbrook has shown.

Thank you, Lieutenant General McCarthy. We're working very closely with your Reserve Officers Association and with the other organizations as well. And you've got a lot of very good suggestions and ideas. As a member of the Armed Services Committee, I can think of some things we might be able to do and take some of your recommendations. We'll work with those members, Senator Reed, and we'll work with the veterans and we'll try and not let this slip through.

We'll have maybe a few general kinds of questions. You've been enormously helpful and it's been very important and enormously constructive. I think our hearing has pointed out some of the challenges and some of the problems. I think what echoes in our ears is, Senator Murkowski's individual that had fallen through the cracks. Lt. Colonel Duarte has fallen through. The point that Jack Reed makes about the growth of homelessness, and all the challenges we face. And, we see when it can be done right and what a difference it makes.

I'm sure that your company, in terms of morale, in terms of productivity of those service men who have come back and are working, has expanded and increased. And the company deserves great credit.

So, we've learned about some of the challenges and about some of the hope. And we are going to build on those more hopeful indicators.

Senator Murkowski, anything final you want to say before——

Senator MURKOWSKI. I just also want to echo what the Chairman has said about thanking you for your testimony. It was great to hear Major Duckworth describe what the State of Illinois is doing and their specific efforts.

You think about the service man who is going back into the civilian workplace. How we can help them craft a resume that says what they have really done? And your comments at the beginning of your testimony, Major, about how our service members know that lives hang in the balance if their work is lacking in quality. None of the rest of us could ever possibly be expected to do and yet, this service man is doing that on a daily basis. And, we've got to figure out a way that we can help that—help them make that transition so that credit for what they have done is truly given.

So again, I thank you all for your efforts. Thank you.

[Additional material follows.]

ADDITIONAL MATERIAL

PREPARED STATEMENT OF SENATOR ENZI

Thank you, Senator Kennedy, for holding this hearing today. Employers of all sizes know that a skilled workforce is essential to being competitive in the global economy.

Our businesses must have the workers they will need to be competitive. Strengthening America's competitiveness requires that students and workers of all ages have the opportunity to gain the knowledge and the skills they will need to be successful throughout their lives, regardless of their background. Education and training are integral to meeting this goal.

A substantial portion of our workforce now finds itself in direct competition for jobs with highly motivated and often well-educated people from around the world. We can no longer afford to ignore that over the past 30 years, one country after another has surpassed us in the proportion of their entering workforce that has the equivalent of a high school diploma. We used to have the best-educated workforce in the world, but that is no longer true.

We must re-build, strengthen and maintain our educational pipeline, beginning in elementary school. We need to find ways to encourage high school students to stay in school and prepare for and enter high-skill fields such as math, science, engineering, health, technology and critical foreign languages. We must also strengthen the programs that encourage and enable citizens of all ages to enroll in postsecondary education institutions and obtain or improve knowledge and skills. The decisions we make about education and workforce development will have a dramatic impact on the economy and our society for a long time to come.

The present situation is discouraging. Every day in the United States, 7,000 students drop out of school. We must deal with the situation head on—we cannot allow students to "waste" their senior year, and graduate unprepared to enter postsecondary education and a workforce focused on skills and knowledge. Unless high schools are able to graduate their students at higher rates than the 68 to 70 percent they currently do, more than 12 million students will drop out during the course of the next decade. The result long term will be a loss to the Nation of $3 trillion, and as you can imagine, even more in terms of the quality of life for those dropouts.

To remain competitive in a global economy, we cannot afford to lose people because they do not have the education and training they need to be successful. Thirty years ago the United States was proud to claim 30 percent of the world's population of college students. Today that proportion has fallen to 14 percent and is continuing to fall.

Demographics are responsible for some of this shift—keep in mind that if India alone educates just one-third of its population, it will have more educated people than the total population of the United States. We have control over whether we continue to let so many students fall through the cracks and out of the education and training pipeline.

To be successful in the 21st century economy we need to challenge our high school students more, increase high school gradua-

tion rates, reduce remedial education at the college level, increase student retention and completion rates for students in college, reduce barriers to adult worker participation in postsecondary education and training. Lifetime education and training is no longer an option, it is a necessity—for individuals, for employers and for the economy.

Innovation provides a way for individuals to create their own jobs or jobs for others. That is one of the primary reasons I began my annual free Inventors Conferences in Wyoming in 2004—to encourage and provide resources to individuals to impact the economy with their ideas. Too often, young people in Wyoming start thinking at too early an age that they will have to leave the State to find a good job. I offered another suggestion—create your own product—create your own job. That kind of mindset will encourage creativity and begin to tap the well of good ideas so many of our State's young people have to share. We can attract businesses, but we can grow our own new businesses too. Good ideas generate good jobs and that is something that will keep our kids at home and attract new businesses to our State.

I have had terrific role models, such as Dean Kamen, speak at my conference. I am hosting the Inventors Conference again in Wyoming this April. We need to encourage this kind of activity because America no longer holds the sole patent on innovation. Inspired by our example, countries such as China, India and South Korea have invested heavily in education, technology and research and development. Billions of new competitors are challenging America's economic leadership. In 2005, foreign-owned companies were a majority of the top 10 recipients of patents awarded by the U.S. Patent and Trademark Office.

In addition, we need to look at how we address immigration. Many people are concerned about illegal immigration and the impact legal immigration could have on their employment. Many employers have a need for trained and educated employees and are unable to fill these positions with domestic employees. The companies are often faced with the choice of hiring foreign workers or considering moving their operations overseas.

In the high tech sector and across the Nation, I believe employers must be a partner in ensuring that employees are in the United States legally and holding the proper visas and work permit. It is clear, however, that the current system is not working. The complicated and overly burdensome process for visas and permanent residency cards serves as a disincentive to both the employer and the employee.

Initial efforts have been taken to address the problems with the H-1B visa process and immigration in general but no final action has been set. Congress has considered legislation that specifically addresses foreign workers with masters or higher degrees from accredited U.S. universities to return or stay in the United States. I believe we should continue to work on this issue in the context of larger immigration reform as well in the context of our international competitiveness.

While we work to make our domestic workforce better trained to fill high-tech jobs, we must ensure that our high-tech companies remain in the United States.

We have our work cut out for us to meet the challenge of ensuring that America expands its competitive edge. We need a plan. We need to ensure opportunities are available to all Americans, because our future depends on widely available and extensive knowledge and training and a commitment to excellence. Strong partnerships and alignment among K–12 schools, institutions of higher education, business and government will help us meet the needs.

In the HELP Committee, we are using this opportunity to shape policy and strengthen the education and training pipeline. Through the reauthorization of Head Start, No Child Left Behind, the Higher Education Act and the Workforce Investment Act (WIA) we can make sure that every individual has access to a lifetime of education and training opportunities that provide the knowledge and skills they need to be successful and that our employers need to remain competitive.

As important as education is to the knowledge and skills of our workforce, I want to emphasize the need to reauthorize the Workforce Investment Act. It strengthens connections with economic development, links training to the skill needs of real jobs, and supports greater business engagement.

In a global economy where innovation and technology have created an increasing demand for skilled workers, access to training that prepares workers to meet these challenges is essential. The skills needed to keep current with the requirements of the 21st century workplace are changing at an ever increasing pace. Workforce development is not only hiring the right worker, but knowing how to help them keep current with escalating skill requirements and advances in their occupations. By helping low-wage workers advance in their jobs, entry level jobs will open up and more opportunities will be created. Our efforts in reauthorizing the Workforce Investment Act must ensure that it achieves this goal and is relevant to both employers and workers.

I look forward to hearing the contribution of our witness to this vital conversation.

PREPARED STATEMENT OF SENATOR MURRAY

Thank you, Mr. Chairman, for calling today's hearing on an issue that's vitally important to the men and women who serve in our National Guard and Reserve. Before I go on, I want to thank these brave heroes for their tremendous service to our country. They continue to play a very important role in our Nation's security here at home and abroad. They step in when local communities need them most, and they have performed admirably under enormous pressure in the middle of a civil war in Iraq. We owe them a debt of gratitude.

As Veterans' Day approaches, I think it's very appropriate that we examine whether we're keeping our promise to our returning heroes. Part of that promise is making sure our Guard and Reservists transition back to the civilian workforce successfully when their service is complete.

Thirteen years ago, Congress enacted USERRA to protect the employment rights of returning veterans. But as the war on terror has escalated, so has the mission of our Nation's Guard and Reserve. And the challenges they face are more demanding than ever.

It's vital that we ensure the system is working for them, and that's why we're here today.

Unfortunately, I continue to hear countless stories from veterans in my home State of Washington who have struggled to find good, family-wage jobs, and the training they need to secure them. Too many veterans are struggling to support their families after demobilization. That's just not right—yet the problem isn't getting smaller.

In my home State of Washington:

- Nearly 8,000 Guard and Reservists are currently serving;
- More than 5,500 have served in Afghanistan and Iraq since the war began;
- And we've recently heard that almost 2,800 Guard members are scheduled to deploy in 2008.

Washington, like many other States, is responding to these obstacles with innovative programs, such as the Hire-A-Vet Challenge, which encourages businesses to hire returning National Guard and Reservists.

But more needs to be done.

After more than a decade of having USERRA on the books, I'm frustrated that too many veterans are still running into obstacles when seeking protection.

- Too many are unsure of their employment and re-employment rights under this law.
- Too many employers are unsure of their responsibilities under the law.
- And those who do exercise their rights are still facing unnecessary delays and a complicated bureaucracy.

We have to find a way to make this complex system as easy to navigate as possible for these service members.

First, we have to do a better job of outreach and education for veterans and their employers. To make the system successful, both groups have to understand their rights and responsibilities.

We also have to make the system more user-friendly. Veterans who seek to exercise their rights should never run into a closed door or be shut down by a complicated bureaucracy. I know we have made some improvements over the years, but we have to find a way to simplify the system and make it work for service members whose rights have been violated. I'm looking forward to hearing recommendations from our witnesses about how we can make this happen.

Mr. Chairman, as I've said many times before, I believe that how we treat our veterans when they come home says a lot about the character of our Nation. These brave men and women who face dangerous and stressful situations on the battlefield and here at home shouldn't have to worry about their jobs while they're away. And they're counting on their government to keep its promise.

So we have a big mission, Mr. Chairman, and I look forward to hearing from our witnesses about how we can make the transition from soldier to citizen a smoother one.

U.S. DEPARTMENT OF LABOR,
WASHINGTON, DC. 20210,
May 2, 2008.

Hon. EDWARD M. KENNEDY, Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC. 20510.

DEAR MR. CHAIRMAN: Thank you for the opportunity to testify before the Senate Health, Education, Labor, and Pensions Committee hearing on "Protecting the Employment Rights of Those who Protect the United States," held on November 8, 2007.

The responses to the committee's additional questions for the record are enclosed.

Thank you for your continued support of the employment rights of our Nation's service members and veterans.

Sincerely,

CHARLES S. CICCOLELLA,
Assistant Secretary for Veterans' Employment and Training.

RESPONSE TO QUESTIONS OF SENATOR KENNEDY, SENATOR ENZI, AND SENATOR MURRAY BY CHARLES S. CICCOLELLA

QUESTIONS OF SENATOR KENNEDY

Question 1. What do you believe are the main reasons why 44 percent of Reserve Component members who filed USERRA complaints with DOL VETS said they were dissatisfied with the assistance they received?

What are you doing and what will you commit to doing to improve service members' satisfaction with the assistance they receive from DOL VETS with their USERRA complaints?

Answer 1. We share your concern over the dissatisfaction rate reported by Reservists who responded to the Department of Defense (DOD) Status of Forces Survey, and asked DOD for additional information regarding those responses. According to DOD, two-thirds of those who reported dissatisfaction with the handling of their USERRA complaints also said that their claims were denied or rejected; 9 percent reported that their complaints was resolved in their favor. On the other hand, four-fifths (80 percent) of those who were satisfied with the handling of their formal USERRA complaints reported their complaints were resolved in their favor, and just 4 percent reported their complaints were denied or rejected.

Individuals who file formal complaints, by definition, believe their complaints have merit. It therefore is not surprising that the majority of dissatisfied claimants are individuals whose claims are denied. This finding underscores the importance of better educating claimants on the provisions of the law and engaging them as active participants during USERRA investigations.

VETS recognizes the importance of striving constantly to improve the services it offers to service members and others. To that end, VETS began conducting regional training conferences for investigators in every VETS region in fiscal year 2007 and these efforts continue in fiscal year 2008. In addition, VETS has incorporated customer service techniques into these training conferences and is exploring including such techniques in its existing new investigator 2-week classroom training curriculum.

VETS is also aggressively pursuing steps to reduce the time it takes to investigate, resolve, and close cases. While nearly three-quarters of USERRA cases are closed within 60 days or less, some cases still take too long to process. To address this, VETS has implemented additional supervisory control of investigations, with Regional Administrators and Senior Investigators now being made aware of all cases in their regions that have been open for over 90 days, as well as cases where a claimant has requested referral to either the Department of Justice (DOJ) or the Office of the Special Counsel (OSC). In addition, the Department has funded an independent evaluation of the cost effectiveness of USERRA's investigation process that will be completed in fiscal year 2009. Following an independent analysis of each step of the investigatory process, results of the evaluation should help VETS improve the quality and timeliness of its USERRA case management.

Question 2. What steps are you taking to reduce the bureaucratic delays for investigating, resolving, and referring USERRA complaints that the Government Ac-

countability Office (GAO) has identified, particularly when cases are referred to the Office of Special Counsel or the Attorney General?

Answer 2. As previously reported to your office, of the 1,239 cases that were both received and closed by VETS in fiscal year 2006, nearly three-fourths (72 percent) were closed in 60 days or less, and only 6 percent took over 120 days. We are aggressively pursuing steps to reduce delays that occur in that minority of cases.

Each month, VETS' Regional Administrators and Senior Investigators are made aware of those cases in their region that have been open for over 90 days, as well as cases where a claimant has requested referral to either the Department of Justice (DOJ) or the Office of the Special Counsel (OSC). In February 2008, VETS implemented an updated USERRA Operations Manual that clarifies procedures for investigating, attempting to resolve and referring USERRA cases. Regional training covering these procedures is underway for all investigators, and distance learning modules are under development. In addition, results from the independent evaluation noted above will support VETS' efforts.

It is important to note that the causes for delays are not solely bureaucratic. For example, our investigators occasionally are presented with an opportunity to engage in negotiations with the employer during the referral process, which sometimes has lengthened that process. We have recently clarified to our investigators, though, that once a claimant asks for referral, any continued efforts to resolve the claim should take place concurrently with processing the referral, and should in no way slow the referral process. In fact, such efforts are to be undertaken only under very strict deadlines. Both DOJ and OSC have indicated that they agree with that strategy.

Question 3. Please describe the appropriations and resources dedicated to the enforcement of USERRA within DOL VETS and the Office of the Solicitor, including the number of full-time employees (FTEs) assigned to USERRA enforcement, over the past 8 years.

Does the fiscal year 2007 appropriations level enable the Department of Labor to effectively and expeditiously investigate, resolve, and refer USERRA cases?

Do you believe that the Department needs additional resources to do so, and, if so, how much more funding does the Department need for USERRA enforcement?

Would additional funding help the Department to investigate, resolve, and refer USERRA cases quickly?

Answer 3. VETS maintains a corps of over 100 trained investigators in our Regional and State offices throughout the country. These investigators are responsible for USERRA as well as other issues related to veterans' employment. In addition to our investigators, VETS has a team of specialists at the National Office who are dedicated to compliance and investigations activities, and in 2006 we added six Senior Investigators—one in each Region—who are dedicated exclusively to compliance and investigations.

The Office of the Solicitor offers a nationwide network of attorneys who contribute to the Labor Department's USERRA enforcement efforts. More than 200 agency attorneys in SOL's 14 regional and branch offices provide trial litigation services and advice under most Labor Department administered Federal laws. Because the Department administers well over 100 laws, a regional attorney's USERRA workload at any given time generally will be relatively small; however, the regional attorneys' litigation expertise enables them to provide substantial support to VETS' investigations. At SOL's national office, a six-person group of attorneys in the Employment and Training Legal Services Division provides overall advice and guidance on USERRA matters to VETS and to SOL's regional staff as appropriate.

While the overall number of USERRA cases handled by SOL attorneys is small compared to the total number of cases that arise in all other DOL-administered programs, SOL has taken care to develop a cadre of individuals within theorganization who retain extensive USERRA experience and knowledge. This includes a supervisory counsel for USERRA matters in the national office, and designated experts in each regional office.

The following table reflects VETS and SOL full time equivalent and other resources dedicated to USERRA activities since fiscal year 2000.

Fiscal year	VETS		SOL
	FTE devoted to USERRA	Travel and other USERRA costs (FTE cost not included)	FTE devoted to USERRA
FY 2000	69	$1,285,906	1.9
FY 2001	62	$1,196,849	2
FY 2002	80	$1,592,097	3.6
FY 2003	78	$1,567,532	4.2
FY 2004	101	$2,085,581	4.2
FY 2005	106	$2,329,049	6.8
FY 2006	89	$1,628,471	4.3
FY 2007	85	$2,327,970	3.7

The resources available are sufficient for the effective administration of our USERRA compliance and investigations program. However, the Department will not hesitate to allocate additional resources to USERRA, should that become necessary.

Question 4. Prior to the hearing, members of my staff went to the Department of Labor to review USERRA cases files. They found that some service members were not given an opportunity to review or respond to employers' allegations before the DOL closed their cases and informed the service members that their cases lacked merit.

a. Does the Department of Labor require its investigators to give each service member an opportunity to review and rebut any factual allegations made by his or her employer before the case is determined to lack merit?

b. What is the agency doing to ensure that every veteran is afforded an opportunity to present his or her side of the story?

c. How often does the Department have its investigators interview the witnesses of employers at work sites, rather than accepting employers' factual allegations at face value?

d. Will the Department commit to increasing the frequency by which its investigators interview witnesses at work sites?

Answer 4. Labor Department investigators have been instructed that claimants are to be told about employer allegations that might impact the outcome of their case, and that they are to be given the opportunity to rebut those allegations. We have reiterated and clarified this important point to our investigative staff in the 2008 USERRA Operations Manual, which VETS released in February 2008. The new Operations Manual now states that "the VETS investigator should contact the claimant to describe the employer's point of view. The claimant must be informed of and given the opportunity to rebut any relevant allegation that may affect the outcome of his/her case." However, a limited amount of employer-provided information, such as payroll and personnel records of comparable employees, is not made available to claimants, and claimants are not provided with information that would disclose the identity of informants. Investigators are receiving training on the new manual.

VETS does not accept at face value allegations made by either employers or claimants. Rather, our investigators seek out facts and evidence that are relevant to the USERRA issues that are alleged in a claim. The Department emphasizes in-person interviews and fact gathering, particularly in situations in which an investigator has doubts about the credibility of an individual or the evidence that is provided. Onsite interviews are conducted whenever deemed necessary by the VETS investigator. The USERRA Operations Manual is very clear that face-to-face interviews and evidence collection are important tools available to our investigators. Specifically, the manual states, "An onsite investigation should be conducted when the investigator doubts the veracity of information provided by the employer or otherwise believes an onsite investigation would be beneficial." In addition, supervisors or Senior Investigators conduct open case reviews of all ongoing investigations. Any doubts about the reliability of information provided by an employer that surfaced during that review could lead to an onsite investigation.

Question 5. The February 2007 GAO report found that the Department of Labor, Department of Defense, and Office of Special Counsel do not have a consistent way to record, analyze, or report the disability-related USERRA cases.

Since the report, have these agencies implemented a uniform system for recording, analyzing, and reporting disability-related complaints?

What are the agencies doing to ensure that accurate numbers of disability claims are reported to Congress?

If this system is not fully in place now, then when will this process be completed?

Answer 5. Cases involving disability-related issues under USERRA arise in the context of obtaining the appropriate reemployment position, and the employer's obligation to provide "reasonable accommodations." USERRA provides that employers must provide reasonable accommodations to allow service members who incurred a disability in service to be promptly reinstated in the positions of seniority, status, and rate of pay they otherwise would have attained had they remained continuously employed, or in some cases the nearest approximate position.

Since GAO published its February 2007 report, VETS has undertaken measures to ensure that cases involving reasonable accommodations for service-incurred disabilities are properly recorded in its USERRA Information Management System (UIMS). To that end, our investigators have received additional training to ensure that those issues are properly identified, and managers and Senior Investigators in each region review every case, including those involving service-incurred disabilities, to ensure proper case processing and issue identification.

In addition, VETS and DOD staff have worked closely together to ensure that their systems of reporting data on USERRA cases involving reasonable accommodations for service-incurred disabilities are compatible, and have cross-walked codes used by our respective agencies to identify other issues as an initial step toward having uniform codes for all USERRA issues. We expect this process to be complete in time for the USERRA fiscal year 2008 Annual Report to Congress.

OSC and DOJ involvement with USERRA cases is limited to a relatively small number of referrals they receive each year from VETS. The USERRA issues, including disability issues, involved in the cases they receive from VETS will have already been identified.

Question 6. How many full-time employees do DOL VETS and the Office of the Solicitor dedicate to resolving the complaints of disabled service members?

What specific training and resources do those employees receive to enhance their ability to assist disabled service members?

Answer 6. All VETS investigators are trained to identify USERRA issues involving reasonable accommodations of disabilities; consequently no DOL employees are specifically dedicated to resolving USERRA complaints of disabled service members. As discussed in the previous response, USERRA cases involving disability-related issues arise in the context of obtaining the appropriate reemployment position, and the employer's obligation to provide "reasonable accommodations." A significant portion of the 2-week classroom training provided to VETS investigators involves the provisions of USERRA with regard to reasonable accommodation of disabilities and the provisions of the Americans with Disabilities Act.

Question 7. The Secretary of Labor, in consultation with the Attorney General and the Office of Special Counsel, prepares and transmits a USERRA annual report to Congress on the number of complaints filed, the nature and status of each complaint, and if any patterns of violation are apparent. The report for fiscal year 2006 was due to Congress on February 1, 2007. To date, the report has not yet been filed.

Why is the Department of Labor's Annual Report to Congress over 9 months late? When will the Department transmit this report to Congress? What will the Department do in the future in order to prevent such delays in its reporting?

Answer 7. The fiscal year 2006 USERRA Annual Report was transmitted to Congress on February 5, 2008. We are pleased that some of the reporting issues identified by the GAO were addressed in the 2006 report, and that the fiscal year 2007 report will fully address GAO's concerns with the reporting. Because of the lag time involved in finalizing our own data for the report, and of coordinating the submissions of three other agencies, we ask that the Congress consider changing the due date to June 1 of each year.

Question 8. Of the nearly 1,400 complaints the Department of Labor received in 2006, it referred only 24 cases—less than 2 percent—to other agencies for prosecution that year.

Why is the Department referring so few cases for prosecution each year? With tens of thousands of Reserve Component members experiencing potential USERRA violations, why are only dozens of cases being referred for litigation in Federal court and before the Merit Systems Protection Board?

Answer 8. As reported in our fiscal year 2006 USERRA Annual Report, DOL referred 81 cases to DOJ and 11 to OSC. Two factors significantly influence the number of cases that the Labor Department refers to DOD and OSC each year. First, cases are referred only if the Department is unable to achieve a resolution that is

acceptable to the parties. VETS' goal, of course, is to successfully resolve USERRA issues between the service member and the employer without the need for litigation because such resolutions are more likely to preserve the claimant's employment relationship with his or her employer.

Of the 1,377 cases it closed in fiscal year 2006, 414 (30 percent) were successfully resolved by VETS in the claimant's favor (claim granted or settled). The remaining 70 percent were either withdrawn by the claimant, administratively closed, found to have no merit, or were referred to DOJ or OSC. OSC's reported successful resolution rate for cases it received under the demonstration project in fiscal year 2006 was 27 percent, roughly comparable with VETS' success rate for that year. The second limiting factor is that claimants—not the government—control whether their claims are withdrawn, referred for prosecution, or pursued through private counsel.

Question 9. A recent GAO report found multiple inaccuracies in the USERRA data that the Department of Labor reported to Congress. The report found that (1) DOL's Annual Report inflated the number of claims it had completed, and (2) data on the outcomes of claims was "not reliable."

What has the Department of Labor done to address these reporting problems? How can you reassure this committee that the data the Department is sending to Congress is accurate?

Answer 9. VETS takes its reporting responsibilities very seriously. In response to the findings and recommendations in GAO–07–907, VETS added a number of steps to improve the accuracy of its claim numbers and claim outcomes data. The inaccuracies GAO noted in claim numbers stemmed largely from since-discontinued administrative practices that required single claims to be counted more than once in certain circumstances. For example, if, after opening a case in one state, VETS learned that the employer was located in a second State, the case file would be closed administratively in the filing State and reopened in the employer's State. Beginning with the USERRA fiscal year 2006 Annual Report to Congress, VETS eliminated this source of duplication by counting such openings and reopenings as a single case. As a result, the fiscal year 2006 report includes nine fewer cases than would have otherwise been reported.

Another source of duplication identified by GAO is where a case is closed and subsequently reopened because the claimant provided new and material evidence on the original issues of the case. Beginning with the fiscal year 2007 USERRA Annual Report, VETS will not count such reopened cases as unique cases, but will identify them as cases reopened from previous years. We believe these two modifications in reporting address GAO's concerns regarding the number of cases reported by VETS.

VETS also has taken two important steps to address GAO's concerns about case outcomes data. First, VETS is emphasizing as part of its investigatory training the importance of properly identifying and reporting case outcomes. This training is underway. Second, VETS has increased its oversight of USERRA cases by supervisors and senior investigators so as to ensure that correct case outcomes are appropriately recorded in the USERRA database and that reports generated from the database are accurate.

Question 10. During the hearing, you discussed the case of Robert Traut, which has been open at DOL VETS for 7 years, and stated that the case would be referred to the Office of Special Counsel as soon as possible. Has this case been referred yet?

If the Department, has not yet referred the case, when will the Department refer the case, and what steps is it taking to do so?

What could the Department have done differently to process Traut's case faster, and what actions will you take to ensure that cases like Mr. Traut's do not languish for years and years at the Department of Labor?

Answer 10. The Department of Labor referred the Traut case to the Office of Special Counsel on November 16, 2007.

VETS agrees that Mr. Traut's case should have been handled more expeditiously and has taken steps to ensure USERRA cases are handled as promptly and efficiently as possible. Perhaps the most important lesson learned from the Traut case is the importance of close supervisory oversight of those who investigate USERRA allegations. With that in mind, VETS has created a cadre of senior investigators whose primary responsibility is to oversee the case investigation and referral process in their respective regions, paying particular attention to requests for referrals that have been pending for more than 15 days. In addition, with the February 2008 implementation of the new USERRA Operations Manual, VETS is requiring higher-level review of every single USERRA case before the agency issues a closing letter. VETS believes that these two common-sense improvements in case processing will help ensure that USERRA claims receive the attention they deserve. Finally, a key

question of the independent study that will begin later this fiscal year is what can be done to "error-proof" the investigative process.

Question 11. Only 23 percent of Reserve Component members who report reemployment problems seek some type of assistance, including from DOL VETS. In your opinion, why are so few service members contacting DOL VETS for assistance?

Do you agree that some service members do not seek assistance from DOL VETS because they have heard about the delays in having their cases processed?

Answer 11. There are a number of reasons that not all service members who report having reemployment problems seek assistance from VETS. In many cases, they may not want to be seen as "causing problems" for their employer or they may not opt for help from the government because they are ready to move on to other employment opportunities. It is also likely that some have heard that looking for help from the Federal Government can be time consuming. Others may elect to pursue their statutory rights through private counsel and private litigation. In any event, it is important that service members retain confidence in the government's ability to intervene, as appropriate, on their behalf when USERRA rights have been violated. It is therefore imperative that DOL and our partners at ESGR, DOJ and OSC execute our respective USERRA responsibilities effectively, and that we all consistently convey this message to service members: "Welcome home! We're here to help!"

Additionally, we find that DOD's Employment Support for the Guard and Reserve (ESGR) provides USERRA assistance to thousands of service members each year and much of the time they are able to address employment and reemployment issues without requiring service members to file a formal complaint with VETS. As a result of the assistance that ESGR provides, only a fraction of USERRA issues become claims filed by service members through VETS.

QUESTION OF SENATOR ENZI

Question 1. Some of the written testimony submitted for this hearing relates a personal experience wherein a DOL-VETS "program assistant" informed a veteran that he had no USERRA claim because he "did not hear someone from [his company] tell (him) he was terminated for military reasons," Is this the practice of VETS? What kind of record would exist of such an interaction?

Answer 1. Such a response would certainly be contrary to the training VETS provides to its investigators, and contrary to our procedures for handling veterans' concerns regarding USERRA. If such an interaction occurred during a case investigation, it would be required to be documented in the case file. The USERRA Operations Manual clearly states, "All VETS contacts and attempted contacts with the claimant, the employer, the military unit, and all other persons must be completely documented and included in the case file." On the other hand, if the interaction occurred when VETS was providing informal technical assistance to an individual who had not filed a complaint—something VETS does thousands of times each year—there may be no record of the interaction.

QUESTIONS OF SENATOR MURRAY

Question 1. In their written testimony, GAO reported that some claims are taking close to 2 years to process in their entirety. Why are USERRA claims taking so long to resolve at DOD, DOL, and OSC? What can each of your agencies do to make this process more efficient and effective for veterans?

Answer 1. The Veterans' Employment and Training Service (VETS) is committed to providing the best possible service to the public in carrying out its investigative responsibilities under USERRA. Our primary goal is to secure for our service men and women all their legal entitlements and we are constantly looking for ways to do so more expeditiously. While some USERRA claims take longer to process than others, the average claim is processed and closed within 53 days. Actions described in 1.b, below, will be evaluated by independent process experts later this year. VETS is soliciting recommendations of changes to the investigative process that are expected to improve quality, timeliness and cost effectiveness.

There are several factors that can lengthen the time it takes VETS to fulfill its obligations with respect to a USERRA claim. Sometimes the claimant may become unable (or unwilling) to participate in the investigation for a period of time. For example, the claimant might be called to active duty and deployed and cannot be contacted, although the increased availability of e-mails and cell phones has improved our ability to communicate with such claimants. An employer who is uncooperative can also cause delays in processing claims. Delays can also occur during the referral

process, if the Solicitor's Office requests additional investigation in order to support a litigation recommendation.

There are some situations in which VETS' ability to expedite the USERRA claim process is limited or nonexistent. For example, where the employer is a single individual and that individual is not available for legitimate reasons, delays in communicating with the employer are unavoidable. Similarly, where the claimant is unable or unwilling to participate in the investigation, the investigator's ability to move forward may be lost.

VETS has been taking aggressive steps that will reduce the processing times for claims received by the agency. In February 2008, we implemented a new Operations Manual and updated our Quality Assurance Review process. Extensive investigator training on the Manual is now underway through regional training conferences and new online training will begin this year. Items contained in the Operations Manual and the training programs include investigative tools that can lead to quicker resolution of USERRA claims.

Investigators are encouraged to consider requesting subpoenas at an earlier point in cases where an employer is reluctant to provide documents or witnesses. Onsite investigations, witness interviews, and case resolution conferences are encouraged to expedite investigations. Investigators are now expected to complete referral memorandums within 15 working days after the claimant requests the referral. In addition, we have recently clarified to our investigators that once a claimant asks for referral, any continued efforts to resolve the claim should take place concurrently with processing the referral, and should in no way slow the referral process. With respect to claims filed against Federal employers, the responsible headquarters office of the agency involved now receives a copy of the VETS investigator's opening letter.

In 2006, VETS established a Senior Investigator (SI) position in each of its six Federal regions. The SI helps investigators deal with difficult employers and claimants, provides a second set of eyes on investigators' cases, and assists the referral process. The SI or the investigator's next-level supervisor conducts a review of open claims at the 45-day mark. If the claim remains open after 60 days, a more detailed review is conducted by the regional office. After 90 days, the SI determines what is needed to finalize the investigation. In addition, the SI is responsible for taking appropriate steps to resolve requests for referral that have been pending for more than 30 days.

VETS continues to work to improve communications between all partners involved in USERRA enforcement. We have already made relevant data from the USERRA Information Management System available to the DOD, OSC and DOJ, and are moving to more electronic case management. When this initiative is completed, users from each agency will have immediate access to information on the status of claims moving through the referral process.

Question 2. We know as the war grows, so will the number of returning veterans who may need USERRA protection, resulting in a much greater case load than DOL, DOD, DOJ, OSC are currently handling. How can your agencies work proactively to prevent the need for USERRA claims in the future?

Answer 2. We are optimistic that the aggressive outreach program conducted by DOL's VETS and DOD's ESGR will help employers properly deal with these reemployment issues. As more employees and employers understand their respective rights and obligations under the statute, we believe that USERRA violations will be reduced. However, Reserve and National Guard deployments have increased in both duration and frequency, and we are very mindful of the increased complexity of USERRA cases.

We are vigilant in our administration of USERRA, recognizing that many workplaces are dealing with reemployment rights for the first time. We resolve many potential disputes by providing timely education and guidance to service members, employers, and other interested parties as to the requirements of the law. However, when we receive a USERRA complaint, we thoroughly and promptly investigate to ensure compliance with the law.

VETS outreach activities are discussed in response to Question 5 below.

Question 3. In Mr. Bloch's testimony he claims that granting the OSC exclusive jurisdiction over Federal sector USERRA cases greatly enhance the efficiency of with which Federal sector cases could be handled.

a. If OSC were allowed to have sole jurisdiction over Federal sector claims, do you think that veterans who are not Federal employees would perceive that they are being treated differently than their counterparts?

b. In your opinion, how would such a change impact the larger USERRA system?

Answer 3. Segmenting USERRA complaint filing and investigations based on whether the service members' employer is Federal or private sector is confusing and results in at least the perception of disparate treatment. We believe that a single agency needs to have visibility over the entire USERRA program, so that veterans know exactly where to go for help. DOL is in a position to do exactly that. Helping veterans and service members transition to civilian employment is VETS' primary mission. We offer a holistic approach to assisting veterans by helping those who want our assistance resolving a USERRA dispute with their employer as well as those who decide not to return to their previous employer and instead seek other employment or training opportunities. We have Veterans' Employment Specialists in every state in the country, and VETS-funded Disabled Veterans Opportunity Specialists (DVOPs) and Local Veterans' Employment Representatives (LVERs) are located at One-Stop Career Centers in communities across the Nation. VETS has made significant investments in technology, so that electronically filed claims go directly to the appropriate field or regional offices through its UMIS system. This leads to reduced processing time.

Furthermore, VETS' and OSC's success in resolving USERRA cases is comparable. In fiscal year 2006, 30 percent of VETS' USERRA cases were successfully resolved and the remaining 70 percent were either withdrawn by the claimant, administratively closed, found to have no merit, or were referred to DOJ or OSC. OSC's reported successful resolution rate for fiscal year 2006 was 27 percent, roughly comparable with VETS reported success rate for that year.

Question 4. In your opinion, does the referral process hinder DOL's ability to resolve cases efficiently? If DOL had the authority to litigate cases through its Solicitor's office, would claims be resolved faster?

Answer 4. The referral process does not hinder DOL's ability to resolve cases efficiently. The most important reason is that VETS resolves the vast majority of USERRA problems before service members ever ask to have their cases referred. Over the last 10½ years, for example, VETS has resolved without referrals 91 percent of USERRA cases that involve Federal agency employers. Over the same time period, VETS also resolved 83 percent of meritorious cases in the Federal sector within 90 days. While VETS constantly strives to resolve more cases more quickly, we do not believe that the referral process significantly impedes our ability to succeed.

Question 5. It's tough to help veterans get the protection they need and to help employers abide by the law when they don't know their rights and responsibilities. I consistently hear from National Guard and Reserve members that employers are hesitant to hire them because the employer fears that they will be mobilized.

5a. What is DOL doing to ensure that employers understand their responsibilities under USERRA? 5b. Has DOL made efforts beyond enforcement to encourage employers to hire veterans? 5c. What more needs to be done and how do you plan to accomplish it?

Answer 5a. VETS recognizes that most disputes arising under USERRA result from misunderstandings of the law and its requirements with respect to duties and responsibilities. Accordingly, we have engaged in an extensive public outreach program and, since 9/11, have briefed or provided technical assistance to more than 500,000 individuals nationwide. VETS national and regional staff have briefed deploying and returning military units, including members of the National Guard and Reserve, active duty military, and military personnel who are transitioning to civilian life. In addition, with our national staff, we have briefed State Chambers of Commerce, State Bar associations, professional associations, conducted webcasts, telephone and radio interviews and briefings, and national televised information sessions. Our USERRA briefings are now a component of instruction at the U.S. Army Judge Advocate General (JAG) School in Charlottesville, Virginia, and we hope to expand that program to other service branches' JAGs as well.

The final USERRA regulations, now codified at 20 CFR 1002.1–1002.314, are a very important and effective tool to ensure that employees and employers understand their rights and responsibilities under USERRA. Those regulations are highly regarded by stakeholders, and written in "plain English" in an easy-to-read question-and-answer format. The regulations are intended to answer any questions employers and employees alike may have about their respective duties and rights under the law, and we believe they offer the single best tutorial on the law. In addition, our USERRA elaws Advisor, available at http://www.dol.gov/elaws/userra.htm, is an interactive Web site available 24/7 to assist both servicemembers and employers understand their rights and responsibilities under the law. This Web site receives an average of over 8,000 visits per month and allows servicemembers to de-

termine if they appear to have a valid complaint and to file that complaint electronically.

Word of our USERRA outreach is being spread throughout employer and professional communities, and we are receiving a greatly increasing volume of requests for our national and field staff to address those groups nationwide.

5b. In 2004, VETS launched a national outreach program called HireVetsFirst to encourage more employers to hire veterans. With the Web site, www.hirevetsfirst.gov, as its cornerstone, VETS has targeted corporate executives, small businesses and human resources managers to connect them with veterans seeking employment, especially those returning from Iraq and Afghanistan. Additionally, VETS started a program to specially help wounded and injured veterans transition back to the civilian sector. Recovery Assistance Employment Lifelines, or REALifelines, has trained coordinators that work with the service member during their recovery process, and coordinate with local employers when an injured service member returns home to begin his or her civilian life.

5c. VETS is continuing to seek new opportunities and avenues to have employers and veterans get together. Last year, VETS coordinated over 100 veteran-only job fairs with the State workforce system and staged a nationwide blitz surrounding the Veterans Day remembrance to raise the profile of veterans' employment. Nearly 30,000 veterans and transitioning service members were greeted by over 4,000 employers during this period of time. Additionally, VETS is co-branding veteran-only job fairs with private vendors to further enhance opportunities for veterans. Last year over 40,000 veterans attended at least one of 110 such job fairs. This year over 200 private vendor job fairs are scheduled as well as additional events staged by the various State workforce systems.

Question 6. I understand that DOL and DOD have been working together to address the data compatibility concerns that GAO raised concerning common complaint categories for USERRA claims and that we can expect a pilot test of this new program in 2008. Is that effort still on track for next year?

Answer 6. Yes, this effort is on track. VETS and DOD have reviewed the complaint categories, or issue codes, used by each agency and have developed a crosswalk that identifies, for each agency's USERRA issue codes, the related section of the USERRA Regulations and the U.S. Code. The agencies are now assessing the information collected by each agency and VETS' fiscal year 2007 USERRA Annual Report will report the issues involved in each agency's cases in common categories.

RESERVE OFFICERS ASSOCIATION,
WASHINGTON, DC. 20002,
March 5, 2008.

Hon. EDWARD M. KENNEDY, Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC. 20510–6300.

DEAR CHAIRMAN KENNEDY: Thank you for the opportunity to testify before the Committee on Health, Education, Labor, and Pensions on the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the agencies that are responsible for enforcing this law. Attached are the follow-up answers to the additional questions for the record that were requested.

Sincerely,

DENNIS M. MCCARTHY,
LIEUTENANT GENERAL, USMC (RET),
Executive Director.

RESPONSE TO QUESTIONS OF SENATOR KENNEDY BY LIEUTENANT GENERAL DENNIS M. MCCARTHY, USMC (RET.)

Question 1. Have you noticed an increase in reemployment problems among your members? What types of reemployment issues have grown in recent years, and what types of issues present the most difficult to resolve?

Answer 1. Yes. We have noted a large increase after September 11, 2001, and that number has remained high ever since. The Reserve Officers Association retains a lawyer to address reemployment/employment problems, Captain Samuel F. Wright, JAGC, USN (Ret.). ROA have seen an up-tick in the number of phone calls and e-mails that ROA has been receiving. Captain Wright reports that he receives, on

average, three to four e-mails or phone calls a day with requests for assistance or questions regarding USERRA.

In addition to commissioned officers, a larger number of queries come from enlisted Reservists and National Guard members. Captain Wright also hears from attorneys for both USERRA claimants and for employers; employers; human relations managers; ESGR volunteers; and others who have an interest in USERRA. ROA responds and provides information and assistance, without regard to whether the individual requesting assistance is a member of the Reserve Officers Association.

The Reserve Officers Association has noted a change in the typical reemployment disputes faced by returning National Guard and Reserve members. While many challenges still relate to lost jobs or demotions, others are dealing with lost seniority, promotions, pay raises, retirement credit and other employment related matters protected under the Uniformed Services Employment and Reemployment Act (USERRA).

The greatest difficulty arises when the returning service member's reemployment displaces another employee who has filled the Reservist's position during mobilization. Employers often try to resist this requirement, wanting to reward the employee who stayed behind.

In Fishgold v. *Sullivan Drydock & Repair Corp*., 328 U.S. 275, 284–85 (1946), the Supreme Court enunciated the "escalator principle" when it held, "[The returning Guard or Reserve member] 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 the war."

Section 4316(a) of USERRA [38 U.S.C. 4316(a)] codifies the "escalator principle" in the current law. After completing his mobilization, a Guard or Reserve member is entitled to promotions, pay raises, and other benefits that he most likely would have received if he had remained continuously employed.

If a promotion is dependent upon passage of an exam (as is often the case for police officers, firefighters, and other State and local government employees), the employer is required to offer the returning member the opportunity to take a make-up exam after returning to work. If the member's score on the make-up exam is such that the person would have been promoted if continuously employed, the individual is entitled to the promotion, *even if that means displacing another employee who was promoted some months earlier. See* 20 CFR 1002.193(b).

Of course, the "escalator" can descend as well as ascend. The returning service member is not exempted from bad things, like reductions in force and layoffs that *clearly would have happened anyway*, even if the individual had not been away from work for military service at the time.

Another recurring problem we see is the "preemptive firing." If the employer is aware that Mary Jones is likely to be called to active duty sometime in the next 6 months or so, the employer often begins a search for a pretext to fire Mary now, and thus avoid USERRA obligations.

Question 2. In your opinion, are the four government agencies charged with enforcing USERRA doing a satisfactory job of assisting service members in resolving their reemployment problems? Are there any agencies in particular that you feel are not serving service members' needs effectively, and if so how are such agencies failing to serve their needs? What actions should these agencies take to better handle Reservists' reemployment problems? What can these agencies do to better inform and educate returning soldiers, sailors, Marines and airmen of their reemployment rights?

Answer 2. There are four agencies that have a role to play in USERRA enforcement:

a. The National Committee for Employer Support of the Guard and Reserve (ESGR), a Department of Defense organization.

b. The Veterans' Employment and Training Service of the Department of Labor (DOL-VETS).

c. The Department of Justice (DOJ).

d. The Office of Special Counsel (OSC).

The vast majority of the USERRA disputes can be corrected through good communications, as is demonstrated by the ombudsman program of the Employer Support for the Guard and Reserve that does an excellent job in correcting a large portion of these disagreements. Yet, not all the problems that arise can be settled through mediation.

DOL's Veterans' Employment and Training Service (VETS) handles USERRA complaints and other veterans' issues. DOL-VETS provides assistance to all persons having complaints under USERRA. Unfortunately, actual elapsed times of cases can often take 1 to 2 years to investigation and process. Within DOL, cases are still

processed on paper; this slows information transfer, and creates the risk of duplication. In the vast majority of cases, the outcome is dismissal of the claim.

If the Department of Labor does not resolve a complaint, it will refer the complaint to the Department of Justice upon the request of the person who filed the complaint. The cases go to the Civil Rights Division of DOJ and in turn USERRA enforcement is assigned to the Employment Litigation Section. Under USERRA, the DOJ has authority to appear on behalf of a claimant in a suit filed in *Federal district court* if DOJ is satisfied that the claimant is entitled to the rights or benefits being sought. The Department of Justice does not pursue all possible cases.

A successful demonstration project was authorized by Congress, which expanded the Office of Special Council's (OSC) role over *federally* employed Reservist USERRA cases. OSC got about half of the Federal cases, and aggressively resolved many at a faster and higher rate of success than DOL.

The Department of Labor should follow the success of the Office of Special Council with dedicated investigators and lawyers assigned to DOL-VETS who specifically focus on USERRA cases. I believe that DOL-VETS would do much better with more funding for specifically assigned and trained personnel.

ROA believes that there is room for improvement in each of these agencies. DOL seems to have unreasonable expectations about the level of proof (a "smoking gun") that is necessary to make a USERRA case, and the agency closes all too many cases as "without merit" that do have merit. Further cases are measured by time spent processing, not by actual elapsed time.

The Reserve Officers Association believes five actions are necessary to improve processing reemployment problems:

1. Resource the National Committee on Employer Support of the Guard and Reserve adequately.

- Enable ESGR to expand its outreach programs to employers. This will head off many problems before they arise by educating employers as to their USERRA responsibilities.
- Staffing and training ESGR's "ombudsmen" will solve many problems at a low level—the quickest way to get a service member back to work.

2. The Department of Labor needs a specific set of USERRA investigators who work on these issues full time.

3. USERRA records should be maintained and transmitted electronically. with access by the service member, ESGR, DOL-VETS, the Office of Special Counsel, and the Department of Justice.

4. Congress should mandate better reporting by all Federal agencies involved in these cases:

- How many cases are there?
- How are they resolved?
- How long does the process really take?

5. The Office of Special Counsel should handle all cases involving Federal employees, in order to free up DOL-VETS to work with private employers.

What is needed is not only a single Federal office which can focus and streamline USERRA claims. but a collaboration between Federal and private representation to serve this country's patriots who are returning to being citizens from a tour as warrior.

The National Committee on Employer Support for the Guard and Reserve has set an excellent example on how a Federal agency can work with the private sector recruiting business executives to assist in intervention with other business owners on USERRA.

The Labor and Defense departments are responsible for informing service members and employers of their rights and obligations under USERRA.

GAO reports that 72 percent of Guard and Reserve members with reemployment problems never seek Federal remedy. This reflects a breakdown in communication of knowing the rights, and options.

- Active, Guard and Reserve leadership needs to be better trained on USERRA rights to share with serving Guard and Reserve members.
- Enable ESGR outreach programs to employers and serving members, and expand its ESGR's "ombudsmen program.
- Department of Labor needs to treat serving members as their customers, by providing claims status to Guard and Reserve Claimants.

Question 3. Why do you think that so many service members who experience reemployment problems fail to contact anyone for assistance, including the Federal Government? Why do you think that we have seen an increase in recent years in the percentage of reservists with reemployment problems who contact private attor-

neys? Are private lawyers simply doing a better job of investigating and resolving cases, or do our reservists doubt that the government will assist them effectively?

Answer 3. Since USERRA's passage in 1994, most USERRA enforcements were by reservists who sought private litigation. Unfortunately, many Reserve Component members can't afford private litigation.

The actual elapsed times of DOL cases often take 1 to 2 years to investigation and process. Many reservists are discouraged by the time it takes for DOL and feel that DOL is not acting as their litigator. They feel a private attorney would better represent them in a more timely fashion.

A private attorney can investigate the facts and the law and make a decision, and then send a demand letter and if necessary file suit, within a month or so. Investigations at DOL-VETS take many months, and in some cases many years. Also, a private attorney can consider legal theories and remedies under various State and Federal laws, not just USERRA. Finally, a private counsel will approach a USERRA case, or any case, with a sense of advocacy, not neutrality, representing the Guard or Reserve claimant.

However, not enough private lawyers are well-informed about handling these USERRA cases. More information and training (in the form of Continuing Legal Education) is needed.

RESPONSE TO QUESTIONS OF SENATOR MURRAY BY LIEUTENANT GENERAL DENNIS M. MCCARTHY, USMC (RET.)

Question 1. You mention in your testimony that the number of phone calls and e-mails your organization receives regarding reemployment of National Guard and Reserve is increasing. How much has it increased and do you expect these numbers to increase further?

Answer 1. We had a five fold increase and get as many queries in a day that we used to get in a week prior to 9/11/2001. As Guard and Reserve members continue to mobilize in support of the Global War on Terrorism, we expect to see a growing number of problems occurring among our Nation's employers due to mobilization fatigue.

Question 2. What are the most common problems Guard and Reserve members are having with reemployment?

Answer 2. Finding timely representation, to resolve their employment problems, lawyers, willing to work pro bono or on contingency, are needed, and these lawyers need training and research materials to be effective.

Question 3. Does the Reserve Officers Association (ROA) have the resources to handle the increased number of USERRA cases?

Answer 3. Not at this time. Working with very limited resources, ROA has accomplished a great deal in educating Reserve Component members and their civilian employers about their rights and obligations under USERRA and other laws, but demand is greater than means.

The challenge is finding lawyers willing to represent Guard and Reserve members facing USERRA problems.

Question 4. In your written testimony, you propose the establishment of a Service Members Law Center at ROA. Do you think that such a center would be necessary if the four Federal agencies were accountable for maintaining and managing USERRA?

Answer 4. Yes. ROA is already providing a "Law Review" Library with approximately 320 articles, about the Uniformed Services Employment and 'Reemployment Rights Act (USERRA) and related laws. This is being used as a resource by both government and private attorneys, as well as providing information to Guard and Reserve members. New articles are added each month.

The Law Center would serve as a hub for sharing information on USERRA and SCRA to serving members, professionals and academians. The ultimate key to effective USERRA enforcement is to educate private attorneys, both for USERRA claimants and for employers. By developing the Law Center, ROA could conduct Continuing Legal Education (CLE) sessions nationwide. We would also file *amicus curiae* (friend of the court) briefs in courts around the country, in cases involving USERRA and other laws that protect the rights of service members.

To accomplish all that needs to be done, we need startup assistance from Congress. The initial cost of $750,000 is a small investment on potential return.

[Whereupon, at 11:58 a.m. the hearing was adjourned.]

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